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Monday
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Highlights

Cumulative List of Public Laws—The third cumulative list of public laws for the second session of the 96th Congress will be published in the **Reader Aids** section of the Wed., Nov. 5th issue.

72617 **Mushroom imports** Presidential proclamation

72637 **Washington National Airport** DOT/Sec'y issues special regulation which allocates Instrument Flight Rules reservations at Washington National Airport; effective 10–29–80

72709 **Waste Treatment and Disposal** EPA proposes modifications to and clarifies its interpretation of criteria for classification of solid waste disposal facilities and practices; comments by 12–3–80

72984 **Grant Programs—Environmental Protection** EPA amends regulations governing cost-effectiveness analysis guidelines prepared under grants for construction of treatment works; comments by 1–2–81 (Part VIII of this issue)

72697 **Low and Moderate Income Housing** HUD/FHC proposes to amend eviction procedures in the Existing Housing Assistance Payments Program; comments by 1–2–81

72647 **Supplemental Security Income** HHS/SSA clarifies how we decide whether adjustment or recovery of an overpayment would defeat purpose of program; effective 11-3-80

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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.

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72626 **Gasoline** DOE/ERA adopts amendments to mandatory price rules to delete equal application rule with respect to all sales of gasoline; effective 11–1–80

72948 **Pesticides** EPA issues proposed guidelines for registering pesticides in the U.S., comments by 2–2–81 (Part VI of this issue)

72886 **Improving Government Regulations** DOE publishes semiannual agenda of regulations under development or review (Part III of this issue)

72732 **Grant Programs—Community Services** CSA issues notice of decision to fund ten conduit migrant and seasonal farmworker Emergency Energy Assistance Programs in every State except Hawaii and Alaska; effective 11–3–80

72734 **Petroleum** DOE/ERA issues Domestic Crude Oil Allocation Program Entitlements notice for August, 1980

72675 **Improving Government Regulations** FCA publishes semiannual agenda of regulations under development and review

72883 **Water Pollution Control** EPA proposes amendments to general pretreatment regulations for existing and new sources; comments by 1–2–81 (Part II of this issue)

72714 **Freedom of Information** GSA proposes rule providing procedures for public access to GSA records; comments by 1–2–81

72713 **Federal Buildings and Facilities** GSA proposes regulations providing for display of Code of Ethics for Government Service in public space in Government-owned or fully Government-occupied buildings; comments by 1–2–81

72902 **Television** FCC proposes rules that would modify process for making available additional VHF television allotments; comments by 12–15–80 (Part IV of this issue)

72860 **Sunshine Act Meetings**

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72886 **Part III, DOE**
72902 **Part IV, FCC**
72944 **Part V, EPA**
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Presidential Documents

Title 3—

The President

Proclamation 4801 of October 29, 1980

Temporary Duty Increase on the Importation Into the United States of Certain Mushrooms

By the President of the United States of America

A Proclamation

1. Pursuant to Section 201(d)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2251(d)(1)), the United States International Trade Commission (USITC), on August 18, 1980, reported to the President (USITC Report 201–43) the results of its investigation under section 201(b) of the Trade Act (19 U.S.C. 2251(b)). The USITC determined that mushrooms, prepared or preserved, provided for in item 144.20 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The USITC recommended the imposition of quantitative restrictions on imports of the above specified mushrooms.

2. On October 17, 1980, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to remedy the injury, or threat thereof, found to exist by the USITC by proclaiming a temporary duty increase. On October 17, 1980, in accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth my determination and intention to proclaim a temporary duty increase and stating the reason why my decision differed from the action recommended by the USITC.

3. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 15 days after the import relief determination date.

4. Pursuant to sections 203(a)(1) and 203(e)(1) of the Trade Act (19 U.S.C. 2253(a)(1) and 2253(e)(1)), I am providing import relief through the temporary increase of the import duty on the subject mushrooms.

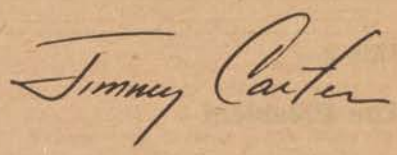
NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 604 and 203 of the Trade Act (19 U.S.C. 2483 and 2253), and in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786), do proclaim that—

(1) Part I of Schedule XX to the GATT is modified to conform to the actions taken in the Annex to this Proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this Proclamation.

(3) This Proclamation shall be effective as to articles entered, or withdrawn from warehouse for consumption, on or after November 1, 1980, and before the close of October 31, 1983, unless the period of its effectiveness is earlier expressly suspended, modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.



ANNEX

Subpart A, part 2 of the Appendix to the TSUS (19 U.S.C. 1202) is modified by inserting in numerical sequence the following new provision:

Item	Articles	Rates of Duty			
		1			2
		Effective on or after November 1,--			
		1980	1981	1982	
"922.55	Mushrooms, prepared or preserved, provided for in item 144.20...	The rate provided for in item 144.20 + 20% ad val.	The rate provided for in item 144.20 + 15% ad val.	The rate provided for in item 144.20 + 10% ad val.	No change."

[FR Doc. 80-34425
Filed 10-31-80; 11:23 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 214
Monday, November 3, 1980

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

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Question and Answer on the Anti-Inflationary Price Standards Second Program Year

AGENCY: Council on Wage and Price Stability.

ACTION: Question and Answer on the anti-inflationary price standards for the second program year.

SUMMARY: The Council is adopting a Question and Answer that explains its policy on the effect of a change in accounting methods under Statement of Financial Accounting Standards No. 34 on calculations of profits under the price standards.

EFFECTIVE DATE: The effective date of this Question and Answer is November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Andrew Bartels, Office of Price Monitoring, (202) 456–7107.

(Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979)).

Issued in Washington, D.C. October 29, 1980.

R. Robert Russell,

Director, Council on Wage and Price Stability.

Accordingly, Questions and Answers on the anti-inflation Price Standards for the Second Program Year are amended by the addition of a new Question and Answer I., I. 9. which reads as follows:

Q. 9 Profit and net sales are defined in § 705.76 of the price standards in terms of definitions contained in Securities and Exchange Commission regulations. Under these regulations and consistent with the adoption of Statement of Financial Accounting Standards No. 34 (effective December 15, 1979), companies are now required to treat a portion of interest expense for certain long-term activities as part of capital cost or as part of the cost of manufacturing or construction. This could result in different measurements of profit in base and program periods. Should a compliance unit follow these new S.E.C. requirements in reporting profit data to the Council?

A. No. In order for the Council to have comparable data, interest should not be treated as part of capital cost or as part of the cost of manufacturing or construction in any calculations of profit for compliance purposes. Compliance units may, however, follow the S.E.C. requirements for treatment of interest included in depreciation charges as part of asset values, because of the difficulties in determining the amounts of interest included in the amortized asset cost.

[FR Doc. 80-34228 Filed 10-31-80; 8:45 am]
BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 404

Western United States Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring apples in the Western United States effective with the 1981 crop year. This rule is a revision of the previous regulations for insuring apples to include several changes and to reissue the regulations in a clearer, shorter, and simpler document which will make the program easier to understand and more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The Final Impact Statement describing options considered in developing this final rule and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 (August 25, 1978), to implement Executive Order No. 12044 (March 23, 1978), and has been classified "not significant".

The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the **Federal Register** on Monday, August 4, 1980 (45 FR 51573–51579), prescribing procedures for insuring apples in the Western United States effective with the 1981 crop year. In the notice, FCIC, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), proposed to revise and reissue the Western United States Apple Crop Insurance Regulations (7 CFR Part 404) as appearing in the **Federal Register** on November 29, 1976 (41 FR 52289), as amended on January 17, 1978 (43 FR 2381), on January 9, 1979 (44 RR 1963), and on December 18, 1979 (44 FR 74792–74793), effective with the 1981 crop year.

In addition to shortening and simplifying the regulations, the revised 7 CFR Part 404 provides (1) for a premium adjustment table that provides for up to 50 percent premium discount for good insuring experience and premium increases for unfavorable insuring experience, which replaces the present premium discount system, (2) for insurance protection to be provided against "fruit-set failure", which is a new insurable cause of loss covering failure of the apple tree to develop blossoms or failure of the apple to set due to adverse weather conditions, but not including poor pollination resulting from inadequate pollinizers in the orchard or failure to set due to spray damage or other manageable causes, (3) that the insurance period will begin on November 21 instead of the present March 1 and March 16, (4) that the premium per acre will be the production guarantee per acre multiplied by the applicable price election and the result multiplied by the premium percentage rate, (5) for a method for computing the production lost due to reduction in grade, (6) for unit division by written agreement between the insured and the Corporation or by applicable guidelines,

and (7) for changes in the cancellation and termination for indebtedness dates as indicated on the following table:

	Present	Proposed
End of insurance: (No change).	Oct. 31	Oct. 31.
Cancellation	Dec. 31	Sep. 30.
Termination:		
Oregon	Feb. 28	Nov. 20.
Washington	Mar. 15	Nov. 20.

In addition, there has been added a "Good Faith Reliance on Misrepresentation" section found in 7 CFR 404.5 of these revised regulations. This section is now included in all FCIC regulations and provides a limitation of $20,000 in those cases involving good faith reliance on misrepresentation by employees or agents of the Corporation wherein the Manager of FCIC is authorized to take action to grant relief. Similar cases involving in excess of $20,000 may only be considered by the Board of Directors of the Corporation.

All previous regulations applicable to insuring apples in the Western United States as found in 7 CFR Part 404 will not be applicable to the 1981 and succeeding Western United States apple crops but will remain in effect for FCIC Western United States apple insurance policies issued prior to 1981.

Under the provisions of Executive Order No. 12044, and the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)), the public was given an opportunity to submit written comments, data, and opinions on the proposed regulations, but none were received. Therefore, with the exception of minor and nonsubstantive corrections to language, the regulations as contained in the proposed rule are hereby issued as a final rule to be effective starting with the 1981 crop year.

In addition, there is hereby added to the final rule an Appendix "B" which lists the counties where apple crop insurance is available in accordance with the provisions of 7 CFR Part 404.1 which states in part that before insurance is offered in any county, there shall be published by appendix to this part the names of the counties where such insurance shall be offered.

In compliance with the Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), the review of these regulations contained in 7 CFR Part 404 for need, currency, clarity, and effectiveness must be completed prior to the sunset date of July 14, 1985.

Final Rule

Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Western United States Apple Crop Insurance Regulations (7 CFR 404) to read as follows:

PART 404—WESTERN U.S. APPLE CROP INSURANCE

Subpart—Regulations for the 1981 and Succeeding Crop Years

Sec.

404.1 Availability of Western U.S. Apple Insurance.
404.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
404.3 Public notice of indemnities paid.
404.4 Creditors.
404.5 Good faith reliance on misrepresentation.
404.6 The contract.
404.7 The application and policy.
Appendix A (Additional Terms and Conditions).
Appendix B Counties Designated for Western Apple Crop Insurance.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516)

§ 404.1 Availability of Western U.S. Apple Insurance.

Insurance shall be offered under the provisions of this subpart on apples in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published in Appendix B to this part the names of the counties in which Western U.S. apple insurance will be offered.

§ 404.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for apples which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 404.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 404.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 404.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Western U.S. apple insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 404.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the apple crop as provided in the policy. The contract shall consist of the application, the policy, the attached Appendix A, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of

forms referred to in the contract are available at the office for the county.

§ 404.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the apple crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications for contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1977 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a Western U.S. apple contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Western U.S. Apply Insurance Policy for the 1981 and succeeding crop years, and the Appendix A to the Western U.S. Apply Insurance Policy are as follows:

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Application for 19——and Succeeeding Crop Years

Western U.S. Apply Crop Insurance Contract

Contract number ——————
Indentification Number ——————
Name and Address ——————
ZIP Code ——————
County ——————
State ——————
Type of Entity ——————
Applicant is over 18 Yes——No——

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation".), hereby applies to the Corporation for insurance on the applicant's share in the apples grown on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.
LEVEL ELECTION ——————
PRICE ELECTION ——————

EXAMPLE: FOR THE 19——CROP YEAR ONLY (100% SHARE)

Location/Farm No.	Guarantee per acre*	Percentage premium rate**

* Your guarantee will be on a unit basis (acres x per acre guarantee x share).
**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED as provided in the contract. This accepted application, the following Western U.S. apple insurance policy, the attached Appendix A, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.
Signature of Applicant ——————
Date, 19—— ——————
Code No./Witness to Signature ——————
Address of Office for County: ——————

——————
Phone ——————
Location of Form Headquarters: ——————

——————
Phone ——————

Western U.S. Apple Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix A:

1. CAUSES OF LOSS. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from frost, freeze, wind, hail or fruit-set failure occuring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good orchard management practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. CROP AND ACREAGE INSURED. (a) The crop insured shall be apples established as adapted to the area, which is located on insured acreage, and for which the actuarial table shows a guarantee and percentage premium rate.

(b) The acreage insured for each crop year shall be that acreage of apples located on insurable acreage as shown on the acturial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided,* That insurance shall attach only after the acreage (1) has produced a minimum of 250 boxes per acre and (2) is considered acceptable based upon a Corporation inspection.

3. RESPONSIBILITY OF INSURED TO REPORT ACREAGE, SHARE, YIELD, AND NUMBER OF TREES. The insured shall submit to the Corporation on a form prescribed by the Corporation a report showing the following: (a) all acreage of apples in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share, (b) the insured's share therein at the time insurance attached, (c) the number of bearing trees thereon, and (d) the loose field boxes produced from the preceding year's insurable acreage on each unit. Such report shall be submitted each year not later than November 20.

4. PRODUCTION GUARANTEES, COVERAGE LEVELS, AND PRICES FOR COMPUTING INDEMNITIES. For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the acturial table.

5. ANNUAL PREMIUM. (a) The annual premium is earned and payable on the date insurance attaches and the amount thereof shall be determined by multiplying the insured acreage times the production guarantee per acre, times the price election per loose field box, times the percentage premium rate, times the insured's share at the time insurance attaches, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 – .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 – .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 – .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 – .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 – 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE																
	Number of Loss Years Through Previous Year 2/															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

BILLING CODE 3410-08-C

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. *INSURANCE PERIOD.* Insurance on insured acreage shall attach each crop year on November 21 and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvest of the insured apples, (c) October 31 of the calendar year in which the apples are normally harvested, or (d) total destruction of the insured apple crop.

7. *NOTICE OF DAMAGE OR LOSS.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county when the insured damage to the apples becomes apparent giving the date(s) and cause(s) of such damage.

(b) If an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county (1) at least fifteen days before harvest commences if a final adjustment has not been made on the unit, and (2) immediately if the damage occurs within the fifteen-day period before harvest commences, or during harvest.

(c) In addition to the notices required in subsection (a) and (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than *30 DAYS* after the earlier of (1) the date harvest is complete on the unit, (2) October 31 or (3) the date the entire apple crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *CLAIM FOR INDEMNITY.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of apples on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of apples on the unit by the applicable guarantee per acre, which product shall be the guarantee for the unit, (2) subtracting therefrom the total prodution of apples to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) mulitiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production: *Provided*, Production which, due to insurable causes, does not grade 80 percent Fancy or better, based on applicable State Standards will be counted as follows:

(1) Production with 21 percent thru 40 percent not grading Fancy or better will be reduced 2 percent for each percent in excess of 20. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 percent thru 50 percent not grading Fancy or better will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 thru 64 percent not grading Fancy or better will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50. The difference between the reduced production and the total production will be considered cull production.

(i) Production with 65 percent or more not grading Fancy or better will be considered 100 percent cull production.

(ii) 30 percent of all cull production, as determined above shall also be counted as production.

(iii) In no event shall a reduction in grade be applied to any apple grading less than fancy due solely to shape or color.

(4) Appraised production to be counted shall include: (i) any appraisals by the Corporation for potential production, uninsured causes and poor farming practices, and (ii) not less than the production guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause.

(5) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (i) is not put to another use before harvest of apples becomes general in the county, (ii) is harvested, or (iii) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. *MISREPRESENTATION AND FRAUD.* The Corporation may void the contract without affecting the insured's libility for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *TRANSFER OF RIGHT TO INDEMNITY ON THE INSURED SHARE.* If the insured transfers any part of the insured share during the crop year the insured may transfer the right to an indemnity on an approved form. The insured shall be liable for the premium if such form is or is not executed. If such a form is executed, the transferee shall have the same rights and responsiblities as the original insured for the current crop year.

11. *RECORDS AND ACCESS TO FARM.* The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all apples produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. *LIFE OF CONTRACT: CANCELLATION AND TERMINATION.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All states	Sep. 30	Nov. 20

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b) and (c) of this section, and section 6 of the Appendix A, the contract shall continue in force for each succeeding crop year.

Appendix A

(ADDITIONAL TERMS AND CONDITIONS)

(1) *Meaning of Terms.* For the purposes of Western U.S. apple crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, percentage premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding apple insurance in the county.

(b) "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way shall also be considered contiguous.

(c) "County" means the Western U.S. county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(d) "Crop year" means the period beginning with the date insurance attaches to the apple crop and extending through normal harvest time and shall be designated by the calendar year in which the apples are normally harvested.

(e) "Fruit-set failure" means failure of the apple trees to develop blossoms or set fruit due to adverse weather conditions, but shall not include poor pollination resulting from inadequate pollinizers in the orchard or failure to set fruit due to spray damage or other manageable causes.

(f) "Harvest" means the picking of marketable apples from the trees or from the ground.

(g) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(h) "Insured" means the person who submitted the application accepted by the Corporation.

(i) "Loose field box" means a standard container, accepted by the industry, containing a minimum of 35 pounds of apples.

(j) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(k) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivison of a State, or any agency thereof.

(l) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured apple crop at the time insurance attaches as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(m) "Tenant" means a person who rents land from another person for a share of the apple crop or proceeds therefrom.

(n) "Unit" means all insurable acreage of apples in the county which is located on contiguous land, and, at the time insurance attaches for the crop year, (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the apple crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

(o) "Western U.S." means those states west of a line extending north-south along the eastern state boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

2. *ACREAGE INSURED.* (a) The Corporation reserves the right to limit the insured acreage of apples to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the time insurance attaches.

(b) If the insured does not submit an acreage report on or before November 20, the Corporation may elect to determine by units the insured acreage, share and number of trees, or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. *ANNUAL PREMIUM.* (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

4. *CLAIM FOR AND PAYMENT OF INDEMNITY.* (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured apple acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c) as amended: *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However,* in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

5. *SUBROGATION.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The insured thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

6. *TERMINATION OF THE CONTRACT.* (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

7. *COVERAGE LEVEL AND PRICE ELECTION.* (a) If the insured has not elected on the application a coverage level and price

at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

8. *ASSIGNMENT OF INDEMNITY.* Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

9. *CONTRACT CHANGES.* The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Appendix B

Counties Designated for Apple Crop Insurance–7 CFR 404

In accordance with the provisions of 7 CFR 404.1, the following counties in the Western United States are designated for apple crop insurance:

Oregon—
Umatilla

Washington—
Benton
Chelan
Columbia
Douglas
Okanogan
Yakima

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 and OMB Circular A–40.

This action will not have a significant impact specifically on area or community development; therefore, review as required by OMB Circular A–95 is inapplicable.

Approved by the Board of Directors on July 14, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Roland Wentzel,

Acting Manager.

Dated: October 27, 1980.

[FR Doc. 80-34174 Filed 10-31-80; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Contact Representatives Within the Definition of Immigration Officer; Delegation of Authority

AGENCY: Immigration and Naturalization Service.

ACTION: Temporary Regulatory Amendment.

SUMMARY: This document provides a temporary amendment to 8 CFR 103.1(q) to include Houston Contact Representatives within the definition of Immigration Officer as set forth in 8 CFR 103.1(q). This amendment delegates to such Contact Representatives the authority to adjudicate applications and petitions filed by aliens and citizens for benefits under the Immigration and Nationality Act, as amended. The use of this authority by Contact Representatives will be tested as a part of an experimental INS program to adjudicate certain types of cases as soon as they are filed.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–3048.

For specific information: Roger J. Lucas, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633–3240.

SUPPLEMENTARY INFORMATION:

Background

INS is conducting in the Boston and Houston District Offices a four month test of a procedure called Up-Front Adjudication (UFA). The UFA procedure entails the adjudication of certain routine and fully-documented applications and petitions immediately upon receipt. Upon completion of the test, INS will analyze the cost/effectiveness of UFA and decide whether to implement it nationwide.

In both Boston and Houston, officers as defined in 8 CFR 103.1(q) will adjudicate cases under the UFA test procedures. Additionally, Houston Contact Representatives, who are not as a class included in 8 CFR 103.1(q), will adjudicate some of the less-complex UFA cases. These include, but are not limited to, extensions of temporary stay, and issuance of Re-Entry Permits and Refugee Travel Documents. For the purposes of the test the provisions of 8 CFR 103.1(q) regarding the definition of Immigration Officers are expanded to include Contact Representatives in the Houston District Office. This inclusion will provide the Houston Contact Representatives with the delegated authority to adjudicate cases.

Need for Temporary Amendment

This amendment to 8 CFR 103.1(q) is needed only temporarily because the Up-Front Adjudication Test will conclude on February 25, 1981.

Drafting Information

The author of this amendment was Roger J. Lucas, Adjudications Division, Office of the Associate Commissioner, Examinations, Immigration and Naturalization Service.

Compliance with the provisions of 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date in unnecessary and impractical because of the time limitation and because the amendment affects only agency organization and procedure.

Accordingly, the following amendment is made to Chapter I of Title 8 of the Code of Federal Regulations:

Part 103 Powers and Duties of Service Officers; Availability of Service Records

1. 8 CFR 103.1(q) is amended by adding the following sentences to the end of the existing paragraph to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration Officer.* * * * For the purpose of conducting a four month test of the Up-Front Adjudication procedure, contact representatives at the Houston District Office are designated as immigration officers authorized to exercise the powers and duties of such officers as specified by the Act, or this Chapter. This authority as to contact representatives commences on November 3, 1980, and expires on February 25, 1981.

* * * * *

(Secs. 103, 8 U.S.C. 1103)

Dated: October 30, 1980.

David Crosland,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 80-34277 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Houston County in Minnesota, a portion of Kane County in Illinois, and a portion of Denver County in Colorado, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Houston County in Minnesota, a portion of Kane County in Illinois, and a portion of Denver County in Colorado, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

§ 82.3 [Amended]

1. In § 82.3(a)(5), relating to the State of Minnesota, paragraph (i) relating to the premises of Far-Vu Feathers, Route 1, La Crescent, Houston County is deleted.

2. In § 82.3(a)(7), relating to the State of Illinois, paragraph (ii) relating to the premises of Zoological Enterprises, Inc., 135 N. 11th Street, Saint Charles, Kane County is deleted.

3. In § 82.3(a)(20), relating to the State of Colorado, paragraph (i) relating to the premises of Pampered Pets, 1322 South Cherokee, Denver, Denver County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4; 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment of preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 29th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-34177 Filed 10-31-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-20]

Sales of Gasoline; Equal Application Rule

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby adopts amendments to its mandatory price rules to delete the equal application rule with respect to all sales of gasoline. The effect of the deletion of the rule is that refiners, and resellers and reseller-retailers not using the fixed margin price rule, will be permitted the pricing flexibility to recoup increased costs allocated to gasoline as they deem appropriate.

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–4055.

Chuck Boehl (Office of Regulatory Policy), Economic Regulatory Administration, Room 7108, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–3220.

William Funk or William Mayo Lee (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

SUPPLEMENTARY INFORMATION:

I.—Background.
II.—Summary of Comments.
III.—Amendments.
IV.—Procedural Requirements.

I. Background

DOE eliminated the equal application rule for retailers [1] on July 15, 1979, and for most resellers and reseller-retailers [2] on May 1, 1980. The elimination of the rule for these marketers was part of a new, simplified pricing scheme for retailers, resellers, and reseller-retailers.

[1] 44 FR 42541, July 19, 1979.

[2] 45 FR 29546, May. 2, 1980; Before July 1, 1980, approximately 45 resellers and reseller-retailers elected to remain subject to the old pricing rules and therefore remained subject to the equal application rule.

Generally the maximum lawful selling price for gasoline is its acquisition cost, plus a fixed cents per gallon markup, plus tax costs. Under the new pricing scheme the equal application rule was no longer applicable and, therefore, was deleted.

In September 1979, DOE issued a Notice of Proposed Rulemaking [3] proposing various amendments to remove regulatory constraints that could influence refiners to sell gasoline at retail prices below those of independent retailers. On April 18, 1980, DOE issued a final rule [4] increasing the difference between what refiners may charge in sales at retail outlets and other types of sales without being subject to the equal application rule. These amendments, however, did not remove the regulatory constraints that had been the focus of the public comments at the rulemaking, because they did not alter the requirement that the equal application rule apply *within* a class of purchaser as well as *between* classes of purchasers. That is, refiners are deemed to recoup any increase in one retail sale in all other retail sales.[5] Thus, as a practical matter, the rule created a discincentive for refiners to increase any retail sale price unless every retail price could be raised.

On June 24, 1980, DOE issued another Notice of Proposed Rulemaking and Public Hearing (NOPR) regarding the equal application rule (45 FR 44238, June 30, 1980). Specifically, DOE proposed to eliminate the equal application rule with respect to retail gasoline sales. In the alternative, DOE proposed to eliminate the equal application rule with respect to (1) all sales of gasoline or (2) only retail sales of gasoline that result in greater increased costs being passed through in retail sales than in other sales.

II. Summary of Comments

On August 19 and 20, 1980, DOE held a public hearing in Washington, D.C. regarding the proposed alternative amendments. 21 interested parties testified at the hearing and 23 written comments were received.

The majority of those testifying or submitting written comments on the proposed amendments were refiners; 17 major and 13 independent refiners. The Antitrust Division of the Department of Justice, refiners, and the Service Station Dealers of America supported the first alternative proposal that the equal application rule be eliminated in its entirety. Approximately six parties, mostly independent marketers associations, supported the second alternative proposal that the rule be eliminated only in retail sales that result in an increased price differential between retail sales and other sales. The Office of Special Counsel, DOE, and The Independent Gasoline Marketers Council opposed any amendments to the rule.

A. Alternative Proposal I

Most of the commentators supported eliminating the equal application rule for gasoline in its entirety. The following reasons were those most often cited by those in support of deleting the rule.

(1) Price distortions in retail gasoline prices were said by some to exist in many areas largely because refiners do not want to be deemed to have recouped increased costs pursuant to the equal application rule when, in fact, they have not recouped such increased costs in actual sales.

Because the rule applies *within* a class of purchaser as well as between classes of purchaser,[6] there is a disincentive for refiners to adjust one retail price if all retail prices within the marketing area are not similarly adjusted.

> If a retail price in one area cannot be adjusted without penalty due to failure to make the identical adjustment in another area, then serious difficulties are encountered and refiners are denied the opportunity to react effectively to competitive circumstances in various markets. Timothy Bloomfield, Independent Refiners Association, Oral Testimony, p. 7.

Moreover, a refiner marketing on a national basis is encouraged by the rule to keep recoveries on a nationwide basis within the specific limitations permitted by the rule.[7] Accordingly the inter-regional effect of the rule also can create an incentive that could result in retail price distortions.

> Where [a national marketers'] prices are higher than the regional competition, his dealers will suffer; where they are lower, the regional marketer will suffer. A. Prud'homme, Atlantic Richfield Co., Oral Testimony, p. 9.

Several commenters, however, including both marketing associations and refiners, contended that the current price distortions are not caused by the equal application rule as much as they are by disparities in refiners' crude oil costs.

IRAA submits, however, that the proposed amendment, important as it is, will have only limited impact on the problem * * * competitive imbalances due to relatively low retail prices by major refiners. The reason why the proposed amendments would not reduce gasoline retail market distortions is that those distortions are caused by disparities in crude oil costs * * * Timothy Bloomfield, Independent Refiners Association of America, Oral Testimony, p. 2.

In addition, several commenters, including some refiners, contended that the elimination of the rule will have little effect on refiners' prices and, therefore, will not alleviate current market price distortions.

(2) Marketing conditions have changed since May 15, 1973. Currently gasoline is plentiful and retail marketing practices have changed to reflect self-serve, high volume sales and population shifts.

> The mandatory petroleum price regulations * * * are now seven years old. As far as price regulations are concerned, they no longer serve the purpose for which they were intended and are certainly out of date insofar as they relate to current petroleum marketing conditions and overall economic conditions. Lowell Way, Union Oil Company of America, Oral Testimony, p. 1.

The equal application rule is intended to create a strong incentive for refiners to maintain May 15, 1973 price differentials. Consequently if refiners alter historic price differentials when adjusting to changed marketing conditions, they are deemed to recover increased costs as through the highest increased price charged to one customer had been charged to all customers.

(3) Given current market conditions, in which crude oil and gasoline inventories are at an all time high, and where many refiners are reducing gasoline prices, there should be little impact on average gasoline prices.

(4) The Emergency Petroleum Allocation Act (EPAA), and therefore DOE's statutory authority to control prices, expires in September 1981. To avoid market disruptions when controls expire, commenters said that the DOE should allow a limited elimination of the current regulations that restrict refiners' flexibility to react to market conditions. Thus, the elimination of the equal application rule would help "phase-in" the return to the free market by giving firms greater pricing flexibility.

B. Alternative Proposal II

The primary argument advanced by marketing associations supporting the adoption of DOE's alternative proposal to eliminate the equal application rule only in retail sales that result in an increased price differential between retail sales and other sales was that elimination of the rule in retail sales or in its entirety might result in predatory

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[3] 44 FR 54902, September 21, 1979.

[4] 45 FR 28302, April 29, 1980.

[5] Between regions refiners are allowed a three cent differential. *See* 10 CFR 212.83(h)(2)(i).

[6] *See* § 212.83(h)(2)(iv) for a limited exception to the equal application rule between classes of purchasers for refiners' sales at retail outlets.

[7] *See* § 212.83(h)(2)(i) for a limited exception to the equal application rule between Petroleum Administration for Defense Districts (PADDs).

pricing by refiners, particularly if tight supply conditions were to reoccur.

This alternative is the only one which will protect jobbers against predatory refiner prices. Jane Jachimczyk, National Oil Jobbers Council, Written Comment, p. 1.

Any change should clearly prohibit predatory pricing * * * the second alternative proposal would be the most equitable. John Calhoun, Texas Oil Marketers Association, Written Comment, p. 1.

Most importantly, the adoption of the second alternative proposal would achieve these objectives without creating the opportunity for suppliers to employ price mechanism in a predatory manner * * * Tim Columbus, Society of Independent Gasoline Marketers of America, Oral Testimony, p. 3.

In response to these fears, refiners stated that other laws afforded independent marketers sufficient safeguards against predatory pricing by refiners.

Existing antitrust laws are more than adequate to protect dealers from unfair trade practices. R. J. Landry, Exxon, Oral Testimony, p. 3.

Whatever changes may occur, they must still be in compliance with the antitrust laws, the Uniform Commercial Code, and the Petroleum Marketing Practices Act, all of which will continue to provide the best protection against any potential problems. George Carnahan, Shell Oil Company, Oral Testimony, p. 3.

III. Amendments

The amendments adopted today, effective November 1, 1980, eliminate the equal application rule for all sales of gasoline. DOE realizes that the deletion of the rule fundamentally alters the regulatory scheme by removing from the price regulations one of the more basic provisions. The effect of the deletion of the rule is that refiners, and resellers and reseller-retailers not using the fixed margin price rule, will be permitted the pricing flexibility to recoup increased costs allocated to gasoline as they deem appropriate. Thus, refiners' and these resellers' and reseller-retailers' aggregate price increases will be compared to total increased costs to determine compliance with the price rules.[8]

Thus, the limitation on gasoline price increases for refiners and marketers not using the final margin rule is that they may not allocate more cost to gasoline than allowed under the regulations. Thus, one of the major elements of DOE's price control program—the maintenance of historic price differentials between classes of purchaser—is eliminated. However, the objective of the price control program—prevention of excessive profits by limiting price increases to the amount of increased costs—is retained.

DOE believes the elimination of the rule is appropriate for the following reasons:

After considering all the comments, DOE believes that the benefits of maintaining May 15, 1973 pricing differentials are outweighed by the costs of maintaining those differentials. Three factors, which converge at this time, lead us to this conclusion: (1) The length of time that has elapsed since the imposition of the base price concept and the economic changes that have occurred in that time, (2) the short period of time before controls expire, and (3) the current adequate supply environment.

As was noted in the NOPR, the price control system in effect for several years is based on the concept of a base price in all transactions among classes of purchasers and the addition of increased costs to those base prices in such a manner as to retain the historical price differentials between and within classes of purchasers. In retrospect, on the basis of the information and expectations at the time, we believe such a price control system to have been the best to achieve the purposes of the EPAA. Moreover, until very recently, we believed retention of this system to have best furthered the purposes of the EPAA. Nevertheless, the further one goes beyond a base date under such a price control system, the further regulatory constraints are likely to be at variance with economic realities.[9]

As was also noted in the NOPR, while such relatively inflexible constraints may be entirely appropriate in an environment of pervasive price and allocation controls, the appropriateness of such constraints in an environment soon to be decontrolled and in many regulatory areas already subject to "phased" decontrol must be questioned. DOE believes the "phased" decontrol of crude oil prices is easing the potential economic impacts of abrupt decontrol on both the consumer and the industry. Similarly, DOE believes that by reducing the regulatory restraints associated with the equal application rule, we are fostering competition in the market place generally, minimizing regulatory interference with market mechanisms, and promoting economic efficiency. This will in the long-run benefit both the industry and the consumer.

The current adequate supply of both crude oil and gasoline, notwithstanding the Iraqi-Iranian war, as well as a generally favorable supply outlook for the next year, suggests that it is appropriate to increase gasoline marketing flexibility.

Accordingly, DOE has determined that the equal application rule should be eliminated in its entirety. In so doing, DOE specifically rejects suggestions made by some refiners that the equal application rule was always inappropriate. As described above, DOE continues to believe that maintenance of historical price differentials in the pass-through of increased costs is in a supply shortage the most appropriate means, if not the *only* means, of ensuring equitable pricing, a specific purpose of the EPAA. The convergence of the three factors, discussed above, at this time, justifies the elimination of the rule. Competition in the adequate supply environment should generally continue to protect equitable pricing in the year left before the EPAA expires.

As more fully discussed in the Final Regulatory Analysis, this change should have little impact on consumer prices, given the large amount of unrecovered costs available to refiners, a very competitive gasoline market and the Council on Wage and Price Stability guidelines.

We are not unmindful of the comments and concerns of independent marketers with respect to the possiblity of predatory pricing by refiners if the equal application rule is eliminated. As noted above, however, we believe the adequate supply environment and the competitive marketplace will provide the primary safeguard against anticompetitive pricing by refiners. *See* the comments of the Antitrust Division of the Department of Justice supporting elimination of the equal application rule. Moreover, because the elimination of the rule is undertaken now, as opposed to when the authority for price controls expires, the possibility of reimposing the equal application rule is retained in case the supply environment changes dramatically or refiners abuse the flexibility this amendment provides. The antitrust laws remain available for certain anticompetitive market activities.

In the NOPR and the Draft Regulatory Analysis, we suggested that it was our tentative belief that the equal application rule created a regulatory inducement for refiners both to

[8] There remains one restriction on refiners' cost passthrough. Section 212.83(c) (1)(C) prohibits refiners from charging in retail sales at a retail outlet more than 16.8¢ per gallon over the price charged by the refiner in its nearest DTW price to an independent retailer.

[9] When supplies are plentiful, competition may set prices without being constrained generally by the price regulations. Even in such supply situations, however, because of particular anomalies in 1973 or particular developments since then, there remain situations and circumstances where the regulations do constrain market flexibility and inhibit free competition.

undersell independent competitors in certain situations and not to reduce prices to marketers to meet price competition in other situations, and that this inducement possibly could have serious long-term effects on the independent sector of the industry. After consideration of all the data and comments, however, it is DOE's determination that the rulemaking record does not in fact support the conclusion that the equal application rule itself is currently harming or is likely in the future to harm the independent sector of the gasoline market. Our tentative belief was unfounded, and our elimination of the equal application rule for gasoline sales is not based on any determination that such elimination is necessary to aid the independent sector of the market. As was noted by both independent marketers and refiners, and as was forcefully stated by the Office of Special Counsel, DOE, most of the current petroleum product price disparities can be attributed to the crude oil cost disparities between refiners, not to the equal application rule. While elimination of the rule may allow refiners to raise or lower prices in particular markets where price anomalies exist, thereby relieving pressures on individual marketers, this will not meaningfully address the larger problem of product price disparities due to varying crude oil costs about which many refiners and marketers have been complaining.

We have addressed this problem by adopting changes to the treatment of Alaskan North Slope Crude under the entitlements program and have published in the **Federal Register** of October 31, 1980 a Notice of Proposed Rulemaking to address the wide variation in post-entitlement costs between controlled and exempt domestic crude oil.

IV. Procedural Requirements

A. FERC Review

Under Section 404(a) of the Department of Energy Organization Act, Pub. L. 95–91 (DOE Act), the proposed rule was referred to the Federal Energy Regulatory Commission (FERC) for a determination as to whether it may significantly affect any functions within the jurisdiction of the FERC under Sections 402(a)(1), (b), and (c)(1) of the DOE Act. The FERC has declined to make such a determination.

B. NEPA Review

Under DOE's Proposed Guidelines for Compliance with the National Environmental Policy Act (44 FR 42136, July 18, 1978) the DOE has determined that the adoption of this rule is not a major federal action significantly affecting the quality of the environment. Thus the preparation of an environmental impact statement is not required.

C. Effective Date

The provisions of 5 U.S.C. section 553(d) generally requiring that a substantive rule may not be made effective less than 30 days following publication of the rule do not apply to rules that grant an exemption, relieve a restriction, are interpretative or if the agency finds good cause for the rule's earlier effectiveness. In this instance, the rule relieves a restriction.

D. Summary of Regulatory Analysis

Although the regulatory change does not allow refiners or resellers any additional increased costs, they will have greater flexibility in passing through the already allowable increased costs or "banked" increased costs incurred but not passed through in prior months. There are a number of indications that this ability will be limited. Gasoline stocks were up by 7.4% in July 1980, over a year ago while demand had decreased by 7.5% over the same period. Competition has forced most refiners to reduce prices by several cents a gallon even though their crude oil costs have been increasing as price controls on domestic crude oil are phased out. Likewise, "banked" costs are also increasing, although part of this increase represents costs associated with unsold product that would be reserved for use when the product is sold in order to prevent excessive price fluctuations. Also guidelines established by the Council on Wage and Price Stability (COWPS) could contribute to banked cost increases as the guidelines are considered by many refiners to constrain their prices more than DOE regulations.

Those who objected to elimination of the rule expressed concern that refiners would use the opportunity to increase prices in areas they no longer wished to serve or to increase their own market share by discriminatory pricing to unwanted buyers. In the current supply surplus, we believe refiners are more interested in selling product than discouraging purchasers, as is evidenced by the recent price reductions. Moreover, the equal application rule has provided a disincentive for many refiners to market in new areas since actual costs of serving new customers are not reflected in prices charged because of the equal application rule.

If refiners did wish to institute discriminatory pricing, they could do so under the present regulations which allow unequal price increases provided cost recovery is computed as if the highest price increase had been charged to all customers. With "banked" costs of $20.6 billion [10] as of July 1980 for refiners, there appears to be ample availability of funds to support the imputed recovery of costs required for unequal price increases, provided these banks are not being retained for other reasons. Even if refiners did use the absence of the rule to discourage sales in areas they wished to abandon, the current surplus supply situation should allow the former purchaser to obtain other sources of supply.

Only about 50 resellers or reseller-retailers remain subject to the equal application rule, and they face the same competitive situation described above for refiners.

For these reasons, we believe that elimination of the rule will have no adverse effect on any sector of the petroleum industry or on users of gasoline. Its deletion will simplify the regulatory program by decreasing the complexity and expense of compliance. Finally, its deletion should remove any disincentive under the rule to supply remote areas because increased delivery costs had to be divided equally among all customers.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212, Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below effective November 1, 1980.

Issued in Washington, D.C., October 24, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

1. Section 212.83(h)(2)(i) is revised to read as follows:

[10] This figure may include some retroactive adjustments based on interpretations of the regulations that may not be correct. It represents a $6.3 billion increase over banked costs initially reported for June which were later adjusted to $18.6 billion.

§ 212.83 Price rule.

* * * * *

(h) *Equal application among classes of purchaser.* * * *

(2) *Special rules.*—(i) *Gasoline.* All sales of gasoline are exempt from the provisions of this paragraph.

* * * * *

2. Section 212.83(h)(2)(iv) is deleted.

3. Section 212.83(h)(3)(iii) is deleted.

4. Section 212.93(e)(1) is revised to read as follows:

§ 212.93 Price rule.

* * * * *

(e) * * *

(1)(i)For gasoline priced pursuant to paragraph (a)(5) of this section and other covered products, if a seller charges prices for a particular product that result in the recoupment of less total revenues than the total amount of increased product costs of that product incurred during the month, the amount of increased product costs not recouped by a price adjustment in the subsequent month pursuant to paragraph (a) of this section may also be added to the May 15, 1973, selling prices of that product in a subsequent month at the time the selling prices are computed pursuant to paragraph (a). A seller shall calculate its amount of increased product cost of a particular product not recouped, since the most recent price increase after November 1, 1973, to include the following: (A) Any "increased product costs" not added to the May 15, 1973, selling price at the time of the most recent price increase implemented after November 1, 1973, multiplied by the volume sold since that price increase, plus (B) increases in the weighted average unit cost above the weighted average unit cost which was used to calculate the most recent price increase implemented after November 1, 1973, multiplied by the volume of product purchased at each such increased product cost, less, (C) any decrease in the weighted average unit cost from the weighted average unit cost which was used to calculate the most recent price increase implemented after November 1, 1973, multiplied by the volume of product purchased at each such lesser cost.

(ii) With respect to covered products other than gasoline, when a seller calculates its amount of increased product costs not recouped under this paragraph, it shall calculate its revenues as though the greatest amount of increased product costs actually added to the May 15, 1973 selling price of that covered product and included in the price charged to any class of purchaser had been added in the same amount to the May 15, 1973 selling price of such covered product and included in the price charged to each class of purchaser; except that where an equal amount of increased product cost is not included in the price charged to a purchaser because of either a price term of a written contract covering the sale of such product which was entered into on or before September 1, 1974, such portion of the increased product costs not included in the price charged to such a purchaser need not be included in the calculation of revenues.

* * * * *

[FR Doc. 80-34271 Filed 10-31-80; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q, Docket No. R-0329]

Interest on Deposits

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: This interpretation provides that Regulation Q, (interest on deposits), interest rate limitations do not apply to *fixed rate* obligations issued by bank holding companies with a stated maturity of five years or more and with respect to which no more than 5 per cent of the original principal amount of the issue may be redeemed in any one year, with a limitation of $25,000 per investor per year.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz. Assistant General Counsel (202/452-3623), or Anthony F. Cole, Senior Attorney (202/452-3612), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: 12 CFR 217 is amended by adding a new section 217.156 to read as folllows:

§ 217.156 Application of Regulation Q to fixed rate obligations issued by the parent bank holding company of a member bank.

(a) The Board has received a request for an interpretation that §§ 217.1(h) and 217.7(h) of Regulation Q (12 CFR 217.1(h) and 217.7(h)) do not apply to small denomination *fixed rate* obligations with limited redemption features issued by bank holding companies. The obligations in question generally have a stated maturity of from 10 to 25 years, but are redeemable at the option of the holder subject to limitations as to the amount that any holder may redeem in any year (usually $25,000) and as to the aggregate amount that may be redeemed in any year (usually 5 per cent of the original principal amount of the issue).

(b) Sections 217.1(h) and 217.7(h) were adopted by the Board effective March 14, 1980, and apply Regulation Q interest rate ceilings to certain obligations issued by a member bank's parent bank holding company. Section 217.1(h) specifically provides that the "deposits" of a member bank includes an obligation that is: (1) issued in a denomination of less than $100,000; (2) required to be registered with the SEC; (3) issued or guaranteed in whole or in part by the member bank's parent which is a bank holding company (regardless of the use of the proceeds); and (4) issued with an original maturity or redemption period of four years or less. Section 217.7(h) specifies the ceiling rates of interest payable on such obligations.

Sections 217.1(h) and 217.7(h) were adopted in view of the Board's concern of the potential adverse impact the widespread issuance by bank holding companies of principally floating rate notes with a redemption feature aimed at the retail market was likely to have on deposit flows among depository institutions. The Board's concern was based on its belief that such obligations, which typically are issued at rates substantially in excess of Regulation Q ceiling rates payable on time deposits of comparable maturity, were competitive with consumer deposits issued by depository institutions.

(c) The Board believes that the obligations in question are distinguished from those that were the subject of the Board's principal concerns in two ways. First, they carry a fixed rate of interest; second, the amount that may be redeemed in any year is limited to 5 per cent. The Board regards this limited redemption feature as having an effect similar to a sinking fund which ensures that repayments are not concentrated, while at the same time preserving the long-term nature of the obligation. In view of these considerations, the Board does not believe that such obligations would be a major source of competition for deposits issued by depository institutions.

(d) Accordingly, the Board has determined that obligations issued by a member bank's parent which is a bank holding company will not be regarded as having a redemption period of four years or less under § 217.1(h) and, thus, will not be subject to the interest rate limitations specified in § 217.7(h), if they have the following characteristics: (1) the obligations possess a *fixed rate* of interest that does not change during the life of the obligation; (2) no more than 5 per cent of the original principal amount of the issue may be redeemed at the

option of the holders in any one year; (3) no more than $25,000 per holder may be redeemed in any one year; and (4) the obligations possess a minimum stated maturity of five years or more. The five year minimum maturity requirement (i.e., 25 per cent higher than the current more than four year requirement) offsets the possible 25 per cent maximum reduction (5 per cent per year for five years) in the amount outstanding after five years and is regarded as necessary to preserve the objective of the four year minimum maturity requirement in section 217.1(h). The Board also believes that in order to ensure that potential purchasers are aware of the limited nature of the redemption feature, those limitations should be prominently disclosed in any materials or solicitations concerning such obligations.

The Board has issued this interpretation based upon its statutory authority under section 19 of the Federal Reserve Act, 12 U.S.C. § 461.

By order of the Board of Governors. October 23, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-34239 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 80-655]

12 CFR Part 526

Amendments Regarding Interest on NOW Accounts, Give-aways, Return on Savings Accounts and Finders Fees

October 23, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: These amendments revise the Board's regulations regarding interest on NOW accounts, give-aways, the payment of return or interest on savings (including merchandise), and the use of finders' fees to solicit accounts. These changes conform the Board's regulations to rules adopted by the Depository Institutions Deregulation Committee ("Committee"). The Board's regulations must conform to the regulations of the Committee because statutory authority to regulate rates of return paid by members of the Federal Home Loan Bank System has been transferred from the Board to the Committee.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: David J. Bristol, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Telephone: (202) 377-6461.

SUPPLEMENTARY INFORMATION: Title II of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Act) (Pub. L. 96-221) transferred to the Committee the authority conferred on the Federal Home Loan Bank Board under section 5B(a) of the Federal Home Loan Bank Act (12 U.S.C. 1425b(a)) to prescribe rules governing the payment of interest and dividends and the establishment of classes of deposits or accounts, including limitations on the maximum rates of interest and dividends which may be paid on such deposits or accounts.

Pursuant to its authority under the Act, the Committee has adopted regulations: (1) Setting an interest rate ceiling for accounts subject to negotiable orders of withdrawal; (2) revising the Board's rules regarding the use of premiums or give-aways to attract savings; (3) formalizing the Board's previous policy of prohibiting the payment of a return in cash or merchandise on accounts until such return has been earned; and (4) prohibiting the payment of finders' fees in addition to interest in the solicitation of accounts that are subject to the maximum rate ceilings of Part 526 (45 FR 68641; published October 16, 1980).

In order to bring its regulations into conformity with the regulations of the Committee, the Board is amending its rules regarding interest on NOW accounts, give-aways, return on savings (including merchandise) and finders' fees.

The Board notes that the provisions regarding finders' fees will limit the applicability of § 563.25 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation (12 CFR 563.25), pertaining to brokered savings accounts, to accounts with a balance over $100,000. The Board recently amended § 563.25 (Board Resolution No. 80-615; 45 FR 37613; published October 10, 1980) to remove the ceiling on the amount of funds an association may solicit through a broker. When this amendment was adopted, the Board had expected that the Committee's action prohibiting the payment of finders' fees on accounts subject to rate control would take effect immediately. Thus, the Board delayed for 30 days its removal of the restriction on the use of brokers to allow the Committee's action to take effect so that, as a result of the Board's action, brokers could be used only to solicit accounts that would not be subject to rate control. Since the Committee action takes effect on December 31, 1980, rather than immediately, and since the Board's amendment of § 563.25 has not yet taken effect, to conform its action to the Committee's schedule and to avoid an unintended authorization of unlimited use of brokers to solicit small accounts during the remainder of 1980, the Board is hereby amending Resolution No. 80-615 by changing the effective date of the amendment of § 563.25 to December 31, 1980. The Board notes further that the amendment regarding interest on NOW accounts changes the recently adopted, but not yet effective, paragraph (1) of § 526.1(12 CFR 526.1) (Board Resolution No. 80-613; 45 FR 66781; published October 8, 1980).

Accordingly, the Board hereby amends Part 526 of the Regulations for the Federal Home Loan Bank System (12 CFR Part 526) by amending §§ 526.1 and 526.2 thereof, to read as set forth below.

PART 526—LIMITATIONS ON RATE OF RETURN

1. Amend the first sentence of paragraph (l) of § 526.1 to read as follows:

§ 526.1 Definitions used in this part.

* * * * *

(l) *NOW (negotiable order of withdrawal) account.* A savings account on which interest is paid subject to the rate limitation in § 1204.108 of this title, and from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

2. Revise paragraph (f) of § 526.2 and add new paragraphs (h) and (i) thereto, to read as follows:

§ 526.2 Maximum rate of return.

* * * * *

(f) *Give-aways.* Premiums awarded by any member institution in accordance with § 1204.109 of this title shall not be included in calculating the rate of return.

* * * * *

(h) *Finders' fees.* With respect to savings accounts subject to § 526.3 of this Part, fees paid by any member institution to a person who solicits investment in such accounts at the institution must be paid as prescribed in § 1204.110 of this title.

(i) *Prepayment of return and payment of return in merchandise.* Any member institution may pay a return in the form of merchandise, cash, or a credit to an account as prescribed in § 1204.111 of this title.

(Title II, Pub. L. 96-221; Sec. 4, 80 Stat. 824 (12 U.S.C. 1425b); Reorg. Plan No. 2 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. 80-34130 Filed 10-31-80; 8:45am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NE-21; Amdt. 39-3966]

Airworthiness Directives; Rolls-Royce, Ltd., DART 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, 550, and all Variants Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection for cracks and the modification or the removal from service of certain low pressure impellers on Rolls-Royce, Ltd., DART series engines.

DATES: Effective—October 30, 1980.

Comments on the rule must be received on or before compliance schedule—as prescribed in text of AD.

ADDRESSES: The applicable Alert Service Bulletin may be obtained from Technical Publications Department, Rolls-Royce, Ltd., East Kilbride G74 4PY, Scotland.

A copy of the Alert Service Bulletin is contained in the Rules Docket, Federal Aviation Administration, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Donald F. Perrault, Engine Standards Section, ANE-215, Engineering and Manufacturing Branch, Flight Standards Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: There have been several reports of frettage fatigue cracks and failure of the low pressure impeller in Rolls-Royce DART engines. The failures occurred between 10,200 and 11,500 flight cycles. Metallurgical examination has shown that the failures originated from frettage fatigue cracking of the impeller hub rear abutment face. Since this condition is likely to exist on other engines of the same type design, an AD is being issued to require inspection for cracks and the modification or removal from service of low pressure impellers on DART series engines which have not been previously inspected for cracks and modified in accordance with the applicable Rolls-Royce Alert Service Bulletin.

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

Request For Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

Adoption of the Amendment

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

Rolls-Royce, Ltd., applies to Rolls-Royce, Ltd., DART 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, 550, and all variants turboprop engines.

Compliance required as indicated, unless already accomplished.

To preclude possible frettage fatigue failure of low pressure impellers, inspect for cracks and modify or remove from service all low pressure impellers installed in the following DART model engines:

1. DART 506, 510, 511, 514, 515, and their variants; and DART 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 550, and all variants of these marks equipped with a low pressure impeller which has run previously in a DART 506, 510, 511, 514, 515, or any variant of these engines.

a. After November 30, 1980, no low pressure impeller may exceed 5,000 flight cycles since new without inspection for cracks and incorporation of Modification 1732, in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service low pressure impellers having crack indications.

b. After November 30, 1980, prior to further flight, all low pressure impellers for which the flight cycles since new cannot be positively established, must be inspected and modified to incorporate Modification 1732; in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service, low pressure impellers having crack indications.

c. Remove from service not later than May 31, 1981, all low pressure impellers which have not been inspected for cracks and do not have Modification 1732 incorporated.

2. DART 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 550, and their variants equipped with a low pressure impeller which has not run previously in a DART 506, 510, 511, 514, 515 or any variant of these engines.

a. After December 31, 1982, no low pressure impeller may exceed 9,000 flight cycles since new without inspection for cracks and incorporation of Modification 1732, in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service, low pressure impellers having crack indications.

b. After December 31, 1982, prior to further flight, all low pressure impellers for which the flight cycles since new cannot be positively established, must be inspected and modified to incorporate Modification 1732, in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service low pressure impellers having crack indications.

c. Remove from service not later than December 31, 1984, all low pressure impellers which have not been inspected for cracks and do not have Modification 1732 incorporated.

3. DART 542 and 543 model engines and their variants.

a. After December 31, 1981, no low pressure impeller may exceed 9,000 flight cycles since new without inspection for cracks and incorporation of Modification 1732, in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service low pressure impellers having crack indications.

b. After December 31, 1981, prior to further flight, all low pressure impellers for which the flight cycles since new cannot be positively established, must be inspected and modified to incorporate Modification 1732, in accordance with Rolls-Royce DART Alert Service Bulletin No. Da72-A445, Revision 4, dated October 27, 1980. Remove from service low pressure impellers having crack indications.

c. Remove from service not later than December 31, 1983, all low pressure impellers which have not been inspected for cracks and do not have Modification 1732 incorporated.

Note.—For the purpose of this AD, a flight cycle is considered to be an engine operating sequence from takeoff to landing.

Airplanes may be ferried in accordance with the provisions of FAR 21.197 to a base where the AD can be accomplished.

Upon request of the operator, equivalent means of compliance with the requirements of this AD may be approved by the Chief, Engineering and Manufacturing Branch, FAA, New England.

The Manufacturer's Alert Service Bulletin identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 533(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Technical Publications Department, Rolls-Royce, Ltd., East Kilbride G74 4PY, Scotland. The document may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its Headquarters in Washington, D.C., and at the New England Region Office. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA, New England Region, may adjust the compliance date(s) specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This amendment becomes effective October 30, 1980.

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

Note.—The FAA has determined that this document involves an emergency regulation under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in Burlington, Massachusetts, on October 24, 1980.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference provision of this document was approved by the Director of the **Federal Register** on June 19, 1967.

[FR Doc. 80-34141 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-13-M

Department of Transportation

14 CFR Part 39

[Docket No. 80-WE-42-AD; Amdt. 39-3965]

Hughes Helicopters Model 269 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons, an amendment adopting a new airworthiness directive (AD) which was previously made effective on certain Hughes Helicopters Model 269 series helicopters by letter AD 80-18-07, dated August 26, 1980. This amendment requires inspection and replacement of pinion assemblies, if necessary, on certain Hughes Helicopters Model 269 series helicopters. This AD is required because there have been pinion assembly failures in the main transmission which could result in failure to transmit power to the rotor system.

DATES: Effective November 11, 1980, and was effective earlier for recipients of letter AD 80-18-07 on or about August 26, 1980.

Compliance schedule—Within 50 hours' time in service from the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from: Hughes Helicopters, Division of Summa Corporation, Centinela and Teale Streets, Culver City, California 90230.

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

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

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

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: An emergency AD was issued as letter AD 80-18-07 on or about August 26, 1980 and made effective immediately upon receipt to all known U.S. operators of Hughes Helicopter Model 269 series helicopters. This AD required certain serial numbered main transmission assemblies, P/N 269A5175-7 or 269A5175-9, to be removed, disassembled and that the pinion assembly be inspected and replaced with a like serviceable part if found unserviceable. Since this condition is likely to exist or develop on other helicopters of the same type design an airworthiness directive is being adopted which requires inspection of the pinion assembly and replacement of unserviceable pinion assemblies with like serviceable parts on Hughes Helicopters Model 269 series helicopters.

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

Adoption of the Amendment

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

Hughes Helicopters: Applies to Model 269A, and TH-55A, 269A-1, 269B and Model 269C Helicopters with main transmission P/N 269A5175-7 or 269A5175-9, Serial Numbers:

5743 through 5804
5806 through 5811
5813 through 5827
5829 through 5855
5857 through 5863
5867
5868
5870 through 5882
5884
5886 through 5890
5893
5894
5895 through 5901
5903 through 5908
5911
5914
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5938
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5972
5986

Compliance is required within 50 hours' time in service from the effective date of this AD, unless already accomplished. To prevent loss of power into main tramission, due to fracture of main transmission pinion shaft, accomplish the following:

(a) Remove main transmission assembly, per Basic Hughes Maintenance Instruction (HMI). Disassemble main transmission assembly, and pinion and bearing retainer assemblies, per HMI Appendix C.

(b) Clean pinion assembly. Using 10X glass, visually inspect pinion for scratches, tooling marks, corrosion or other surface defects. Pay particular attention to area of fillet radii and threaded area forward of bearing journal. If scratches, tooling marks, corrosion or other surface defect is noted, perform the following:

1. Position pinion on lathe or equivalent rotating fixture.

2. Polish out defect(s) on pinion as it is rotated on lathe or fixture. Use fine emery cloth wrapped around tongue depressor or equivalent for polishing. Extra fine arkansas or carborundum stone may be used, provided diameter of stone matches radius. Emery cloth and hand stone are the only polishing methods approved.

(c) Clean pinion assembly and perform magnetic particle inspection of entire pinion in accordance with MIL–I–6868. Pay particular attention to forward end of bearing journal and fillet radii, pinion gear teeth, and threaded area just forward of H-frame bearing journal. If no defects are found, treat polished area with wet zinc chromate, as applicable.

(d) If magnetic particle inspection indication is noted in area polished per step (B) 2 above, repolish and repeat magnetic particle inspection of the area. If indication cannot be removed by repolishing, or the minimum diameter at the bottom of the fillet radius after polishing is less than 1.472 inches, mark and tag the pinion as unserviceable.

(e) If evidence of cracking is noted, mark and tag pinion as unserviceable.

(f) If inspection pinion is found serviceable and reinstalled in helicopter transmission, treat polished area with zinc chromate primer, as applicable. Paint white dot on gear box ID plate next to Serial Number to denote compliance with this Notice.

(g) As applicable, reassemble pinion and bearing retainer assemblies, and main transmission assembly, per HMI Appendix C.

(h) As applicable, reinstall main transmission assembly, per Basic HMI.

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

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

This amendment becomes effective November 11, 1980 to all persons, except those whom it was made immediately effective by letter dated August 26, 1980.

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

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, California on October 22, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-34127 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWE-11]

Designation and Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates new VOR Federal Airways V–22 and V–317 in the vicinity of San Diego, Calif., and alters V–460 by extending the airway from Julian, Calif., to the new VORTAC at Poggi, Calif. These changes enhance en route traffic flow and terminal operations in the San Diego area. This action increases air safety in the San Diego area.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION: On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate new VOR Federal Airways V–22 from Oceanside, Calif., to Poggi, Calif., and V–317 from Mission Bay, Calif., to Imperial, Calif., via Poggi. Also, it would extend V–460 from Julian, Calif., to Poggi (45 FR 54080). The new Poggi VORTAC, identification PGY, is located at Lat. 32°36'37" N., Long. 116°58'42" W. This action improves en route traffic flow and enhances terminal operations at San Diego, Calif. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The only objection to the proposal was submitted by the Aircraft Owners and Pilots Associations (AOPA). They stated that designating airways in the San Diego, Calif., area should be delayed until all studies being conducted on the San Diego Terminal Control Area (TCA) have been completed. However, the FAA is of the opinion that these new airways will benefit the San Diego air traffic flow problems and give the additional flexibility required to improve air safety and expedite traffic in the San Diego terminal area including all satellite airports. Moreover, if the studies being conducted for the San Diego TCA indicate that other airway alignments are warranted, then FAA will initiate appropriate action at that time. This amendment is the same as that proposed in the notice except for minor changes in the coordinates that state the location of the new Poggi VORTAC. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Rule

This amendment to Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates new VOR Federal Airway V–22 from Oceanside, Calif., to Poggi, Calif., and V–317 from Mission Bay, Calif., to Imperial, Calif., and extends V–460 from Julian, Calif., to Poggi. This action provides additional route flexibility in the San Diego area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.123:

"V–22 From Oceanside, Calif., via INT Oceanside 143° and Poggi, Calif., 350° radials; to Poggi." is added.

"V–317 From Mission Bay, Calif., via Poggi, Calif., to Imperial, Calif." is added.

Under V–460 "From Julian, Calif.," is deleted and "From Poggi, Calif., via Julian, Calif.;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on October 28, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-34128 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-13-M

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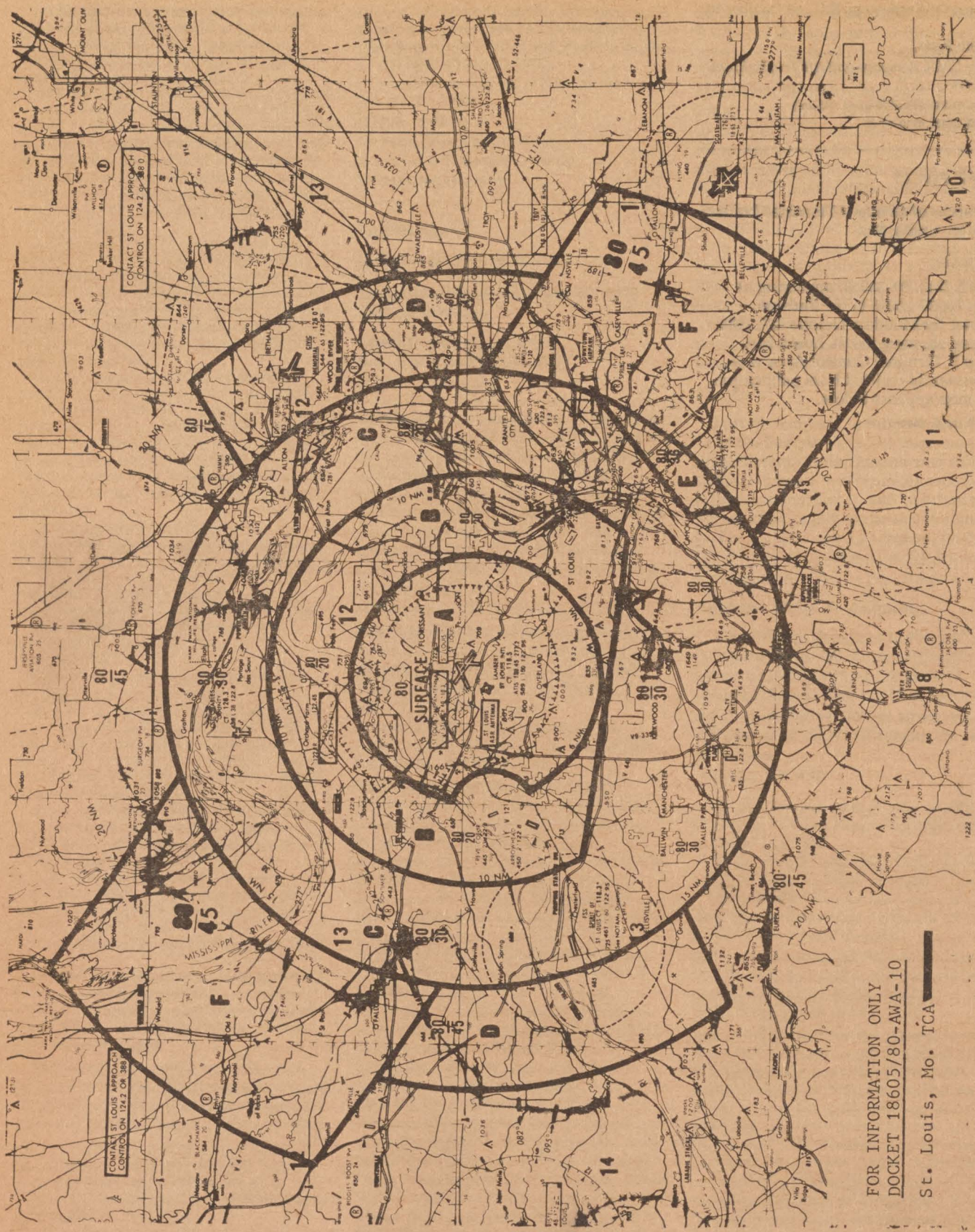
14 CFR Part 71

Alteration of Group II Terminal Control Area, St. Louis, Mo.

Correction

In FR Doc. 80-33353, appearing at pages 70853-70855 in the **Federal Register** for Monday, October 27, 1980, the map showing the St. Louis, Mo. Group II Terminal Control Area was inadvertently omitted from publication. That map appears below.

BILLING CODE 1505-01-M



BILLING CODE 1505-01-C

Office of the Secretary

14 CFR Part 93

Special Federal Aviation Regulation; Temporary Allocation of IFR Reservations at Washington National Airport

AGENCY: Department of Transportation/ Office of the Secretary.

ACTION: Special Federal Aviation Regulation (SFAR).

SUMMARY: This special regulation allocates Instrument Flight Rules (IFR) reservations or "slots" for operations (takeoffs and landings) of air carriers except air taxis at Washington National Airport, a "high density" airport under 14 CFR Part 93, Subpart K. Under that regulation, air carriers are limited to 40 operations per hour at National. In the past, air carrier IFR slots were allocated by an air carrier scheduling committee. On October 14, the committee advised the Department that it was deadlocked and unable to reach any agreement with respect to the period December 1, 1980 to April 26, 1981. This amendment establishes a mechanism for allocation of the available slots for that period and thereby provides for orderly operations at the Washington National Airport and for an efficient utilization of the navigable airspace.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Gregory Wolfe, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, Department of Transportation, Washington, D.C. 20590, Telephone No. 202–426–4710, or Rick Yates, Office of Industry Policy, Industry Operations Division, Department of Transportation, Washington, D.C. 20590, Telephone No. 202–426–4425.

Background

The Secretary of Transportation has broad authority under the Federal Aviation Act of 1958, as amended (FAAct) to regulate and control the use of navigable airspace of the United States. Section 307(a) of the FAAct (49 U.S.C. section 1348(a)), as amended by section 6(c) of the Department of Transportation Act, provides:

> The Secretary of Transportation is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace.

Under section 307(c), (49 U.S.C. section 1348(c)), the Secretary is further authorized and directed to prescribe air traffic rules and regulations for the efficient utilization of the navigable airspace. Except when exercised by the Secretary, these functions are delegated to the Federal Aviation Administrator. 49 CFR 1.47(a). Under the authority of this statutory mandate, the Federal Aviation Administration (FAA) promulgated the High Density Rule (14 CFR 93.121 *et seq.*) in Amendment 93–13 (33 FR 17896, December 3, 1968), effective on April 27, 1969.

The High Density Rule designates five high density traffic airports, prescribes limitations on the number of IFR operations that can be conducted at those airports, and further divides those allowable IFR operations among specified classes of users. It sets the hourly number of IFR operations that air carriers may reserve at Washington National Airport at 40 between 7:00 a.m. and 10:00 p.m., for a total number of 640 slots per day. In the preamble to the High Density Rule the FAA described its purpose in terms of affecting the efficient utilization of the navigable airspace, stating it was "to provide relief from excessive delays at certain major terminals."

In conjunction with the High Density Rule and as a means of implementing the regulations, in 1968 the air carriers formed committees to schedule their operations under the rule. Under the authority of section 412 of the FAAct, the Civil Aeronautics Board (CAB) approved the Air Carrier Scheduling Agreements (Order 68–12–11), finding them not to be adverse to the public interest, and, subject to certain conditions and limitations, granted them immunity from the antitrust laws.

Since CAB approval of the air carrier scheduling committees, they have been the sole instrumentalities for allocating air carrier operations to individual carriers at four high density airports (LaGuardia, John F. Kennedy International, O'Hare International, and Washington National). These allocations have been accomplished at semiannual meetings after extensive discussion and negotiation among the various air carriers authorized to serve the respective airports. After resolving a schedule, the committee has presented it to the FAA, which has then granted IFR slot reservations in accordance with the agreed-upon schedule.

Despite its eleven-year record of managing the allocation of slots, the scheduling committee advised the FAA Administrator on October 14 that it has been unable to reach agreement on the allocation of slots at Washington National Airport after November 30, 1980. This means that as of December 1, 1980, slot reservations must be granted to the carriers on some other basis, unless the committee reconvenes and resolves a schedule.

Without advance assignments of reservations, operations at National would return to the first-come, first-served system now in effect at other airports, where, when congestion does occur, airplanes are kept in holding patterns until they may land, or on the ground until they may take off. Reliance upon such a system at National, where demand far exceeds the number of slots available, would result in acute congestion problems (both in the air and on the ground) similar to (or worse than) those in existence in 1969 when the High Density Rule was first promulgated. Reinstatement of such a system when the number of users seeking access to National is increasing would be contrary to the statutory mandate to provide for "efficient utilization of the navigable airspace."

The Department on October 22, 1980, initiated a rulemaking proceeding to establish a permanent method of slot allocation at National Airport in Notice No. 80–16 (Docket No. 70; 45 FR 71236; October 27, 1980). The Notice of Proposed Rulemaking (NPRM) set forth three alternative methods for public comment: an auction, an administrative or formula allocation, and the present slot committee approach. A public hearing will be held in connection with the NPRM, and the public comment period will close 90 days after its date of publication in the **Federal Register.** Under this schedule, it will not be possible to implement a final comprehensive slot allocation rule in time to resolve the airline schedules at National for the December 1, 1980 to April 26, 1981 scheduling period.

Allocation of slots at one airport affects operations at other airports, and the positioning of aircraft, ground personnel, and equipment. In addition, a substantial change in slots at National could have an appreciable effect on service to other cities and areas. While the carriers could adjust schedules and equipment over a several-month period to compensate for major changes, a significant alteration of the current system on short notice could result in a disruption of the aviation system affecting numerous communities and a significant segment of the traveling public. This would be contrary to the public interest.

Complicating allocation of the slots at Washington National Airport is the number of carriers currently holding slots (more than ever before), the

number of carriers seeking entry into the airport and the number of slots they are seeking, and the number of additional slots sought by carriers already operating at the airport.

Public Comments

On October 17, the Department issued Notice No. 80–14, which was published in the **Federal Register** of October 20 (45 FR 69403), requesting comments and suggestions on the appropriate action to take in the face of the failure of the scheduling committee to reach agreement. Thirty-seven comments were submitted by air carriers, commuter air carriers and associations representing them, elected government officials, local government agencies, citizens groups concerned with airport problems in the Washington area, the Civil Aeronautics Board Office of Economic Analysis, and two citizens. All comments were fully considered in the development of this rule. The more significant comments are discussed below. The docket for this rulemaking (Docket No. 69) will remain open to receive comments, and the Department will consider making changes in the rule as early as January 5.

Dislocation of Existing Service Patterns. Most commenters argued that any mechanism chosen should avoid serious dislocations of existing service patterns because of the effect they would have on air carrier schedules and the inconvenience that could be imposed on passengers during the holiday season. These commenters stated that many carriers have had planned schedules set for some time, and that seats have already been sold on many National Airport flights for the scheduling period. Elected officials from outside the metropolitan area in particular urged that this rule not result in a loss or diminution of existing service patterns to their communities. The Department agrees with these comments. To the extent that dislocation is not required to accommodate the needs of new airlines serving National, it should be avoided. For that reason, the basis chosen for the regulation has been the November schedule agreed upon by the carriers in the scheduling committee. As explained later in this rule, only a small number of changes will be made to the November schedules.

The Department notes, however, that scheduling problems created by this regulation have been caused in the first instance by the inability of the carriers to agree on a schedule. The carriers that have published December schedules for Washington have done so without an agreed-upon slot allocation. The risk that some of these flights would have to be cancelled was as great under the scheduling committee procedure as it is under this rule. Any of the slots carriers might lose as a result of this rule might have been lost under the scheduling committee process and, in fact, some of the carriers had already agreed to give up slots during the committee's deliberations. Because the committee did not inform the Department until October 14 that it could not resolve a schedule, it has been impossible for the government to provide for the normal amount of public participation while still developing a solution in time for the schedules to be published in the *Official Airline Guide.* Under this rule, if there is any decision to reduce or terminate service to or from any point, it will come about because of a business decision made by the carrier providing the service, as it is under ordinary circumstances. The rule does not compel any particular service reduction by any carrier. This fact is further underscored by the availability of Dulles and Baltimore-Washington International for any flights by air carriers wishing to provide additional service to the Washington metropolitan area.

Several commenters suggested novel mechanisms to allocate slots, such as treating them as marketable rights or by assigning them in accordance with a point system based in part on flight distances and other local airports served. Although worthy of further consideration, these approaches for the short term could take months to work out, preventing the issuance of any timely rule, and could result in severe service dislocation. They must therefore be rejected in this rulemaking. The Department urges those commenters interested in this subject to submit comments on what replacement slot allocation system should be instituted at National Airport in commenting on Notice No. 80–16.

Service to New York. A principal issue discussed by many commenters, both carriers and spokesmen for communities that anticipate a possible loss, reduction, or change in service, was the additional service that would be provided in the Washington-New York market. Texas International Airlines, by permission of the Civil Aeronautics Board, has sought slots for reduced fare service by an affiliated corporation, New York Air, in that market. Many commenters argued that New York has more than enough service already, particularly in view of the guaranteed seats provided by the Eastern Airlines shuttle. Many air carrier commenters argued against providing New York Air with any more than four to eight slots in view of the scheduling committee's past practice of awards to new entrants at National Airport.

The Department does not express any view with respect to the adequacy of the New York-Washington service, except to note that additional low fare service in that market will increase competition and would thus be consistent with the Airline Deregulation Act. This rule is based on the carriers' own approach to the New York Air request. The scheduling committee in several near-unanimous votes, including one in which only New York Air itself dissented, granted that carrier eighteen slots for its proposed new service. Because of the limited time available in which to take action, and in order to minimize service disruptions, the Department has decided to rely on those votes. Since that number is only two less than New York Air had requested, and since it represents the largest number of slots ever given a new entrant at National Airport, the Department has not increased the number. On the other hand, since the carriers had themselves come close to agreement on that number, we have not reduced it.

The High Density Rule. Many commenters suggested that the Department should accommodate the request of new carriers by simply adding the slots they request to the 40 per hour already allocated in the November schedule by exemptions from the High Density Rule. Some of the commenters suggested that the High Density Rule, which provides the 40-per-hour scheduling limitation, is no longer valid. New York Air provided logs from the National Airport air traffic control tower to show that the limitation is often exceeded in a given hour, especially in Visual Flight Rules (VFR) conditions. Some carriers proposed that additional hourly slots be provided by reallocating them from the number assigned to other users. On the other side of this issue, organizations representing those that live and work in the Washington area urged that the number of slots authorized per hour not be increased to deal with the present situation. Organizations representing general aviation and commuter air carrier interests argued that their slots should not be used to solve a scheduled air carrier problem and that consequently there should be no reduction in commuter or general aviation slots to accommodate the needs of air carriers.

With respect to some of the comments on the validity of the High Density Rule, the Department notes that it was never intended to be read as keeping actual

operations at National at a total of 60 per hour in all weather conditions. The rule limits reservations only for Instrument Flight Rule (IFR, or poor weather) conditions. In good weather, air traffic is permitted at whatever level the air traffic controllers can safely manage. Further, the rule by regulating IFR reservations does not prescribe a particular time that a particular flight must land or take off; it establishes reservations for *scheduled* operations. The rule recognizes that flights are often not operated on time because of conditions beyond the control of the airlines. Thus for a given hour at National, air carrier operations may fall below the 40 scheduled, followed by an hour in which late arriving or departing flights may cause total operations to exceed 40. The rule nevertheless serves to assure that all scheduled air carrier flights can operate safely without serious delays in poor weather conditions, and that the terminal buildings and other ground facilities, designed for far less activity than now takes place at National, are not regularly clogged with an excess of passengers.

Any alteration of the High Density Rule, no matter how temporary, is totally inappropriate in the context of this emergency rulemaking. That rule serves not only to limit congestion and provide for an efficient use of the navigable airspace, but to limit noise impacts around National Airport, which are caused principally by air carrier aircraft. In the rules implementing the Metropolitan Washington Airports Policy, which are now scheduled to take effect April 26, 1981, air carrier slots will be reduced from 40 to 36 per hour. To allow the carriers to schedule more than 40 operations for the next several months would only intensify the impact of that reduction on the traveling public, and would be inconsistent with the goal of shifting air carrier operations over time to the other two airports serving the metropolitan area. Such a change in longstanding policy could not be undertaken on the basis of the abbreviated rulemaking necessary to resolve the temporary problem addressed by this rule, without full opportunity for public comment on all the associated issues.

Whether or not actual air carrier operations at National currently exceed 40 per hour is not the issue in this rulemaking—the Department's policy, as recently announced, is to reduce flights at National, and increasing the 40 per hour now permitted will increase flights over the current levels. The commenters' arguments fail to come to grips with the fact that demand exceeds supply for IFR air carrier slots, and that this imbalance will likely increase in the future unless operations are shifted to other airports in the region, as contemplated in the Metropolitan Washington Airports Policy. Finally, it is likely that a change in the High Density Rule, as recently amended by the rules implementing the Airports Policy, would be a "major federal action significantly affecting the quality of the human environment" under the National Environmental Policy Act, therefore requiring an environmental impact statement. As such, it could hardly be accomplished quickly enough to resolve the present problem. The Department also agrees that the air carrier problem should not be resolved in the short term by taking slots from other classes of users of National. In short, this rulemaking provides a solution to the scheduling committee impasse within the confines of the High Density Rule.

Procedural Objections. Several commenters argued that insufficient notice was provided for adopting this rule and that a proposed rule should have been presented for public comment. These commenters, however, do not recognize that the development of a comprehensive Departmental proposal for comment would have required a considerable period of time, and that providing a conventional 45 or 60 day comment period would have delayed the rulemaking beyond the December 1 date by which the flights affected by the rule will be operated. Additional lead time is required to permit schedule adjustment and adequate notice to passengers of the post-November schedule. Publication of a comprehensive Notice of Proposed Rulemaking would therefore have been not only contrary to the public interest, but also essentially useless. Thus, good cause exists for making this rule effective upon issuance. The docket in this rulemaking remains open to all wishing to comment on or suggest changes in this final rule.

One commenter questioned the Department's authority to issue the rule. In addition to the FAAct authority discussed above, the Department under the Act for the Administration of Washington National Airport and other statutes has the authority to consider such things as noise impact, energy conservation, and efficiency in regulating National Airport's operation. It was also argued that the allocation of slots in essence a licensing proceeding requiring compliance with Administrative Procedure Act adjudicatory requirements. The Department disagrees. It is well established that the rights or privileges of a large group can lawfully be affected through informal rulemaking, especially in an emergency context. Moreover, if adjudicatory procedures were required, the allocation of slots by the scheduling committee over the past eleven years would have been unlawful. In a similar vein, commenters argued explicitly and implicitly that slots somehow constitute property rights for those that hold them. There is no property right in access to a public facility. The FAA accepts carrier slot reservations on a temporary basis; whether carriers receive them in any subsequent scheduling period in the past has depended entirely upon the unanimous agreement of the airline scheduling committee, acting pursuant to the antitrust immunity granted it by the Civil Aeronautics Board. Plainly the Department has the power to allocate them on any basis that is not arbitrary and capricious, or otherwise contrary to law.

Specific Slot Requests. Several air carriers submitted specific requests for an increased number of slots for the period in question. Others did not. Notice No. 80–14 requested comments only on a mechanism to allocate the available slots. It is not possible for the Department to provide for the allocation of slots on a basis that does not reflect all carrier desires. The Department has had available to it the slot requests as submitted to the scheduling committee and as later refined and compromised by the carriers. It cannot base action at this time on requests that have not been refined through the scheduling committee negotiation process. Finally, the Department will not promulgate a rule governing schedules or frequencies of the individual carriers. These are decisions for the carriers to make, and there is plenty of airport capacity to accommodate their plans among the three airports serving the Washington area.

Provisions of the Rule

In order to minimize disruptions to existing service patterns, enable the air carriers to adjust their schedules and to provide adequate advance notice to the traveling public, and to comply with the provisions of the Federal Aviation Act and the Airline Deregulation Act, this Special Federal Aviation Regulation does the following:

1. Distributes 638 slots per day at Washington National Airport in accordance with the proposal that had the greatest support with the scheduling committee.

2. Takes as a starting point the hourly distribution of slots agreed to for the period October 26 to November 30, 1980.

3. Requires the carriers receiving fewer slots under the scheduling committee proposal than under the November schedule to select the slots they give up in specified hours.

4. Requires the twelve carriers with the most slots under the November schedule to give up one slot each from the 0700 to the 2100 hours, with the right to receive a new slot in the 2200 hour.

5. Grants Air North four slots; Midway Airlines, Empire Airlines, and Mid-South Airlines two additional slots; and Texas International Airlines eighteen slots.[1]

6. Allows carriers to exchange slots in any hours, subject to CAB authorization.

Procedures for accomplishing the above are set forth in Appendix A of the special regulation.

The number of slots selected for reallocation is based in part on a review of the scheduling committee's recent efforts to resolve the December–April schedule. On October 8, all members, with the exception of Texas International agreed to award 18 slots to that carrier. The same agreement allocated ten slots to Midway, two more than it has for the November schedule; four to Air North, the other new entrant for this scheduling period; and six each to Empire and Mid-South, two more than they hold for November.

The method of assigning slot reductions established in this regulation has been devised to minimize and to spread among the carriers, as equitably as possible, the costs of the scheduling committee's failure to resolve a schedule. The Department recognizes that the impacts on individual carriers cannot be uniform, and has relied on a mechanical process designed to allocate the reductions as impartially as possible. The allocation developed under this regulation is temporary and *ad hoc;* it should not be considered a precedent.

Immediate Effectiveness and Invitation for Additional Comment

As mentioned previously, this rule is necessary to avoid serious disruption and uncertainty of service at National Airport and resultant inconvenience to the public. Therefore, it would be contrary to the public interest to delay the issuance of the rule. In order to complete the allocation of slots as soon as possible before December 1, the rule must be made effective immediately. The Department intends, however, continuously to review experience under this special regulation. Consequently, interested persons are invited to submit such data, views, or arguments as they may desire on this rule. Communications should identify the docket number and be submitted in duplicate to the Docket Clerk, Office of the Secretary, Docket No. 69; Notice No. 80–14, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, or be delivered in duplicate to Room 10421, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments delivered must be marked: Docket No. 69. Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Commenters who want the Department to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 69." The postcard will be dated, time stamped, and returned to the commenter.

The docket for Notice No. 80–14 will remain open until a decision is made with respect to a long-term solution to slot allocation methods at Washington National Airport. All comments submitted will be available in the rules docket for examination by interested persons. All comments submitted will be considered by the Department in making changes to the rule, if warranted. Changes will be considered to take effect as early as January 5, 1981.

Adoption of the Amendment

Accordingly, the following Special Federal Aviation Regulation is adopted, effective October 29, 1980.

Special Federal Aviation Regulation Number 43

Contrary provisions of Part 93 of the Federal Aviation Regulations notwithstanding, IFR reservations available to air carriers except air taxis at Washington National Airport will be issued in accordance with Appendix A for the period December 1, 1980 to April 26, 1981.

Appendix A

(a) The allocation agreed upon by the Airline Scheduling Committee for Washington National Airport for November, 1980, shown in Table 1 below, shall be in effect from December 1, 1980 until April 26, 1981, with adjustments made in accordance with paragraphs (b) through (f) of this Appendix.

(b) Slots shall be set aside for redistribution in accordance with paragraphs (d) and (e) of this Appendix in the following numbers by hour: at 0700(2 slots), 0800(2), 0900(2), 1000(2), 1100(1), 1200(1), 1300(1), 1400(1), 1500(1), 1600(2), 1700(2), 1800(2), 1900(2), 2000(2), 2100(1), and 2200(4), as shown in Table 2.

(c) The Department shall ask the scheduling committee to reconvene on Friday, October 31.

(d) For the purpose of determining the distribution of the set-aside slot reductions among the carriers, the following procedure shall be used:

(1) The total number of slots available to each carrier for December is established as shown in the right hand column of Table 1.

(2) The five carriers with fewer total slots in December than in the November schedule, as shown in Table 1 (U.S. Air, Braniff, Eastern, Pan American, and Piedmont), shall be ranked in accordance with the number of slots they hold in the December totals.

(3) In rank order, beginning with the carrier with the fewest slots, each of the five carriers shall be called to select the slots in its November schedule to be deleted. The slots selected by each carrier must fall within the hours 0700 to 2100, must correspond to set-aside slots not selected by another carrier, and must equal in total number the difference between the slots shown for each carrier in the November and December totals.

(4) Thereafter the twelve carriers with the most slots in the November totals shall be ranked in order of the number of slots they hold. The rank of carriers with an equal number of slots shall be established by the toss of a coin.

(5) The ranked carrier with the fewest slots shall be called upon to select one of its slots corresponding to one of the remaining set-aside slots in the 0700 to 2100 hours to be shifted to the 2200 hour, or deleted from its schedule at the carrier's option. The other ranked carriers shall do the same, following in rank order.

(6) Any carrier not participating when called or unable to respond within 15 minutes shall be put at the bottom of the rank list.

(7) If any ranked carrier is unwilling or unable to participate, the set-aside slots to be lost or shifted by those carriers shall be determined by lot.

(e) For the purpose of distributing the set-aside slots to the gaining carriers, the following procedure shall be used:

(1) Air North shall select two slots.

(2) Texas International shall select four slots.

(3) Air North shall select two slots.

[1] Air North, Texas International and New York Air are new applicants for slots in the scheduling period. Texas International and New York Air are both subsidiaries of Texas Air. Because New York Air has not yet been certificated, slots for both carriers have been sought, with the permission of the Civil Aeronautics Board, by Texas International.

(4) Texas International shall select four slots.

(5) Empire and Mid-South, in order determined by the toss of a coin, shall select two slots each.

(6) Midway shall select two slots.

(7) Texas International shall receive the remaining ten slots.

Under this section, each carrier may select only one slot in any hour, except the 2200 hour, unless no other slot is available. Each carrier with a total of more than four slots for December shall select one slot from the 2200 hour if one is available.

(f) Subject to CAB authorization, the carriers may then exchange slots in any hour.

(g) The Department shall then issue and publish a final schedule in the **Federal Register.** Thereafter, existing procedures (or any new procedure approved by the CAB) of the scheduling committee for the relinquishment and reassignment of unused slots may be employed.

(h) The FAA will accept at any time a schedule developed by the committee in accordance with its rules for part or all of the scheduling period, in lieu of the schedule published under paragraph (f) of this Appendix.

BILLING CODE 4910-62-M

Table 1

NOVEMBER SCHEDULE
AND TOTAL SLOTS FOR DECEMBER

CARRIERS	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	TTL		DEC
American	5	3	4	4	3	6	2	4	3	2	5	4	5	3	3	2		58	AA	58
Altair	1		2	1	2	1				2		1	1	1	2	2		16	AK	16
USAir	7	7	6	3	5	3	6	7	5	4	6	5	5	6	5	4		84	AL	82
Braniff	1	1		1	1	2	2	2	3	1	2		2	2	2			22	BN	20
Delta	3	3	1	2	2	2	3	2	1	3	3	2	2	1	2			32	DL	32
Eastern	9	8	7	12	8	7	8	9	9	7	5	8	8	7	12	4		128	EA	124
Aeromech		1	1				1	1					2					6	KC	6
Midway	1				1	1		1	1		1	1			1			8	ML	10
New Air		2					1	1			1	1						6	NC	6
Air North																			NO	4
Northwest	3	2	3	2	2	4	3	1	4	3	2	2	2	5	1	1		40	NW	40
Ozark					1	1				1	1							4	OZ	4
Pan American	2	2	3	5	1	1	4	2	1	2	3	5	2	1	2	2		38	PA	36
Piedmont	2	4	6	4	4	5	4	5	3	4	4	4	4	4	3	4		64	PI	62
Pilgrim		2								1	1							4	PM	4
Air Florida	1	1	1		1	1	1	1	1	1		1	1	1	1	1		14	QH	14
Republic					1	1								2				4	RC	4
Texas Int'l																			TI	18
Trans World	1	2	3	2	1	3	3	2	5	3	3	2	2	3	2	1		38	TW	38
United	4	1	2	2	4	2	1	2	3	3	2	4	2	4	3	1		40	UA	40
Empire		1	1				1		1				2					6	UR	8
Mid-South				2	2					2								6	VL	8
Western					1					1	1				1			4	WA	4
TOTAL	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	22		622		638
	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23	TTL		DEC

Table 2

SET-ASIDE SLOTS

07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	TTL
2	2	2	2	1	1	1	1	1	2	2	2	2	2	1	4	28

BILLING CODE 4910-62-C

(Secs. 103, 307 (a) and (c), 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. section 1303, 1348 (a) and (c), and 1354(a)); Secs. 4 and 6 of the Department of Transportation Act (49 U.S.C. 1653 and 1655); Sec. 2, Act for the Administration of Washington National Airport (54 Stat. 688))

Note.—The Department has determined that this document is a significant regulation under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Department will prepare a regulatory evaluation covering the economic impacts of this rulemaking. A copy of this evaluation will be included in the Docket. The Department has determined that this regulation will not have a signficant impact on the quality of the human environment. This special regulation is a final order under the Federal Aviation Act. As such, it is subject to review only by the Courts of Appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued at Washington, D.C., on October 29, 1980.

William J. Beckham, Jr.,

Acting Secretary of Transportation.

[FR Doc. 80-34212 Filed 10-29-80; 5:10 pm]

BILLING CODE 4910-62-M

Federal Aviation Administration

14 CFR Part 97

[Docket No. 20880; Amdt. No. 1176]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

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

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00

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

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

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

This amendment to Part 97 is effective on November 3, 1980, and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

Adoption of the Amendment

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

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

* * * Effective December 25, 1980:

Greenwood, IN—Skyway, VOR-A, Original
Grantsburg, WI—Grantsburg Muni, VOR-A, Original

* * * Effective December 11, 1980:

Huntsville, AL—Huntsville Airport North, VOR/DME-B, Amdt. 2
Pittsfield, IL—Pittsfield Penstone Municipal, VOR/DME Rwy 13, Amdt. 1
Mt. Pleasant, MI—Mt. Pleasant Municipal, VOR Rwy 27, Amdt. 7
Redwood Falls, MN—Redwood Falls Muni, VOR A, Amdt. 3
Rocky Mount, NC—Rocky Mount Downtown, VOR-A, Amdt. 10, cancelled
Rocky Mount, NC—Rocky Mount Downtown, VOR/DME-B, Amdt. 7, cancelled

* * * Effective November 27, 1980:

Naples, FL—Naples Muni, VOR Rwy 4, Original

Naples, FL—Naples Muni, VOR Rwy 22, Original
Coeur d'Alene, ID—Coeur d'Alene Air Terminal, VOR Rwy 5, Amdt. 2

* * * Effective October 9, 1980:

Kahului, HI—Kahului, VOR Rwy 2 (TAC), Amdt. 5
Kahului, HI—Kahului, VOR Rwy 20, Amdt. 8
Kahului, HI—Kahului, VOR/DME or TACAN Rwy 20, Amdt. 3
Kahului, HI—Kahului, VOR/DME or TACAN-A, Amdt. 2

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

* * * Effective October 9, 1980:

Kahului, HI—Kahului, LOC/DME (BC) Rwy 20, Amdt. 6

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

* * * Effective December 25, 1980:

Hutchinson, MN—Hutchinson Muni, NDB Rwy 14, Original
Superior, WI—Richard I. Bong, NDB Rwy 31, Original

* * * Effective December 11, 1980:

Pittsfield, IL—Pittsfield Penstone Municipal, NDB Rwy 31, Amdt. 3
Frankfort, IN—Frankfort Muni, NDB Rwy 3, Amdt. 3
White Plains, NY—Westchester Co., NDB Rwy 16, Amdt. 17

* * * Effective November 27, 1980:

Coeur d'Alene, ID—Coeur d'Alene Air Terminal, NDB Rwy 5, Original
Coeur d'Alene, ID—Coeur d'Alene Air Terminal, NDB Rwy 5, Amdt. 4, cancelled
Millinocket, ME—Millinocket Muni, NDB-B, Amdt. 7, cancelled

* * * Effective October 9, 1980:

Kahului, HI—Kahului, NDB Rwy 20, Amdt. 5

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

* * * Effective December 11, 1980:

Bellaire, MI—Antrim County, MLS Rwy 2 (Interim), Amdt. 4
White Plains, NY—Westchester Co., ILS Rwy 16, Amdt. 19

* * * Effective November 27, 1980:

Coeur d'Alene, ID—Coeur d'Alene Air Terminal, ILS Rwy 5, Original

* * * Effective October 21, 1980:

Louisville, KY—Standiford Field, ILS Rwy 19, Amdt. 3

* * * Effective October 16, 1980:

Boston, MA—General Edward Lawrence Logan International, ILS Rwy 22L, Amdt. 1

* * * Effective October 9, 1980:

Kahului, HI—Kahului, ILS Rwy 2, Amdt. 16

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

* * * Effective December 11, 1980:

Columbus, OH—Port Columbus Intl, RADAR-1, Amdt. 15
Oak Harbor, WA—Oak Harbor Air Park, RADAR-1, Original

* * * Effective October 21, 1980:

Louisville, KY—Standiford Field, RADAR-1, Amdt. 17

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

* * * Effective December 11, 1980:

Redwood Falls, MN—Redwood Falls Muni, RNAV Rwy 30, Original

(Secs. 307, 313(a), 601, 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.49(b)(3))

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

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

Issued in Washington, D.C., on October 24, 1980.

John S. Kern,

Acting Chief, Aircraft Programs Division.

[FR Doc. 80-33905 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 231

[Release No. 33-6253]

Procedures Utilized by the Division of Corporation Finance for Rendering Informal Advice

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission has authorized the issuance of a release describing certain procedures recently adopted by the Division of Corporation Finance (the "Division") for responding to all requests for no-action and interpretive letters except those involving shareholder proposals. In addition, the release discusses some of the alternative methods utilized by the Division in providing informal interpretive advice to the public. Also, it enumerates those matters which the staff of the Division, for policy or other reasons, will not express any view on when raised in a request for no-action or interpretive advice. Finally, it sets forth a discussion of letters regarding shareholder proposals.

FOR FURTHER INFORMATION CONTACT: William E. Morley or Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: One of the more important functions of the Commission's Division of Corporation Finance is to respond to requests for informal advice concerning the application of the federal securities laws administered by it.[1] As explained in more detail later in this release, the Division provides such advice in a variety of ways, such as by issuing no-action and interpretive letters,[2] preparing interpretive releases, and answering telephone inquiries. Some other units of the Commission, such as the Divisions of Investment Management and Market Regulation, similarly provide informal advice in this manner.

No-Action and Interpretive Letters

The practice of issuing no-action and interpretive letters in response to written requests has been singled out in the past as an "excellent practice in administrative procedure,"[3] and many members of the public have come to rely on the informal advice provided in this manner.[4] Such letters provide a current statement of the staff's views concerning the application of the securities laws to particular transactions and are monitored closely by many issuers, members of the bar, and the public. As an aid to these persons, the Division publishes monthly in the SEC News Digest a list of those letters issued

[1] The Division administers the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a, et seq.], the Trust Indenture Act of 1939 ("1939 Act") [15 U.S.C. 80a, et seq.], and portions of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a, et seq.].

[2] A no-action letter is one in which an authorized staff official indicates that the staff will not recommend any enforcement action to the Commission if the proposed transaction described in the incoming correspondence is consummated. In some instances, the staff will state in response to a no-action request that it is unable to assure the writer that it will not recommend enforcement action to the Commission if the transaction occurs in the manner proposed by the writer. An interpretive letter is one in which the staff provides an interpretation of a specific statute, rule or regulation in the context of an actual fact situation.

[3] *See* the "Task Force Report on Legal Services and Procedures" prepared in 1955 by the Commission on Organization of the Executive Branch of the Government, p. 189.

[4] Members of the public are entitled to rely on no-action and interpretive letters as representing the views of the Division. Such letters, however, set forth staff positions only and do not constitute an official expression of the Commission's views. *See* 17 CFR 202.1(d).

during the preceding month that it considers significant.

Until recently, all no-action and interpretive letters issued by the Division have followed the format of reciting the essential facts and then setting forth the position of the Division regarding the issues raised. While such detailed responses have been helpful to the public in the sense that they have included in a single document all of the pertinent information relating to the matter under discussion, they have required significant expenditures of staff manpower both in preparation and typing.[5] Due to an increase in the number of disclosure documents which are subject to review by the Division, as well as a decrease in the number of Division attorneys, it no longer is practical for the Division to continue providing such lengthy responses. Accordingly, in order to make more efficient use of its resources, while at the same time continuing its longstanding practice of providing no-action and interpretive letter advice upon request, the Division has instituted a new abbreviated procedure for providing such advice.

The new procedure involves the use of an endorsement to the incoming letter as a method of response. Under this procedure, which is being utilized for all no-action and interpretive requests except those involving shareholder proposals,[6] the Division simply sets forth its position on the issues raised either on the last page of the incoming letter or, more commonly, on a separate page attached at the end of that letter. Both the incoming letter and the Division's endorsement response are then sent to the requester, along with a brief note explaining the procedure.

The principal difference between the endorsement procedure and the procedure formerly utilized by the Division is that the Division no longer recites the facts in its response. The absence of such a recitation is not harmful, since all of the pertinent facts are set forth in the incoming correspondence. The experience of the Commission's Division of Investment Management, which has been utilizing a similar type of endorsement procedure for many years without any apparent adverse results, indicates that while a restatement of the facts is useful, it is not essential and can therefore be dispensed with.

[5] The extent of these expenditures is evident in the fact that the Division annually issues more than one thousand such letters, and the letters commonly are four or more pages in length.

[6] Letters involving shareholder proposals will be discussed later in this release.

Other Methods for Providing Informal Advice

In addition to no-action and interpretive letters, the Division, as previously mentioned, also provides informal advice in other ways as well. For example, it responds to many thousands of telephone inquiries annually concerning the statutes, rules and regulations administered by it. While the statements made by the staff on the telephone are intended to be helpful to the persons making the inquiries, they are not binding due to their highly informal nature.

The Division also provides informal advice through the periodic issuance of interpretive releases on matters of general interest to the public. In the past, these releases generally have been limited to a discussion of a single issue and have been relatively short.[7] During the past year or so, the Division determined to expand its activities in this regard by issuing interpretive releases on selected subjects or areas of the law that are much more comprehensive than those issued in the past. These comprehensive interpretive releases are intended both to inform the public of the staff's current views on matters of wide interest and to reduce the need for the public to submit no-action or interpretive requests.

The two major interpretive releases issued to date under this policy dealt, respectively, with resales of restricted securities [8] and the application of the 1933 Act to employee benefit plans.[9] Both releases appear to have been quite helpful to the interested public and, as a consequence, the Division intends to continue to issue such releases whenever a need for them is perceived.

Currently, the staff of the Division is engaged in preliminary work for the preparation of an extensive interpretive release on the Commission's rules underlying the insider reporting and liability provisions of Sections 16 (a) and (b) of the 1934 Act. It also is preparing another comprehensive release on employee benefit plans which is intended to supplement the earlier release on that subject by discussing some issues not previously addressed.

The Division would welcome any comments or suggestions from the public regarding other specific topics or areas of the law that are believed to be appropriate subjects for such a release.[10]

[7] *See*, e.g., Release Nos. 33–4790 (July 13, 1965) [30 FR 9059] (employee stock purchase plans), 33–4982 (July 2, 1969) [34 FR 11581] (spin-off transactions), 33–5347 (January 18, 1973) [34 FR 1735] (sale of condominiums), 33–5515 (August 8, 1974) [39 FR 28520] (dividend reinvestment plans), and 33–5927 (April 24, 1979) [18163] (registration of certain tender offers.)

[8] Release No. 33–6099 (August 2, 1979) [44 FR 46752].

[9] Release No. 33–6188 (February 1, 1980) [45 FR 8962].

Areas of No-Comment

In connection with its function of providing informal no-action and interpretive advice, the Division occasionally finds that it is inappropriate for policy or other reasons to express any position or to comment upon the transaction which is the subject of a particular inquiry. In such situations, the Division will decline to express any view on the application of the securities laws to the proposed transaction.

There are several reasons why the Division may feel it is inappropriate in a particular instance to express an opinion. For example, (1) the Division may be in no position to verify the facts and circumstances which are the basis of the letter; (2) the Division may be concerned that its position may be misconstrued in somewhat different factual situations; and (3) in some areas policy concerns dictate that the Division not express a view.

All of the situations in which the staff will decline to state a position have previously been publicized either in Commission releases or in staff letters which are publicly available.

The Division believes, however, that it would be helpful to provide a comprehensive list of those situations. The list, which relates generally to matters arising under the 1933 Act, is as follows:

(1) *Hypothetical questions.* Responses to such inquiries could be misconstrued when applied to actual fact situations.[11]

(2) *Integration.* Questions of this nature involve factual issues which the staff is not in a position to resolve.[12]

(3) *Affiliate or control status.* This too is an area involving factual questions which the staff is not in a position to resolve.[13]

(4) *Removal of restrictive legends.* Since such legends are applied by the issuer voluntarily, their removal is subject solely to the issuer's discretion.[14]

(5) *Availability of the Section 4(2) exemption.* The Commission has adopted a safe harbor in the form of

[10] Any such suggestions or comments should be forwarded to William E. Morley, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549.

[11] *See* Release No. 33–5127 (January 25, 1971) [36 FR 2600].

[12] *See*, e.g., letter re *Security Bancorp Inc.* dated January 21, 1980.

[13] *See*, e.g., letter re *Book Mobile, Inc.* dated November 17, 1979.

[14] *See*, e.g., letter re *RLT, Inc.* dated December 12, 1979.

Rule 146 [17 CFR 230.146] for this exemption.[15] Accordingly, only in the most compelling circumstances will the Division express a view on its availability.

(6) *Availability of the Section 3(a)(11) exemption.* Again, the Commission has adopted a safe harbor, Rule 147 [17 CFR 230.147], for this exemption and will therefore express a view concerning its availability only in the most compelling circumstances.[16]

(7) *Availability of the Section 4(1) exemption.* Rule 144 [17 CFR 230.144] has provided a safe harbor for this exemption since April 15, 1972. As a consequence, the Division will not express any view concerning the availability of the exemption unless the securities involved were acquired on or before April 15, 1972.[17]

(8) *Availability of the Section 3(a)(4) exemption where the issuer has not received a favorable tax ruling.* The exemption provided by Section 3(a)(4) of the 1933 Act depends in part on whether the issuer possesses certain characteristics that are common to specific types of tax-exempt organizations. Under the circumstances, unless the issuer can demonstrate that it has received a ruling from the Internal Revenue Service that it qualifies as such an organization, the Division will not express any view on the availability of the exemption.[18]

(9) *Time-Sharing and other novel real estate offerings.* Pursuant to a directive from the Commission, the Division will not take a position on whether individual offerings of this nature involve securities within the meaning of Section 2(1) of the 1933 Act.[19] The concern underlying the Commission's directive is that incorrect inferences could be drawn from any expression of staff views in this evolving area.

(10) *Esoteric commodity offerings (e.g., gems, rare books, gold, silver, and master recordings).* The Division has declined to express any view as to whether such offerings involve securities because of the unique and unusual circumstances involved and the possibility that no-action letters for such offerings could be misunderstood or misapplied.[20] The applicability of Section 2(1) of the 1933 Act to these offerings is highly dependent on the particular facts and circumstances involved, and the Division is in no position to verify such facts and circumstances.

Shareholder Proposal Letters

As previously noted, the new endorsement procedure outlined earlier in this release will not be used in responding to letters under Rule 14a–8 [17 CFR 240.14a–8] of the Commission's proxy rules relating to the omission of shareholder proposals from an issuer's proxy materials. Letters received from issuers pursuant to Rule 14a–8 generally raise a variety of complex and difficult issues which cannot be easily dealt with through the abbreviated endorsement format. The Division, however, is concerned with the amount of staff time being devoted to shareholder proposal matters and therefore is exploring ways for reducing the length and complexity of its responses in this area.

Some of the alternatives presently under consideration for achieving the above objective are the elimination from the Division's response of a verbatim restatement of the proposal under discussion and the use of a standardized statement of the Division's function regarding such proposals that can be attached to each response rather than retyped in each letter as a separate final paragraph. While none of these alternatives have yet been adopted, it is anticipated that some methods of this nature will be utilized within the next few months to limit the amount of time which must be spent on shareholder proposal matters. Any comments or suggestions from members of the public regarding this subject would be welcomed.[21]

The recently issued Staff Report on Corporate Accountability indicated a desire by the Division and the Commission to reconsider some of the views previously expressed with respect to certain types of shareholder proposals.[22] The Report indicates that the Commission will issue concept releases relating to various shareholder proposal matters in the future.[23] It is anticipated that these releases will reduce the number of requests for no-action letters under Rule 14a–8 because they will set forth the staff's position with respect to the applicability of the rule's provisions to certain relatively common types of proposals. If such a reduction does indeed occur, it will alleviate somewhat the Division's resource problem in this area.

In connection with the foregoing, the Division urges issuers to avoid the practice followed by some in the past of citing frivolous grounds for omitting proposals. Such a practice causes the Division's staff to spend valuable time in responding to such grounds that could be better utilized in other areas. Accordingly, while the Division continues to believe that issuers should feel free to raise all legitimate bases for the omission of a proposal, they and their counsel should review past statements issued by the Division in connection with the same or similar proposals submitted to other issuers to make certain that the grounds for omission have not been previously addressed,[24] thereby reducing the need for the Division to discuss previously settled issues.

Accordingly, 17 CFR Part 231 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons

Secretary.

October 28, 1980.

[FR Doc. 80-34234 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

[15] Release No. 33–5487 (April 23, 1974) [39 FR 15266].)

[16] Release No. 33–5450 (January 7, 1974) [39 FR 2353].

[17] Release No. 33–5223 (January 11, 1972) [37 FR 591].

[18] *See*, e.g., letter re *Shannondale Club, Ltd.* dated January 12, 1979.

[19] *See*, e.g., letters re *Tropics International* and *Spirit of Hawaii* dated April 5, 1974.

[20] *See*, e.g., letters re *Publishers Distributors Inc.* dated August 23, 1979 (book sales); *Wes Sanborn* dated November 9, 1979 (master recording leases); and *Diamond Network Associates Inc.* dated July 9, 1979 (gems).

[21] Any such comments or suggestions should be directed to William E. Morley at the address listed in footnote 10.

[22] *See* Chapter Two of the "Staff Report on Corporate Accountability" prepared by the Division. The Staff Report is dated September 4, 1980 and is set forth in a Committee Print for the Senate Committee for Banking, Housing and Urban Affairs, 96th Cong., 2nd Sess. GPO Document No. 052–070–05418–2.

[23] Some areas which are to be the subject of such releases are Rule 14a–8(c)(7) dealing with proposals relating to an issuer's ordinary business, and the Commission's view of the applicability to shareholder proposals of the Supreme Court's decision in *First National Bank* v. *Bellotti*, 435 U.S. 765 (1978).

[24] All correspondence and other materials relating to shareholder proposals which an issuer seeks to omit from its proxy materials pursuant to Rule 14a–8(d) are publicly available. *See* 17 CFR 200.82. Thus, it is a relatively simple matter to review prior statements by the Division on the same or similar proposals submitted to other issuers.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 80–264]

Entry and Clearance of Aircraft Proceeding Between the United States and Cuba

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In a document published as T.D. 80–116, in the **Federal Register** on May 1, 1980 (45 FR 29247), the Customs Regulations were amended on an interim basis, effective April 29, 1980, to provide: (1) that aircraft clearing the United States for, or entering the United States from, Cuba, obtain permission to depart from or enter at the Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida; and (2) procedures to be followed by pilots clearing or entering there. As stated in the document, the amendment was made to provide for the safe and expeditious transportation of persons between Cuba and the United States.

The notice advised the public that written comments received on or before June 2, 1980, would be considered in determining whether any change to the regulation would be required before a final rule was published. No comments were received in response to the notice and Customs has determined that the regulation does not require alteration. Accordingly, it is being published as a final rule.

EFFECTIVE DATE: April 29, 1980.

FOR FURTHER INFORMATION CONTACT: John Mathis, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5706).

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Adoption of the Interim Regulation

The interim regulation set forth as T.D. 80–116, in the **Federal Register** of May 1, 1980 (45 FR 29247), is adopted as set forth below.

William T. Archey,

Commissioner of Customs.

Approved: October 16, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

Amendment to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended by adding a new § 6.3a to read as follows:

§ 6.3a Entry and Clearance; Cuba.

(a) Unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida, the owner or person in command of any aircraft clearing the United States for, or entering the United States from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, shall:

(1) Clear or obtain permission to depart from, or enter at, the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida;

(2) Before arrival from Cuba, furnish a notice of intended arrival to the Customs Service, either by or at the request of the commander of the aircraft, not less than 15 minutes before crossing the United States coast or border. The notice shall be furnished through the Federal Aviation Administration flight notification procedures or directly to the Customs officer in charge at the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida. The notice shall include the following:

(i) Aircraft registration number;

(ii) Name of aircraft commander;

(iii) Number of United States citizen passengers;

(iv) Number of alien passengers;

(v) Place of last foreign departure;

(vi) Estimated time and location of crossing United States coast or border; and

(vii) Estimated time of arrival.

(3) Upon arrival, present a manifest of all passengers on board, as required by 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer.

(4) As a condition precedent to clearance, present to Customs:

(i) The documents required by section 6.8 of this Part; and

(ii) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19, or a license issued by the Department of State, as provided in 22 CFR Part 123. See footnote (2) to section 6.3 of this Part.

(b) No passenger arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart, before the passenger is released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

(c) All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624, 49 U.S.C. 1509))

[FR Doc. 80-34235 Filed 10-31-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits, Overpayments, and Underpayments Recovery of Overpayments

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final regulation clarifies how we decide whether adjustment or recovery of an overpayment would defeat the purpose of the Supplemental Security Income (SSI) program. The regulation makes clear that the test is whether an individual's income and resources are needed for ordinary and necessary living expenses. For individuals currently receiving SSI benefits, however, we will consider that they meet the test if their monthly income does not exceed a stated amount, since we know they have limited resources. These revisions clarify what had been intended under the previous regulation.

EFFECTIVE DATE: The final regulation shall be effective November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Marval Cazer, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: On May 28, 1980, these rules were published in the **Federal Register** (45 FR 35838) as a Notice of Proposed Rule Making (NPRM) with a 60-day comment period. A total of 8 commentators expressed their views which we discuss under the heading Discussion of Comments.

Section 1631(b)(1) of the Social Security Act provides that, if we make an overpayment, we will adjust future benefits or require repayment. However, if an individual is "without fault" in connection with the overpayment, we will waive adjustment of future benefits or repayment of the overpayment under certain conditions. One of these conditions is where recovery of the overpayment would defeat the purpose of the SSI program.

Current Regulation

The present rule (§ 416.553) has been interpreted by some to provide for a finding that the purpose of the SSI program has been defeated if either of two tests is met. The first test is whether

the individual's current monthly income does not exceed a stated amount. The amount equals the SSI benefit level (including any applicable State supplement) plus $20 ($85 if income is earned). This amount corresponds to the income level of an eligible individual who has the maximum amount of other income generally allowable without causing a reduction in SSI benefits. The second test is whether adjustment or recovery of the overpayment would deprive the individual of income or resources needed for ordinary and necessary living expenses.

Final Regulation

The revisions make clear that these are not true alternative tests, but rather apply to different situations. Under the final regulation, the general rule is whether the individual's income and resources are needed for ordinary and necessary living expenses. This standard applies to everybody, whether the individual is currently receiving SSI benefits or not. However, we will consider individuals receiving SSI benefits to meet this standard if their income is below stated levels, since, by definition, an individual who is eligible for SSI has limited resources. This final regulation, then, is designed to make clear that there is only one rule.

Discussion of Comments

As previously indicated, we received a number of comments on the NPRM published on May 28, 1980 (45 FR 35838). A summary of the comments and our responses follow.

1. *Comment:* Two commentators believe the regulation is a positive step forward in dealing realistically with the income levels and resources needed for ordinary and necessary living expenses.

Response: This comment requires no response.

2. *Comment:* Two commentators recommend that we state in this regulation the resource levels below which recovery would not be equitable.

Response: We believe placing resource limits in this regulation would have a result opposite to that assumed by the commentator. The regulation, as written, allows for an evaluation of each case on its own merits. Setting resource limits could result in requiring recovery of overpayments out of actual resources even though the individual needs the funds to meet necessary living expenses. We believe this would be contrary to the intent of the law.

3. *Comment:* One commentator states the regulation is not realistic because the result will be negative. The commentator believes overpayments should not become collectable until after the beneficiary has ceased to receive benefits and is deemed to be employable.

Response: This recommendation cannot be adopted because it is in direct opposition to what is called for in section 1631(b)(1) of the Social Security Act. That section requires us to adjust future benefits or require repayment as a means of recouping overpayments.

4. *Comment:* Two commentators suggest we adopt a rule that any current SSI recipient automatically meets the "defeat the purposes" of the Act condition of the waiver test.

Response: As indicated in the response to Comment 3 above, we cannot adopt this suggestion because section 1631(b)(1) of the Social Security Act requires us (with limited exceptions) to recover overpayments out of benefits due an SSI recipient. We believe § 416.553 represents a fair and reasonable method for determining whether recovery of the overpayment defeats the purpose of the SSI program.

5. *Comment:* One commentator states that the test in § 416.553(b) should be applied to nonrecipients as well as current recipients.

Response: Basically, there is one test, not two. The general rule, (§ 416.553(a)) which applies to everybody, is whether recovery or adjustment would deprive the individual of income or resources needed for ordinary and necessary living expenses. However, in applying this test to current SSI recipients, we use a shortcut. If the current recipient's income is below the levels described in § 416.553(b), we find that the test is met, since by definition a current recipient's resources are small (that is, he or she has resources low enough to qualify for SSI).

6. *Comment:* One commenter notes that § 404.508(b) dealing with overpayments under title II of the Social Security Act provides that adjustment or recovery of an overpayment is considered to defeat the purpose of title II where the individual needs substantially all of his current income to meet current ordinary living expenses. The commenter states that this provision makes no reference to resources and suggests that this same principle be followed under the SSI program.

Response: Although § 404.508(b) does not make reference to resources, § 404.508(a) clearly states that an individual's financial resources will be considered in determining whether recovery or adjustment will defeat the purpose of the Social Security Act. As in the SSI program, if the individual has substantial resources, even though not producing income, the resources must be taken into account in determining the ability to repay the overpayment.

7. *Comment:* One commenter states our Claims Manual provides that recovery from an individual will defeat the purpose of the program for nonrecipients if they have resources exceeding specified amounts. The commenter believes the Claims Manual is not consistent with § 416.553 of the regulations which the commenter views as not requiring consideration of resources if the claimant's income is within the limits specified in the regulations.

Response: This interpretation of the current regulations is what is being clarified by this final rule. As indicated in the response to comment 5, both income and resources are considered in all cases.

8. *Comment:* Two commenters state that our Claims Manual provides that if an SSI recipient of an overpayment has identifiable proceeds of the overpayment in his or her possession recovery cannot be considered to defeat the purposes of the SSI program. In essence, the commenters suggest this policy be eliminated or if we continue to apply it, that we put this policy in the regulations.

Response: We believe this comment has potential merit. These commenters are correct in saying that operating policy provides that recovery of erroneous funds still in an individual's possession would not constitute defeat, the purpose of title XVI; however, we could find waiver of recovery based on the criteria in § 416.554 (against equity or good conscience test) or § 416.555 (small amount involved test). Nevertheless, we will give serious consideration to incorporating this operating policy into our regulations. Should we decide that this operating policy belongs in our regulations, we will publish a Notice of Proposed Rule Making in the **Federal Register.** This will give the public full advance notice and provide an opportunity for public comment.

9. *Comment:* One commenter points out that § 416.555 permits waiver of an overpayment where, because of the small amount involved adjustment or recovery would impede efficient and effective administration of the SSI program. The commenter suggests that we include in this section the specific amount currently in effect ($45).

Response: The subject amendment to the regulation deals with one of several bases for waiver. We will consider the commenter's suggestion which concerns a different basis for waiver of an overpayment in the process of recodifying all of the rules on payment

of benefits, underpayments, and overpayments.

10. *Comment:* One commenter suggests that we add the following sentence to § 416.553(b): "The general rule of paragraph (a) applies to SSI recipients whose income exceeds this level."

The commenter believes that without this addition, the regulation could be misinterpreted to require repayment from SSI recipients whose income, though above the level stated in paragraph (b), is needed for ordinary and necessary living expenses.

Response: We believe that the regulation, as written, already states what the commenter wishes to have clarified. Nevertheless, to eliminate any potential misinterpretation of this regulation we are adding the following sentence at the end of § 416.553(b): "For those SSI recipients whose income exceeds these criteria, we follow the general rule in paragraph (a) of this section."

11. *Comment:* One commenter states that there should be a regulation that specifically allows for a reevaluation of overpayment recovery actions when the individual has experienced a change of circumstances.

Response: This is our current operating policy as set forth in the Claims Manual (CM 5597(b) and 5597.5(d)). We will give serious consideration to the need for incorporating into the regulations this operating policy (as well as any others not currently in the regulations) in the process of our recodifying all the rules in this Subpart E.

Accordingly, this regulation with one clarifying change is adopted as set forth below.

(Secs. 1102 and 1631 of the Social Security Act, as amended; 49 Stat. 647 as amended, and 86 Stat. 1475; 42 U.S.C. 1302 and 1383)

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program for the Aged, Blind, and Disabled)

Dated: October 14, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 28, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Section 416.553 is revised to read as follows:

§ 416.553 Waiver of adjustment or recovery—defeat the purpose of the supplemental security income program.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery of the overpayment would defeat the purpose of the supplemental security income program.

(a) *General rule.* We consider adjustment or recovery of an overpayment to defeat the purpose of the supplemental security income (SSI) program if the individual's income and resources are needed for ordinary and necessary living expenses under the criteria set out in § 404.508(a) of this chapter

(b) *Alternative criteria for individuals currently receiving SSI benefits.* We consider an individual or couple currently receiving SSI benefits to have met the test in paragraph (a) of this section if the individual's or couple's current monthly income does not exceed—

(1) The applicable Federal monthly benefit rate (see Subpart D of this part); plus

(2) One-third of the quarterly amount of the earned or unearned income exclusion described in § 416.1165 (i.e. $20); plus

(3) One-third of the quarterly amount of the earned income exclusion described in § 416.1167 but no more than $65; plus

(4) The applicable State supplementary payment, if any (see Subpart T of this part).

For those SSI recipients whose income exceeds these criteria, we follow the general rule in paragraph (a) of this section.

[FR Doc. 80-34227 Filed 10-31-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 3, 53

[T.D. 7728]

Holding Period Required for Treatment of Long-Term Capital Gain or Long-Term Capital Loss; Changes in Terms Relating to Transactions in Capital Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to changes in the holding period required for gains or losses on transactions in capital assets to be treated as long-term capital gains or long-term capital losses and to changes in certain terms relating to transactions in capital assets. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations affect the tax treatment of sales or exchanges of capital assets and provide the public with needed guidance.

DATES: The amendments pertaining to the change in the holding period from 6 months to 9 months are effective for taxable years beginning in 1977. The amendments pertaining to the change in the holding period from 9 months to 1 year are effective for taxable years beginning after December 31, 1977. The amendments pertaining to the new terms "capital gain net income" and "net capital gain" are effective for taxable years beginning after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Claudine Ausness of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. [Attention: CC:LR:T [202-566-3459]].

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations, the Regulations on Capital Construction Fund, and the Regulations on Foundation Excise Taxes (26 CFR Parts 1, 3, and 53) under numerous sections of the Internal Revenue Code of 1954 (45 FR 24205). These amendments were proposed to conform the regulations to sections 1402 (a) (1) and (2), and 1901(a)(136) (A) and (B) of the Tax Reform Act of 1976 (90 Stat. 1731, 1787). A public hearing was neither requested nor held. One written comment was received suggesting a technical amendment to the proposed regulation. The proposed amendments are adopted by this Treasury decision with one technical change.

Explanation

Section 1402(b)(3) of the Tax Reform Act of 1976 makes a technical amendment to section 631(a) (relating to gain or loss in the case of timber) by deleting the requirement that the holding period be satisfied before the beginning of the taxable year in which the timber was cut. Technical amendments are made to §1.631-1(a)(4) and § 1.631-1(b)(1) to reflect this change.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. Evaluation of the effectiveness of these regulations will be based upon comments received from members of Congress, offices within

Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

The principal author of these regulations is Claudine Ausness of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Parts 1, 3, and 53 published as a notice of proposed rulemaking in the **Federal Register** for April 9, 1980 (45 FR 24205), are hereby adopted as proposed subject to the following additional amendments: The first sentence of § 1.631–1(a)(4) (relating to effect of election to consider cutting as sale or exchange) is amended by deleting the phrase "the beginning of the taxable year in which" and inserting in lieu thereof "when", and the first sentence of § 1.631–1(b)(1) (relating to who may make election to consider cutting as a sale or exchange) is amended by deleting the phrase "before the beginning of the taxable year" and inserting in lieu thereof "prior to when the timber is cut".

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

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: October 7, 1980.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

Income Tax Regulations

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1980

Paragraph 1. The following regulation sections are amended by substituting "1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977)" for "6 months" and "six months" each place "6 months" or "six months" appears in such regulation sections:

1. Section 1.123–1(a)(3).
2. Section 1.166–5(a)(2).
3. Section 1.170A–4(b)(1).
4. Section 1.272–1(b)(3).
5. Section 1.333–5 (d)(1) and (d)(2).
6. Section 1.341–4(a).
7. Section 1.341–6 (b)(2)(iii) and (b)(5).
8. Example (1) of § 1.357–2(b).
9. Section 1.421–5 (a)(1), (c)(2), (d)(1) and (e).
10. Section 1.423–1(a)(1).
11. Section 1.424–1(a)(1)(i).
12. That portion of § 1.614–6(b) other than the example.
13. Section 1.631–1 (a)(4), (b)(1) and (d)(4).
14. Section 1.631–2 (a)(1), (a)(2), (b)(1), (c)(2), (d)(1), (d)(3)(i) and (d)(3)(iii).
15. Section 1.631–3 (a)(1), (a)(2), (b)(1) and (c)(3).
16. Section 1.691 (a)–3, (b)(1).
17. Section 1.702–1 (a)(1) and (a)(2).
18. Section 1.817–2 (b)(1)(i), (b)(3)(i) and (b)(3)(ii).
19. Section 1.852–4 (b)(1), (b)(2)(i), (b)(3) and (d)(1).
20. Section 1.856–2(c)(1)(iii)(*a*).
21. Section 1.857–4 (b) and (c)(1).
22. Section 1.1012–1 (e)(3), (e)(4)(i) and (e)(4)(ii).
23. Section 1.1222–1 (a) and (c).
24. Section 1.1223–1(j).
25. Section 1.1231–1 (a), (b), (c)(1) (c)(2), (c)(5), (e)(1) and (e)(3).
26. Section 1.1232–1(a).
27. Section 1.1232–3 (a)(1) and (b)(1)(ii).
28. Section 1.1233–1 (a)(4), (c)(2), (c)(4), (c)(5) and (e).
29. Section 1.1234–2(a).
30. Section 1.1235–1(a).
31. Section 1.1235–2(d)(2).
32. Section 1.1245–4(a)(4).
33. Section 1.1247–3 (b)(4) and (d)(1).
34. Section 1.1248–1(e)(3).
35. Section 1.1251–3(a)(1)(i)(*a*).
36. Section 1.1385–1(c)(2)(ii)(*a*).

§§ 1.421–5, 1.423.2 and 1.424–2 [Amended]

Par. 2. Paragraphs (a)(2) and (b)(1)(i) of § 1.421–5, paragraph (k)(1)(i) of § 1.423–2, and paragraph (b)(1)(i) of § 1.424–2 are amended by substituting "1-year (6-month for taxable years beginning before 1977; 9-month for taxable years beginning in 1977)" for "6-month" each place "6-month" appears in such regulation sections.

§ 1.1012–1 [Amended]

Par. 3. Paragraph (e)(3) of § 1.1012–1 is amended by substituting "1-year (6-month for taxable years beginning before 1977; 9-month for taxable years beginning in 1977)" for "6-months" each place "6-months" appears in such paragraph.

§ 1.1012–1 [Amended]

Par. 4. The caption of paragraph (c)(3)(iii) of § 1.1012–1 is amended by substituting "*1-year*" for "*6-months*".

§ 1.1247–3 [Amended]

Par. 5. The caption of paragraph (d) of § 1.1247–3 is amended by substituting "*1 year*" for "*6 months*".

Par. 6. The following regulation sections are amended by substituting "capital gain net income (net capital gain for taxable years beginning before January 1, 1977)" for "net capital gain" and "net capital gains" each place "net capital gain" or "net capital gains" appears in such regulation sections.

1. Section 1.381 (c)(3)–1, (c)(1), (d)(1), (d)(1)(ii), (d)(2), (e)(1), (e)(5), (e)(6), and (e)(7).
2. Section 1.852–10(b)(1).
3. Section 1.1202–1(a).
4. Section 1.1212–1 (a)(2)(i), (a)(3)(ii), (a)(3)(iii)(*a*), and (a)(3)(iii)(*f*).
5. Section 1.1222–1(d)(1).
6. Section 1.1248–4 (d)(5)(ii) and (g)(2).
7. Section 1.1502–4(d)(1)(ii).
8. Section 1.1502–11(a)(3).
9. Section 1.1502–15(a)(1).
10. Section 1.1502–21(f)(2).
11. Section 1.1502–22 (a)(1), (c)(2)(i) and (d)(2)(i).
12. Section 1.1502–25(c)(2)(ii).
13. Section 1.1502–27(b)(2).
14. Section 1.1502–79 (a)(3)(ii) and (b)(2)(i).
15. Section 1.1552–1(a)(1)(ii)(*b*).

Par. 7. The following regulation sections are amended by adding the parenthetical phrase "(capital gain net income for taxable years beginning after December 31, 1976)" directly after the phrases "net capital gain" and "net capital gains" each place the phrases "net capital gain" or "net capital gains" appears in such regulation sections:

1. Section 1.381 (c)(3)–1, (c)(4), (d)(4) and (e)(8).
2. Examples (3) and (5) of § 1.642(c)–3(c).
3. Example (2) of § 1.643(a)–6(b).
4. Examples (6), (7) and (8) of § 1.1211–1(b)(8).
5. Section 1.1212–1(a)(1)(i), examples (a), (b) and (c) of paragraph (a)(1)(ii), example (2) of paragraph (a)(2)(iii), examples (1), (2), (3), (4) and (5) of paragraph (a)(3)(iv), and example (7) of paragraph (b)(5).
6. Example (2) of § 1.1248–4(d)(5)(iii).
7. Examples (4) and (5) of § 1.1375–1(f).
8. Example (2) of § 1.1502–4(j).
9. Examples (1), (2), and (3) of § 1.1502–11(b)(6).

§§ 1.381 and 1.1502–22 [Amended]

Par. 8. The captions of paragraphs (d)(1) and (e)(5) of § 1.381(c)(3)–1, of § 1.1502–22, and of paragraph (a)(1) of § 1.1502–22 are amended by substituting "*capital gain net income*" for "*net capital gain*" each place "*net capital gain*" appears in such captions.

Par. 9. The following regulation sections are amended by substituting "Net capital gain (net section 1201 gain for taxable years beginning before

January 1, 1977)" for "net section 1201 gain" each place "net section 1201 gain" appears in such regulation sections:

1. Section 1.665(d)-1A(c)(2).

2. Section 1.1201-1(a)(1)(i), (a)(2)(i), (a)(4), (b)(1), (b)(2)(i), (b)(2)(ii)(*a*), (b)(2)(ii)(*b*), (e)(1) and (e)(2).

3. Section 1.1222-1(h).

4. Section 1.1348-2(d)(1).

Par. 10. The following regulation sections are amended by adding the parenthetical phrase "(net capital gain for taxable years beginning after December 31, 1976)" directly after the phrase "net section 1201 gain" each place the phrase "net section 1201 gain" appears in such regulation sections:

1. Example (1) of § 1.21-1(n).

2. Example (3) of § 1.514(b)-1(b)(1)(iii) and example (2) of paragraph (b)(3).

3. Section 1.1201-1(a)(3)(i), (a)(3)(ii)(*a*), (a)(3)(ii)(*b*), (a)(3)(iii), (a)(3)(iv), (b)(2)(iii) and examples (2), (3) and (4) of paragraph (g).

§ 1.21-1 [Amended]

Par. 11. Example (1) of § 1.21-1(n) is amended by adding the parenthetical phrase "(net capital gain for taxable years beginning after December 31, 1976)" directly after the phrase "section 1201 gain."

§ 1.631 [Amended]

Par. 12. Section 1.631-1 is amended as follows:

1. The first sentence of paragraph (a)(4) is amended by deleting the phrase "the beginning of the taxable year in which" and inserting in lieu thereof "when".

2. The first sentence of paragraph (b)(1) is amended by deleting the phrase "before the beginning of the taxable year" and inserting in lieu thereof "prior to when the timber is cut".

PART 3—CAPITAL CONSTRUCTION FUND

§ 3.4 [Amended]

Par. 13. Paragraphs (c) and (d)(2) of § 3.4 are amended by substituting "1 year (6 months for taxable years beginning before 1977, 9 months for taxable years beginning in 1977)" for "6 months" each place "6 months" appears in such paragraphs.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

§ 53.4940-1 [Amended]

Par 14. Paragraphs (c)(1)(i) and (f)(1) of § 53.4940-1 are amended by substituting "capital gain net income (net capital gain for taxable years beginning before January 1, 1977)" for "net capital gain" each place "net capital gain" appears in such regulation section.

§ 53.4940-1 [Amended]

Par 15. Example (2) of § 53.4940-1(f)(4) is amended by adding the parenthetical phrase "(capital gain net income for taxable years beginning after December 31, 1976)" directly after the phrase "net capital gain" each place the phrase "net capital gain" appears in such regulation section.

[FR Doc. 80-34123 Filed 10-31-80; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Parts 31 and 301

[T.D. 7730]

Information Return Penalties and Withholding Tax Rules Concerning Individual Retirement Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations prescribing withholding tax rules for individual retirement plans and penalties for failure to furnish information in connection with such plans. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 and the Tax Reform Act of 1976. These regulations would provide the public with additional guidance needed to comply with those Acts and would affect the parties responsible for furnishing or filing certain documents concerning individual retirement plans and employers contributing to such plans.

DATE: The regulations have varying effective dates as indicated. The provisions imposing a penalty tax for the failure to furnish or file documents concerning individual retirement plans are effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) 202-566-3430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1979, the Federal Register published proposed amendments to the Procedure and Administration Tax Regulations (26 CFR Part 301) under section 6693 of the Internal Revenue Code of 1954 and to the Employment Tax Regulations (26 CFR Part 31) under section 3401 of the Code (44 FR 48719). The amendments were proposed to conform the Regulations to section 2002 (f) and (g)(7) of the Employee Retirement Income Security Act of 1974 (88 Stat. 967, 970) and section 1501(b)(7) of the Tax Reform Act of 1976 (90 Stat. 1736). A public hearing was neither requested nor held on these regulations. After consideration of all the comments regarding the proposed amendments, those amendments are adopted, as revised by this Treasury decision.

Exclusion From "Wages" of Payments to Individual Retirement Plans

Section 3401 defines the term "wages" for purposes of chapter 24 of the Code (relating to withholding taxes). Section 3401(a)(12)(D) excludes from the definition of "wages" payments to individual retirement plans described in section 219(a) or section 220(a) if, at the time of such payment, it is reasonable for the employer to believe the employee will be entitled to a deduction under section 219 or 220 for the payment. In general, the effect of the exclusion from wages is that the employer does not have to withhold any income taxes for the employee for these payments.

The final regulations make it clear that this exclusion is also available for payments to a simplified employee pension arrangement described in section 408(k).

Penalties for Failure to Furnish Information Concerning Individual Retirement Plans

Section 6693 of the Code imposes a $10 penalty for each failure to furnish or file a report or statement required by the regulations under section 408(i) regarding each individual retirement account or individual retirement annuity. This penalty is assessed against the person required by section 408(i) to furnish or file the report or statement. A penalty shall not be assessed, however, if it is established that there was reasonable cause for the failure.

Drafting Information

The principal author of these regulations is Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly—

1. Paragraph 1, as set forth in the notice of proposed rulemaking, is withdrawn.

2. The proposed amendments to 26 CFR Parts 31 and 301 are hereby adopted, subject to the changes indicated below.

Employment Tax Regulations

[26 CFR Part 31]

Paragraph 1. Section 31.3401(a)(12)–1(d), as set forth in paragraph 2 of the notice of proposed rulemaking, is revised to read as follows:

§ 31.3401(a)(12)–1 Payment from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans, or to individual retirement plans.

* * * * *

(d) *Payment to individual retirement plans.* (1) The term "wages" does not include any payment to an individual retirement plan described in section 7701(a)(37) by an employer after December 31, 1974, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee will be entitled to a deduction for such payment under section 219(a).

(2) The term "wages" does not include any payment to an individual retirement plan described in section 7701(a)(37) by an employer after December 31, 1976, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee on whose behalf the payment is made will be entitled to a deduction for such payment under section 220(a).

(3) The term "wages" does not include any payment to a simplified employee pension arrangement described in section 408(k) by an employer after December 31, 1978, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee on whose behalf the payment is made will be entitled to a deduction for such payment under section 219(a).

Procedure and Administration Tax Regulations [26 CFR Part 31]

Par. 2. Section 301.6693–1(a), as set forth in paragraph 3 of the notice of proposed rulemaking, is revised to read as follows:

§ 301.6693–1 Penalty for failure to provide reports and documents concerning individual retirement accounts or annuities.

(a) *In general*—(1) *Annual reports, etc.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a report or any other document required under section 408(i) and § 1.408–5 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

(2) *Disclosure statements.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a disclosure statement, a governing instrument, an amendment to either, or any other document required under section 408(i) and § 1.408–6, within the time and in the manner prescribed for furnishing or filing such item, shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

* * * * *

Par. 3. The first sentence of section 301.6693–1(b), as set forth in paragraph 3 of the notice of proposed rulemaking is revised by deleting "or the director of the Internal Revenue Service Center".

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Approved: October 7, 1980.

Jerome Kurtz,

Commissioner of Internal Revenue.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Paragraph 1. Section 31.3401(a)(12) is deleted.

Par. 2. The title of section 31.3401(a)(12)–1 is amended and a new paragraph (d) is added to read as follows:

§ 31.3401(a)(12)–1 Payment from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans, or to individual retirement plans.

* * * * *

(d) *Payment to individual retirement plans.* (1) The term "wages" does not include any payment to an individual retirement plan described in section 7701(a)(37) by an employer after December 31, 1974, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee will be entitled to a deduction for such payment under section 219(a).

(2) The term "wages" does not include any payment to an individual retirement plan described in section 7701(a)(37) by an employer after December 31, 1976, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee on whose behalf the payment is made will be entitled to a deduction for such payment under section 220(a).

(3) The term "wages" does not include any payment to a simplified employee pension arrangement described in section 408(k) by an employer after December 31, 1978, on behalf of an employee, if, at the time of such payment, it is reasonable for the employer to believe that the employee on whose behalf the payment is made will be entitled to a deduction for such payment under section 219(a).

PART 301—PROCEDURE AND ADMINISTRATION

§ 301.6693–1 Penalty for failure to provide reports and documents concerning individual retirement accounts or annuities.

(a) *In general*—(1) *Annual reports, etc.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a report or any other document required under section 408(i) and § 1.408–5 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

(2) *Disclosure statements.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a disclosure statement, a governing instrument, an amendment to either, or any other document required under section 408(i) and § 1.408–6, within the time and in the manner prescribed for furnishing or filing such item, shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

(b) *Showing of reasonable cause.* The penalty imposed by section 6693 shall not apply to any person with respect to a failure to furnish or file a report, statement, or other document within the time and in the manner prescribed if it is established to the satisfaction of the district director that such failure was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration by such person that it is made under the penalties of perjury and setting forth all the facts alleged to constitute reasonable cause.

(c) *Deficiency procedures not to apply.* The penalty imposed by section 6693 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

(d) *Other penalties.* The penalties of section 6693 and this section are in lieu of any penalty imposed by section 6652(f) for violation of section 6047(d), with respect to any failure to furnish or file described in this section.

(e) *Effective date.* This section shall take effect on January 1, 1975.

[FR Doc. 80-34122 Filed 10-31-80; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 48

[T.D. 7729]

Excise Tax Treatment of Articles Sold Tax Free for Exportation Upon Their Subsequent Importation Into the United States

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final Manufacturers and Retailers Excise Tax Regulations relating to the excise tax treatment of articles previously sold tax free for exportation under section 4221(a)(2) of the Internal Revenue Code of 1954 upon their subsequent return to the United States. These regulations provide necessary guidance to importers of previously exported articles that are returned to the United States in an unused condition.

DATE: The regulations are effective December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Kyllikki Kusma of the Legislation and Regulation Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention CC:LR:T:LR-13-80, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1980, the **Federal Register** published proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under section 4221(a)(2) of the Code. No written comments were received, and a public hearing was neither requested nor held. After further consideration, those amendments are adopted as revised by this Treasury decision.

Explanation of the Regulations

Section 48.4221-3 of the regulations is currently silent with respect to the excise tax treatment of articles that previously were sold tax free for exportation but which subsequently are imported to the United States in an unused and undamaged condition. These regulations provide that the importer of these articles is subject to the excise tax imposed by Chapter 32 of the Code on the subsequent sale or use of the imported article in the United States.

A change has been made in these regulations as proposed. The reference to a bus in example (2) at § 48.4221-3(a)(2) is inappropriate as bus chassis and bodies are now exempt from manufacturers excise taxes by reason of section 4063(a)(6) of the Code. Consequently, this example is amended by changing the subject of the example from a bus to a truck.

Drafting Information

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

Adoption of amendments to the regulations:

Accordingly, the following amendments to the regulations (26 CFR Part 48) are hereby adopted as set forth below:

Paragraph 1. Section 48.4221-3(a) is redesignated as § 48.4221-3(a)(1) and a new § 48.4221-3(a)(2) is added to read as follows:

§ 48.4221-3 Tax-free sales of articles for export, or for resale by the purchaser to a second purchaser for export.

(a) *In general*—(1) * * *

(2) If an article, otherwise taxable under chapter 32 of the Code—

(i) Is sold tax free by the manufacturer pursuant to section 4221(a)(2) and this section, and

(ii) Is returned subsequently to the United States in an unused and undamaged condition,

then the importer is liable for the tax imposed by chapter 32 on the subsequent sale or use of the article in the United States. The provisions of this paragraph (a)(2) may be illustrated by the following examples:

Example (1). Q, a U.S. motor vehicle manufacturer, previously sold a truck chassis to R, a company in Canada. The sale was tax free under section 4221(a)(2). R mounted a truck body on the truck chassis and sold the completed vehicle to S. Thereafter S sold the completed new vehicle to T who imported the vehicle into the United States and sold it. The sale of the completed truck subjects T to an excise tax liability under section 4061(a)(1) with respect to both the body and the chassis.

Example (2). X, a U.S. manufacturer of trucks, sold a trash collection truck to Y, a company in France. The sale was tax free under section 4221(a)(2). The truck was sold by Y to the City of Nice, France. After initial use, the city determined that the truck was not suited for its needs and resold the truck to X. X returned the truck to the United States where it was resold. The resale of the truck by X does not subject X to an excise tax liability under section 4061(a)(1).

* * * * *

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: October 23, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-34124 Filed 10-31-80; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 5

Secrecy of Certain Inventions and Licenses To File Applications in Foreign Countries; Exports of Technical Data

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This amendment of the rules of practice brings them into agreement with changes which the Office of Export Administration of the International Trade Administration, Department of Commerce, has made in its Export Administration Regulations. The Office of Export Administration has amended these regulations by adding the filing of patent applications in foreign countries to the list of exports which are not controlled by the Office of Export Administration. As amended, these regulations point out that exports of unclassified technical data in the form of patent applications, amendments and the like are governed by regulations issued by the Patent and Trademark Office. These changes in the Export Administration Regulations are intended to be reflected in this amendment of the Patent and Trademark Office's rules of practice.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Engle by telephone at (703) 557-2897 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: On July 30, 1980, the International Trade Administration of the Department of Commerce published in the **Federal Register** (45 FR 50556) its amendment of 15 CFR Parts 370 and 379. These amendments added the filing of patent applications in foreign countries to the list of exports which are not controlled

by the Office of Export Administration. They point out that no validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office in 37 CFR Part 5. Section 5.19 of 37 CFR Part 5 is therefore being revised to delete the now-obsolete requirement for a validated export license and make clear that such a license is not required if the filing of a patent application in a foreign country is in accordance with Patent and Trademark Office regulations, 37 CFR 5.11–5.23.

This amendment of 37 CFR Part 5 has been reviewed pursuant to Executive Order 12044 and found to have no major economic consequences and therefore does not require a regulatory analysis.

Since the amendment imposes no burden on any person and is a clarification of an existing rule, notice and public procedures thereon are considered to be unnecessary.

Accordingly, pursuant to the authority contained in 35 U.S.C. 6, as amended and 35 U.S.C. 181–188, the rules of practice in 37 CFR Part 5, relating to licenses to file applications in foreign countries are amended as follows:

By revising § 5.19 to read:

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 370.10(j)) established by the U.S. Department of Commerce, International Trade Administration, Office of Export Administration, a validated export license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (37 CFR 5.11–5.23) of the Patent and Trademark Office.

(b) A validated export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 379.3(c)).

(c) Inquiries concerning the export control regulations for the foreign filing of technical data other than patent applications should be made to the Office of Export Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230.

Dated: October 15, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Approval:

Jordan J. Baruch,

Assistant Secretary for Productivity, Technology and Innovation.

Dated: October 28, 1980.

[FR Doc. 80-34082 Filed 10-31-80; 8:45 am]

BILLING CODE 3510-16-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Service Records as Evidence of Service and Character of Discharge

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration has amended its regulation concerning service records as evidence of service. The need for this change results from a July 1, 1979 revision of DD Form 214, Certificate of Release or Discharge from Active Duty, by the Department of Defense. The original copy of the revised DD Form 214 no longer contains information as to character of service. Since this information is necessary to determine Veterans Administration benefit entitlement the original copy is no longer acceptable. In addition the regulation has been rewritten for clarity and to preclude acceptance of a document certified to by a notary public or a public record custodian without verification by the service department.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle Jr. (202–389–3005).

SUPPLEMENTARY INFORMATION: On pages 49297–98 of the **Federal Register** of July 24, 1980, the Veterans Administration published a proposed amendment to 38 CFR 3.203. Interested persons were given until August 22, 1980, to submit comments, suggestions, or objections to the proposed amendment of § 3.203. We received five comments.

Two commentators objected to the format of the new DD Form 214. This form is issued by the Department of Defense. Consequently, the Veterans Administration lacks authority to implement any suggested changes in it.

Two other commentators urged us to accept a copy of a Certificate of Discharge or DD Form 214 that had been issued by a public custodian of records (e.g. a county clerk) and certified by that official as being a correct copy of the document in his or her custody without verification from the service department. The problem here is that the custodian merely furnishes a copy of what was put on public record. There is no guarantee that the document that was recorded is genuine and free of alteration. The use of modern photocopy equipment can easily mask erasures or alterations on the document from which the copy was made.

We believe that to insure the integrity of our benefit programs the Veterans Administration should accept without verification from the service department only a Discharge Certificate or DD Form 214 that was furnished directly to the former service member. In those cases in which service records have been lost or destroyed the Veterans Administration will accept the best available evidence.

The fifth commentator suggested that a decisional document issued by a Discharge Review Board or Board for Correction of Military Records upgrading a discharge be used to establish character of service without waiting for a revised DD Form 214 to be issued. The revised wording of § 3.203 does not preclude such use and will so instruct our adjudicators.

The proposed amendment of § 3.203 is adopted without change.

Approved: October 28, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

1. Section 3.203 is revised to read as follows:

§ 3.203 Service records as evidence of service and character of discharge.

(a) *Evidence submitted by a claimant.* For the purpose of establishing entitlement to pension, compensation, dependency and indemnity compensation or burial benefits the Veterans Administration may accept evidence of service submitted by a claimant (or sent directly to the Veterans Administration by the service department), such as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, without verification from the appropriate service department if the evidence meets the following conditions:

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if the copy was issued by the service department; and

(2) The document contains needed information as to length, time and character of service; and

(3) In the opinion of the Veterans Administration the document is genuine

and the information contained in it is accurate.

(b) *Additional requirements for pension claimants.* In addition to meeting the requirements of paragraph (a) of this section, a document submitted to establish a creditable period of wartime service for pension entitlement may be accepted without verification if the document (or other evidence of record) shows:

(1) Service of 4 months or more; or

(2) Discharge for disability incurred in line of duty; or

(3) Ninety days creditable service based on records from the service department such as hospitalization for 90 days for a line of duty disability.

(c) *Verification from the service department.* When the claimant does not submit evidence of service or the evidence submitted does not meet the requirements of paragraph (a) of this section (and paragraph (b) of this section in pension claims), the Veterans Administration shall request verification of service from the service department. If it appears that a length of service requirement may not be met (e.g., the 90 days wartime service requirement to receive pension under 38 U.S.C. 521(j)), the Veterans Administration shall request a complete statement of service to determine if there are any periods of active service that are required to be excluded under § 3.15.

2. In § 3.204, the heading is changed to read as follows:

§ 3.204 Evidence other than evidence of service.

* * * * *

§ 3.205 [Amended]

3. Section 3.205 is amended by deleting the words "widow, (or widower)," and adding the words "surviving spouse" in paragraph (a).

[FR Doc. 80-34148 Filed 10-31-80; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates; Rates to the People's Republic of China

Correction

In FR Doc. 80-32300 appearing at page 68651 in the issue for Thursday, October 16, 1980, make the following corrections:

(1) On page 68652, in Table 8-16, *Custom Designed Service*, the entry for 7 pounds under Zone 4 now reading "47.41" should read "47.71".

(2) Also on page 68652, in Table 8-17, *On Demand Service*, the entry for 15 pounds under Zone 7 now reading "66.90" should read "63.90".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL 1648-6]

Approval and Promulgation of Implementation Plans; Revision to the Commonwealth of Puerto Rico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to approve a revision to the air quality standard attainment plan for the Commonwealth of Puerto Rico. This plan revision was prepared by the Commonwealth to meet the requirements of Part D ("Plan Requirements for Nonattainment Areas") of the Clean Air Act, as amended in 1977.

EFFECTIVE DATE: This action is effective on November 3, 1980. 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 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.

ADDRESSES: Copies of the Implementation Plan revision submitted by the Commonwealth of Puerto Rico and supplementary information are available for inspection at the following addresses:

Environmental Protection Agency, Region II, 26 Federal Plaza Room 908, New York, New York 10278.

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

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Environmental Quality Board, 204 Del Parque Street, Santurce Puerto Rico 00910.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (202) 264-2517.

I. Supplemental Information

A. Background

Pursuant to the requirements of Section 107(d) of the Clean Air Act, on January 25, 1979 the Environmental Protection Agency (EPA) published in the **Federal Register** at 44 FR 5119 a designation of the attainment status with respect to each national ambient air quality standard for every area within the Commonwealth of Puerto Rico. These designations represented revisions, corrections and elaborations to designations originally published in the March 3, 1978 issue of the **Federal Register** at 43 FR 8962. The reader is referred to the January 25, 1979 notice for a detailed description of the geographic areas covered by today's final rulemaking action. A general description is contained in the revisions to § 52.2723, "Attainment dates for national standards," promulgated at the end of today's notice.

Part D of the Clean Air Act requires that for each area designated as not meeting a national ambient air quality standard a State Implementation Plan (SIP) revision must be developed by the state and submitted to EPA by January 1, 1979. The SIP revision must provide for attainment of the contravened standard by December 31, 1982 or, for certain pollutants, no later than December 31, 1987. The required contents of such SIP revisions are described in Part D and, more generally, in Section 110(a) of the Clean Air Act. These requirements are further discussed and elaborated upon in **Federal Register** notices published on April 4, 1979 (44 FR 20372), July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67182).

On June 29, 1979 the Governor of the Commonwealth of Puerto Rico formally adopted a SIP revision entitled, "Clean Air For Puerto Rico—1979." This document was intended to meet Clean Air Act requirements for the two areas of the Commonwealth designated as not meeting the national ambient air quality standard for particulate matter, the "Guayanilla Air Basin" and the "Catano Air Basin." A notice of availability of the proposed revision was published in the **Federal Register** on August 3, 1979 at 44 FR 45647. This revision was subsequently reviewed by EPA and discussed with the Puerto Rico Environmental Quality Board (EQB). As a result of these discussions, several changes to the proposed revision were undertaken by the Commonwealth prior to proposed rulemaking by EPA. A revised submission, including these changes was provided to EPA under

cover of a letter dated October 30, 1979 and was the subject of a November 14, 1979 public hearing held in San Juan, Puerto Rico.

On March 26, 1980, EPA proposed action on the subject SIP revision and requested comment on its determinations with regard to the Commonwealth's fulfillment of the requirements for approval. This notice, published at 45 FR 19570, raised several issues (identified as "unfulfilled requirements"), which, based on EPA's review, required additional action by the Commonwealth. These issues, corrective actions and time frames, as well as the general contents of the submission and determinations arrived at by EPA, were identified in this **Federal Register** notice and, as stated, public comment was requested. No specific comments were received. However, general comments, addressed at national policy, were submitted by Covington and Burling, on behalf of the Manufacturing Chemists Association (letter dated July 5, 1979) and the Natural Resources Defense Council, Inc. (letter dated August 6, 1979). These comments are addressed in Section III, "Other Comments and Issues," of today's notice.

On July 24 and August 6, 1980, the EQB submitted additional information to EPA for inclusion in the Commonwealth's proposed SIP revision. This supplementary material, submitted in fulfillment of the conditions on approval proposed by EPA, is discussed in Section II, "Disposition of Proposed Conditions for Approval," of this notice.

The reader is referred to EPA's March 26, 1980 notice of proposed rulemaking for a detailed discussion of EPA's proposed conditions on approval. Based on its review of the supplemental information received, EPA is now taking final action to approve, unconditionally, the Puerto Rico plan revision. EPA finds that good cause exists for making this action immediately effective for the following reasons:

- Implementation plan revisions are already in effect under Commonwealth law and EPA approval imposes no additional regulatory burden.
- EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979, or as soon thereafter as possible.

B. Summary of SIP Contents

In summary, attainment of the primary and secondary national ambient air quality particulate matter standards is demonstrated in the revision document submitted by the Commonwealth as a result of expected emission reductions due to:

- New regulations for the control of emissions from agricultural burning, asphalt dryers, open burning, non-process industrial sources, and a program to offset emissions from new major source growth.
- Continued enforcement of existing Commonwealth rules and regulations.

II. DISPOSITION OF PROPOSED CONDITIONS FOR APPROVAL

In its July 24 and August 6, 1980 submittals of supplemental information, the Commonwealth provided documentation adequate to meet the three conditions on approval proposed by EPA. These conditions are identified below along with the pertinent supplemental information.

EPA finds that the Commonwealth's submittals adequately meet the requirements set forth as the required conditions. On this basis, EPA is not promulgating these requirements as conditions for approval of the SIP revision. EPA further finds that, for good cause, notice and comment on this action are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act) insofar as the corrective actions were clearly identified, the submissions fully meet the proposed requirements, and no comment was received in response to the proposal.

Proposed Condition (1):

"On or before April 1, 1980, the Commonwealth must submit to EPA an acceptable revision to its regulatory definition of the term, "air pollution control equipment," as found in Rule 102, "Definitions." The phrase, "according to the Board," should be deleted or reworded so as to give EPA enforcement authority."

Supplemental Information: In its July 24, 1980, submittal, the Commonwealth submitted adopted enforceable regulations that contain a modification to the regulatory definition of the term "air pollution control equipment." This modified definition does not contain the phrase, "according to the Board."

Proposed Condition (2):

"On or before April 1, 1980, the Commonwealth must submit to EPA a commitment to submit external offsets as SIP revisions."

Supplemental Information: In its August 6, 1980 submittal the Commonwealth provided the necessary commitment to submit external offsets as SIP revisions. And, therefore, has insured the continued satisfaction of Part D requirements in this regard. The emission "offsets" will be required in accordance with the now adopted and enforceable regulation, Rule 201, "Location Approval."

Proposed Condition (3):

"On or before April 1, 1980, the Commonwealth must certify to EPA that its "Regulation for the Control of Atmospheric Pollution" has been adopted and is legally enforceable. EPA acceptance of this certification will be based on a determination that the air pollution control requirements contained therein have not been substantively changed from those submitted as a part of the plan revision. Correction of regulatory or other deficiencies discussed in this action shall not be considered "substantive changes." A copy of the adopted regulation must be submitted along with the Commonwealth's certification."

Supplemental Information: In its July 24, 1980 submittal, the Commonwealth provided certification to EPA that its "Regulation for the Control of Atmospheric Pollution" has been adopted and is legally enforceable. A copy of the adopted enforceable regulation was submitted along with the applicable Commonwealth certification. The adopted regulation submitted by the Commonwealth on July 24, 1980 contains no substantive change from the proposed regulation submitted on October 30, 1979.

III. OTHER COMMENTS AND ISSUES

A. General Comments

General comments addressed at national EPA policy and, therefore, applicable to all comprehensive SIP revisions prepared pursuant to Part D of the Clean Air Act were submitted by the Natural Resources Defense Council and the law firm of Covington and Burling on behalf of the Chemical Manufacturers Association. These comments and EPA's response to them are presented in a final rulemaking notice for New York State published on February 5, 1980 at 45 FR 7803.

B. Attainment Dates and Compliance Deadlines

Revisions to § 52.1682, "Attainment dates for national standards," which are promulgated at the end of today's notice, list the deadlines for attaining each national ambient air quality standard in the various areas of the Commonwealth of Puerto Rico. The version of this list appearing in the latest edition of the Code of Federal Regulations does not reflect the new deadlines provided for by Section 172(a) of the Clean Air Act, as amended in 1977. Today's notice updates this list

where later dates were provided by the Commonwealth in its SIP revisions and where these later dates were approved by EPA.

However, sources subject to plan requirements and deadlines established prior to the 1977 Amendments to the Clean Air Act remain obligated to comply with those requirements as well as with the new Section 172 plan requirements. Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

"Section 110(a)(2) of the Act made clear that each source had to meet its emission limits 'as expeditiously as practicable' but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D." (123 Cong. Rec. H 11958, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to preexisting plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendment. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. Even when a new requirement is being added to a SIP, the existing requirement may not ordinarily be relaxed or revoked. The new requirement does not supersede or replace the old requirement. Instead the existing requirement must remain an enforceable provision of the SIP, and must co-exist with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement.

There are some exceptions, however. A State may submit a relaxation or revocation of an existing requirement (or, for an existing requirement promulgated by EPA, have EPA relax or revoke it) if the requirement is in one or more of the following categories:

—Any existing requirement that conflicts with a new, more stringent requirement, making it highly impractical for a source to comply with the old requirement. Any exemption granted must be drawn as narrowly as possible, on a case-by-case basis, and will be acted upon by EPA as a SIP revision.

—Any federally promulgated indirect source review program and any bridge toll requirement revocable under Section 110(c)(5)(A) of the Act.

—Any existing inspection/maintenance or transportation control measure to the extent the measure is demonstrated not to be reasonably available, if the revised SIP satisfies all Part D requirements.

—Any new requirement in a 1979 SIP submittal designed for the 0.08 ozone level as long as the control measures in the revised SIP satisfy all requirements for the 0.12 level.

A relaxation or revocation is also pemissible if it will not contribute to concentrations of pollution where there is a violation of an ambient air quality standard or of a Prevention of Significant Deterioration increment. Where relaxation of a requirement is allowed, but where the deadline for compliance is not relaxed, the new requirement must call for compliance no later than the existing deadline for compliance so that there is no gap in enforceability.

C. Other Issues

It should be noted that the Commonwealth, in implementing the necessary regulatory revisions to its plan, provided a recodified version of its air pollution control regulations. Any revisions of substance to these regulations have been discussed in today's notice as well as in EPA's March 26, 1980 notice of proposed rulemaking. However, both the previously approved regulations and those on which action is being taken today contain a number of "discretionary authority" provisions. The most obvious example of this is the authority for modification of maximum fuel oil sulfur content pursuant to Rule 209, "Modification of Allowed Percentage of Sulfur in Fuels," and Rule 410, "Maximum Sulfur Content in Fuels."

EPA is approving, as part of the applicable implementation plan, the Commonwealth's "Regulation for the Control of Air Pollution" to the extent it contains emission limitations, compliance schedules, sampling or testing methods or such other measures as may be necessary to insure the attainment and maintenance of national standards. Any exercise by the EQB of its "discretionary authority" under the provisions of the regulation which serves to vary, alter or modify these applicable plan requirements must be submitted to and approved by EPA as plan revisions. Such variances, granted by EQB under its "discretionary authority," which are not submitted to and approved by EPA as plan revisions do not alter the applicable implementation plan (Clean Air Act Section 110(d); 40 CFR 51.34 and 51.6) and will not be recognized by EPA in carrying out its authority to enforce the applicable plan. In order to prevent any misunderstanding of this requirement, EPA is promulgating today a new § 52.2732, "Control strategy and regulations: General," which serves to clearly enunciate this requirement with regard to the Commonwealth's implementation plan. The regulation being promulgated today is not a substantive one. Because it merely interprets and clarifies, but doe not alter, existing regulatory requirements, prior notice and opportunity for comment are unnecessary (5 U.S.C. Section 553(b)(A)).

Provisions of the "Regulation for Control of Air Pollution" which are subject to this interpretation include, but are not limited to, the following:

—Rule 105, "Malfunction;"
—Rule 106, "Test Methods;"
—Rule 204(C), "Temporary permit to operate;"
—Rule 205, "Compliance for Existing Sources;"
—Rule 204, "Permits to operate;"
—Rule 208, "Agricultural Burning Authorized;"
—Rule 209, "Modification of Allowed Percentage of Sulfur in Fuels;"
—Part III, "Variances;"
—Rule 409, "Non-Process Sources;"
—Rule 410, "Maximum Sulfur Content of Fuel;"
—Rule 411, "Hydrogen Sulfide;"
—Rule 417, "Storage of Volatile Organic Compounds;"
—Rule 419, "Organic Solvents."

A further discussion of the manner in which the new § 52.2732 applies to sulfur-in-fuel assignments under provisions of Rules 209 and 410 is required. First, it should be noted that by approving the plan revisions addressed by today's notice, which do not include any identified changes in EPA-approved (September 11, 1975, at 40 FR 42191) sulfur-in-fuel "assignments" for existing sources, EPA is not

approving any subsequent EQB-issued, but not EPA-approved, "reassignments." Thus, the sulfur-in-fuel "assignments" to specific sources, as approved by EPA, continue as enforceable implementation plan requirements. Any changes to these EPA-approved "assignments" or any subsequent "assignments" to sources in existence prior to September 11, 1975 must be submitted to and approved by EPA as SIP revisions. Nevertheless, under the procedures established in Rules 209 and 410, EQB continues its independent authority to establish fuel sulfur content limitations, in the context of its "new source review program," for sources upon which construction commenced on or after September 11, 1975. The limits for such sources, implemented by EQB in accordance with procedures approved by EPA pursuant to provisions of 40 CFR 51.18, "Review of new sources and modifications," become a part of the plan without need for EPA review and approval and are federally enforceable.

Note.—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.

(Secs. 110, 172, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Note.—Incorporation by reference of the Implementation Plan for the Commonwealth of Puerto, Rico was approved by the Director of the Federal Register on July 1, 1980.

Dated: October 23, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Code of Federal Regulations is amended as follows:

Subpart BBB—Puerto Rico

1. Section 52.2720 paragraph (c) is amended by adding new paragraphs (c)(26) and (c)(27) as follows:

§52.2720 Identification of plan.

* * * * *

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

* * * * *

(26) A document entitled, "Clean Air for Puerto Rico," submitted, pursuant to requirements of Part D of the Clean Air Act, on June 29, 1979 by the Governor of the Commonwealth of Puerto Rico.

(27) Supplementary submittals of SIP revision material from the Puerto Rico Environmental Quality Board, dated:

(i) October 30, 1979, containing policy statements of EQB with regard to: its objective to attain both the primary and secondary particulate matter air quality standards by December 31, 1982, assurances with regard to meeting the requirements of reasonable further progress, verification of the detail of its annual reporting effort, clarification of the operation of its offset program and correction of the related inventory and graphical presentations.

(ii) July 24, 1980, providing a comprehensive set of adopted regulations, entitled "Regulation for the Control of Atmospheric Pollution."

(iii) August 6, 1980, providing a commitment to submit "external offsets" as SIP revisions.

2. Section 52.2722 is revised to read as follows:

§ 52.2722 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Puerto Rico's plans for the attainment and maintenance of national standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, Title I, of the Clean Air Act, as amended in 1977.

3. Section 52.2723 is revised to read as follows:

§ 52.2723 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information contained in the Puerto Rico plan. Further information on the specific boundaries of the "nonattainment," "unclassifiable," and "attainment" areas is found in § 81.355 of this Chapter.

Air quality control region and nonattainment area	Pollutant						
	TPS		SO_2		NO	CO	O_3
	Primary	Secondary	Primary	Secondary			
Catano air basin	b	b	a	a	a	a	a
Guayanilla air basin	a	b	a	a	a	a	a
Remainder of Puerto Rico AQCR	a	a	a	a	a	a	a

NOTE 1.—Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out in the 1978 edition of the *Code of Federal Regulations* at 40 CFR Part 52, § 52.2723.

a. Air quality levels presently attain standards or area is unclassifiable.

b. December 31, 1982.

4. Subpart BBB is amended by adding a new § 52.2732 as follows:

§ 52.2732 Control strategy and regulations: General.

Commonwealth regulations codified as the "Regulation for the Control of Atmospheric Pollution," as submitted July 24, 1980, are approved to the extent they set forth emission limitations, compliance schedules, sampling or testing methods or such other measures necessary to insure the attainment and maintenance of national ambient air quality standards. The air pollution control agency of the Commonwealth of Puerto Rico is authorized, under provisions of this regulation, to exercise its "discretionary authority" in certain circumstances. Any exercise of such discretionary authority by the air pollution control agency of the Commonwealth of Puerto Rico which serves to vary, defer, alter, or modify any limitation, schedule, method or other measure contained in the approved regulations will not revise the applicable implementation plan until the action has been submitted to and approved by EPA as a revision to the implementation plan. This is in accordance with the requirement of 40 CFR 51.6 and 51.34.

[FR Doc. 80-34071 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5941]

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

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These

communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

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

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

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

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

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

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

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A.95.

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

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

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Massachusetts	Essex	Groveland, town of	250083C	Oct. 1, 1980, suspension withdrawn	June 28, 1974 and Nov. 1, 1977.
Ohio	Hamilton	Springdale, city of	390877—New	Oct. 1, 1980, emergency	
Missouri	McDonald	Anderson, city of	290217A	do	May 17, 1974 and Dec. 26, 1975.
Illinois	McHenry	Sunrise Ridge, village of	170976A	Oct. 2, 1980, emergency	July 6, 1979.
Texas	Carson	Groom, city of	480726	do	Dec. 3, 1976.
Michigan	Genesee	Clayton, township of	260663B	Oct. 2, 1980, emergency, Oct. 2, 1980, regular.	Nov. 11, 1977 and Aug. 1, 1980.
Illinois	St. Clair	Fairmont, village of	170627	July 29, 1975, emergency, Mar. 28, 1980, regular, Mar. 28, 1980, suspended, Oct. 2, 1980, reinstated.	Oct. 8, 1976 and Mar. 28, 1980.
California	San Joaquin	Unincorporated areas	060299A	Feb. 23, 1973, emergency, May 15, 1980, regular, July 2, 1980, suspended, Oct. 3, 1980, reinstated.	
Pennsylvania	Allegheny	Blawnox, borough of	420013B	Nov. 1, 1974, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Oct. 9, 1980, reinstated.	June 14, 1974 and May 7, 1976.
Do	do	Harmar, township of	421068B	June 3, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended, Oct. 8, 1980, reinstated.	Sept. 6, 1974 and July 30, 1976.
Maine	Oxford	Denmark, town of	230476A	May 7, 1976, emergency, July 2, 1980, regular, July 2, 1980, suspended, Oct. 15, 1980, reinstated.	Dec. 24, 1976.
Connecticut	Fairfield	Bridgeport, city of	090002B	Oct. 15, 1980, suspension withdrawn	Sept. 13, 1974 and Feb. 11, 1977.
Kansas	Shawnee	Silver Lake, city of	200335B	do	May 31, 1974 and Oct. 24, 1975.
Do	do	Willard, city of	200337B	do	Aug. 16, 1974 and June 18, 1976.
Kentucky	Campbell	Silver Grove, city of	210040A	do	Feb. 1, 1974.
Do	do	Wilder, city of	210041B	do	Feb. 15, 1974 and May 7, 1976.
Maine	Aroostook	Washburn, town of	230037A	do	Aug. 20, 1976.
Maryland	Caroline	Unincorporated areas	240130B	do	Apr. 4, 1975 and Jan. 6, 1978.
Massachusetts	Middlesex	Carlisle, town of	250187B	do	Aug. 16, 1974 and Dec. 10, 1976.
Michigan	Kent	Ada, township of	260248B	do	Nov. 22,1974 and Feb. 6, 1976.
Minnesota	Lesueur	Unincorporated areas	270246A	do	
Missouri	St. Louis	Breckenridge Hills, village of	290337B	do	Dec. 7, 1973 and July 30, 1976.
Do	do	Overland, city of	290375B	do	Jan. 23, 1974 and June 4, 1976.
North Dakota	Cass	Harwood, township of	380259A	do	
Ohio	Montgomery	Kettering, city of	390412B	do	May 31, 1974 and June 25, 1976
Pennsylvania	Westmoreland	Ligonier, borough of	422180B	do	Apr. 12, 1974 and May 14, 1976.
Do	Susquehanna	Oakland, township of	422581A	do	Dec. 27, 1974.
Do	do	Susquehanna Depot, borough of	420816B	do	June 21, 1974 and June 4, 1976.
Do	Lycoming	Watson, township of	420661B	do	Aug. 9, 1974 and Oct. 10, 1975.
Vermont	Franklin	Richford, town of	500218B	do	Mar. 15, 1974 and Oct. 22, 1976.
Virgin Islands		Commonwealth of the Virgin Islands.	780000B	do	Feb. 25, 1977.

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

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33796 Filed 10-31-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5939]

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

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

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

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

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

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

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

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

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

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

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

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

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Massachusetts	Essex County	Groveland, town of	250083	750619 emerg., 801001 reg	740628
Michigan	Genesee County	Clayton, township of	260663	801002 emerg., 801002 reg	771111
Alabama	Jefferson County	Adamsville, city of	010267	760223 emerg., 801010 reg	750117
North Dakota	McHenry County	Anamoose, city of	380154	770812 emerg., 801014 reg	750117
Connecticut	Fairfield County	Bridgeport, city of	090002	730807 emerg., 801015 reg	740913
Illinois	Du Page County	Bolingbrook, village of	170812	740628 emerg., 801015 reg	740412
Kansas	Shawnee County	Silver Lake, city of	200335	741226 emerg., 801015 reg	740531
Kansas	Shawnee County	Willard, city of	200337	750825 emerg., 801015 reg	740816
Kentucky	Campbell County	Silver Grove, city of	210040	741015 emerg., 801015 reg	740201
Kentucky	Campbell County	Wilder, city of	210041	741024 emerg., 801015 reg	740215
Maine	Kennebec County	Manchester, town of	230239	750530 emerg., 801015 reg	741206
Maine	Aroostook County	Presque Isle, city of	230032	741202 emerg., 801015 reg	740222
Maine	Aroostook County	Washburn, town of	230037	750623 emerg., 801015 reg	760820
Maryland	Caroline County	Unincorporated areas	240130	740618 emerg., 801015 reg	750404
Massachusetts	Middlesex County	Carlisle, town of	250187	760113 emerg., 801015 reg	740816
Michigan	Kent County	Ada, township of	260248	730904 emerg., 801015 reg	741122
Michigan	Muskegon County	Whitehall, city of	260166	750513 emerg., 801015 reg	740823
Minnesota	Le Suer County	Unincorporated areas	270246	730323 emerg., 801015 reg	0
Missouri	St. Louis County	Breckenridge Hills, village of	290337	750718 emerg., 801015 reg	731207
Missouri	St. Louis County	Manchester, city of	290366	750903 emerg., 801015 reg	731217
Missouri	St. Louis County	Overland, city of	290375	740522 emerg., 801015 reg	740123
North Dakota	Cass County	Harwood, township of	350259	780323 emerg., 801015 reg	0
North Dakota	Cass County	Reed, township of	380257	771227 emerg., 801015 reg	0
Ohio	Montgomery County	Kettering, city of	390412	731212 emerg., 801015 reg	740531
Pennsylvania	Lycoming County	Watson, township of	420661	730510 emerg., 801015 reg	740809
Oregon	Lincoln County	Depoe Bay, city of	410283	790111 emerg., 801015 reg	790612
Oregon	Multnomah County	Portland, city of	410183	720519 emerg., 801015 reg	750110
Pennsylvania	Susquehanna County	Lanesboro, borough of	420813	750417 emerg., 801015 reg	741220
Pennsylvania	Westmoreland County	Ligonier, borough of	422180	750430 emerg., 801015 reg	740412
Pennsylvania	Lancaster County	Lititz, borough of	420554	721006 emerg., 801015 reg	740308
Pennsylvania	Susquehanna County	Oakland, township of	422581	751113 emerg., 801015 reg	741227
Pennsylvania	Susquehanna County	Susquehanna Depot, borough of	420816	750401 emerg., 801015 reg	740621
Vermont	Franklin County	Richford, town of	500218	760922 emerg., 801015 reg	740802
Virgin Islands		Virgin Islands, Commonwealth of	780000	751006 emerg., 801015 reg	770225
West Virginia	Jefferson County	Unincorporated areas	540065	751215 emerg., 801015 reg	741220

Total is: 35.

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

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–33797 Filed 10–31–80; 8:45]

BILLING CODE 6718–03–M

44 CFR Part 64

[Docket No. FEMA 5943]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

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

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community.

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

§ 64.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Illinois	St. Clair	Belleville, city of	170618A	July 5, 1973, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	May 3, 1974 Sept. 24, 1976	Nov. 19, 1980.
Do	Cook	Chicago Ridge, village of	170076A	June 28, 1974, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Mar. 22, 1974	Do.
Do	McHenry	McHenry, city of	170483B	Jan. 17, 1974, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Mar. 29, 1974 Sept. 24, 1976 Feb. 24, 1978	Do.
Do	Cook	Streamwood, village of	170166B	Apr. 14, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Apr. 12, 1974 May 12, 1978	Do.
Do	Winnebago	Unincorporated area	170720A	Feb. 16, 1973, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Jan. 10, 1975 Apr. 1, 1977	Do.
Do	Cook	Winnetka, village of	170176A	July 25, 1973, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Nov. 9, 1973 Jul. 16, 1976	Do.
Kentucky	Harlan	Evarts, city of	210101A	Mar. 5, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	May 17, 1974 Feb. 27, 1976	Do.
Do	Lawrence	Louisa, city of	210241A	Aug. 8, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Feb. 8, 1974 Oct. 29, 1976	Do.
Louisiana	St. Tammany	Covington, city of	220200A	Apr. 8, 1974, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Dec. 28, 1973 Dec. 12, 1975	Do.
Minnesota	Wabasha	Hammond, city of	270485B	Sept. 18, 1974, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Aug. 2, 1974 Sept. 10, 1976 Mar. 9, 1979	Do.
Montana	Gallatin	Three Forks, town of	300029A	Aug. 1, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Mar. 29, 1974 Sept. 26, 1975	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
New Jersey	Bergen	Washington, township of	340080	Sept. 17, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Nov. 5, 1976	Do.
New York	Erie	Akron, village of	361553A	May 2, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	May 31, 1974 Sept. 19, 1975	Do.
Do	do	Newstead, town of	360251B	July 18, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Aug. 20, 1976 Apr. 12, 1974 Apr. 22, 1977	Do.
Ohio	Greene	Fairborn, city of	390195A	June 19, 1975, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Mar. 15, 1974	Do.
Oklahoma	Osage	Hominy, city of	400151A	Apr. 16, 1976, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Dec. 28, 1973 Jan. 9, 1976	Do.
Pennsylvania	Berks	Bern, township of	421050	Mar. 25, 1974, emergency, Nov. 19, 1980, regular, Nov. 19, 1980, suspended.	Dec. 6, 1974	Do.
Do	Northumberland	Delaware, township of	421010A	Nov. 9, 1973, emergency, Nov. 19, 1980, regular, Nov. 19 1980, suspended.	Aug. 5, 1977	Do.
Do	York	East Manchester, township of	420921A	June 6, 1973, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Jan. 28, 1977 Oct. 19, 1973	Do.
Do	Allegheny	Leetsdale, borough of	420047A	Apr. 23, 1974, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Apr. 21, 1974 May 7, 1976	Do.
Do	do	Turtle, borough of	420079A	Aug. 6 1975, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Feb. 1, 1974 May 28, 1976	Do.
Do	Lancaster	Warwick, township of	421786A	July 2, 1975 emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	June 18, 1976	Do.
South Carolina	Richland	Arcadia Lakes, town of	450171B	May 27, 1975 emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Aug. 2, 1974 June 4, 1976 Oct. 22, 1976	Do.
Texas	Dallas	Irving, city of	480180	June 19, 1970, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	June 17, 1970	Do.
Do	Hays	San Marcos, city of	485505A	Oct. 9, 1970, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Aug. 28, 1971 July 1, 1974 Nov. 5, 1976	Do.
Virginia	Stafford	Unincorporated area	510154	Apr. 9, 1974, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	June 9, 1978	Do.
Washington	Lewis	Toledo city of	530303	Feb. 22, 1977, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	July 11, 1975	Do.
Wisconsin	Dove and Green	Belleville, village of	550159A	July 15, 1975, emergency, Nov. 19 1980, regular, Nov. 19, 1980 suspended.	Apr. 16, 1976	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001.4128; Executive Order 12127, 44 FR 19367; and delegation of authority of Federal Insurance Administrator)

Issued: October 22, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33795 Filed 10-31-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-72; RM-3390]

Radio Broadcast Services, TV Broadcast Station in El Paso, Tex.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Action taken herein deletes the noncommercial educational reservation on VHF television Channel 7 in El Paso, Texas, reserves VHF television Channel 13 for noncommercial educational use, and modifies the licenses to specify the new channels accordingly. Action is in response to a joint petition filed by El Paso Public Television Foundation, licensee of noncommercial educational television Station KVOS-TV, Channel 7, El Paso and Marsh Media of El Paso, licensee of commercial television Station KVIA-TV, Channel 13.

DATE: Effective December 22, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (El Paso, Texas).

REPORT AND ORDER

(Proceeding Terminated)

Adopted: October 21, 1980.

Released: October 28, 1980.

By the Chief, Policy and Rules Division:

1. The Commission has before it a *Notice of Proposed Rule Making*, 45 FR 13152, published February 28, 1980, proposing an exchange in the reservation for television channel assignments 7 and 13 in El Paso, Texas. The proposal was adopted in response to a joint petition filed by El Paso Public Television Foundation ("EPTV"), licensee of Station KCOS (TV), (Channel 7) and Marsh Media of El Paso, licensee of Station KVIA (TV) (Channel 13).

2. The *Notice* proposed to reserve VHF–TV Channel 13 for noncommercial educational use and delete the reservation of Channel 7. If no other interest was expressed in either channel, it also proposed to modify the respective licenses to specify the appropriate channels (Station KCOS (TV) would operate on Channel 13 and Station KVIA–TV on Channel 7) in El Paso. In offering the proposal for comments, the Commission expressed the view that the proposal could give KCOS–TV needed financial assistance which it plans to use to improve its programming, thereby offering substantial public benefit.

3. El Paso (population 322,261),[1] seat of El Paso County (population 359,291) is located in the extreme western part of Texas, on the Mexican border. It is served locally by four commercial and one educational television stations: KDBC–TV, Channel 4; KTSM–TV, Channel 9; KVIA–TV, Channel 13; KCIK(TV), Channel 14; and KCOS–TV, Channel 7, respectively.

4. Petitioners again urged the Commission to adopt their proposal citing what they see as substantial public interest benefits that would result in their proposal to exchange channel assignments. However, they did not agree with the *Cheyenne* policy [2] which gives other interested parties an opportunity to express an interest in a new channel assignment and thereby foreclose the modification of license. They argue that except for the exchange in reservations for the channel, the proposal amounts to no more than an assignment of license which is not subject to competing interests.

5. Based on our review of the allocation situation, it is clear that substantial public benefits can result from the proposed exchange of channels. The El Paso educational station can considerably improve its programming by the use of financial benefits in excess of $250,000 under the terms of the exchange agreement. Since no interest was expressed in the use of either channel, we shall proceed to modify the licenses. Thus, we have not addressed the Cheyenne issue of how the modifications would have been affected should an interest have been expressed.

6. Accordingly, It is ordered, That pursuant to authority contained in §§ 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, the Television Table of Assignments (§ 73.606(b) of the Rules) Is amended, effective December 22, 1980, with respect to the following community:

City	Channel No.
El Paso, Tex	4, 7, 9, *13, 14, 26+, *38–

7. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the outstanding license of El Paso Public Television Foundation for Station KCOS(TV) is modified, effective December 22, 1980, to specify operation on VHF TV Channel *13 instead of VHF Channel 7. The licensee shall inform the Commission in writing by no later than December 22, 1980, of its acceptance of this modification. Station KCOS(TV) may continue to operate on Channel 7 for one year from the effective date of this action or until it is ready to operate on Channel *13, whichever is earlier, unless the Commission directs otherwise. In addition, the following information shall be provided.

(a) At least 30 days before commencing operation on Channel *13, the licensee of Station KCOS(TV) shall submit to the Commission the technical information normally required of an applicant for the channel.

(b) At least 10 days prior to commencing operation on Channel *13, the licensee of Station KCOS(TV) shall submit the measurement data required of an applicant for a broadcast station license; and

(c) The licensee of Station KCOS(TV) shall not commence operation on Channel *13 without prior Commission authorization.

8. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the outstanding license of Marsh Media of El Paso for Station KVIA–TV, is modified, effective December 22, 1980, to specify operation on VHF TV Channel instead of Channel *13. The licensee shall inform the Commission in writing no later than December 22, 1980, of its acceptance of this modification. Station KVIA–TV may continue to operate on Channel *13 for one year from the effective date of this action or until it is ready to operate on Channel 7, whichever is earlier, unless the Commission directs otherwise. In addition, the following information shall be provided.

(a) At least 30 days before commencing operation on Channel 7, the licensee of Station KVIA–TV shall submit to the Commission the technical information normally required of an applicant for the channel.

(b) At least 10 days prior to commencing operation on Channel 7, the licensee of Station KVIA–TV shall submit the measurement data required of an applicant for broadcast station license; and

(c) The licensee of Station KVIA–TV shall not commence operation on Channel 7 without prior Commission authorization.

9. It is futher ordered, That copies of this *Report and Order* shall be mailed by certified mail, return receipt requested, to El Paso Public Television Foundation, licensee of Station KCOS(TV), Post Office Box 146, El Paso, Texas 79942 and to Marsh Media of El Paso, licensee of Station KVIA–TV, Post Office Box 12277, El Paso, Texas 79912.

10. It is further ordered, That this proceeding is terminated.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[1] Population figures are from the 1970 U.S. Census.

[2] 62 FCC 2d 63 (1976).

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-34083 Filed 10-31-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-2, Notice No. 5]

Railroad Accidents/Incidents: Reports, Classification, and Investigations; Biennial Adjustment of Reporting Threshold

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to require railroads to report to FRA only those accidents/incidents that result in damages of more than $3,700. The effect of the rule is to increase the reporting threshold from $2,900 to $3,700 for railroad accidents/incidents that occur during the calendar years 1981 and 1982. This action is needed to ensure that the reporting requirements reflect increases in the cost of labor and materials since the reporting threshold was last computed in 1978.

EFFECTIVE DATE: This rule becomes effective on January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Principal Authors

Principal Program Person: Frank V. Fanelli, Reports Division, Office of Planning and Analysis, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, DC 20590, phone (202) 426–2762.

Principal Attorney: Edward F. Conway, Jr., Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, DC 20590, phone (202) 426–8836.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1974, FRA published in the **Federal Register** (39 FR 25956) proposed amendments to Part 225 (49 CFR Part 225). Proposed § 225.19 provided that highway grade crossing and rail equipment incidents would have to be reported to FRA if they result in more than $1,750 in damages. That section further proposed a periodic review and possible adjustment to the $1,750 reporting threshold.

FRA issued the amendment based on the NPRM on December 9, 1974 (39 FR 43222). The amendment reflected a number of changes made by FRA in response to comments received. With respect to the proposed $1,750 reporting threshold, FRA stated the following: "As suggested by several commenters, the $1,750 reporting threshold will be adjusted, as necessary, in increments of $100.00 every two years." Section 225.19(c) of the amendment provided that the adjustments would be made in accordance with the procedures outlined in Appendix A of Part 225.

FRA issued amendments on November 10, 1976 and November 2, 1978, increasing the reporting threshold to $2,300 and $2,900, respectively. (41 FR 50690 and 43 FR 51020). These adjustments to the reporting threshold reflected increases in the costs of labor and materials during each preceding two-year period.

New Reporting Threshold

Because two years have passed since the accident/incident reporting threshold was last revised, FRA has recomputed the threshold, as required by § 225.19(c), based on increased costs of labor and materials. As a result of this computation, FRA has determined that the current reporting threshold of $2,900 should be increased to $3,700. Accordingly, §§ 225.5 and 225.19 are being amended to require railroads to report rail-highway grade crossing accidents/incidents and rail equipment accidents/incidents resulting in more than $3,700 in damages. In addition, Appendix A has been amended to reflect the most recent calculations and the procedure used to determine the reporting threshold.

Economic Impact

FRA has evaluated this amendment in accordance with Executive Order 12044 (43 FR 12661) and the Department of Transportation's policies for the evaluation of regulatory impacts (44 FR 11034). FRA has concluded that this amendment will have no measurable impact since it merely adjusts the accident/incident reporting threshold in accordance with current provisions of § 225.19(c) (49 CFR 225.19(c)) and does not impose any additional requirements on any person. FRA has also evaluated the impact of this action on the environment and on small business and has concluded that there is no measurable impact.

Notice and Public Procedure

Since this amendment merely adjusts the reporting threshold for accidents/incidents in accordance with 49 CFR 225.19(c) and imposes no additional burden on any person, FRA concludes that notice and public procedure are not necessary.

The Final Rule

Accordingly, Part 225 (49 CFR Part 225) is amended effective January 1, 1981, as follows:

1. By amending § 225.5 by revising paragraph (b)(2) to read as follows:

§ 225.5 Definitions.

As used in this part—

* * * * *

(b) "Accident/Incident" means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $3,700 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

* * * * *

2. By amending § 225.19 by revising the second sentence of paragraph (b) and the first, third, and fifth sentences of paragraph (c) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(b) *Group I—Rail—Highway Grade Crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $3,700 damages to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F 6180.54. * * *

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that result in more than $3,700 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repair or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $3,700 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $3,700 reporting threshold will be reviewed periodically and will be adjusted in increments of $100 every two years in accordance with the procedures outlined in Appendix A of this part.

* * * * *

3. By revising Appendix A to read as follows:

Appendix A—Procedure for Determining Reporting Threshold

(1) Wage figures used for track direct labor rates will be based on the "Average straight

time rate" shown in the "Recapitulation by Group of Employees," for Group III Maintenance of Way Structures Employees. This information appears in the most recent annual edition (year 1979) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

(2) Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation by Group Employees" for Group IV Maintenance of Equipment and Stores Employees. This information appears in the most recent annual edition (year 1979) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

(3) Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on an agreement between the Federal Highway Administration and the Association of American Railroads. This agreement is contained in the Federal Highway Administration's Policy and Procedure Memorandum 30–3 entitled "Reimbursement for Railroad Work" (April 28, 1975, as amended on June 30, 1978.)

(4) To calculate the index number for mechanical labor, divide the present (1980) mechanical wage rate of $12.75 by the previous (1978) mechanical wage rate $10.13. The result is a mechanical labor index number 1.26 for 1980.

(5) The track labor index number is calculated by dividing the present (1980) track wage rate $11.83 by the previous (1978) track wage rate of $9.29. The result is a track labor index number 1.27 for 1980.

(6) Calculation of the labor index number is as follows: (track labor index number) 1.27 × .20 + (mechanical labor index number) 1.26 × .80 = labor index number of 1.26.

(7) The mechanical material index number is calculated by first totaling the present (1980) cost of the following mechanical materials:

Quantity and description	1978	1980
8—33" CS wheels	$1,624	$2,176
8—6 x 11 in. roller bearings	1,000	1,240
4—Roller bearing axles	1,200	1,968
4—6 x 11" Roller bearing truck sides (750 lbs.)	2,736	3,308
2—6 x 11" truck bolsters (1,060 lbs.)	1,978	2,456
2—E couplers	396	706
4—Brake beams	276	324
1—AB cylinder	96	96
1—AB reservoir	196	249
1—AB control valve	794	1,010
500—Steel bar (lbs.)	270	345
1,000—Steel sheets	540	690
1,000—Steel plates	540	690
8—Brake shoes	48	56
8—Roller bearing adapters	152	168
24—Outer coil springs	240	264
800—Board feet hardwood lumber	728	296
1—Traction Motor	19,900	25,250
60—1¼" brake pipe (feet)	97	61
1—Hand brake	158	197
Total mechanical material	32,969	41,550

The mechanical material index number is determined by dividing present (1980) total cost for these mechanical materials ($41,550) by the previous (1978) total cost for mechanical materials ($32,969). The result is 1.26.

(8) The track material index number is calculated by first totaling the present (1980) cost of the following track materials:

Quantity and description	1978	1980
4,500—Ties, wooden	$54,270	$77,940
250 ton—Rail	83,322	104,707
90 ton—Tie plates	32,048	41,685
27,000—Spikes (5.8 tons)	2,976	3,856
800—Joint bars (25.4 tons)	12,358	19,479
2,000—Track bolts	782	995
1—Frog	2,848	3,860
1—Switch	2,586	3,504
Total mechanical material	191,190	256,026

The track material index number is determined by dividing the present (1980) total cost for these track materials ($256,026) by the previous (1978) total cost for track materials ($191,190). The result is 1.34.

(9) Calculation of the material index number is as follows: (track material index number) 1.34 × .20 + (mechanical material index number) 1.26 × .80 = material index number of 1.28

(10) Calculation of the threshold index number is as follows: (labor index number) 1.26 × .40 + (material index number) 1.28 × .60 = threshold index number of 1.27.

(11) In order to calculate the new reporting threshold, multiply the existing reporting threshold ($2,900 by the threshold index number of 1.27. The result is $3,683. The result, when rounded to the nearest $100.00, is the new accident/incident reporting threshold figure of $3,700.

(Sec. 20, Interstate Commerce Act, as amended (49 U.S.C. 20); Secs. 1 and 6, Accident Reports Act (45 U.S.C. 38 and 42); Secs. 202 and 208, Federal Railroad Safety Act, as amended (45 U.S.C. 431 and 437); Sec. 6(e) and (f), Department of Transportation Act (49 U.S.C. 1655(e) and (f)); Sec. 1.49(h) and (n), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49 (h) and (n))

Issued in Washington, DC on October 20, 1980.

John M. Sullivan,

Administrator.

[FR Doc. 80-34149 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1031A

[Ex Parte No. 389]

Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of interim rules and request for comments.

SUMMARY: This rulemaking is to determine the most efficient procedure for obtaining information from rail carriers which will permit the Commission to discharge its functions pursuant to Section 217 of the Staggers Rail Act of 1980. Further, the interim rules shall apply to all rail carriers, subject to the jurisdiction of the Commission under subchapter 1 of Chapter 105 of Title 49, on an interim basis effective upon publication of this notice in the **Federal Register**, until such time as a final rule is adopted.

DATES: Effective November 3, 1980 on an interim basis. Written representations should be filed with the Commission on or before December 18, 1980.

ADDRESSES: All written submissions shall be sent to: Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall (202) 275–7656.

SUPPLEMENTARY INFORMATION: Section 217 of the Staggers Rail Act of 1980 establishes a new provision, 49 U.S.C. 10705a(h), which provides that within 5 days after the request of a rail carrier participating in a joint rate subject to a surcharge or cancellation, a shipper moving traffic over a route to which such surcharge or cancellation applies, or an affected port, the Commission shall make available to such carrier, shipper, or port the Commission's determination of the variable costs and revenues, over the route or routes to which the surcharge or cancellation applies, of the carrier applying the surcharge or cancelling the application of the joint rate.

The Commission is concurrently releasing a Notice to the Public (published elsewhere in this issue), detailing procedures to be followed by participating carriers, shippers, and ports for requesting cost and revenue determinations under Section 10705a(h). Some of the information required for such determinations is not readily available to the Commission, participating carriers, shippers, or ports.

For example, shippers can provide a freight bill, the car-type, and the name of the surcharging carrier. However, the revenue division would not be immediately available. The same problem might occur with respect to the actual distance the subject shipment moved on the surcharging or cancelling carrier's line. Ports may well have no information whatsoever concerning such joint traffic movements. The Commission has no "In-house" sources available for revenue divisions or specific shipment data. Accordingly,

interim requirements are instituted to facilitate the mechanics of data retrieval. It should be noted that the interim requirements and the rules requiring comment are the same (See Appendix A).

It is necessary that we impose the interim requirements without prior comments from interested persons in order that Section 10705a(h) be implemented without delay. Because the nature of the proposed rules are procedural, we do not contemplate any hardship on the railroads in supplying the necessary information in a timely manner. Notice of the interim rules, with time allowed for comment prior to their effectiveness, is both impractical and contrary to the public interest, pursuant to 5 U.S.C. 553 (b)(B). Nevertheless, we are giving interested parties an opportunity to participate in the final rulemaking.

This proceeding specifically elicits public comment on the interim rules. If adopted, participating carriers, shippers, and ports would be permitted to request the following information for each movement from the surcharging or cancelling carrier:

(1) A legible copy of the waybill or freight bill;

(2) The actual distance the shipment moved while on the surcharging or cancelling carrier's portion of the joint route;

(3) The car-type;

(4) The division of revenue accruing to the surcharging or cancelling carrier; and

(5) The amount of surcharge in the event that no traffic has yet moved under the surcharged or cancelled joint rate.

Further, the surcharging or cancelling carriers would have to respond to any such requesting carrier, shipper, or port within three (3) days of receipt of written request.

Participants' submissions should focus on a method of requesting such information which would be the least burdensome to all parties.

These interim rules does not appear to affect significantly the quality of the human environment or conservation of energy resources.

This rulemaking is instituted pursuant to 49 U.S.C. 10321, 10705a and 5 U.S.C. 553.

Decided: October 27, 1980.

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

Agatha L. Mergenovich,

Secretary.

Appendix A

This rulemaking amends Chapter X of Subtitle B of Title 49 of the Code of Federal Regulations to include a new Part 1031A to read as follows:

PART 1031A—PROCEDURES FOR REQUESTING SURCHARGE COSTS AND REVENUES FROM RAIL CARRIERS APPLYING A SURCHARGE OR CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. SECTION 10705a

Sec.

1031A.1 Scope.
1031A.2 Purpose.
1031A.3 Data requirements.

Authority: 49 U.S.C. 10321, 10705a and 5 U.S.C. 553.

§ 1031A.1 Scope.

The provisions of this part apply only to rail carriers subject to the jurisdiction of the Commission under subchapter 1 of Chapter 105 of Title 49.

§ 1031A.1 Purpose.

Pursuant to 49 U.S.C. 10705a, the Commission must furnish determinations of the variable cost-of-service and revenue of a rail carrier applying a surcharge or cancelling the application of a joint rate. This requires that certain information be made available by the rail surcharging or cancelling carrier to the participating carriers, shippers, and ports for provision to the Commission for making such determinations.

§ 1031A.3 Data Requirements.

(a) The surcharging or cancelling rail carrier is required to provide the following information for each movement to any participating carrier, shipper, or port:

(1) A legible copy of the waybill or freight bill;

(2) The actual distance the subject shipment moved while on the surcharging or cancelling carrier's portion of the joint route;

(3) The car-type;

(4) The division of revenue accruing to the surcharging or cancelling carrier; and

(5) The amount of surcharge in the event that no traffic has yet moved under the surcharged or cancelled joint rate.

(b) The surcharging or cancelling carrier is required to respond to any such requesting carrier, shipper, or port within three (3) days of receipt of written request.

[FR Doc. 80-34088 Filed 10-31-80; 8:45 pm]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

Fishermen's Protective Act

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This amendment changes § 258.33(c) relating to applications to increase the filing period for claims filed under the Fishing Vessel and Gear Damage Compensation Fund from 60 to 90 days. This document implements an amendment to section 10(c)(1) of the Fishermen's Protective Act, recently enacted.

EFFECTIVE DATE: This amendment is effective as of June 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Ms. Kathryn E. Hensley, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235, telephone number (202) 634–4688.

SUPPLEMENTARY INFORMATION: On Thursday, October 25, 1979, the final rules implementing Section 10 (Section 10) of the Fishermen's Protective Act of 1967 (Act), as amended by Pub. L. 95–376, were published in the **Federal Register** 44 FR 61546. Section 258.33(c) of those rules reads as follows:

"(c) *Time Requirement.* Applications must be submitted to the Financial Services Division within 60 calendar days of the date the owner or operator became aware of the casualty. Applications sent by mail must be postmarked during that 60 day period. Applications made later than 60 days are not eligible."

This amendment to 50 CFR Part 258 implements an amendment to Section 10(c)(1) of the Fishermen's Protective Act, Pub. L. 95–376. The statutory change was effected by H.R. 6614 which was enacted on June 30, 1980. This legislation reads as follows:

"Section 10(c)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980) is amended by striking 'sixty' and substituting '90.' "

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

October 24, 1980.

(Pub. L. 95–376, 92 Stat. 715 (22 U.S.C. 1980))

Subpart C—Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God

Accordingly, in 50 CFR Part 258, § 258.33(c) is deleted in its entirety and the following is inserted in lieu thereof:

§ 258.33 Applications.

* * * * *

(c) *Time Requirement.* After June 30, 1980, applications must be submitted to the Financial Services Division within 90 calendar days of the date the owner or operator became aware of the casualty. Applications sent by mail must be postmarked during that 90-day period. Applications made later than 90 days are not eligible.

* * * * *

[FR Doc. 80–34237 Filed 10–31–80; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 611 and 671

Tanner Crab off Alaska: Final Regulations Implementing Amendment to Fishery Management Plan

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

ACTION: Final regulations.

SUMMARY: These regulations implement Amendment Number 5 to the Fishery Management Plan for Tanner Crab off Alaska (FMP). Amendment No. 5 and proposed regulations were published on April 15, 1980 (45 FR 25421) for public comment. The regulations are necessary because: (1) the quantity and distribution of the Tanner crab stocks have changed; and (2) participation in the fishery by U.S. vessels has increased dramatically in the last several years. The regulations will strengthen U.S. harvest and export capability and ensure protection of the Tanner crab stocks by establishing new harvest limits and by reducing the total allowable level of foreign fishing (TALFF).

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert McVey, Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone (907) 586–7221.

SUPPLEMENTARY INFORMATION:

A. Background

The FMP for Tanner crab off Alaska was prepared by the North Pacific Fishery Management Council (Council), approved by the Assistant Administrator for Fisheries, NOAA, on behalf of the Secretary of Commerce, and published in the **Federal Register** on May 16, 1978 (43 FR 21170) under authority of the Fishery Conservation and Management Act of 1976 (Act) (16 U.S.C. 1801 *et seq.*). Final regulations applicable to vessels of the United States were published on December 6, 1978 (43 FR 59292).

The FMP has been amended four times. The first amendment extended the implementing regulations through October 31, 1979 (44 FR 1115). The second amendment increased the optimum yield (OY) for the Kodiak district from 25 million pounds to 35 million pounds, and the third authorized vessels of foreign nations to take a portion of the TALFF in a specified area south of 58° N. latitude (44 FR 15503). Amendment No. 4 extended the FMP and implementing regulations, as amended, through October 31, 1980 (45 FR 785).

At its October 4–5, 1979 meeting, the Council reviewed the results of the 1979 National Marine Fisheries Service (NMFS) Tanner crab trawl survey in the Bering Sea, and received extensive testimony from U.S. and foreign interests participating in this fishery. On the basis of new information presented and analysis of fishery performance, the Council prepared Amendment No. 5, which has been reviewed and approved by the Assistant Administrator.

During the 60-day public comment period on the amendment and proposed regulations to implement the amendment, two comments were received. Response to the comments can be found below under "public comments."

B. Substance of Amendment

Amendment No. 5, as implemented by these final regulations, changes the management of the Bering Sea and Aleutian Islands area Tanner crab stocks as follows:

1. Optimum Yield (OY)

(a) Reduce the OY for *C. bairdi* Tanner crab from the current level of 40,381 metric tons (m.t.) to a range of 10–15,000 m.t.; and

(b) Increase the OY for *C. opilio* Tanner crab from the current levels of 16,360–17,268 m.t. north of 58° N. latitude, and 10,000 m.t. south of 58° N. latitude, to a total OY of 58,984 m.t.

2. Domestic Annual Harvest (DAH)

(a) Increase the estimate of DAH for *C. opilio* from the current level of 12,268 m.t. to 51,484 m.t.; and

(b) Decrease the estimate of DAH for *C. bairdi* from the current level of 40,381 m.t. to a range of 10–15,000 m.t., which is the new OY.

3. TALFF

Reduce the TALFF for *C. opilio* from the current level of 15,000 m.t. to 7,500 m.t.

4. Area Restrictions

Restrict foreign fishing to the area north of 58° N. latitude and west of 164° W. longitude.

5. Joint Venture Amendment

Implement provisions of the Joint Venture Amendment. For clarity, the amendment incorporates parts of the FMP which had previously been approved.

A discussion of the intent of and need for the amendment, as well as the full text of the amendment indexed to the original FMP text (43 21170), can be found at 45 FR 25421.

Public Comments

(1) Biological Condition of the C. opilio Resources

Comment: It was unreasonable for the Council to accept only the results of the 1979 National Marine Fisheries Service trawl survey, conducted by the Northwest and Alaska Fisheries Center, as the best scientific evidence available.

Response: National Marine Fisheries Service scientists calculated the maximum sustainable yield from the estimated abundance of male crabs with a carapace width greater than 104 millimeters (mm) to be 218 million pounds (98,900 m.t.). From this, and using an exploitation rate of 0.58, acceptable biological catch (ABC) was calculated to be 126 million pounds (57,170 m.t.). Six percent of this amount, or 7.56 million pounds (3,430 m.t.), was estimated to be north of 58° N. latitude. In comparison, the Japanese estimate of ABC north of 58° was 28.6–33.06 million pounds (13,000–15,000 m.t.). Japanese data differed from National Marine Fisheries Service data, but were of unknown validity. Thus, National Marine Fisheries data were adopted by the Council as being the best scientific information available.

(2) Assessment and Specification of the DAH for C. Opilio; Allowable Level of Foreign Fishing; Fleet Separation Line

Comment: The DAH for *C. opilio* of 113.47 million pounds (51,500 m.t.) was set too high relative to market conditions, although harvesting and processing capacity for that amount was realistic. TALFF should be retained at 33.06 million pounds (15,000 m.t.). The U.S. Tanner crab fishery will probably not expand north of 58° N. latitude or west of 173° W. longitude in 1980.

Response: At the October, 1979, North Pacific Fishery Management Council (Council) meeting, a spokesman for the Tanner crab industry presented its best realistic estimate for DAH of 129.63 million pounds (58,800 m.t.). This exceeded ABC by 3 million pounds. Based on this estimate of DAH, the Council could have set TALFF at zero under the Fishery Conservation and Management Act of 1976, since there was no surplus OY. However, after considering past market opportunities for *C. opilio*, the traditional U.S. fishing grounds for Tanner crab, and the needs of the recent Japanese fishery in the area, the Council set TALFF at 16.53 million pounds (7,500 m.t.) and restricted foreign fishing to north of 58° N. latitude and west of 164° W. longitude.

The NMFS estimates that during 1980 U.S. crab fishermen will not harvest the entire *C. opilio* DAH. The harvest to date has been about 40.0 million pounds. In spite of this smaller-than-expected harvest, DAH should not be reduced for these reasons:

1. A smaller DAH would result in a higher TALFF, which would further aggravate the basic problem of a soft Japanese market for U.S. production of Tanner crab.

2. A higher TALFF could be achieved only by allowing foreign fishing in traditional U.S. crab fishing grounds south of 58° N. latitude, as the size of stocks north of this latitude are still considered to be small in relation to the existing TALFF.

3. Foreign fishing south of 58° N. latitude would cause gear conflicts, and would reduce the density of *C. opilio* available to U.S. fishermen, reducing their catch per unit of effort and increasing their costs per unit of catch.

4. Foreign incidental catches of *C. bairdi* south of 58° N. latitude would be treated as a prohibited species and discarded, resulting in some mortality. Any such wastage by foreign fishermen of a species which is fully utilized by the U.S. industry and which is currently at a low level of abundance is not acceptable.

Concerning the fleet separation line, large areas presently available to U.S. fishermen will not be fished in 1980. The industry has expanded rapidly in harvesting and processing capacity recently, however, and as market conditions improve, will likely increase its efforts towards *C. opilio*.

In future years, the fleet could expand north of 58° N. latitude and west of 173° W. longitude and further displace the Japanese crab fleet.

Although previous amendments to this FMP have included expiration dates, Amendment No. 5 does not. Consequently, an annual amendment for the sole purpose of extending the FMP for an additional year will no longer be needed. However, the FMP will be reevaluated annually to consider new scientific information with respect to OY, DAH, and TALFF. If appropriate, the FMP will be amended to reflect this new information.

The Assistant Administrator for Fisheries, NOAA, under delegation of authority from the Secretary of Commerce, has determined that the regulations as described above:

1. Are necessary and appropriate to the conservation and management of Tanner crab resources off the coast of Alaska;

2. Are implementing management measures which are consistent with the National Standards and other provisions of the Act and other applicable law;

3. Do not constitute a major Federal action requiring the preparation of an environmental impact statement under the National Environmental Policy Act (an environmental assessment and declaration of negative environmental impact was filed with the Environmental Protection Agency on February 21, 1980);

4. Shall become effective November 1, 1980.

This reduction of the 30-day cooling-off period specified by the Administrative Procedures Act is necessary because the U.S. fishery begins on November 1, and availability of the inseason adjustment and closure provisions of the regulations are necessary to assure adequate protection of the Tanner crab resource; and

5. Are significant under the provisions of Executive Order 12044, "Improving Government Regulations." A Regulatory Analysis was prepared and a notice of availability was published on April 15, 1980 (45 FR 25421). No public comments on the Regulatory Analysis were received. The final Regulatory Analysis has been approved, with the final regulations, by the Administrator of NOAA. A copy of the final Regulatory Analysis may be obtained from Robert McVey, Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, Alaska 99802.

Since the complete regulations governing the fishery for Tanner crab off Alaska were published in 1978, for the

purpose of clarity domestic regulations, including all amendments to date, are republished below.

Signed in Washington, D.C., this 28th day of October, 1980.

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

Terry L. Leitzell,

Assistant Administrator, National Marine Fisheries Service.

A. 50 CFR Part 611 is amended as follows:

§ 611.20 Appendix 1 [Amended]

1. Entry 4C of Appendix 1 to § 611.20 is amended to read:

	Species and code	Areas	OY	DAH	DAP	JVP=(DAH-DAP)	DNP	Reserve	TALFF
4. Alaska Fisheries: N.C. Tanner Crab Fishery....	*C. opilio and hybrid*, 684.	610, North of 58°, and west of 164°W.	58,984	51,484	51,484	0	—	—	7,500
	C. bairdi, 501		15,000	15,000	15,000	0	—	—	0

§ 611.91 [Amended]

2. Section 611.91(b)(2) is amended to read:

(b) * * *

(2) TALFF. The total allowable level of foreign fishing (TALFF) for Tanner crab is set forth in Appendix 1 to § 611.20.

* * * * *

3. Section 611.91(d) is amended to read:

* * * * *

(d) *Closed Areas.* No foreign vessel may engage in fishing for Tanner crab:

(1) Within twelve nautical miles of the baseline used to measure the U.S. territorial sea;

(2) South of 58°N. latitude; or

(3) East of 164°W. longitude.

B. 50 CFR Part 671 is revised to read as follows:

PART 671—TANNER CRAB OFF ALASKA

Subpart A—General

Sec.
671.1 Purpose and scope.
671.2 Definitions.
671.3 Relation to other laws.
671.4 Reporting requirements.
671.5 General prohibitions.
671.6 Enforcement.
671.7 Penalties.

Subpart B—Management Measures

671.21 Optimum yield table.
671.22 Size and sex restrictions.
671.23 Vessel registration.
671.24 Vessel inspection.
671.25 Landing requirements.
671.26 Season and gear restrictions.
671.27 Time and area closures.

Authority: Sec. 305, Fishery Conservation and Management Act of 1976, as amended; 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 671.1 Purpose and scope.

(a) This part regulates fishing for Tanner crab by vessels of the United States within that portion of the Bering Sea and Gulf of Alaska over which the United States exercises exclusive fishery management authority. These regulations implement the Tanner crab fishery management plan developed by the North Pacific Fishery Management Council.

(b) For regulations governing fishing for Tanner crab in the Gulf of Alaska and Bering Sea by fishing vessels other than vessels of the United States, see 50 CFR 611.91.

§ 671.2 Definitions.

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

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

ADF&G means the Alaska Department of Fish and Game.

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

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the United States Coast Guard;

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

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

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

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

Fishing means any activity, other than scientific research, which involves:

(a) the catching, taking or harvesting of fish;

(b) the attempted catching, taking or harvesting of fish;

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

(d) any operations at sea in support of, or in preparation for, any activity described in paragraphs (a), (b), or (c) of this definition.

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

Landing means off-loading fish (including Tanner crab).

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

Owner, with respect to any vessel, means:

(a) any person who owns that vessel in whole or in part;

(b) any charterer of the vessel, whether bareboat, time or voyage;

(c) any person who acts in the capacity of a charter, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control

over the destination, function, or operation of the vessel; or

(d) any agent designated as such by any person in paragraph (a), (b), or (c) of this definition.

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

Regional Director means the Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska, 99802 or an individual to whom appropriate authority has been delegated.

Registration Area A (Southeastern Alaska-Yakutat) is that portion of the FCZ in the Gulf of Alaska east of 143° 53'36" W. longitude (Cape Suckling).

Registration Area E (Prince William Sound) is that portion of the FCZ between 143°53'36" W. longitude (Cape Suckling) and 148°53' W. longitude (Cape Fairfield).

Registration Area H (Cook Inlet) is that portion of the FCZ lying west of 143°53' W. longitude (Cape Fairfield) and north of 58°52' N. latitude (Cape Douglas).

Registration Area J (Westward) includes the FCZ in the Bering Sea, and that part of the FCZ in the Gulf of Alaska between 148°53' W. longitude (Cape Fairfield) and 172° E. longitude south of 58°52' N. latitude (Cape Douglas).

Ring Net means a bag-shaped net suspended from a circular or retangular frame.

Tanner Crab means all species of the genus *Chionoecetes* including *C. bairdi* and *C. opilio.*

Tanner Crab Pot means a portable structure designed and constructed to capture and retain fish and shellfish alive in the water. The Tanner crab pot has rigid tunnel eye openings which individually are a maximum of five (5) inches (13 cm) in one dimension, and tunnel eye opening perimeters which individually are larger than thirty (30) inches (76 cm); or the pot tapers inward from its base to a top consisting of one horizontal opening of undescribed size.

Vessel of the United States means:

(a) a vessel documented or numbered by the Coast Guard under United States law; or

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

§ 671.3 Relation to other laws.

(a) *Delegation.* The Assistant Administrator has delegated to the Regional Director authority to make in-season adjustments pursuant to section 671.27 of this Part.

(b) *Other Agreements.* Certain responsibilities relating to the administration of this Part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the United States Coast Guard.

§ 671.4 Reporting requirements.

(a) The operator of any fishing vessel subject to this Part whose port of landing is in the United States is responsible for the submission of an accurately completed State of Alaska fish ticket for each sale or delivery of any Tanner crab covered by this Part.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) submitted by the vessel operator directly to the ADF&G within one week after such Tanner crab are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who receives Tanner crab for a commercial purpose from a fishing vessel subject to this Part) and submitted by the purchaser to the ADF&G within one week after such Tanner crab are received by the purchaser.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) total time fished; (2) total number of pot lifts; and (3) quantity and type of gear used.

(d) The operator of any fishing vessel subject to this Part whose port of landing is outside the State of Alaska shall submit a completed State of Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket and in section 671.4(c), to the ADF&G within one week after the date of each sale or delivery of any Tanner crab. [Sample alternative document reserved.]

(e) Any U.S. processor who receives Tanner crab by way of purchase, barter, trade, or sale from a U.S. fishing vessel or prior purchaser subject to this Part shall provide, when requested to do so by the Regional Director, but in no event more than twice a year, the following information by Tanner crab species:

(1) Actual plant capacity to process Tanner crab in the next fishing year, in terms of weight, and

(2) The estimated actual amount by weight of Tanner crab to be processed in the coming fishing year.

§ 671.5 General prohibitions.

It is unlawful for any person to:

(a) fish for, take, or retain Tanner crab in violation of the Act, this Part, or any regulation or permit issued under the Act, including but not limited to the following: during closed seasons or in closed areas specified in Subpart B; after closure of an area when a catch limitation is reached, or as otherwise announced by a field order issued under this Part; or by means of gear or methods prohibited by this Part, *except that C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may be retained;

(b) take and retain Tanner crab in violation of Section 671.22 of this Part;

(c) possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, land, or export any Tanner crab taken in violation of the Act, this Part, or any other regulation or permit issued under the Act;

(d) refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Act, this Part, or any other regulation or permit issued under the Act;

(e) forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any search or inspection described in paragraph (d) of this section;

(f) resist a lawful arrest for any act prohibited by this Part; or

(g) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part.

§ 671.6 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the fishing vessel, its gear, equipment, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." which is the call to an unknown station.

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

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

(2) If requested, provide a safe ladder for the Authorized Officer and party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for the ladder; and

(4) Take such other actions as necessary to ensure the safety of the Authorized Officer and party and to facilitate the boarding.

§ 671.7 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 671.21 Optimum yield.

(a) *Table.* The optimum yield for Tanner crab for each Federal registration area is set forth in Table I. These specifications of optimum yield are effective for the fishing year beginning on November 1, and ending on October 31.

Table I

Registration area	Optimum yield (in metric tons) [1]	Species
Registration Area A (Southeast-Yakutat).	2,495	All.
Registration Area E (Prince William Sound).	3,175	All.
Registration Area H (Cook Inlet).	2,404	All.
Registration Area J:		
Kodiak district	15,865	All.
South Peninsula district	13,606	All.
Aleutian district	907	All.
	10,000–15,000	*C. bairdi.*
Bering Sea district	58,984	*C. opilio.*

[1] Catches of Tanner crab in State of Alaska registration area will be considered part of the optimum yield specified for the contiguous Federal registration area.

(b) *Limitation.* Except that *C. bairdi* Tanner crab taken incidentally to permitted fishing for *C. opilio* Tanner crab in the area north of 58° N. latitude and west of 164° W. longitude may also be retained.

(c) *Field Orders.* Except as provided in § 671.21(b), if the Regional Director determines that the optimum yield for a particular species of Tanner crab in any geographic area specified in Table I will be reached, he shall issue a field order pursuant to § 671.27(a) prohibiting fishing for that particular species of Tanner crab by vessels of the United States in the applicable geographic area from the effective date of the field order.

§ 671.22 Size and sex-restrictions.

(a) *Female Tanner crabs.* No female Tanner crab may be retained.

(b) *Male Tanner crabs.* No male Tanner crab of the species *C. bairdi* measuring less than 5½ inches (140 mm) across the greatest width of the carapace may be retained, except that male Tanner crabs of the species *C. bairdi* in Federal registration area E (Prince William Sound) may be retained if they measure 5.3 inches (135 mm) or greater, across the greatest width of the carapace. The width measurement of Tanner crab is determined by measuring the greatest straight line distance across the carapace, including the spines, perpendicular to an imaginary line drawn between a point midway between the eyes and the midpoint of the posterior portion of the carapace.

(c) *General.* All female and undersized male Tanner crabs of the species *C. bairdi* must be returned to the sea immediately with a minimum of injury, regardless of their condition.

§ 671.23 Vessel registration.

(a) *Requirement.* Any vessel of the United States fishing for Tanner crab in any Federal registration area must be registered for fishing in such area pursuant to this section.

(b) *Applications:*

(1) The owner (or the owner's authorized agent) of a fishing vessel desiring to fish for Tanner crab in a Federal registration area, not registered for a State of Alaska registration area contiguous with such Federal registration area, must submit to the Regional Director, within 30 days prior to the scheduled opening of fishing in the Federal registration area, a completed State of Alaska registration form to be used as a Federal form.

(2) A fishing vessel registered for a State of Alaska registration area will be deemed to be registered for the contiguous Federal registration area.

(c) *Registration Certificate.* The registration certificate shall be signed by the owner (or the owner's authorized agent), shall be kept onboard by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(d) *Registration Validation.* A registration certificate is not valid until the fishing vessel has complied with the inspection requirements contained in § 671.24 of this Part. A valid registration certificate becomes invalid:

(1) Upon landing Tanner crab in a Federal registration area other than the area for which the vessel is registered (or other than the contiguous State of Alaska registration area); or

(2) Seventy-two (72) hours after the close of the season for the applicable Federal registration area, whichever occurs first.

(e) *Late Registration.* The late registration of any fishing vessel may be permitted by the Regional Director in the case of the loss of a registered fishing vessel. For purposes of this paragraph, "loss of a registered fishing vessel" means that the fishing vessel is incapable of being used to take Tanner crab during the open Tanner crab season in the area for which it is registered. An application for late registration under this paragraph shall be documented by submission of adequate proof, in writing, concerning the loss of the vessel. The late registration shall be for the Federal registration area in which the lost fishing vessel was registered.

(f) *Expiration.* A registration certificate expires on the last day of the registration year. Registration for any subsequent year shall be obtained by re-application in accordance with the procedure set forth in this section.

(g) *Registration Year.* The registration year shall be August 1 through July 31.

(h) *Exclusive Registration Areas.* (1) Federal registration areas E and H are exclusive registration areas. No fishing vessel registered for an exclusive Federal registration area may be registered for any other Federal registration area (exclusive or non-exclusive) during a registration year.

(2) A fishing vessel registered for an exclusive State of Alaska registration area may register only in the contiguous Federal exclusive registration area during that registration year.

(3) No operator of a fishing vessel registered for an exclusive Federal registration area may operate any other fishing vessel registered for any other exclusive Federal registration area.

(i) *Non-Exclusive Registration Areas.* Federal registration areas A and J are non-exclusive registration areas. A fishing vessel may be registered for any or all of the non-exclusive Federal registration areas during any registration year.

§ 671.24 Vessel inspection.

(a) *Inspection.* (1) Within 72 hours prior to fishing for Tanner crab for the first time during an open season, each registered fishing vessel must have its holds and live tanks, if any, inspected by an Authorized Officer at an

inspection point specified in paragraph (b) of this section.

(2) *Requirement.* A registration certificate will not be validated if there are Tanner crab on board the fishing vessel at the time of inspection.

(3) *Certificate.* No fishing vessel will be issued an inspection certificate unless a current registration certificate for the contiguous Federal registration area is displayed to the Authorized Officer conducting the inspection. The inspection certificate shall be signed by the current fishing vessel operator, shall be kept on board by the operator at all times during fishing operations, and shall be shown by the operator upon request to any Authorized Officer.

(4) *Landings.* The operator of a fishing vessel landing Tanner crab in a Federal registration area other than the area for which the fishing vessel is registered (or other than in the contiguous State of Alaska registration area) must attach the inspection certificate to the back of the ADF&G copy (yellow copy) of the State of Alaska fish ticket at the time the Tanner crab are landed.

(b) *Inspection Points.* Inspection points are those established by the ADF&G for State of Alaska purposes and by these regulations for Federal purposes. Additional inspection points may be authorized by the Regional Director if the Regional Director finds that:

(1) Existing inspection points are imposing an unusual and material hardship which affected fishermen cannot themselves mitigate; or

(2) The ADF&G has no practical means of making special administrative accommodations regarding existing inspection points; and

(3) Authorization of additional inspection points would not result in a significant likelihood of unauthorized fishing or other management or enforcement problems.

§ 671.25 Landing requirements.

(a) Except as provided in paragraph (b) of this section, all Tanner crab must be landed in the State of Alaska registration area contiguous to a Federal registration area for which the fishing vessel is registered.

(b) The operator of a fishing vessel who desires to land Tanner crab outside the State of Alaska, or in a State registration area other than the State registration area contiguous to a Federal registration area for which the fishing vessel is registered, shall contact, by radio or other means, an Authorized Officer prior to leaving the Federal registration area for which the fishing vessel is registered, and shall state to the Authorized Officer the amount of Tanner crab on board at the time. A fishing vessel operator acting pursuant to this paragraph shall submit the vessel to inspection at such location as the Authorized Officer may require. The operator shall not land an amount of Tanner crab which is more than one hundred and ten (110) percent or less than ninety (90) percent of the amount stated to be present onboard upon leaving the Federal registration area, or observed to be present onboard at the time of any inspection.

(c) *Certificate Validity.* If a fishing vessel lands Tanner crab pursuant to paragraph (b) of this section, the registration certificate of the fishing vessel becomes invalid. To again become validly registered for a Federal registration area, the fishing vessel must be reinspected pursuant to the procedures of section 671.24 of this Part.

§ 671.26 Season and gear restrictions.

(a) *Season Dates.* All season dates in this section are inclusive. Time periods begin at 12:01 a.m. and end at 11:59 p.m. on the dates specified, based on local zone time, unless otherwise specified.

(b) *General Requirements.* (1) At least one buoy on each Tanner crab pot or ring net shall be legibly marked with the permanent ADF&G vessel license number of the fishing vessel using the gear or, if a fishing vessel does not have a permanent ADF&G vessel license number, with the official documentation number of the fishing vessel operating the gear. Identification numbers shall be painted on the top one-third of the buoy in numerals at least 4 inches in height and ½ inch in width in contrasting color to that of the buoy. The buoy markings shall be legible and visible on the buoy above the water surface when attached to the Tanner crab pot, and maintained in a legible condition.

(2) All Tanner crab pots shall contain an opening in the webbing of a side wall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(3) During any period when fishing for all species of Tanner crab is prohibited in any Federal registration area, Tanner crab pots shall either be removed from the water or stored in less than 25 fathoms (46m) of water, with all doors secured fully open and all bait and bait containers removed, with the following exceptions:

(i) In the Kamishak Bay and Southern districts of the Cook Inlet area, the maximum pot storage depth is 15 fathoms (27m);

(ii) Tanner crab pots with all doors secured fully open and with all bait and bait containers removed may be stored in water depth greater than the maximum permissible storage depth for 72 hours prior to the opening of the Tanner crab season, and for 72 hours after the season closure where the pots are fished;

(iii) Tanner crab pots may be stored in waters deeper than 25 fathoms (46m) if specifically allowed by this section.

(c) *Registration Area A:* Tanner crab may be taken in Registration Area A from September 1 through May 1 only, except that west of the longitude of Cape Spencer (at 136°40′ W. longitude), Tanner crab may be taken from September 1 through 6:00 p.m. (YST) April 20.

(d) *Registration Area E.* (1) *Districts.* The following districts within Federal Registration Area E are established:

(i) *Western District:* All waters east of the longitude of Cape Fairfield (148°53′ W. longitude) south of a line from the southern entrance of Port Nellie Juan at 60°36′ N. latitude to Point Eleanor (60°34′42″ N. latitude, 147°34′6″ W. longitude) to the eastern tip of Smith Island (60°31′54″ N. latitude, 147°19′ W. longitude) to Montague Point (60°22′18″ N. latitude, 147°06′0″ W. longitude), west of a line from Zaikof Point (60°18′12″ N. latitude, 146°55′42″ W. longitude) to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude) and west of the longitude of Seal Rocks.

(ii) *Eastern District:* All waters east of the longitude of Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), east of a line from Seal Rocks, to Cape Hinchinbrook (60°15′54″ N. latitude, 146°37′18″ W. longitude), south of a line from Point Bentinck (60°23′24″ N. latitude, 146°05′36″ W. longitude) to Point Whitshed (60°26′36″ N. latitude, 145°53′12″ W. longitude), and west of the longitude of Cape Suckling (51°59′ N. latitude, 143°53′36″ W. longitude).

(iii) *Hinchinbrook District:* All waters east of a line from Montague Point to the eastern tip of Smith Island, south of a line from the eastern tip of Smith Island to Johnstone Point (60°28′48″ N. latitude, 146°37′18″ W. longitude), north and east of a line from Cape Hinchinbrook to Seal Rocks (60°10′ N. latitude, 146°50′ W. longitude), and east of a line from Seal Rocks to Zaikof Point.

(2) *Seasons.* Tanner crab may be taken in Registration Area E from November 15 through May 31 only, subject to adjustment by the Regional Director pursuant to section 671.27 of this Part.

(3) *Gear.* (i) Only Tanner crab pots may be used to fish for Tanner crab. Tanner crab taken by any other means must be returned immediately to the sea, with a minimum of injury, regardless of their condition.

(ii) Two escape rings, 4¾ inches (121 mm) in minimum inside diameter, so located on the vertical plane to permit the escape of undersized crabs, shall be provided for each Tanner crab pot.

(e) *Registration Area H.* (1) *Districts.* The following districts within Registration area H are established:

(i) *Central District:* All waters between a line extending from Boulder Point at 60°46'23" N. latitude, to Shell Platform C (60°45'50" N. latitude, 151°30'08" W. longitude), then to a point on the west shore at 60°46'23" N. latitude, and the latitude of Anchor Point Light (59°40'12" N. latitude, 151°52' W. longitude).

(ii) *Southern District:* All waters within a line from Anchor Point Light west to 59°46'15" N. latitude, 152°20' W. longitude, then south to 59°04'15 N. latitude, 152°20' W. longitude, then in a northeasterly direction to Cape Elizabeth (59°9'12" N. latitude; 151°53'18" W. longitude), then from Cape Elizabeth to Point Adam, (59°15'12" N. latitude; 151°58'48" W. longitude, including Kamishak Bay.

(iii) *Kamishak Bay District:* All waters within a line from 59°46'15" N. latitude, 153°00'30" W. longitude, then east to 59°46'15" N. latitude, 152°20' W. longitude, then south to 59°04'15" N. latitude, 152°20' W. longitude, then southwesterly to Cape Douglas (58°50'54" N. latitude, 153°16'24" W. longitude), including Kamishak Bay.

(iv) *Barren Islands District:* All waters within a line from Cape Douglas to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then west to Cape Douglas.

(v) *Outer District:* All waters within a line from Point Adam to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then east to the longitude of Aligo Point (149°44'33" W. longitude), then north to the mainland of Alaska.

(vi) *Eastern District:* All waters east of the longitude of Aligo Point (149°44'33" W. longitude), west of the longitude of Cape Fairfield (148°53' W. longitude), and north of 58°52' N. latitude.

(2) *Seasons.* (i) Tanner crab may be taken in the Southern district from December 1 through April 30 only, subject to adjustment by the Regional Director pursuant to section 671.27 of this Part.

(ii) Tanner crab may be taken in the Central, Kamishak Bay, Barren Islands, and Outer and Eastern Districts from December 1 through May 31 only, subject to adjustment by the Regional Director pursuant to section 671.27 of this Part.

(3) *Gear.* During any king crab season established by the State of Alaska an aggregate of not more than 75 king and Tanner crab pots (including Tanner crab pots used in State waters) may be fished in Registration Area H from any registered Tanner crab vessel.

(f) *Registration Area J.* (1) *Districts.* The following districts within registration area J are established:

(i) *Kodiak District:* South of 58°52' N. latitude, west of 150° longitude and east of the longitude of Cape Kumlik (157°27' W. longitude).

(ii) *South Peninsula District:* Between the longitude of Cape Kumlik and the longitude of Scotch Cap Light (164°44'6" W. longitude).

(iii) *Aleutian District:* Between the longitude of Scotch Cap Light (164°44'6" W. longitude) and 172° E. longitude, and south of 54°36" N. longitude.

(iv) *Bering Sea District:* Bering Sea waters north of 54°36' N. latitude. The following subdistricts within the Bering Sea District are established:

(A) *Southeastern Subdistrict:* East of 168° W. longitude, and south of the latitude of Cape Newenham (58°39' N. latitude), and all Bristol Bay waters.

(B) *Pribilof Subdistrict:* West of 168° W. longitude and south of the latitude of Cape Newenham (58°39' N. latitude).

(C) *Northern Subdistrict:* North of the latitude of Cape Newenham (58°39' N. latitude). The following sections within the Northern Subdistrict are established:

(*1*) *Nome Section:* All waters of Norton Sound between the longitude of Penny River and the longitude of Tophok Head.

(*2*) *General Section:* All other waters of the northern subdistrict.

(2) *Seasons.* Subject to adjustment by the Regional Director pursuant to section 671.27 of this Part, Tanner crab may be taken in Federal Registration Area J:

(i) In the Kodiak district from January 5 through April 30 only, except that in that portion of the Kodiak district between 156°20'13" W. longitude (Kilokak Rocks) to 157°27' W. longitude (Cape Kumlik) Tanner crab may be taken from January 5 through May 15 only.

(ii) In the South Peninsula district from November 1 to 12 noon, May 15 only, except in the Deer Island, Pavlof Bay, and Beaver Bay-Balboa Bay areas of the South Peninsula district east of a line extending from Cape Tachilni (54°56'10" N. latitude, 162°52'45" W. longitude) to the northernmost point of Cherni Island (54°39' N. latitude, 162°22'10" W. longitude) and north of line extending from the northernmost point Cherni Island to Sombrero Point on Unga Island (55°12'24" N. latitude, 160°51'06" W. longitude) and north of a line extending from West Head on Unga Island (55°22'28" N. latitude, 160°31'06" W. longitude) to the westernmost point of Henderson Island (55°25'12" N. latitude, 160°21'30" W. longitude) and west of a line extending from the western tip of Henderson Island to Renshaw Point (55°36'36" N. latitude, 160°21'18" W. longitude) Tanner crab may be taken from November 1 through 12 noon (AST) April 12.

(iii) In the Aleutian district from November 1 to 12 noon, June 15 only; and

(iv) In the Bering Sea district from 12:00 noon November 1 to 12:00 noon June 15 only, except that Tanner crab, other than *C. bairdi*, and *C. bairdi* taken incidentally in the area north of 58°N. Latitude and west of 164°W. longitude, may be taken or possessed from 12:00 noon November 1 to 12:00 noon September 3 only.

(3) *Storage of Gear.* During any period when fishing for all species of Tanner crab is prohibited in the applicable area, Tanner crab pots may be stored in the water only if stored:

(i) in the waters which are both west of 172°W. longitude and 30 fathoms (55 meters) or less in depth; or

(ii) in the Southeastern Subdistrict, in the waters which are bounded on the north by 58°N. latitude, on the south by 57°N. latitude, on the east by 164°W. longitude and on the west by 166°W. longitude.

§ 671.27 Time and area closures.

(a) *Field Orders.*

(1) Field orders issued by the Regional Director under this Part shall include the following information: (i) a description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this section shall be effective until:

(i) it is filed for publication with the **Federal Register**;

(ii) it has been posted and otherwise made available to the public, in accordance with procedures customarily used by the ADF&G for posting and publicizing of similar notices of closure for 48 hours prior to its effective dates; and

(iii) it has been broadcast, at those time intervals, channels and frequencies customarily used by the ADF&G to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates: (i) any expiration date stated in the field order; or (ii) the effective date of any field order which modifies, rescinds, or supersedes the initial field order.

(b) *In-season Adjustments.*

(1) *General.* The Regional Director may, following consultation with the ADF&G, adjust the opening and closing dates for the Federal registration areas, districts, subdistricts, and sections specified in section 671.26 of this Part.

(2) *Determinations.* Any adjustment under this section shall be based on a determination by the Regional Director that (i) the condition of Tanner crab stocks in any such geographic area is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for in-season conservation measures to protect such Tanner crab stocks.

(3) *Data.* Fishery data reported in-season which relate to one or more of the following factors may be considered in making this determination:

(i) the effect of overall fishing effort within the area;

(ii) catch per unit of effort and rate of harvest;

(iii) relative abundance of Tanner crab within the area in comparison with pre-season prediction;

(iv) the proportion of immature or softshell Tanner crab being handled;

(v) general information on the condition of Tanner crab within the area; and

(vi) any other factors relevant to the conservation and management of Tanner crab.

(4) *Procedures.*

(i) The Regional Director shall publish proposed adjustments in the **Federal Register** for public comment before they are made final, unless the Regional Director finds for good cause that such advance notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Regional Director decides, for good cause, that any in-season adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of 15 days after the effective date of the adjustment.

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802).

(iv) If comments are received during the 15-day period, the Regional Director shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the **Federal Register** a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of Adjustments.* The Regional Director shall give notice of in-season adjustments by issuance of field orders in accordance with the procedures in paragraph (a) of this section.

(c) *Optimum Yield.* No action which has the effect of raising the optimum yield for Tanner crab in any geographic area as specified in Table 1 of section 671.21(a) is authorized under this section.

(d) *Prohibition.* Any fishing for Tanner crab contrary to a field order issued under this section is prohibited.

[FR Doc. 80-34126 Filed 10-29-80; 2:07 pm]

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Proposed Rules

Federal Register
Vol. 45, No. 214
Monday, November 3, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Improving Government Regulations Semiannual Agenda of Regulations

AGENCY: Farm Credit Administration.

ACTION: Semiannual agenda of regulations.

SUMMARY: Pursuant to Section 2 of Executive Order 12221 (previously E.O. 12044), the Farm Credit Administration has established the following agenda of significant regulations which it will have under development and review during the period October 31, 1980, through March 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578, (202) 755–2181.

Significant Regulations Under Development

12 CFR 618.8360—Authorization (Disposition of Obsolete Records).

This regulation authorizes the Farm Credit banks and associations to dispose of obsolete records, except those records identified in the regulation. The Farm Credit Administration is considering amending this section pursuant to 12 U.S.C. 2243 and 2252 to provide for the following:

1. Retention of capital stock transfer records for 10 years or until the expiration of the statute of limitation, whichever is longer, after the date on which the stock was retired and proceeds paid to the owner.

2. Retention of records in form other than original form. This provision will be subject to the acceptability of the form in which the institution is located.

None of the proposed amendments to the above regulations will result in: (a) An annual effect upon the economy of $100 millon or more; or (b) a major increase in costs or prices for individual industries, levels of government, or geographical regions. Therefore, regulatory analysis of the type required by Section 3 of Executive Order 12221 will not be prepared for these proposals.

Significant Regulations Selected for Review

12 CFR Parts 612.618—Regulations for Banks and Associations of the Farm Credit System.

These parts of Chapter VI, Title 12 of the Code of Federal Regulations are being reviewed in terms of changes that may occur from the passage of the proposed Farm Credit Act Amendments of 1980 (H.R. 7548 and S. 1465).

Status of Regulations Previously Selected for Review

On March 31, 1980, the Farm Credit Administration published in the **Federal Register** (45 FR 20900) lists of significant regulations under development and review. The current status of those regulations is as follows:

12 CFR 611.1031—Limitation on Special Assignments.

A draft amendment to this section was reviewed by the Federal Farm Credit Board at its April 1980 meeting. The Board determined that the provisions of the present regulation are adequate and the draft amendment was not approved.

12 CFR Part 612—Personnel Administration.

Proposed amendments to the sections under this part were published in the July 8, 1980, issue of the **Federal Register** (45 FR 45917). Comments, which were due in FCA on September 8, 1980, were presented to the Federal Farm Credit Board at its October 4–6, 1980 meeting, along with the proposed rules. At its meeting, the Board approved the regulations effective on October 22, 1980, (see 45 FR 69880).

12 CFR 617.7100–7170—Irregularities.

Review of these regulations has been terminated. There is no plan for review in the immediate future at this time.

12 CFR 618.8300–8350—Release of Information.

Review of these regulations has been terminated. There is no plan for review in the immediate future at this time.

12 CFR 618.8430—Internal Control.

The proposed amendment to this section was published in the June 11, 1980 issue of the **Federal Register** (45 FR 39507). The board approved the proposed amendment at its October 4–6 meeting, effective on October 22, 1980, (see 45 FR 69887).

For further information concerning any item on the agenda, please contact: Mr. Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578, (202) 755–2181.

Donald E. Wilkinson,

Governor.

[FR Doc. 80-34179 Filed 10-31-80; 8:45 am]
BILLING CODE 6705-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 80.653]

Alternative Mortgage Instrument Amendments

October 23, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its renegotiable-rate mortgage (RRM) regulation with regard to maximum annual interest-rate changes and grouping of loans, and to amend its alternative mortgage instrument regulation to make it consistent in certain respects with the RRM regulation. The Board believes that its proposed changes will allow lenders greater flexibility in offering these mortgage plans while maintaining adequate consumer protections for borrowers.

DATE: Comments must be received by: December 30, 1980.

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

FOR FURTHER INFORMATION CONTACT: Kenneth F. Hall, Office of General Counsel ((202) 377–6466), or Susan Kelsey, Office of Policy and Economic Research (202–377–6914), at the above address.

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, the variable rate mortgage, the graduated payment mortgage, and the reverse annuity mortgage (FHLBB Res. Nos. 78-708, 79-303; 43 FR 49336 (1978), 44 FR 32199 (1979)). On April 3, 1980, the Board authorized the use of the renegotiable rate mortgage (FHLBB Res. No. 80-231; 45 FR 24108 (1980)). In addition, the Board recently proposed to authorize the issuance of two additional types of mortgage instruments—the graduated payment adjustable mortgage (45 FR 66798 (1980) and the shared appreciation mortgage (45 FR 66801 (1980)).

Proposed Changes to Adjustable-Rate Mortgages

The Board authorizes Federal Associations to offer two types of adjustable-rate mortgages to borrowers on the security of owner-occupied, one-to-four-family dwellings: the variable-rate mortgage and the renegotiable-rate mortgage. (Federal associations are not limited by the Board in offering adjustable-rate mortgages on other types of real estate security.)

As currently structured, the variable rate mortgage (VRM) is a long-term loan on which the interest rate may be adjusted annually by not more than 50 basis points (0.5%), subject to a limitation on the total increase of the rate of 250 basis points (2.5%) over the life of the mortgage (12 CFR 545.6-4(c)). Total rate decreases may not be limited. Adjustments in the contract interest rate are governed by changes in a national cost-of-funds index calculated by the Board. Interest rate decreases must be passed on to the borrower while interest rate increases are optional with the lender. The renegotiable rate mortgage (RRM) may be structured as either a short-term note that is automatically renewable for the life of the loan or as a long-term note of up to 30 years. The interest rate on a RRM may be adjusted every 3, 4 or 5 years, in accordance with a national average mortgage rate index computed monthly by the Board. However, on any adjustment date, changes in the interest rate may not exceed 50 basis points multiplied by the number of years in an adjustment period, and the overall increase or decrease in the interest rate from the original contract rate is limited to 5 percentage points. Rate decreases must be passed on to the borrower while increases are optional with the lender.

Currently, the Board's regulations do not place a percentage-of-assets limitation on the number of RRM loans that may be made, but do limit the amount of a Federal association's VRM investment to 50 percent of assets. The RRM regulation sets forth a disclosure form that must be given to the applicant at the time of receipt of an application. Although associations are required to make certain disclosures concerning the VRM and other alternative mortgage instruments at the time of application for such instruments, no specific forms of disclosure currently are designated for use by associations.

1. *Proposed changes to the RRM.* The Board proposes to amend its RRM regulation by changing the maximum permissible interest-rate adjustment from 50 basis points (0.5 percentage points) per year of the loan term or adjustment period to 100 basis points (1 percentage point), and by amending the provision that permits associations to extend the initial term or adjustment period of RRM by up to six months to require that the base index rate (used to calculate rate adjustments) be set at the beginning rather than the end of any six-month period—that is, three, four or five years *plus* six months prior to the first interest rate adjustment.

a. *Limitations on rate adjustment.* The proposed change in the maximum permissible interest-rate adjustment reflects the Board's recognition of the effects of the extraordinary volatility of interest rates over the past year and the expectation that this volatility will continue for at least several more years. On October 6, 1979, the Federal Reserve Board announced a major change in its planned implementation of monetary policy. It announced that it would focus on the control of monetary aggregates instead of on the control of interest rates. One of the results of this new strategy is that fluctuations in the financial markets or even minor disturbances in the manufacturing sector of the economy can cause large swings in interest rates unless the Federal Reserve temporarily departs from its money supply targets.

Interest rates rose to unprecedented heights during the first quarter of 1980, perhaps partly as an overreaction to Federal Reserve policy. During the second quarter of 1980, interest rates fell by record amounts, again perhaps overreacting, this time to the softness of the economy. In the third quarter, interest rates swung around once more and rose by several hundred basis points. Clearly, the magnitude of these interest rate swings and dependence by associations on short-term funds for long-term mortgage lending has made the mortgage investing role of savings and loan associations exceedingly difficult.

The ability to raise mortgage rates allows the lender to have sufficient income to pay for both savings and borrowed funds. Almost half of total savings balances are in market rate accounts. Since these funds are very sensitive to short-term increases in interest rates, lenders must have some degree of portfolio flexibility. Given the enormous magnitude of interest rate swings in the past year, the Board feels that the one-half of one percentage point per year limit on changes in RRM interest rates provides insufficient portfolio flexibility to lenders.

From the borrower's viewpoint, the more liberal limitation proposed by the Board can help the borrower to achieve greater rate decreases than would otherwise be possible. For example, under the existing RRM limits, the maximum decrease a borrower with a 14 percent RRM could realize over a three-year period would be 1.5 percentage points, resulting in a rate of 12.5 percent. If market rates were 10.5 percent and the borrower wished to refinance the mortgage, the borrower would be faced with the substantial costs associated with refinancing. With an annual interest rate adjustment limit of one percentage point, however, the borrower's mortgage rate would fall to 11 percent in three years, a drop that should be satisfactory to the borrower.

The proposed amendment is also intended to make Federal associations more competitive with other home mortgage lenders that currently are not similarly restricted with regard to interest rate adjustments. In this connection, the Board notes that the Office of the Comptroller of the Currency has proposed regulations that would permit national banks to adjust the rates on such mortgages by one percentage point per year (see proposed regulations for national banks issued by the Office of the Comptroller of the Currency, published at 45 FR 64196 on September 29, 1980).

The proposed regulations of the Office of the Comptroller of the Currency also request comment on whether there should be no limit on the amount by which the interest rate may increase or decrease over the life of the mortgage. While the Board intends to keep abreast of the comments received by the Comptroller of the Currency and will consider comments on the issue before promulgating a final regulation, the Board has determined at this time not to propose deletion of its 5 percentage point limitation.

b. "Grouping" authority. The current regulation authorizes extension of the

initial renewal or adjustment period for up to six months longer than subsequent periods. The extended period is added at the beginning of the initial three-, four-, or five-year term or adjustment period rather than at the end. The regulation provides that the base index rate, which in conjunction with the index rate available at the time of adjustment of the interest rate establishes the amount by which the contract interest rate may be adjusted, be set at the end of the extended period. As a result, neither the lender, the borrower, nor secondary market investors know the value of the base index rate at the time the loan is closed.

In order to eliminate this uncertainty, the proposed regulation would require that the base index rate be established as of the date that is six months prior to the date three, four or five years before the first adjustment of the index rate—*i.e.*, three, four or five years *plus* six months prior to the first adjustment. This means that, where the initial term or adjustment period is extended by less than six months, the base index rate will actually pre-date the closing date of the loan. For example, if a three-year RRM loan were closed on October 31, 1980, and the initial term were extended by two months, the loan interest rate would be adjusted on December 31, 1983, and the base index rate would be the rate most recently available as of June 30, 1980—the date three years plus six months prior to the initial rate adjustment.

c. *RRM index.* The existing RRM regulation provides that the index by which adjustments in the interest rate are calculated is the national average mortgage rate for all major lenders for the purchase of previously-occupied homes. The proposed regulation would retain this index, but the Board specifically requests comment on whether the regulation should be amended to provide for use of some other index or indices, and on whether the indices used for the RRM and VRM should be identical.

2. *Proposed changes to the VRM.* At the time the Board authorized issuance of VRMs on a nationwide basis, the board stated its intention to undertake a continuing review of VRM loan activity. This continuing review has demonstrated that, except in the State of California, issuance of VRMs has been light. Even in California, issuance of the VRM authorized by Federal regulations has been light relative to use of the VRM authorized by the state for use by state-chartered associations. This is due in part to the newness of the concept, and in part to restrictions in the Federal VRM regulation that have limited its usefulness to lenders. The Board has therefore determined to propose amendments to this mortgage instrument to allow greater flexibility to associations, while maintaining adequate borrower protections by more closely aligning its provisions to the RRM.

a. *VRM index.* The current VRM regulation requires associations to use a national cost-of-funds index computed by the Board, whereas the RRM regulation requires use of a national average mortgage rate index computed by the Board. Experience with the cost-of-funds index indicates that it tends to move steadily upwards. In addition, because deposit rates are in part administratively set, the index does not appear to reflect mortgage market movement and may, in fact, move against mortgage rates, or at least at a different pace. Although the proposed VRM regulation would retain the cost-of-funds index, the Board requests comment on whether the VRM regulation should be amended to require use of the mortgage rate index, or whether the VRM and RRM regulations should be amended to provide for some other index or indices. In this respect, the Board would like to receive comments on all types of indices, whether national or regional, including indices tied to the cost of funds, a national average mortgage rate, and Treasury bill rates.

b. *Limitations on rate adjustment.* The Board proposes to change the VRM's maximum annual and overall interest-rate adjustments to be consistent with the proposed changes in the RRM adjustments described above. In addition, the Board proposes to authorize VRM adjustments every six months rather than once a year, as currently provided, which would benefit both lenders and borrowers in periods of interest-rate volatility. Thus, the maximum rate adjustment would be 50 basis points (0.5 percentage points) every six months, with a maximum increase or decrease of five percentage points over the life of the mortgage.

The proposal provides that the initial interest rate adjustment may not take place sooner than six months after the first regular loan payment. The Board requests comment on whether this period is appropriate. The proposal also provides that, once an adjustment period has been fixed, its length may not later be altered. Thus, for example, an association that establishes 18 months as the period between the first loan payment and the first interest rate adjustment may not at a future time shorten the period between adjustments to 12 months, or lengthen it.

The current regulation provides for a minimum adjustment in the interest rate of one-tenth of one percentage point (0.1 percentage points). The Board proposes to delete this provision, and notes that, under current Board interpretation of the RRM regulation, which contains no minimum adjustment provision, this would mean that the loan interest rate must be computed to a hundredth of a percentage point. Since the index rate is calculated to the thousandth of a percentage point, the loan interest rate would have to be rounded to the nearest hundredth of a percent to obtain the appropriate rate. In no event, though, could the interest rate, as a result of such rounding, exceed the regulatory limitation on changes in the loan interest rate. Since the VRM regulation makes all interest rate decreases mandatory, even a decrease of only one one-hundredth of a percentage point would have to be passed on to the borrower. This should not place an undue burden on associations, however, since the notification procedure for adjustment of the interest rate must be followed even if there is no change at all in the rate.

Currently, the VRM regulation provides that changes in the index rate that are not taken (either at the lender's option in the case of increases or because they are too small or too large) may be accumulated by the lender in the case of increases and must be accumulated in the case of decreases, and may be taken at a later time or used to offset other rate changes (12 CFR 545.6–4(c)(4)). In view of the more liberal limitations on interest rate adjustments proposed herein, the Board believes that the provision for accumulation is no longer needed by associations and so proposes to delete the provision. The Board notes that the regulation would continue to enable associations to "catch up" to increases in the index rate.

c. *Multi-year VRM.* The existing VRM regulation permits associations to issue VRMs with interest rate adjustment periods exceeding one year, in multiples of 12 months (12 CFR 545.6–4(c)(6)). The Board believes it is unnecessary to have a separate provision in order to authorize use of a multi-year VRM since the regulation merely limits the minimum period of time that may elapse between adjustments of the interest rate and does not place any limits on the maximum period of time. Therefore, the Board proposes to delete this provision.

d. *Offer of fixed-rate, fixed-payment mortgage.* Existing 12 CFR 545.6–4(a) requires Federal associations to offer a "standard" mortgage to borrowers who

may be eligible for a VRM. This requirement was adopted to reflect the Board's concern over the newness of the adjustable-rate concept and to indicate the Board's intent to monitor the growth and market acceptance of such instruments. Experience gained after adoption of these provisions, most notably with regard to the VRM authorized by the state of California for use by California savings and loan associations, has satisfied the Board that the required disclosures give consumers sufficient information to make an informed choice about mortgage financing. Therefore, the Board proposes to eliminate the mortgage-choice requirement.

e. *Notification; prepayment penalty.* The current VRM regulation requires a 30-day notice of a change in the interest rate when a 1-year adjustment is used, and prohibits prepayment penalties for 90 days after receipt of the notice. By comparison, the RRM regulation requires a 90-day notice for a 3-to-5 year adjustment and prohibits the imposition of prepayment penalties at any time after notice of the first interest rate adjustment. In view of the proposed liberalization of the limitation on interest rate adjustments, the Board believes that a 30-day notice of adjustment may be insufficient. Therefore, the Board proposes to increase the minimum notice period to 60 days, and requests comment on whether this period should be longer or shorter. In addition, to prevent potential abuses resulting from notice being given too far in advance *(e.g.,* selection by the lender of the index rate most favorable to it), the Board proposes to place a limitation on the maximum length of the notice period of 90 days. In addition, in views of the proposed similarity of the rate adjustments permitted for both VRMs and RRMs, the Board proposes to prohibit imposition of a prepayment penalty at any time after commencement of the notice period for the first interest rate adjustment period.

f. *Addition Changes.* At present, the VRM regulation limits the dollar amount of an association's investment in VRM loans to 50 percent or less of the amount of the association's home mortgage loans, and provides that authority to invest in VRMs will cease as of December 31, 1982 (12 CFR 545.6–4(c)(2)). Experience gained about the use of mortgage loans permitting adjustment of the interest rate has led the Board to believe these provisions are no longer needed. Therefore, the Board proposes to eliminate both the portfolio restriction and the sunset limitation.

Other Proposed Changes to Alternative Mortgage Instruments

1. *Offer of fixed-rate, fixed-payment mortgage.* As noted above, 12 CFR 545.6–4(a) requires that Federal associations offer a "standard" mortgage to borrowers who may be eligible for a VRM. This requirement applies also to the other alternative mortgage instruments authorized pursuant to 12 CFR 545.6–4, the graduated-payment mortgage ("GPM") and the reverse annuity mortgage ("RAM").

The GPM is a mortgage instrument with scheduled payments beginning at a level lower than would be necessary to amortize the loan's principal and interest over the loan term. Payments rise at a graduated rate to a predetermined point, after which they remain constant for the remainder of the loan term. The RAM authorizes periodic payments to homeowners based on accumulated equity; payments are made directly by the association or indirectly through purchase of an annuity, and the total loan (the sum of the principal payments plus accumulated interest) becomes due either at a specific date or when a specified action occurs, such as sale of the property or death of the borrower.

The GPM was developed to provide home financing for potential borrowers who would be ineligible for fixed-payment loans because of inadequate monthly income in the early years of the loan. Associations have indicated there is considerable confusion with regard to the "standard" mortgage option required to be offered to these applicants, *i.e.,* a fixed-payment loan with the same downpayment and other terms as the GPM, for which they would be ineligible, or a fixed-payment loan with the same monthly payments as the GPM in its first year, which would require a very substantial downpayment. The confusion stems from the fact that neither of these "options" is reasonable or helpful to the applicant. Similarly, the RAM applicant, typically a person with substantial home equity or other assets but a retirement income level, wants monthly payments from the lender as an income supplement and is not interested in an offer of a fixed-payment loan which will require additional monthly expenses and an income test for eligibility. The Board therefore proposes to eliminate the fixed-payment-mortgage option for all of its alternative mortgage instruments, but specifically requests comment on this proposal.

2. *Disclosure requirements.* The Board proposes to amend its disclosure requirements for VRMs, GPMs, and RAMs to make them consistent with the substantive changes proposed above. In addition, the Board proposes to adopt standard disclosure documents for VRMs and GPMs in response to the strong approval voiced by lenders and consumers for the standardized disclosures provided in the Board's RRM regulations.

The Board proposes to structure the VRM preapplication form to closely reflect its RRM standard disclosure form. Since associations would no longer be required to offer a fixed-rate mortgage alternative, the side-by-side comparison and full-term "worst case" schedule would be replaced by an example of the effect of the maximum increase allowable at the first adjustment, and the maximum possible rate changes (up and down) over the life of the mortgage, using the association's current mortgage rate. The Board notes that Truth-In-Lending statements will continue to provide specific credit information supplemental to the Board's disclosure material.

The GPM regulation currently gives a borrower the right to convert, at a time chosen by the borrower, to a standard mortgage instrument (provided the borrower is eligible for such instrument under the association's normal underwriting standards) (12 CFR 545.6–4(c)(3)). Also, the disclosure required by the regulation must contain a side-by-side comparison of the two types of instruments. The standard GPM disclosure form proposed by the Board would continue to contain a comparison in the form of an example of two instruments having the same term, interest rate and initial principal balance.

Since the entire payment schedule of a GPM is known at the time of loan commitment, something which is not possible with either the RRM or the VRM, an additional question is raised as to whether the borrower should be given a post-application, instrument-specific disclosure setting out both the payment schedules of the GPM loan offered to the borrower and of the standard mortgage loan to which the borrower may convert. The Board specifically requests comment on whether this additional disclosure should be required as a means of fully informing the borrower of the borrower's options.

3. *Option to convert.* The Board also specifically requests comment on whether the borrower's right to convert from a GPM to a standard mortgage instrument should be retained in the regulation. The conversion option is only usable during the graduation period, since after the graduation period monthly payments do not change in

amount. It is unclear, therefore, how many borrowers can avail themselves of this feature. On the other hand, through utilization of the option, a borrower would be able to obtain a monthly payment amount that, although larger than the amount being paid prior to conversion, would be lower than the amount the borrower would have had to pay at the end of the full graduation period.

4. *Extension of loan maturity of RRMs and VRMs.* The VRM regulation permits borrowers to extend the loan term up to a maximum of one-third of the original loan term in order to avoid or lessen the impact on monthly payments of interest rate increases. The Board proposes that this provision be amended to permit an extension of up to ten years, though not to such an extent that monthly loan payments would be reduced below the original monthly payment amount, and proposes to extend this right to RRM borrowers, who currently possess no such right.

The Board notes that, when it promugated the RRM regulation in April, it considered giving RRM borrowers the right to extend the loan maturity but determined not to include such a provision for several reasons. First, although permitting extension would lessen the effects of an interest rate increase, it also would result in a substantial increase in the total mortgage payments. In addition, it was felt that payment changes created by the combination of loan extension and rate adjustment would create administrative problems for lenders and secondary market participants. Finally, it was believed that loan extensions would create secondary market problems because instruments included in a loan portfolio would move at different rates. The Board remains concerned with these potential problems and therefore requests comment on all aspects of the proposed change.

5. *Merger of RRM and VRM regulations.*

The Board specifically requests comment on whether the RRM and VRM regulations should be combined into one regulation that would authorize Federal associations to issue one type of adjustable-rate mortgage incorporating features of both the existing and proposed RRM and VRM regulations. The Board notes that the regulations on adjustable-rate mortgages proposed by the Comptroller of the Currency contemplate only one type of instrument.

6. *Federal preemption.* The Board proposes to codify its view that the alternative mortgage instruments regulation is promulgated pursuant to the Board's plenary and exclusive authority to regulate all aspects of the operations of Federal associations. As such, the Board's exercise of this authority is preemptive of any state law purporting to restrict the ability or right of any Federal association to use alternative mortgage instruments.

Finally, the Board would like to clarify that any of the alternative mortgage instruments authorized by the Board may be used to finance the purchase of mobile homes where the loan is made on the combined security of the mobile home and the real estate to which it is affixed, because this is considered to be a home loan under 12 CFR 545.6–2(a). Where the loan is secured only by a mobile home and not by the real estate to which it is affixed, however, it is considered to be a mobile home loan under 12 CFR 545.7–6, which does not contain any restrictions on adjustment of the rate on such a loan.

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

PART 545—OPERATIONS

1. Amend 12 CFR 545.6–4 by amending paragraph (a), paragraphs (b)(1) and (b)(6), and paragraphs (c)(1), (c)(3), (c)(4)(i), (c)(4)(iv), (c)(4)(v), and (c)(5), deleting paragraphs (b)(5), (c)(2), (c)(4)(iii), (c)(4)(v)(*c*), (c)(4) (vii)(*c*), and (c)(6), and redesignating existing paragraphs (b)(6), (c)(3), (c)(4), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), (c)(4)(vii)(*d*), (c)(4)(vii)(*e*), (c)(4)(vii)(*f*), and (c)(5), as paragraphs (b)(5), (c)(2), (c)(3), (c)(3)(iii), (c)(3)(iv), (c)(3)(v), (c)(3)(vi), (c)(3)(vi)(*c*), (c)(3)(vi)(*d*), (c)(3)(vi)(*e*), and (c)(4), to read as follows:

§ 545.6–4 Alternative mortgage instruments.

(a) *Authorization.* (1) A Federal association may make, purchase or participate in the alternative mortgage instrument loans described in this section if such loans comply with the provisions of § 545.6–2(a) of this Part, pertaining to one-to-four-family home loans. The instruments described in this section allow certain payment and other provisions otherwise prohibited by this Subchapter. An association using an alternative mortgage instrument shall obtain and retain in the loan application file a certification signed by the prospective borrower indicating that the borrower has received the disclosure materials specified in this section before electing to take the alternative mortgage instrument.

(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 the alternative mortgage instruments set forth in this section, or to directly or indirectly restrict such ability or right.

(b) *Graduated-payment mortgage.* (1) *Description.* For purposes of this section, a graduated-payment mortgage loan is a fixed-rate loan on which the monthly payments begin at a level lower than that of a level-payment, fixed-rate loan. During a period the length of which is fixed at loan origination (the "graduation period"), the monthly payment amount gradually rises to a level sufficient to amortize the remaining principal balance over the remaining term of the loan. Limitations on the rate of increase in the monthly payment amount during the graduation period are also fixed at loan origination.

* * * * *

(5) *Application disclosure.* An applicant for a graduated payment 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 Mortgage

You have received an application form for a graduated payment mortgage (GPM). The GPM differs from a level-payment mortgage in the following respect: during the early years of the loan, monthly payments are lower than they would be on a level-payment mortgage and are not sufficient to cover the interest being charged on the loan. As a result, the outstanding principal balance on the GPM loan actually increases somewhat during these years.

To compensate for the initial, 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 principal 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 up to a 5-year graduation period to 3 percent per year for a 10-year graduation period. The length of the graduation period and limitations on the rate of increase of monthly payments are fixed at loan origination.

Payment amounts may not be changed more than once a year, and the first change may not occur sooner than one year after the date of the first regular loan payment.

You have the right to convert this mortgage, at any time you choose, to a level-payment mortgage instrument, provided that you are then eligible for such mortgage under the

association's normal underwriting standards. You may not be charged any fees or penalties if you convert to a level-payment mortgage bearing the same interest rate and outstanding maturity as the GPM. Such a mortgage has a fixed interest rate and level payments sufficient to pay all interest and principal by the end of the loan term.

Example of Operation of GPM

Consider a $50,000 GPM that has an interest rate of [*Lender's current commitment rate*] percent, a graduation period of —— years, and a term of —— years. The monthly payments in the first —— years of the mortgage (the graduation period) will be as shown in the following table, which reflects a —— percent grduation. After the —— year, the payment will remain constant; it will not be increased beyond the level paid in the —— year.

Year	Principal at year-end	Monthly payment

By comparison, a $50,000 level-payment mortgage with the same interest rate and for the same term would carry a monthly payment of $——, and the remaining principal balance at the end of the *[number corresponding to year in which graduation period on above GPM would end]* year would be $——.

(c) *Variable-rate mortgage.*

(1) *Description.* For purposes of this section, a variable rate mortgage loan is a loan issued for a term of up to thirty years, secured by a mortgage of equal term, on which the interest rate may be adjusted as frequently as once every six months. Thus, future monthly payment amounts are not known at the time of loan origination. Adjustments of the interest rate are tied to changes in an index, as described in subparagraph (2). Prepayment in full or in part of the loan balance secured by the mortgage may be made without penalty at any time after the beginning of the notice period for the first adjustment, or at any earlier time specified in the loan contract.

(2) *Index.* * * *

(3) *Interest-rate adjustments.*

(i) *Frequency.* Interest-rate adjustments (and loan payment changes resulting from them) may not be made more frequently than once every six months, and the first adjustment may not occur sooner than six months after the date of the first regular monthly payment.

(ii) *Calculation and timing of adjustments.*

* * * * *

(iii) *Maximum adjustments.* Rate adjustments (up or down) may not exceed one-half of one percentage point (0.5 percentage points) every six months, provided that the maximum increase or decrease in the interest rate over the life of the loan may not exceed five percentage points. Downward adjustments must be made, but increases are at the lender's option. Associations may offer a borrower a variable rate mortgage loan with maximum interest rate decreases smaller than the maximums set out in this subparagraph; provided, however, that in such case the maximum interest rate increases offered shall not exceed the maximum decreases set out in the loan contract.

(iv) *Actions relating to rate increases.* Upon notification of an increase, the borrower shall have the following options:

(*a*) Not respond to the notice; payment will be adjusted upward to reflect the higher interest rate; or

(*b*) Request that loan maturity be extended by up to 10 years (but not to such an extent that monthly loan payments would be reduced below the original monthly payment amount).

(v) *Actions relating to rate decreases.* * * *

(vi) *Notification requirements.* * * *

(4) *Application disclosure.* An applicant for a variable-rate mortgage loan must be given, at the time of receipt of an application, a disclosure notice in the following form:

Information About the Variable-Rate Mortgage

You have received an application form for a variable-rate mortgage ("VRM"). The VRM differs from the fixed-rate, fixed-payment mortgage with which you may be familiar. Instead of having an interest rate that is set at the beginning of the mortgage and remains the same, the VRM has an interest rate that may increase or decrease as frequently as once each six months. This means that the amount of your monthly payment may also increase or decrease.

The term of the VRM is —— years. The interest rate may be adjusted every —— months (the "adjustment period").

Adjustments to the interest rate are based on changes in an index rate. The index used is computed by the Federal Home Loan Bank Board, an agency of the Federal government. The index is based on the national average cost of funds to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

At the time of adjustment of the interest rate, if the index has moved to a level higher than it was at the beginning of the mortgage, the lender has the right, subject to the limitations described in the paragraph below, to adjust the interest rate to a rate equalling the original interest rate plus the increase in the index rate. Although taking such an increase is optional with the lender, you should be aware that the lender has this right and may become contractually obligated to exercise it.

If the index has moved down, the lender 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, the lender, at the time of adjustment, may not increase or decrease the interest rate on your VRM loan by an amount greater than ——— of one percentage point per adjustment period, and the total increase or decrease over the life of the mortgage loan may not be more than ——— percentage points.

If the interest rate increases, you have the right to extend the maturity of the loan by up to 10 years, although the loan may not be lengthened to such an extent that the monthly loan payments would be reduced below the original monthly payment amount. In addition, you have the right to prepay the loan in part or in full without penalty at any time after notification of the first interest rate increase or decrease. This notification, which also sets out the new interest rate, monthly payment amount, and remaining principal balance, must be sent to you at least 60 but not more than 90 days prior to adjustment of the interest rate.

Example of Operation of VRM

The maximum interest-rate increase at the end of the first adjustment period, which is ——— months long, is ——— percentage points. On a $50,000 VRM with a term of ——— years and an original interest rate of [*lender's current commitment rate*] percent, this rate change would increase the monthly payment (principal and interest) from $——— to $———. Using the same example, the highest interest rate you might have to pay over the life of the mortgage would be ——— percent, and the lowest would be ——— percent.

2. Amend subparagraphs (c)(1) and (2) and paragraph (f) of 12 CFR 545.6–4a, and add a new subparagraph (c)(4), to read as follows:

§ 545.6–4a Renegotiable rate mortgage instruments.

* * * * *

(c) *Interest-rate changes at renewal or adjustment; extension of loan maturity.* (1) The interest rate offered at renewal or adjustment shall reflect the movement, in reference to the date of the loan, of the Board's most recent monthly national average mortgage rate index for all major lenders for the purchase of previously-occupied, single-family homes: *Provided,* That an association may alter the initial term or initial adjustment period of all loans originated within a six-month period so that they mature or adjust on the same date three, four or five years after the end of that period, in which case the interest rate offered at renewal or adjustment shall reflect the movement of the index from the beginning of the six-month period (that is, as though all loans in the group had originated at the beginning of the period).

(2) The maximum increase or decrease in the contract interest rate

shall be one percentage point per year multiplied by the number of years in the loan term or adjustment period, with a maximum increase or decrease of five percentage points over the life of the mortgage. Associations may offer a borrower a renegotiable rate mortgage loan with maximum annual and total interest rate decreases smaller than the maximums set out in this subparagraph; provided, however, that in such a case the maximum annual and total interest rate increases offered shall not exceed the maximum annual and total decreases set out in the loan contract.

* * * * *

(4) Upon notification of an increase in the interest rate, the borrower may request that loan maturity be extended by up to 10 years (but not to such an extent that monthly loan payments would be reduced below the original monthly payment amount).

* * * * *

(f) *Application disclosure.* An applicant for a renegotiable rate mortgage loan must be given, at the time of receipt of an application, a disclosure notice in the following form (underlined, bracketed language should be substituted for bracketed language if the loan is structured as a long-term note):

Information About The Renegotiable-Rate Mortgage

You have received an application form for a renegotiable-rate mortgage ("RRM"). The RRM differs from the fixed-rate mortgage with which you may be familiar. [In the fixed-rate mortgage the length of the loan and the length of the underlying mortgage are the same, but in the RRM the loan is short-term (3–5 years) and is automatically renewable for a period equal to the mortgage (up to 30 years). Therefore, instead of having an interest rate that is set at the beginning of the mortgage and remains the same, the RRM has an interest rate that may increase or decrease at each renewal of the short-term loan.] [*Instead of having an interest rate that is set at the beginning of the mortgage and remains the same, the RRM has an interest rate that may increase or decrease every three, four or five years.*] This means that the amount of your monthly payment may also increase or decrease.

[The term of the RRM loan is ——— years, and the length of the underlying mortgage is ——— years. The initial loan term may be up to six months longer than later terms.]

[*The term of the RRM is ——— years. The interest rate may be adjusted every ——— years. The initial adjustement period may be up to six months longer than later periods.*]

[The lender must offer to renew the loan, and the only loan provision that may be changed at renewal is the interest rate. The interest rate offered at renewal is based on changes in an index rate.] [*Adjustments to the interest rate are based on changes in an index rate.*] The index used is computed monthly by the Federal Home Loan Bank Board, an agency of the Federal government. The index is based on the national average contract rate for all major lenders for the purchase of previously-occupied, single-family homes.

[At renewal, if the index has moved higher than it was at the beginning of the mortgage, the lender has the right to offer a renewal of the loan at an interest rate equalling the orginal interest rate plus the increase in the index rate.] [*At the time of interest rate adjustment, if the index has moved higher than it was at the beginning of the mortgage, the lender has the right to adjust the interest rate to a rate equalling the original interest rate plus the increase in the index rate.*] This is the maximum increase permitted to the lender. Although taking such an increase is optional with the lender, you should be aware that the lender has this right and may become contractually obligated to exercise it.

In addition, if the interest rate is to be increased, you have the right to extend the overall maturity of the loan by up to 10 years, although the loan may not be lengthened to such an extent that the monthly loan payments would be reduced below the original monthly payment amount.

(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. 80-34131 Filed 10-31-80; 8:45 am]

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12 CFR Parts 546, 561, 563c, and 571

[No. 80-654]

Treatment of Goodwill Acquired in Mergers

October 23, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to revise its policy statement on mergers of savings and loan associations by providing benchmarks for the amount of goodwill that merging institutions may use in calculating net worth. Conforming changes would be made to the Board's net worth definition and its regulations that delegate authority to its Principal Supervisory Agents to approve certain mergers. In addition, the Board proposes to change its accounting rule regarding discount on assets acquired in a merger to require that such discount be accured on the same basis and over the same time period as goodwill is amortized. The Board believes these changes are necessary to assure the capital adequacy of resulting associations.

DATE: Comments must be received by: December 31, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Thomas F. Timmins, Deputy Director, Office of Examinations and Supervision, (202–377–6545) or Patricia C. Trask, Attorney, Office of General Counsel, (202–377–6442) Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: The Board's regulations regarding mergers involving Federal savings and loan associations (12 CFR 546.2), and those involving institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation (12 CFR 563.22), are supplemented by a policy statement at 12 CFR 571.5 which sets out factors the Board uses in considering merger applications. This policy statement does not ordinarily apply to mergers instituted for supervisory reasons.

The Board's primary requirement for a merger is that the institution resulting from a merger ("resulting institution") have the managerial and financial resources to operate successfully. The Board thus reviews the overall operations and financial condition of the merger applicants to determine the resulting institution's prospects of generating sufficient income to meet competition, and otherwise conducting its affairs in a safe and sound manner.

In reviewing the financial resources of merger applicants, the Board determines whether the resulting institution's net worth (defined in 12 CFR 561.13 to mean the sum of all reserve accounts, except specific or valuation reserves; retained earnings; capital stock; and any other nonwithdrawable accounts of an insured institution) will adequately satisfy the net worth and reserve levels of 12 CFR 563.13. This review focuses in part on the assets of the resulting institution. An important asset in many purchase mergers is goodwill, which is the part of the purchase price paid for an acquired institution that exceeds the fair value of the institution. Recent merger applications have disclosed amounts of goodwill that are disproportionately large in relation to the resulting institution's net worth, causing the Board concern about the capital adequacy of the resulting institution. Instead of treating goodwill in each purchase merger application on a case-by-case basis to determine capital adequacy, the Board has decided

to propose benchmarks for the amount of goodwill that may be counted in calculating net worth of the resulting institution. The Board will approve non-supervisory mergers only where the resulting institution's net worth, calculated including permitted goodwill, meets regulatory net worth and reserve levels for that institution.

As proposed, the benchmarks would set a ceiling of 30% of net worth as the maximum amount of aggregated goodwill that could be used in calculating net worth both at the time of merger and thereafter. Aggregated goodwill in amounts between 20 and 30 percent will be permitted to count in determining net worth if, in the opinion of the Board, applicants have carefully and thoroughly substantiated their value considerations. Such substantiation could include evidence that the institution being acquired has, for instance, extraordinary earnings, valuable branch locations, or appreciated assets still carried on the association's books at a conservatively determined value.

As a general rule, the Board anticipates that goodwill in amounts of 20% or less of net worth may be used in calculating net worth, although there may be occasion for the Board to reduce the amount of goodwill, especially if the resulting institution's financial condition was otherwise inadequate.

The Board is also proposing to amend its definition of net worth in § 561.13 to conform to the proposed change. Currently, after a merger has been approved, the Board treats goodwill like any other asset of the resulting association for the purpose of calculating its net worth. However, as proposed, the net worth definition would provide that the net worth of an insured institution will be reduced by the amount of aggregated goodwill that exceeds the percentage authorized by the Board in a resolution approving a merger. As a result of this change, the treatment of goodwill in a merger would be carried over to subsequent annual calculations of net worth.

As a corollary to this proposal, the Board is proposing, as a regulation, its current procedures for accounting for goodwill in mergers. The existing policy is currently in the form of a technical staff memorandum designated R31a, and would be changed in substance only by adding a provision that concerns the accrual to income of discount on assets acquired in a merger and included in goodwill.

Currently, the discount on acquired assets may be accrued using the straight-line, sum-of-the-years digits, or level yield method of accounting. Goodwill, on the other hand, must be amortized using the straight-line method. The use of different accounting methods in this instance may give rise to distortions in net worth levels and computations. Therefore, the proposed change would require that the amount of discount arising out of an acquisition would be accrued to income on the same basis, and over the same time period, as goodwill is amortized.

The Board also proposes conforming changes to its regulations that delegate to the Board's Principal Supervisory Agents (PSAs) the authority to approve certain mergers. The proposed revision would require that the PSAs deduct goodwill when calculating net worth. If the resulting institution's net worth would not meet the regulatory net worth level without goodwill, the merger application would be sent to the Board. Specific comment is invited on this procedure, as well as the potential impact any of the proposed changes might have on mergers of small associations.

Accordingly, the Board hereby proposes to amend 12 CFR 546.2; 12 CFR Part 563; 12 CFR Part 563c by adding thereto new § 563c.14; and 12 CFR 571.5, to read as set forth below.

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

1. Revise paragraph (h)(6) of § 546.2, to read as follows.

§ 546.2 Procedure; effective date.

(h) * * *

* * * * *

(6) The resulting association's net worth, excluding goodwill, would at least equal the amount required for that association under § 563.13 of this chapter;

* * * * *

PART 561—DEFINITIONS

2. Add the following sentence at the end of § 561.13:

§ 561.13 Net Worth.

* * * For purposes of satisfying any net worth requirement of the Corporation, including the annual net worth requirement of § 563.13(b) of this subchapter, the net worth of an insured institution shall be reduced by the amount of aggregated goodwill that exceeds the percentage thereof authorized by the Corporation in a resolution approving any merger.

PART 563—OPERATIONS

3. Revise paragraph (e)(6) of § 563.22, to read as follows:

§ 563.22 Merger, consolidation, or purchase of bulk assets.

* * * * *

(e) * * *

(6) The resulting institution's net worth, excluding goodwill, would at least equal the amount required for that association under § 563.13 of this chapter;

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

4. Amend Part 563c by adding new § 563c.14, to read as follows:

§ 563c.14 Accounting for goodwill in mergers.

Purchase price shall be allocated to assets acquired and liabilities assumed on the basis of fair value at the date of acquisition in accordance with generally accepted accounting principles. The determination of the fair value of assets acquired and liabilities assumed must be adequately supported and documented. The excess of the purchase price over the fair value thus determined is goodwill. Goodwill may be written off in the year of acquisition or amortized over the future periods estimated to be benefited, but no more than 10 years from the acquisition date. An insured institution shall use the straight-line method of amortization of goodwill. The amount of annual amortization shall be charged to non-operating expense. The amount of discount arising out of an acquisition may only be accrued to income on the same basis and over the same time period that goodwill is amortized.

PART 571—STATEMENTS OF POLICY

1. Amend paragraph (d)(2) of § 571.5 by adding at the end thereof the following language:

§ 571.5 Mergers.

* * * * *

(d) *Managerial and financial aspects.*

(1) * * *

(2) *Financial aspects* * * * In evaluating the adequacy of net worth, the Board's policy is to exclude aggregated goodwill in amounts exceeding 30 percent of a resultant association's net worth in calculating the net worth of the resultant association. Aggregated goodwill in amounts between 20 and 30 percent of a resultant association's net worth may be counted by the Board in calculating net worth if, in the opinion of the Board, substantiated value considerations for the amount exceeding 20 percent have been presented by applicants. As a general rule, the Board will not deduct from the resulting association's net

worth goodwill in amounts of 20 percent or less of the resultant association's net worth. However, if the Board finds that one or both of the merging associations has substantial operating losses or presents other reasons for concern, the Board may reduce the amount of goodwill included in the net worth calculation below 20 percent.

(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); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437); 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. 80-34132 Filed 10-31-80; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-ASW-46]

Designation of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate new VOR Federal Airway V-385 from Abilene, Tex., to Lubbock, Tex. This alteration would provide a route that bypasses the Reese 4 and 5 and Roby Military Operations Areas (MOAs) when they are activated, thereby improving flight safety in the area.

DATES: Comments must be received on or before December 3, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ASW-46, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

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

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before December 3, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would designate new VOR Federal Airway V-385 from Abilene, Tex., to Lubbock, Tex. This airway would be utilized when MOAs Reese 4 and 5, and MOA Roby are activated, otherwise, aircraft would proceed via V-62. This action would aid flight planning and increase air safety in the area during the period when Military Flight Training is being conducted. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Subpart C of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) as republished (45 FR 307) as follows:

Under § 71.123

"V-385

From Lubbock, Tex.; INT Lubbock 096°T(085°M) and Abilene, Tex., 333°T(323°M) radials; Abilene." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on October 28, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-34129 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

State and Private Ophthalmic Advertising Regulation; Comments Solicited

AGENCY: Federal Trade Commission.

ACTION: Call for Comment on State and Private Ophthalmic Advertising Regulation.

SUMMARY: On February 6, 1980, the United States Court of Appeals for the District of Columbia Circuit remanded the advertising provisions of the Commission's rule on Advertising of Ophthalmic Goods and Services (16 CFR Part 456). The court did this so that the Commission could reconsider the need for these provisions in light of changes in the regulation of ophthalmic advertising which have occurred since the rule's promulgation. In response to the remand, the Commission has directed its staff to evaluate whether or not changes in state and private regulation of advertising, including enforcement policies, have occurred or are occurring which would eliminate the need for Commission action in this area, to examine whether unwarranted public or private burdens and limitations on advertising continue to exist and to make a recommendation as to whether any Commission action is appropriate. As part of this inquiry, we are aksing for comments from any interested person concerning these questions.

DATES: Since this is a continuing inquiry, there is no formal closing date.

ADDRESSES: Comments should be submitted to: Federal Trade Commission, 6th and Pensylvania Avenue, NW, Washington, DC, 20580. Attention: Eyeglasses I TRR, Room 250.

FOR FURTHER INFORMATION CONTACT: Renee Kinscheck, Bureau of Consumer Protection, Federal Trade Commission, Rm. 250, 6th Street and Pennsylvania Ave., N.W., 20580. Telephone (202) 523–3377.

SUPPLEMENTARY INFORMATION: On June 2, 1978, the Commission promulgated the trade regulation rule on Advertising of Ophthalmic Goods and Services which prohibited states and professional associations from placing limitations and burdens on nondeceptive advertising of eye examinations, prescription eyewear and related dispensing services. The rule also required that eye doctors release eyeglasses prescriptions to their patients to enable them to comparison shop. The rule was promulgated in response to widespread public and private bans, limitations and burdens on nondeceptive ophthalmic advertising and evidence showing great consumer harm flowing from these restrictions. Studies indicated that in states where price advertising was allowed average prices were from 25 to 40 percent lower than in states where advertising was restricted. Other surveys showed that prices for lenses, frames or complete eyeglasses varied as much as 300 percent from seller to seller.

Although the rule became effective on July 13, 1978, the American Optometric Association (AOA), joined by the American Medical Association and 17 states, challenged its validity in court. On February 6, 1980, the United States Court of Appeals upheld the rule's prescription release requirement but remanded the advertising provisions of the rule. In its opinion, the court did not rule on any substantive or procedural questions regarding the remanded advertising provisions. Rather, it held that there had been significant changes in the status of advertising regulation by the states, and possibly by private groups, since the time the FTC developed the record in support of the rule. The court remanded the rule so that the Commission could reconsider the need for these rule provisions in light of these changes.

As a result of the court's remand, the advertising provisions of the FTC rule are not currently in effect and thus state and local laws or regulations which previously conflicted with the rule are no longer superseded. In holding that the FTC rule's advertising provisions may no longer be necessary, however, the D.C. Circuit stated that the Supreme Court "has declared illegal the flat bans on advertising which the rule would prohibit. The Court has probably made illegal state laws which 'burden' or 'limit' advertising, just as the rule would." [1] Consequently, advertisers should check with state authorities regarding applicable law and the state's enforcement policy.

Advertising restrictions imposed by private associations, although not covered by the First Amendment, remain subject to the requirements of the Federal Trade Commission Act and Commission interpretations of it.[2]

In response to the court's remand, we have directed our staff to examine changes in ophthalmic advertising which have occurred since we originally promulgated our rule and to monitor changes which may be presently occurring to enable us to assess the need for continued Commission involvement.

In promulgating the rule, we decided that some limitations and burdens on advertising, other than total bans, might violate section 5 of the FTC Act because they may cause substantial and unnecessary harm and violate the public policy in favor of the right to advertise. Such limitations and burdens may reduce the amount of information available to consumers, thereby increasing prices and may be unnecessary to prevent unfairness or deception.

The Commission's staff will examine whether such burdens and limitations continue to exist. If warranted by the evidence and the public interest, the Commission will decide if it should take action to protect the ability to nondeceptively advertise.

Call For Public Comment

To further our inquiry, we are soliciting public comment from all persons who have any interest in ophthalmic advertising, especially state officials, ophthalmologists, optometrists, opticians and consumers. We are interested in any activities by states and private associations since our rule was originally promulgated in 1978. Because this is a continuing inquiry, we will be interested in changes in state or private activity in the future, and thus, we would welcome comments on these issues as changes occur.

We are specifically seeking comments which address the questions which are listed below, but other comments on advertising issues will also be welcome.

Laws, Regulations and Codes

(1) Have any changes been made recently in the laws or regulations of your state which apply to ophthalmic advertising? [3]

(2) Are there codes of conduct promulgated by national, state or local private associations which apply to ophthalmic advertising?

(3) Are there any proposals for changes in the current laws or regulations or private codes governing ophthalmic advertising in your state?

(4) Have any limitations on advertising been challenged in court? if so, what was the outcome and what costs were associated with bringing the case (*i.e.*, litigation costs, etc.)?

Enforcement

(5) How are the private codes and laws or regulations in your state being enforced, and how have they been enforced during the past two years?

For example:

(a) What ads, letters or telephone calls have licensing officials in your state or association officials found to violate regulations? Why?

(b) What ads, etc. have such officials found to be unfair or deceptive? Why?

(c) What have such officials told or written advertisers or potential advertisers about the legality or propriety of certain advertisements or about advertising in general?

(d) Have these rules or regulations been enforced informally, for example, through letters or telephone calls?

Effect

(6) What effect do these state laws and regulations and association codes have on advertising in your state or locality?

For example:

(a) How much advertising has occurred in your state or locality?

(b) What kind of advertising has occurred? Is it price advertising?

(c) Who has advertised: opticians; chain stores; optometrists; ophthalmologists?

(d) Has anyone desired to advertise but decided not to because of the laws or codes?

(e) Has anyone decreased the amount of their advertising because of the laws or codes?

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[1] *American Optometric Ass'n.* v. *FTC*, CCH 1980–1 Trade Cas. ¶63,165 (D.C. Cir. 1980).

[2] *See, e.g.*, In the Matter of the American Medical Association, Docket No. 9064 (Oct. 12, 1979), *appeal pending* Nos. 79–4214 and 79–4226 (2nd Cir.).

[3] The word "advertising" as we use it throughout this statement, refers to all forms of dissemination of information, including activity which is often referred to as solicitation.

(f) Have the laws or codes helped to eliminate deception or unfairness to consumers?

Comments or questions should be directed to: Eyeglasses I TRR, Room 250, Federal Trade Commission, Washington, DC 20580.

By Direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-34225 Filed 10-31-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6252; File No. S7-861]

Resales of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposal to amend Rule 144, which provides a safe harbor for the resale of securities to the public. The proposed amendments would permit persons who have held securities covered by the rule for periods of three or four years, depending on the status of the issuer of the securities, to sell such securities without compliance with the provisions of the rule relating to amount limitation, manner of sale and notice, provided such persons are not affiliates of the issuer and there is current information available to the public concerning the issuer. The purpose of the amendments is to relax restrictions on resales of restricted securities that may be more burdensome than necessary. The Commission specifically invites comment from interested persons on its proposal to eliminate the notice of sale requirement, as it has no way to determine the utility of information furnished thereby to issuers, the investment community, or the general public. When Rule 144 was adopted in 1972, the notice requirement (Form 144) was considered valuable as an aid to the Commission in monitoring the operation of the rule, and as an enforcement tool to assist in the detection of abuses. The Commission also would welcome comments as to whether the Form 144 requirement should be retained for non-affiliates, but with revisions in content or format, so as to provide information that would be especially relevant to those functions in light of the other proposed amendments.

DATE: Comments must be received on or before December 1, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-861 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ann M. Glickman or William E. Toomey at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: The Commission today published for comment proposed amendments to Rule 144 (17 CFR 230.144) under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.]. The amendments are being proposed for the purpose of relaxing certain provisions of the rule which may be unnecessarily burdensome.

Background

Rule 144 provides a safe harbor for the resale of "restricted securities" [1] and securities held by affiliates [2] of an issuer. The rule sets forth standards which, if met, permit persons who hold such securities to sell them publicly without the need for registration and without being deemed underwriters [3] unde the Securities Act. Rule 144 was considered experimental at the time of its adoption in 1972.[4] Because the rule represented a significant departure in the effort to regulate resales of restricted securities, the resale provisions of the original rule were relatively strict. The Commission has watched the operation of the rule carefully and, from time to time, has relaxed its requirements to alleviate the burden of compliance with the rule in a manner consistent with its goal of investor protection.

In Release No. 33-6032 (March 5, 1979) [44 FR 15610] the Commission adopted amendments for Rule 144 which permitted sales of securities by non-affiliates without regard to the volume restrictions of the rule, provided that the seller held the securities for at least three years, if the securities to be sold were of a class listed on a national securities exchange or quoted on NASDAQ;[5] or after a four-year holding period, if the issuer filed periodic reports under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.]. The Commission did not change any of the other requirements of the rule. In the adopting release, the Commission indicated that the amendments gave some recognition to the fact that a non-affiliate who has held his securities for a considerable length of time has provided a substantial indication that he did not adquire his securities with a view to distribution, and is therefore not an underwriter who must register his securities for resale. Anyone who is not an issuer, underwriter or dealer may resell securities in any manner he wishes subject, of course, to the antifraud provisions of the Securities Act and the Exchange Act.[6] The Commission believes that similar considerations warrant the proposed elimination of the manner of sale and notice requirements of the rule for non-affiliates who have held their securities for the specified periods.

The proposed amendments would also eliminate the manner of sale, amount limitation and notice requirements of the rule for sales by non-affiliates who have held their securities for four years, if the issuer of such securities is in compliance with the requirements of paragraph (c)(2) of Rule 144 regarding the availability of current public information. The Commission is of the opinion that the three- or four-year stratified holding period condition is appropriate for the protection of persons who purchase securities sold pursuant ot Rule 144. Issuers with securities listed on an exchange or quoted on NASDAQ

[1] The term "restricted securities" includes securities acquired in nonpublic offerings, such as those under Section 4(2) of the Securities Act, as well as securities acquired in offerings made in reliance upon Rule 240 (17 CFR 230.240) under the Act.

[2] An "affiliate" of an entity is defined in Rule 405 (17 CFR 230.405) under the Securities Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the (entity)."

[3] The term "underwriter" is broadly defined in Section 2(11) of the Securities Act and includes persons who acquire securities "with a view to * * * distribution.

[4] See in this regard that portion of Release No. 33-5223 (January 11, 1972) (37 FR 591) entitled "Operation of the Rule."

[5] NASDAQ is an electronic interdealer quotation system which is owned and operated by the National Association of Securities Dealers, Inc.

[6] If the proposed amendments are adopted, the manner in which a nonaffiliate resells his securities may raise questions as to whether he is engaged in a distribution for purposes of Rule 10b-6 (17 CFR 240.10b-6) under the Exchange Act. The traditional test of a Rule 10b-6 distribution involves analysis of such factors as (i) the magnitude of the offering, (ii) the selling efforts, and (iii) the selling methods used. *See Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961). These are the same criteria used to determine wheter sales pursuant to the liberalized volume limitations under Rule 144, effective as of September, 1978 (Release No. 33-5979 (September 27, 1978)), constitute a distribution for purposes of Rule 10b-6. See Release No. 33-6099 (August 4, 1979), Question 57. If sales pursuant to Rule 144 constitute such a distribution, Rule 10b-6 prohibits, among other things, purchases of the class of securities to facilitate the distribution by a participant in the distribution until his participation has been completed.

are subject to self-regulatory controls and trading surveillance not applicable to other issuers, and there is a significant difference in the amount of information available concerning exchange-listed or NASDAQ-quoted securities and the securities of other companies that meet the conditions of paragraph (c) of Rule 144.

Certain other considerations prompt the Commission's proposal at this time to provide limited relief from the manner of sale and notice requirements of Rule 144. In Release No. 33-5979 (September 27, 1978) [42 FR 43709] the Commission amended Rule 144 to permit persons selling securities to deal directly with a market maker as an alternative to the unsolicited brokers' transaction historically required by the rule. As a consequence, meaningful amounts of securities have been sold through market makers in transactions involving some degree of solicitation. The Commission is not aware that this relaxation has resulted in any significant adverse effect on the securities markets or the investing public, and a further easing of this restriction seems appropriate at this time. Indeed, a recent joint study by the Commerce Department and the Commission's Directorate of Economic and Policy Analysis suggests that Rule 144 sales generally do not have a significant impact in the over-the-counter market.[7] When Rule 144 was adopted in 1972, the notice requirement (Form 144) was considered valuable as an aid to the Commission in monitoring the operation of the rule, and as an enforcement tool to assist in the detection of abuses. After eight years of successful experience under the rule the Commission's need for the information provided by the notice provision is no longer so great, and it has therefore proposed deletion of this requirement for certain non-affiliates. However, the notice requirement remains the primary, if not the sole, source of information regarding certain transactions under the rule. The Commission would therefore welcome comments as to whether the Form 144 requirement should be retained for non-affiliates, or retained but with revisions in content or format, so as to provide information that would be especially relevant to the monitoring and enforcement functions in light of the proposed amendments. Specifically, comment is requested as to the usefulness of the representation as to material adverse information required to be made in the form. And, from the point of view of a monitoring function, which aspects of the form would be particularly useful? Comment is also invited on the cost or burden involved in the preparation and filing of the form and whether the form should be required to be filed at the time the sale order is placed or after the transaction is effected. The Commission particularly urges any persons who utilize the information provided by Form 144 to comment upon the proposal so that we may measure more adequately the utility of the information provided by Form 144 to issuers, the investment community, and the general public.

The Commission is not recommending any relaxation of the requirements of paragraph (c) of Rule 144 relating to current public information regarding the issuer of the securities to be sold. Because Rule 144 provides a safe harbor for the public resale of restricted securities, the Commission considers these requirements essential in light of the basic policy and purpose of the Securities Act "to provide full and fair disclosure of the character of securities." As the Commission proceeds to relax the more mechanical provisions of Rule 144, the current public information requirement of the rule will help assure the continuance of informed and orderly markets.

Discussion of the Proposal

The Commission is proposing for public comment an amendment which would add to Rule 144 a new paragraph (k), exempting from the amount limitation, manner of sale and notice requirements of the rule sales of securities by non-affiliates after a specified holding period, such holding period to depend upon the information status of the issuer. Specifically, new paragraph (k) as proposed would exempt from the requirements of paragraphs (e), (f) and (h) of Rule 144 sales of restricted securities by persons who have been non-affiliates of the issuer of such securities for a period of at least three months, provided that (i) the securities have been held for at least three years, and are of a class listed on a national securities exchange or quoted in NASDAQ; or (ii) the securities have been held for at least four years, and the issuer thereof files reports pursuant to Setions 13 or 15(d) of the Exchange Act and otherwise is in compliance with the requirements of paragraph (c)(1) of Rule 144, or there is publicly available concerning the issuer of the securities the information specified in clauses (1) to (14), inclusive, and clause (16) of paragraph (a)(4) of Rule 15c2-11 under the Exchange Act or, if the issuer is an insurance company, the information specified in Section 12(g)(2)(G)(i) of that Act.

Paragraph (e)(2) of Rule 144 specifies the amount of restricted securities which may be sold by a non-affiliate within a three-month period.[8] Paragraph (e)(2) by its terms exempts from the amount limitations securities held for at least three years, if they are of a class listed on a national securities exchange or quoted on NASDAQ, or securities held for at least four years, if the issuer thereof files reports pursuant to Sections 13 or 15(d) of the Exchange Act. The proposed amendment would delete this exemptive language and substitute therefor a cross reference to the broader exemptive provisions of proposed paragraph (k).

Paragraph (f) of Rule 144 specifies that all securities sold pursuant to the provisions of the rule must be sold in "brokers' transactions" within the meaning of Section 4(4) of the Securities Act, or in transactions directly with a "market maker" as defined in Section 3(a)(38) of the Exchange Act. Paragraph (f) also requires the seller of securities not to solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with the transaction, or to make any payment in connection with the offer and sale of the securities to any person other than the broker who executes the order to sell the securities. Paragraph (f) by its terms is not applicable to sales of securities for the account of a decedent's estate or the beneficiary of such an estate, if the estate or the beneficiary thereof is not an affiliate of the issuer. The proposed amendments would add to paragraph (f) a cross reference to paragraph (k) to alert the reader to the non-applicability of the general requirements of paragraph (f) if the conditions of paragraph (k) are satisfied.

Paragraph (h) requires the filing of notices of proposed sale pursuant to the provisions of Rule 144, except in *de minimis* situations. The proposed amendments would add to paragraph (h) a cross reference to paragraph (k) to alert the reader to the non-applicability of such notice requirements if the conditions of paragraph (k) are satisfied.

Text of the Proposed Amendments

It is proposed to amend 17 CFR Part 230 by revising paragraphs (e)(2), (f), and (h) of § 230.144 and adding paragraph (k) thereto to read as follows:

[7] "Rule 144 Sales in the OTC Market: A Preliminary Analysis of the Impact of Rule 144 Sales in the OTC Market," pp. 14-16.

[8] In general, a person may sell during any three-month period an amount equal to the greater of the average weekly trading volume (if available), or one percent of the outstanding securities of the class. See, in this regard, paragraph (e)(1) of Rule 144.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(e) * * *

(2) *Sales by persons other than affiliates.* The amount of restricted securities sold for the account of any person other than an affiliate of the issuer, together with all other sales of restricted securities of the same class for the account of such person within the preceding three months, shall not exceed the amount specified in paragraphs (e)(1)(i), (1)(ii) or (1)(iii) of this section, whichever is applicable, unless the conditions in paragraph (k) of this rule are satisfied.

* * * * *

(f) *Manner of sale.* The securities shall be sold in "brokers' transactions" within the meaning of section 4(4) of the Act or in transactions directly with a "market maker," as that term is defined in section 3(a)(38) of the Securities Exchange Act of 1934, and the person selling the securities shall not (1) solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or (2) make any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. The requirements of this paragraph, however, shall not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate: *Provided* the estate or beneficiary thereof is not an affiliate of the issuer, nor shall they apply to securities sold for the account of any person other than an affiliate of the issuer, *Provided* the conditions of paragraph (k) of this rule are satisfied.

* * * * *

(h) *Notice of proposed sale.* If the amount of securities to be sold in reliance upon the rule during any period of three months exceeds 500 shares or other units or has an aggregate sale price in excess of $10,000, three copies of a notice on Form 144 shall be filed with the Commission at its principal office in Washington, D.C.; and if such securities are admitted to trading on any national securities exchange, one copy of such notice shall also be transmitted to the principal exchange on which such securities are so admitted. The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The requirements of this paragraph shall not apply, however, in the event the conditions of paragraph (k) of this rule are satisfied.

* * * * *

(k) *Sales by persons other than affiliates after specified holding period.* The requirements of paragraphs (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months: *Provided* (1) the securities have been beneficially owned by the person for a period of at least three years prior to their sale and are part of a class that is either listed on a national securities exchange or quoted in the National Association of Securities Dealers, Inc.'s electronic interdealer quotation system known as NASDAQ, or (2) the securities have been beneficially owned by the person for a period of at least four years prior to their sale and the issuer thereof is in compliance with the requirements of paragraph (c)(1) of this rule regarding the filing of reports under sections 13 or 15(d) of the Securities Exchange Act of 1934, or with the requirements of paragraph (c)(2) of this rule regarding the availability of public information concerning the issuer. In computing the period for which securities have been beneficially owned for purposes of this provisions, reference should be made to paragraph (d) of this section.

(Secs. 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 88, 85; secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908; secs. 1–4, 5, 68 Stat. 683, 684; sec. 12, 78 Stat. 580; (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a)))

Statutory Basis

The amendments to Rule 144 are being proposed by the Commission pursuant to the Securities Act of 1933, particularly Sections 2(11), 4(1), 4(4) and 19(a) thereof.

Shirley F. Hollis,

Assistant Secretary.

October 24, 1980.

[FR Doc. 80-34224 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. Rm 79.76 (Louisiana-1)]

High-Cost Gas Produced From Tight Formations; Ceiling Prices

AGENCY: Office of Pipeline and Producer 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 recommendation of the State of Louisiana Office of Conservation that the Arkadelphia Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 28, 1980.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 12, 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.

Issue: October 28, 1980

I. Background

On October 10, 1980, the State of Louisiana Office of Conservation (Louisiana) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Arkadelphia Formation, located in the northeast corner of the State of Louisiana 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 Louisiana's recommendation that the Arkadelphia Formation be designated a tight formation should be adopted. Louisiana's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation lies entirely within Union Parish and is located in the northwest section of the Monroe Gas Field. The Arkadelphia Formation is defined as that formation occurring between the measured depths of 2038 feet and 2080 feet. Within the recommended area, the Arkadelphia varies in thickness from 30 to 60 feet, thinning from the northwest to the southeast.

III. Discussion of the Recommendation

Louisiana claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Louisiana 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 oil per day.

Accordingly, Louisiana recommends that the Arkadelphia Formation be designated as a tight formation since it meets the requirements set forth above under § 271.703(c)(2)(i) of the regulations. Evidence presented to Louisiana also indicates that the Arkadelphia Formation would qualify under § 271.703(c)(2)(ii), since the evidence establishes that the price set forth in § 271.703(a) is necessary to provide reasonable incentives for production. In view of this, Louisiana is also recommending that the Arkadelphia Formation qualify under § 271.703(c)(2)(ii).

Louisiana further asserts that the spacing requirements of Statewide Order No. 29–B will assure that development of the Arkadelphia formation will not adversely affect any fresh aquifer that is or is expected to be used as a domestic or agricultural water supply.

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 Louisiana that the Arkadelphia formation, as described and delineated in Louisiana's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. 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 27, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79.76 (Louisiana—1), and should give reasons including supporting data for any recommendations. Comments should include 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 Secretary of the Commission no later than November 12, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. sections 3310–3342).

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 Louisiana's recommendation is adopted.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulation.

(1) Section 271.703(d) is amended by adding new subparagraph (18) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geological extent and geological parameters of the designated tight formation is located in the Commission's official file for Docket No. RM79.76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

(1) * * *

(2) Through (17) [Reserved].

(18) *Arkadelphia formation in Louisiana.*

(i) *Delineation of formation.* The Arkadelphia Formation is found in Union Parish, Louisiana. RM79.76 (Louisiana—1).

(ii) *Depth.* The Arkadelphia Formation is defined as that formation occurring between the measured depts of 2038 feet and 2080 feet.

[FR Doc. 80-34240 Filed 10-31-80; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-80-884]

Proposed Use of Materials Bulletin No. 70a Particleboard Interior Stair Treads and Certification Program

AGENCY: Department of Housing and Urban Development (HUD) Office of Assistant Secretary for Housing-Federal Housing Commissioner.

ACTION: Proposed rule.

SUMMARY: This is a revision to HUD Use of Materials Bulletin No. 70 (UM 70) dated August 16, 1976. The change is necessitated in order to reference a recently published American National Standard ANSI A 208.1 Mat-Formed Wood Particleboard and to provide for increasing the distance between two stringers which support the particleboard interior stair treads from 30 inches to 42 inches.

DATES: Comment due date: January 2, 1980.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Each person submitting a comment should include name and address, refer to the document by the docket number indicated by the headings, and give

reasons for any recommendation. Copies of all written comments received will be available for examination by interested persons in the Office of Rules Docket Clerk, at the address listed above. The proposal may be changed in the light of comments received.

FOR FURTHER INFORMATION CONTACT: Lynford K. Snell, Director, Materials Acceptance Division, Office of Architecture and Engineering Standards, Room 6178, Department of Housing and Urban Development, Washington, D.C. 20410, Telephone: (202) 755–5929. (This is not a toll free number).

SUPPLEMENT INFORMATION: HUD Use of Materials Bulletin No. 70 (UM 70) outline the physical properties, limitation of use, guideline for application, certification program for particleboard interior stair tread.

After publication of UM 70, the National Particleboard Association (NPA) at request of its members has conducted a series of tests on 42 inches distance and proved that particleboard interior stair treads supported by two stringer 42 inches apart meets the design criteria. A field performance survey conducted by HUD Office of Architecture and Engineering Standards also showed that this material performed well in service.

Recently, the American National Standard Institute promulgated ANSI A 208.1, Mat-Formed Wood Particleboard which superseded the Commercial Standard CS 236–66, Mat-Formed Wood Particleboard. HUD UM 70 was revised to reference the ANSI A 208.1 and to incorporate 42 inches distance limitation and is herewith promugated as HUD Use of Materials Bulletin 70a.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2) (C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044, as extended by Executive Order 12221.

A copy of existing UM 70 and of revised UM 70a are available for review during regular business hours in the Office of Architecture and Engineering Standards, Room 6178, or in the Office of the Rules Docket Clerk, Office of General Counsel, room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410.

(Sec. 7(d)), Department of Housing and Urban Development Act of 1965, 79 Stat. 670; 42 U.S.C. 3535(d); sec. 211, 52 Stat. 23; 12 U.S.C. 1715b and 81 Stat. 54: 5 U.S.C. 552(a).

Issued at Washington, D.C. on October 16, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

Department of Housing and Urban Development Assistant Secretary for Housing—Federal Housing Commissioner

[Use of Materials Bulletin No. 70a]

To: Regional Administrators, Directors, Offices of Regional Housing, Field Office Managers and Supervisors.

Subject: Particleboard Interior Stair Treads and Certification Program.

Members of the HUD Staff processing cases and inspecting construction shall use this information in determining acceptability of the subject material for the uses indicated.

This bulletin should be filed with Bulletins on Special Methods of Construction and Materials as required by prescribed procedures. Additional copies may be requisitioned by the field offices.

The technical description, requirements and limitations expressed herein do not constitute an endorsement, approval or acceptance by the Department of Housing and Urban Development (HUD) of the subject matter, and any statement or representation, however made, indicating approval or endorsement by the Department of Housing and Urban Development is unauthorized and false, and will be considered a violation of the United States Criminal Code 18, U.S.C. 709.

Any reproduction of this Bulletin must be in its entirety and any use in sales promotion or advertising is not authorized.

Subject to good workmanship, compliance with applicable codes, and the methods of application listed herein, the materials described in this bulletin may be considered suitable for HUD Housing Programs, including Housing for the Elderly and Care-Type Housing.

The eligibility of a property under these Programs is determined on the property as an entity and involves the consideration of underwriting and other factors not indicated herein. Thus, compliance with this bulletin should not be construed as qualifying the property as a whole, or any part thereof, as to its eligibility.

The methods of application for the materials listed herein are to be considered as part of the HUD Minimum Property Standards and shall remain effective until this bulletin is cancelled or superseded.

General

This UM Bulletin specifies the physical requirements, use limitations, and installation instructions for particleboard interior stair treads. It provides a third party certification program based upon 24 CFR Part 200.935 Administrator Qualifications and Procedures for HUD Building Products Certification Programs.

Description

Particleboard stair treads accepted under this Bulletin are urea resin bonded intermediate density mat-formed particleboard complying with ANSI A 208.1, Grade 1.M.3 except that face screw holding capacity shall be 225 lbs. minimum and edge screw holding capacity shall be 200 lbs. minimum.

Particleboard stair treads shall be 1 1/16 inch minimum thickness and 12 inches maximum width with one edge bullnosed to standard tread bullnose pattern.

Warp Tolerances and Measurement Procecure

Warp tolerances shall not exceed the following: Cup — 1/8 inch. Bow and Twist — 1/32 inch per lineal foot of specimen length.

A. *Specimen.* The warp tolerance specimen shall be a finished product or shall be cut from a length of finished product. The specimen shall be the length and width required by end use, but the specimen length shall not exceed 8 feet.

B. *Procedure.* The specimen shall be laid on a flat surface during measurement of warp tolerances.

Cup—cup is a deviation flatwise from a straight line stretched across the width of the specimen. It is measured at the point of greatest distance from the straight line to the product surface.

Bow—Bow is the deviation flatwise from a straight line stretched parallel to the lenght of the specimen. It is measured at the point of greatest distance from the straight line to the product surface.

Twist—Twist is a deviation from a plane in which one corner of a piece twists so that the four corners of a surface are no longer is the same plane. It is measured by holding three corners of the test specimen snugly against a horizontal flat surface and measuring the distance the fourth corner is raised above the flat surface.

C. *Calculations and report.*— Measurements for bow, cup, and twist shall be made to the nearest 1/64 inch.

Cup shall be reported in inches.

Bow shall be calculated by dividing the measured deviation by the specimen

length and reported in inches per lineal foot.

Twist shall be calculated by dividing the measured deviation by the specimen length and reported in inches per lineal foot.

Limitations and Installation

A. Particleboard stair treads shall be limited to interior stairways subject to normal design loads in one and two family residences. They shall not be installed until the building is sheltered.

B. Particleboard stair treads shall be covered with carpeting or other finish flooring material.

C. The maximum distance between stringers shall be 42 inches.

D. Particleboard stair treads shall be installed, using conventional framing and fastening practices, in compliance with all applicable requirements of the HUD Minimum Property Standards and the instructions in this UM Bulletin.

E. Each particleboard stair tread shall be supported at both front and back by a full length 1 inch (nominal) wood board or ¾ inch structural grade plywood riser fastened with both nails and structural adhesives. Structural adhesives shall comply with Section V of UM 60—Field Glued Plywood & Wood Frame Structural Floor Systems. The tread shall be glued and nailed to the front riser with 8-penny finish nails spaced a maximum of 12 inches on center. The back riser shall extend down flush with or past bottom of the tread and shall be glued and nailed to the tread through the center of the back edge of the tread with 8-penny box nails spaced a maximum of 6 inches on center. The nosing shall not extend beyond the riser more than 1⅛ inch.

F. Stairs which may be subject to wet foot traffic should have the treads protected with a waterproof wearing surface such as vinyl sheet floor covering. When carpeting is used in these areas, the treads shall be protected with a suitable moisture resistant coating before installation of the carpet.

Handling and Storage

Particleboard stair treads are wood products and shall be handled and stored to avoid excessive moisture pickup. Particleboard stair treads should be acclimatized to its surroundings for 24 hours before installation.

Certification

A. *General.*—A third party which meets the requirements of 24 CFR 200.935 Administrator Qualifications and Procedures for HUD Building Products Certification Programs and is acceptable to HUD shall validate the manufacturer's certification that the particleboard stair tread meets the requirements of this UM Bulletin.

Copies of the Administrator Qualifications and Procedures for HUD Building Products Certification Programs may be obtained from: Director, Office of Architecture and Engineering Standards, Room 6164, Department of Housing and Urban development, Washington, D.C. 20410.

B. *Certification Program Development.*—The certification program developed by an administrator shall be based upon the procedures and standards for the specific building product described in this UM Bulletin.

A copy of the accepted program shall be on file in HUD.

C. *Laboratory Approval.*—The administrator shall review laboratories that apply for participation in this program. This certification program allows the use of the administrator's testing laboratory provided that this laboratory is reviewed by a qualified third party acceptable to HUD.

D. *Periodic Tests and Quality Control Inspections.*—The manufacturer shall notify the administrator, of any changes in a certified product and submit the necessary drawings and specifications. If the administrator determines that these changes are significant enough to affect the performance of the product, a new initial test shall be made.

The administrator shall visit the manufacturer's facility every three months to assure that the initially accepted quality control procedures are being followed.

E. *Labeling.*—Each panel certified as conforming to this bulletin shall be stamped with the following information:

a. The registered administrator validation mark.

b. Conformance with HUD UM 70a.

c. The Manufacturer's assigned mill number.

d. Interior Use Only; Install in Sheltered Buildings.

F. *List of Administrators.*—The list of HUD accepted administrators and facsimilies of their labels will be published in the attached Appendix A after their certification programs are evaluated and accepted by HUD subsequent to the promulgation of this UM Bulletin. This list will be revised as administrators are added to or deleted from the program. Only products bearing these labels shall be accepted by HUD Field Offices as evidence that the product complies with this UM Bulletin.

Appendix A

The list of HUD accepted administrators and facsimilies of their labels will be published below after their certification programs are evaluated and accepted by HUD subsequent to the promulgation of this UM Bulletin.

[FR Doc. 80-33331 Filed 10-31-80; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

24 CFR Parts 203, 220, 221, 222, 226, 227, 234, 240

[Docket No. R-80-885]

Mutual Mortgage Insurance and Insured Home Improvement Loans; Congressional Waiver Request

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of Congressional Waiver Request.

SUMMARY: Section 7(o)(4) of the Department of HUD Act permits the Secretary to request waiver of the legislation's requirements in appropriate instances. This Notice lists and briefly summarizes for public information an interim rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of the General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman and Ranking Minority Members of both Congressional Banking Committees the interim rule listed below. The purpose of the transmittal is to request waiver of both the 15-day prepublication review period, under Section 7(o)(2), and the 30-day delayed effective date for the interim rule under Section 7(o)(3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Interim Rule—24 CFR Parts 203, 220, 221, 222, 226, 227, 234, and 240—Mutual Mortgage Insurance and Insured Home Improvement Loans

This interim rule amends several sections of 24 CFR in order to comply with the intent of the Housing and Community Development Act of 1980. The new provision will provide for a change in the maximum mortgage amounts for single family mortgage insurance programs. In order to compensate for regional differences in the cost of housing, the new provisions will provide for increases in the maximum mortgage amounts in areas

where middle- and moderate-income persons have limited housing opportunities due to prevailing high housing sales prices. The higher maximum mortgage amounts will be applicable for Sections 203(b) and 220(d)(3)(A)(i) along with Sections incorporated by reference. An individual maximum limit is also established for Section 234(c).

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o); Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., October 24, 1980.

Moon Landrieu,

Secretary, Department of Housing and Urban Development.

[FR Doc. 80-34150 Filed 10-31-80; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-80-870]

Community Development Block Grants: Subpart F—Small Cities Program

AGENCY: Department of Housing and Urban Development (HUD), Assistant Secretary for Community Planning and Development.

ACTION: Proposed rule.

SUMMARY: This rule adds a new section to Subpart F, which applies only to the Commonwealth of Puerto Rico. It incorporates portions of Subpart F and adds new provisions that deal with factors unique to Puerto Rico.

COMMENTS DUE DATE: January 2, 1980.

FOR FURTHER INFORMATION CONTACT: Helen Duncan, Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, telephone number 202-755-6322. (This is not a toll free number.)

SUPPLEMENTAL INFORMATION: This revision to Subpart F is being promulgated as a proposed rule and interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by January 2, 1980 will be considered in the development of the final rule. Comments received after that date will be considered if time permits. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address. The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of No Significant Impact is available for inspection in the Office of the Rules Docket Clerk, Room 5218, 451 Seventh Street, S.W., Washington, D.C. 20410. In addition, the Chairmen and Ranking Minority Members of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives have waived the prepublication review of this rule provided for in Section 7(o)(2) of the Department of Housing and Urban Development Act.

This rule is not included in the list of items on the Significant Rule Agenda issued pursuant to E. O. 12044 and E.). 12221.

Factors unique to the municipios in the Commonwealth of Puerto Rico, such as the relatively large amount of funds provided, large percentage of population below the poverty level, large number of economically depressed areas, and the fact that there are only approximately 72 municipios eligible for funding under the Small Cities Program, make a competitive system unnecessary. Therefore, HUD has determined that a formula method of distributing funds to eligible municipios under the Small Cities Program in the Commonwealth of Puerto Rico to be a logical and equitable system. A major advantage will be a more simplified application process which will save considerable staff time for eligible applicants and HUD staff. Additionally, municipios will have a predictable level of community development funding, subject to their own performance.

Since funds will be distributed to municipios in predictable amounts, eligible applicants will submit only one application annually to the Caribbean Area Office. A preapplication will no longer be required. Application submission dates will be established by the Caribbean Area Office.

Applicants will be notified of submission dates and amounts for which they may apply. The requirement that clearinghouses must have advance notification of intent to apply for a Federal grant will be satisfied by the Caribbean Area Office.

The Housing and Community Development Act of 1974 as amended in 1977, provides in Section 106 that in making Small Cities grants "the Secretary shall establish for each participating unit of general local government an annual grant at an amount meaningful to the size of the unit and the program identified * * *." HUD complies with this requirement in that the basic grant amount to be invited is computed and coupled with provision to adjust the grant amount to ensure that the grant amount will be sufficient to produce meaningful projects.

Section 106 continues by saying that "* * * the Secretary shall consider such things as * * *" and lists eleven considerations. In determining the basic amounts and making the adjustments described in this rule, HUD has directly taken into account five of the eleven considerations. Additionally, in reviewing the application submitted, the Caribbean Area Office will consider whether an applicant has ignored the needs for economic development or has ignored the need to deal with serious threats to health and safety. This review will directly or indirectly address five of the remaining six considerations.

Many of the changes made to Subpart F in § 570.436 are for the purpose of eliminating references to preapplications and to single purpose and comprehensive grants, which are not applicable to the Small Cities Program in the Commonwealth.

§ 570.436(b) lists those portions of 24 CFR 570 Subpart F that apply to this section.

§ 570.436(c) establishes the method of determining the basic grant amount for each municipio. It further details the steps to be followed in making adjustments to the basic grant amount for each municipio. A minimum grant amount sufficient to ensure a meaningful program will be established.

Following determination of basic grant amounts for each municipio, those municipios that would not receive the minimum grant amount will have their grants adjusted upward to the minimum. Those amounts added to the amount set aside for application by the Commonwealth would be deducted from the total amount of funds available. Each remaining municipio's basic grant would then be reduced proportionally to compensate for the adjustment. Further adjustments in grant amounts for each municipio may be made at the discretion of the Caribbean Area Office, based on past performance in administering prior grants.

§ 570.436(d) incorporates 24 CFR 570.302 into this section, which is the entitlement program's method for determining program benefits to low- and moderate-income persons, and which will be used for the Small Cities Program in Puerto Rico.

§ 570.436(e) details the application process. Municipios will not submit every third year, beginning with its first

application on or after October 1, 1980, a summary of its three year community development and housing plan, a comprehensive strategy, a three year project summary, and a Housing Assistance Plan. A project summary, cost summary, maps, annual housing action program, assurances, and any clearinghouse comments with the applicant's explanation of inconsistencies if any, with areawide plans, shall be submitted annually. Application forms with instructions will be furnished by the Caribbean Area Office. Because of the new approach to funding, applicants will not be required to submit the form dealing with Title VI of the Civil rights Act of 1964. The Caribbean Area Office should have sufficient information based on annual submissions and past performance to made the necessary Title VI finding.

A performance assessment report will be required annually, and will be used as a factor in judging the applicant's performance in carrying out its community development program.

§ 570.436(f) provides for program amendments.

§ 570.436(g) details the actions taken by HUD in reviewing and approving an application, and details the conditions under which HUD will conditionally approve, or disapprove an application.

§ 570.436(h) contains the provisions for Citizen Participation that are applicable to the Commonwealth of Puerto Rico under this new approach.

§ 570.436(i) contains the OMB Circular No. A–95 procedures that apply to the Commonwealth of Puerto Rico.

I. 24 CFR 570, Subpart F is amended in the table of contents by adding § 570.436 to read as follows:

* * * * *

Subpart F—Small Cities Program

* * * * *

570.436 Special procedures applicable to the Commonwealth of Puerto Rico.

* * * * *

II. Part 570, Subpart F is proposed to be amended by adding § 570.436 to read as follows:

§ 570.436 Special procedures applicable to the Commonwealth of Puerto Rico.

(a) *General.* This section shall apply to the Small Cities Program in the Commonwealth of Puerto Rico.

(b) *Scope and Applicability.* (1) *Applicable regulations.* 24 CFR 570.420(a), and (c) shall apply to this section.

(2) *Program Objectives.* The Small Cities Program in Puerto Rico provides grants to units of general local government and to the Commonwealth in both metropolitan and nonmetropolitan areas to undertake the same community development activities as may be funded under the entitlement program. Application must be consistent with one or more of the following purposes: (i) Support realistic and attainable strategies for expanding low- and moderate-income housing opportunities;

(ii) Promote expansion of housing choice for low- and moderate-income persons outside areas of minority and low- and moderate-income concentrations or in revitalizing neighborhoods;

(iii) Promote more rational land use;

(iv) Provide increased economic opportunities for low- and moderate-income persons;

(v) Correct deficiencies in public facilities which affect the public health or safety, especially of low- and moderate-income persons.

(c) *Grant Amount.* (1) *Basic Grant Amount.* A basic grant amount shall be determined for each eligible unit of general local government, based on a ratio of the total amounts available for metropolitan and nonmetropolitan areas to the average of the following ratios for each eligible unit of general local government:

(i) *Metropolitan.*

(A) The population of the eligible unit of general local government and the population of all eligible units of general local government in the metropolitan areas of the Commonwealth;

(B) The extent of poverty in the eligible unit of general local government, and the extent of poverty in all eligible units of general local government in the metropolitan areas of the Commonwealth; and

(C) The extent of housing overcrowding in the eligible unit of local government and the extent of housing overcrowding in all the eligible units of general local government in the metropolitan areas of the Commonwealth.

In determining the average of ratios under this paragaph, the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once ($0.25+0.50+0.25=1.00$).

(ii) *Nonmetropolitan.* Nonmetropolitan funds shall be allocated according to the formula in (c)(1)(i) of this section, except that the ratio shall compare population, poverty, and housing overcrowding in nonmetropolitan areas and nonmetropolitan eligible units of general local government.

(2) *Adjustments.* The following adjustments may be made in determining the amounts for which applicant shall be invited to apply:

(i) A minimum grant amount shall be established for units of general local government which shall be sufficient to ensure meaningful projects;

(ii) A set aside may be established for the Commonwealth;

(iii) An adjustment may be made for any applicant approved for multiyear funding at a level exceeding its basic grant amount.

(iv) An application from an applicant having received a prior Community Development Block Grant may be invited for less than the basic grant amount where past performance is judged by the Caribbean Area Office to be below acceptable levels based on considerations of factors in (c)(3)(iv) of this section.

(v) An application from an applicant having received a prior Community Development Block Grant may be invited for more than the basic grant amount where past performance is judged by the Area Office to be superior based on considerations of factors in (c)(3)(iv) of this section.

(3) *Amount of invitation.* In determining the amount for which each eligible unit of general local government shall be invited to submit an application, the following steps will occur:

(i) The amount necessary to bring each unit of general local government up to the minimum grant amount as determined in (c)(2)(i) of this section shall be calculated and set aside along with any amount set aside for the Commonwealth. This shall be done separately for metropolitan and nonmetropolitan areas;

(ii) Any community with approved multiyear funding for Fiscal Years 1981 and/or 1982 at a funding level exceeding their basic grant amounts, will be funded at the approved level for those years.

(iii) Each unit of general local government's basic grant amount, as determined in accordance with (c)(1) of this section, will be reduced on a pro rata basis so that the total of adjusted basic grant amounts, which includes the minimum grant amount described in (c)(2)(i) of this section, any adjustments necessary to meet multiyear commitments described in (c)(2)(iii) of this section and the amount for the Commonwealth described in (c)(2)(ii) of this section, will equal the total metropolitan and nonmetropolitan allocations, respectively;

(iv) Past performance adjustments may then be made for each unit of general local government and for the Commonwealth in accordance with (c)(2)(iv) or (c)(2)(v) of this section. Any increase in grant amounts for superior

performance cannot exceed the decrease in grant amounts for performance below acceptable levels. Past performance adjustments may be made, considering:

(A) Rate of drawdown

(B) Rate of obligation of funds

(C) Performance under the Housing Assistance Plan

(D) Compliance with other program requirements based on monitoring visits and audits.

(v) Each eligible unit of general local government and the Commonwealth shall be invited to submit an application for the amount determined by the preceding steps. Applicants shall be advised no less than 45 days in advance of date for submission of applications, of amounts of grants to be provided.

(d) *Program benefit to low- and modern-income persons.* Program benefits to low- and modern-income persons shall be determined in accordance with § 570.302 of Subpart D.

(e) *Application process.* (1) *Community Development and Housing Plan Summary.* Each applicant shall submit in a form prescribed by HUD, a summary of its three year community development and housing plan. This document shall be submitted every third year as part of the annual application for funds, beginning with the first application submitted on or after October 1, 1980. It shall summarize the applicant's community development and housing needs, describe a comprehensive strategy for meeting those needs, and specify both short- and long-term objectives to be met by the strategy. The community development and housing plan summary shall include:

(i) *A narrative summary* of the applicant's community development and housing needs, particularly those of low- and moderate-income households and any special needs of identifiable segments of the total group of lower income persons. The narrative shall include a brief description of the major needs for neighborhood revitalization, for community facilities and public improvements, for housing and for economic development needs.

(ii) *Comprehensive strategy.* The applicant shall describe how it proposes to meet its identified community development and housing needs, particularly those of low- and moderate-income households residing in or expected to reside in the community and any special needs of identifiable segements of the lower income population. The provision of all improved community facilities and public improvements, including supporting health, social and similar services where necessary or appropriate, shall be described in a manner that fully ensures opportunity for participation by, and benefits to the handicapped. The strategy shall include the following components:

(A) *Communitywide component* which describes the development strategy of the applicant, the major objectives the applicant seeks to accomplish, the priorities it has established, and the factors it has taken into account in selecting areas for treatment and designing programs to meet identified needs.

(B) *Neighborhood revitalization* shall include the strategy for maintaining and preserving viable neighborhoods and for upgrading neghborhoods affected by blight and deterioration. The strategy shall emphasize the actions to be taken that will improve conditions for low- and moderate-income persons residing in or expected to reside in the community.

(C) *Housing. (1)* Describe a communitywide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. The strategy shall include a Housing Assistance Plan (HAP) as described in § 570.306. It shall include: the strategy for any programs to be carried out on a communitywide basis, such as provision of rehabilitation financing for low- and moderate-income persons or elimination of detrimental conditions; regulatory and other actions proposed to foster housing maintenance and improvements; strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including members of minority groups and female-headed households, efforts to achieve expanded housing opportunities and actions to affirmatively further fair housing; and any community facilities and improvements to be provided in furtherance of the applicant's housing strategy and to assure accomplishment of goals for assisted housing.

(*2*) When displacement or other hardships to low- and moderate-income persons will result from Community Development Block Grant funded acquisition, demolition, code enforcement, and rehabilitation, the strategy shall describe what steps will be taken to minimize involuntary displacement and to enable displaced persons to remain in the same neighborhood if they prefer.

(iii) *Economic development.* A description of the applicant's strategy for economic development is required from applicants that propose block grant funded economic development activities. The strategy shall include a description of:

(*A*) *Major needs* for economic development in the locality.

(*B*) *The activities proposed* to further economic development and to attract private investment, including the coordination of block grant funded activities with other local actions, and a timetable for provision of other Federal and State resources.

(*C*) *The number and types of permanent jobs* expected to result from economic development projects, particularly jobs for unemployed or underemployed population groups and low- and moderate-income persons, and the types and extent of any job training which will be provided to them.

(*D*) *Evidence of financial commitments or interest by developers* in new or expanded employment facilities. In the absence of commitments, the city may supply feasibility studies or other documents evidencing the marketability of new or expanded employment facilities.

(2) *Project Summary.* All applicants shall, after consideration of appropriate environmental factors pursuant to 24 CFR 58, describe the project that will be undertaken which includes:

(i) A description of the project which states its purpose, location, and the sequence of activities;

(ii) Whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community needs having a particular urgency;

(iii) A description of the activities which comprise each project, and their estimated costs and timing;

(iv) The amounts and sources of other public funds and private investments anticipated to be provided;

(v) Anticipated accomplishments.

(3)*Three year project summary.* In addition to the project summary required under paragraph (e)(2) of this section, applicants shall also submit a three year project summary. It shall consist of a tabular summary of the projects proposed to be carried out with block grant funds during the next three years to implement the applicant's comprehensive strategy, grouped by location, the anticipated timing, the goals to be accomplished, the population benefitting, and the estimated block grant and other funds to be provided, and indicating whether the activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community development needs having a particular urgency.

(4) *Cost summary.* Each applicant shall submit a cost summary annually on a form prescribed by HUD.

(5) *Housing Assistance Plan.* Each applicant shall submit a Housing Assistance Plan in accordance with § 570.306 of Subpart D.

(6) *Certifications of assurances.* The certifications of assurance required by § 570.307 of Subpart D shall be submitted by all applicants except that in lieu of § 570.307(d) the applicant shall certify that it:

(i) Has prepared and followed a written citizen participation plan that meets the requirements of (h);

(ii) Has provided citizens with an opportunity to participate in the development of the Housing Assistance Plan;

(iii) Has provided adequate notices of public hearings as required by the written plan;

(iv) Has held hearings on the proposed application before adoption of a resolution or similar action by the local governing body authorizing the filing of the application;

(v) Will provide for citizen participation when considering amendments to the Community Development Program and the Housing Assistance Plan; and

(vi) Will provide for citizen participation in the planning, implementation and assessment of the Community Development Program including the development of the report on performance and the submission of views to the HUD Area Office.

(7) *Map requirements.* Maps must be submitted which include the following information identified by census tract (or enumeration district), or geographic quadrant of the community where census tracts or enumeration districts are either not available or include a substantial area, such as an entire community;

(i) Location of areas with minorities, showing number and percent;

(ii) Location of areas with low- and moderate-income persons, showing number and percent;

(iii) Locations of the proposed activities described in the program schedule and, if applicable, the three year project summary, including boundaries of areas in which activities will be concentrated and service areas of activities where appropriate;

(iv) the median income of the Census tracts in which the proposed activities are to be undertaken;

(v) general locations of proposed new or rehabilitated housing assistance;

(vi) the location of areas with substandard and deteriorated housing, showing number and percent.

Maps should be clearly legible and all required maps submitted shall be of the same scale and cover the same areas. The applicant may submit supplementary maps of a different scale, at its discretion, where this will increase clarity. More than one type of information may be combined on one map if the information is clearly legible when combined.

(8) *Threshold requirements.* Notwithstanding the provisions of paragraph (c) of this section, the Caribbean Area Office shall review the progress of each eligible applicant based on the performance assessment report. If the progress is so inadequate as to indicate that the eligible applicant does not have the capacity to effectively handle a new grant, or a portion thereof, in addition, to the grant currently under contract, that applicant shall not be invited to submit an application for current year funding. Also, if the applicant's performance under its HAP does not meet the standards provided at 24 CFR 570.909(e)(2)(i) and (ii), it will not be invited to submit an application for current year funding.

(9) *Program Design.* The program as a whole must principally benefit low- and moderate-income persons and directly impact on the applicant's needs. All activities contained within such program must either benefit low- and moderate-income persons, or aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency.

(10) *Performance assessment report.* Performance assessment reports shall be submitted to HUD at a time prescribed by the Area Office, but sufficiently in advance of application submission dates so that performance adjustments can be considered based on the information submitted in the report.

(11) *Application submission dates.* HUD shall establish deadlines for submission of applications by letter of notification to eligible applicants. This notification will be provided at least 45 days prior to the date by which the applicant must submit the completed application to HUD.

(f) *Program Amendments.*

(1) HUD may consider amendments if they are necessitated by actions beyond the control of the applicant. Recipients shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries.

(2) *Housing Assistance Plan Amendments.*

Recipients shall request prior HUD approval of Housing Assistance Plan amendments when any of the following conditions exist:

(i) The recipient proposes a reduction of any goal for housing assistance pursuant to § 570.306(b)(3)(i) or § 570.306(b)(4)(i);

(ii) The recipient proposes the inclusion of a goal by household type or housing type, not previously specified pursuant to § 570.306(b)(3)(i) or (b)(4)(i);

(iii) The recipient proposes to exceed any three year goal by housing type or household type by the percentage cited in 24 CFR Part 891;

(iv) The recipient proposes a revision of the general locations for assisted housing established pursuant to § 570.306(b)(3)(ii); or

(v) There is a significant change in, or new data available regarding the conditions of the housing stock or the housing needs of lower income persons.

(3) *A–95 and citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements of this Subpart for A–95 review and citizen participation must met. The recipient shall provide the A–95 clearinghouse with thirty days in which to review and comment on the proposed amendment prior to its submission to HUD.

(g) *HUD review and actions on applications.* (1) *Applications.* Only applications from communities that have been invited to apply are accepted for review, and then only if:

(i) The application has been received before the deadline that has been established by the Area Manager, unless the Area Manager decides that an extension of the deadline is warranted;

(ii) The application requirements are complete;

(iii) The funds requested do not exceed the amount of the invitation by HUD;

(iv) Any conditions that were established at the time of invitation are satisfied;

(v) The application is submitted to the clearinghouse prior to or concurrently with submission to HUD. The applicant shall indicate in its application the date it was submitted to the clearinghouse.

(2) *Review and notification.* While HUD is not required to review discretionary applications within 75 days, it will try to do so. Following the review, HUD promptly notifies the applicant of the actions taken with regard to its application.

(3) *Scope of review.* (i) HUD will normally base its review upon the applicant's assurances, statements of facts and data, and other information. The Secretary reserves the right, however, to consider relevant evidence which challenges the assurances, and information submitted by the applicant, and to require additional information or

assurances from the applicant as warranted by such evidence.

(ii) The review will include, but need not be limited to, the following matters contained in the application and the performance assessment report, or derived from monitoring:

(A) Eligibility of proposed activities;

(B) That the program identified in the application has a reasonable cost relationship to the amount of the grant;

(C) Program benefit to low- and moderate-income persons in accordance with the provisions of § 570.302;

(D) Housing Assistance Plan conformity to the requirements of § 570.306;

(E) Coordination of housing assistance and community development activities;

(F) Consistency of the needs stated in the plan with generally available data;

(G) Appropriateness of proposed plans and programs to meeting the applicant's needs and objectives;

(H) Compliance with previous contract conditions or other corrective and remedial actions required by HUD;

(I) Experience regarding the effectiveness of the proposed activities in meeting the community development needs in the locality;

(J) Applicant's capacity to carry out the program proposed as evidenced by its previous performance record; and

(K) Compliance with the requirements of this Part and other applicable laws and regulations.

(4) *Criteria for conditional approval.* HUD may make a conditional approval in which case the grant will be approved but the obligation and utilization of funds for affected activities will be restricted. The reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction or termination of the grant. Conditional approval may be made:

(i) Where local environmental reviews under § 570.603 have not yet been completed;

(ii) The requirements of § 570.607 regarding the provision of public services and flood or drainage facilities have not yet been satisfied;

(iii) Pending site and neighborhood standards approval for proposed housing projects, if applicable;

(iv) Where there is substantial evidence that there had been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant amount pursuant to § 570.910(b)(10).

(5) *Criteria for disapproval of an application.* HUD may disapprove an application if:

(i) On the basis of significant facts and data generally available and pertaining to community and housing needs and objectives, HUD determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data. The data to be considered may be published data accessible to both the applicant and HUD such as census data; or other data available to both the applicant and HUD, such as recent local, areawide or Commonwealth comprehensive planning data;

(ii) On the basis of the application, or other available information, HUD determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant. The following are examples of situations in which activities may be determined to be "plainly inappropriate" to meeting the identified needs of the applicant:

(A) Experience over a period of time has demonstrated that the types of activities proposed have not been or are unlikely to be effective in alleviating the conditions they were designed to affect;

(B) The applicant has identified serious economic development needs or serious threats to health and safety; activities are eligible which could address the needs with the likelihood of substantial positive results, and yet the applicant proposes no such activities to address the identified needs;

(C) The application does not meet the requirements of § 570.302(b)(2) with respect to the extent of funding proposed to principally benefit low- and moderate-income persons;

(D) The applicant has identified areas containing significant concentrations of deteriorated housing and blight and does not propose to undertake a concentrated program of activities in any such areas;

(E) Proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups, and adequate measures to mitigate those effects are not proposed;

(F) Actions essential to accomplish housing assistance goals, including supportive community development activities, are not proposed;

(G) Housing goals, locations, and strategy do not meet the criteria of § 570.306(c);

(H) The proposed program does not reflect previous requirements of HUD for corrective or remedial actions, or activities proposed have previously been the basis of such requirements.

(iii) HUD determines that the application does not comply with the requirements of this Part with specific regard to the primary purposes of principally benefitting persons of low and moderate income, or aiding in the prevention or elimination of slums or blight, or meeting other community development needs having a particular urgency, or with other applicable laws, or the application proposes activities which are ineligible under Subpart C of this Part;

(iv) Conditions established at the time of invitation have not been fully met;

(v) There is new evidence of a lack of performance or capacity of a recipient to carry out the proposed activities;

(vi) Performance under the HAP is inadequate.

(6) *Previous audit findings and outstanding monetary obligations.* HUD shall not invite an application from any applicant that has an outstanding audit finding for any HUD program, or has an outstanding monetary obligation to HUD. However, the Regional Administrator may provide waivers to this prohibition, but in no instance shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

(h) *Citizen participation requirements.* (1) *General.* Each applicant shall provide citizens with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the program. The applicant shall provide adequate information to citizens, hold public hearings at the initial stage of the planning process to obtain views and proposals of citizens, and provide citizens an opportunity to comment on the applicant's community development performance. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Plan.

(2) *Written Citizen Participation Plan.* To achieve these goals, each applicant shall prepare and follow a written citizen participation plan that serves as a citizens' guide to interacting with the block grant program in a meaningful way. Citizens shall be involved in the development of, and any changes to the plan. The plan shall remain in effect until all activities assisted under this Subpart are completed or until it is superseded by a new plan. The plan

must provide procedures that meet the following requirements:

(i) Provide a process of citizen participation at the communitywide level with regard to the overall application, the Community Development Program, and the assessment of performance where applicable.

(ii) Solicit and respond in a timely manner, to views and proposals of citizens, particularly low and moderate income persons, members of minority groups, and residents of blighted areas where activities are proposed. Written responses shall be made to written proposals.

(iii) Provide technical assistance to facilitate citizen participation, where requested. The level and type of technical assistance shall be determined by the applicant.

(iv) Provide adequate notices of public hearings and the availability of the report on assessment of performance, where applicable, in a timely manner and in such a way as to make them accessible and understandable to all citizens, including non-English speaking persons. The plan must state the number of days prior to a hearing that a notice will be published.

(v) Schedule hearings to obtain citizen views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low- and moderate-income persons, members of minority groups, handicapped persons, and residents of blighted neighborhoods and project areas.

(vi) A public hearing shall be held during the planning process and a public hearing shall be held prior to the submission of the application to the Caribbean Area Office. Additionally, a minimum of one separate hearing shall be held to provide citizens an opportunity to assess performance under previous grants prior to submission of the performance assessment report to HUD;

(vii) Conduct at least one public hearing during the grant closeout process, prior to submission to HUD of the assessment of performance report, if such a report has not been made and a hearing has not been held concerning performance in the last 12 months.

(viii) Provide full public access to program records and information and make affirmative efforts to get adequate information to citizens, especially persons of low and moderate income and residents of blighted neighborhoods and project areas. The citizen participation plan shall identify the information that will be made available to the public by the applicant.

(ix) Conduct a minimum of two public hearings on any amendment requiring HUD approval. A public hearing shall be held to consider the merits of the amendment in its formative stages and a public hearing shall be held on the amendment when it is ready for submission. Citizens, particularly affected citizens, shall also be involved in amendments not requiring prior HUD approval, budget revisions, and changes to the Community Development Program and the Housing Assistance Plan. The methods by which citizens will be involved shall be described in the plan.

(x) Involve citizens in planning, implementing and assessing the Community Development Program and performance. The methods by which citizens and citizen organizations will be given the opportunity to assess and submit comments on the applicant's community development performance shall be described in the plan.

(xi)Advise citizens of the bases and process to be used to submit objections to HUD to the approval of an application.

(xii) Ensure low- and moderate-income persons and minorities substantial representation on any advisory committee.

(xiii) Provide bilingual opportunities at public hearings, when necessary.

(xiv) Provide written responses to written complaints generally within 15 working days.

(3) *Requirements for citizen participation in the application process*—(i) The objective of citizen participation is to provide for meaningful citizen input in the decision making process during the consideration of priorities and of options associated with the development and submission of the application. The applicant shall assure that the following citizen participation requirements have occurred:

(A) Developed and made available to the public a written Citizen Participation Plan at the beginning of the application stage that meets the requirements of paragraph (2). The procedures outlined in this plan were followed during the planning and development of the application prior of its submission to the HUD Area Office.

(B) Provided the public with the following information:

(*1*) Amount of funds that may be applied for by the applicant for community development.

(*2*) Range of activities that may be undertaken with these funds, the kind of activities previously funded if any, and the progress made with respect to those activities.

(*3*) The processes to be followed in soliciting and responding to the views and proposals of citizens in a timely manner.

(*4*) A summary of other important program requirements.

(ii) The applicant shall provide certifications of assurance as prescribed in §570.436(e)(6).

(4) *Post Approval Stage.* The applicant shall assure citizen participation when considering subsequent amendments to the Community Development Program and the Housing Assistance Plan in accordance with the requirements at (h)(2)(ix), and during closeout in accordance with (h)(2)(vii).

(5) *Assessment of performance.* A copy of each written citizen comment or complaint on the grantee's community development performance, the grantee's assessment of the comment or complaint, and the grantee's description of any actions taken and any written response made to the comment or complaint, if any, shall be submitted to HUD with the report on assessment of performance.

(6) *Consideration of objections to applications—(i) Notice of Submission of application.* The applicant shall at the time of submission to HUD, publish a notice in a newspaper of general circulation stating that the application has been submitted to HUD and is available to interested parties upon request, and describing the conditions whereby citizens may submit objections to approval of applications by HUD, as described below.

(ii) *Citizen objections to applications.* Persons wishing to object to approval of an application by HUD may make such objection known to the appropriate HUD Area Office. HUD will consider objections made only on the following grounds:

(A) The applicant's description of needs and objectives is plainly inconsistent with available facts and data.

(B) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant.

(C) The application does not comply with the requirements of this Subpart or other applicable law.

(D) The application proposes activities which are otherwise ineligible under this Part.

Such objections should include both an identification of the requirements not met and, in the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the data upon

which the persons rely. Although HUD will consider objections submitted at any time, such objections should be submitted within 30 days of the publication of the notice that the application has been submitted to HUD in accordance with paragraph (6)(1) of this section. HUD will not approve an application until at least 45 days after receipt of the application.

(7) *Citizen comment to HUD.* Persons may comment to the Caribbean Area Office at any time concerning the applicant's failure to comply with the citizen participation requirements contained in this section.

(i) *Modified OMB Circular No. A–95 procedures.* (1) *General.* (i) Applicants for grants under the Small Cities Program must comply with all of the procedures set forth in Part I of OMB Circular No. A–95 except as modified below. These procedures also require that program amendments which must receive HUD approval shall be submitted to the clearinghouse for a thirty day review and comment period prior to submission to HUD pursuant to 24 CFR 52.101(g).

(ii)All applicants are urged to contact their A–95 clearinghouse for forms and instructions which the clearinghouse has developed to facilitate its review, and to consult with the clearinghouse during development of the application.

(iii) The clearinghouse will be of assistance to the applicant and to HUD if its review addresses the subject matter of comments and recommendations in item 5, Part I, Attachment A of OMB Circular No. A–95, with emphasis on consistency with Commonwealth, areawide and local plans, and compliance with environmental and civil rights law.

(2) *Clearinghouse notification.* The A–95 requirement that clearinghouses be notified of an applicant's intent to apply for Federal assistance will be satisfied by HUD. Each fiscal year HUD will advise the clearinghouse, with a copy to the applicant, of those communities invited to apply for grants under this section. This notification will be provided at least 60 days prior to the date by which the applicant must submit the completed application to HUD. Upon receipt of its copy of the HUD notification to the clearinghouse, the applicant shall make arrangements with the clearinghouse regarding early transmittal of information describing the contents of the application.

(3) *A–95 procedures for applications.* (i) Applications for grants shall be submitted to the areawide A–95 clearinghouse prior to or concurrent with the submission of the application to HUD. The clearinghouse shall have 45 days from receipt of the application in which to conduct its review and provide a response to the applicant with a copy to HUD. The clearinghouse must clearly identify the applicant and the activity or program to which the comments are addressed. Applicants are urged to provide applications to the clearinghouse prior to submission to HUD whenever possible.

(ii) HUD shall take no final action on the application until comments have been received or until 45 days after the application filing deadline. If the A–95 review comments contain any findings of inconsistency with Commonwealth, areawide, or local plans, significant adverse urban impacts, noncompliance with environmental laws, or failure to provide equal opportunity, the applicant must consider these findings and state what action it plans to take as a result of these findings and the reasons therefor. Further, HUD shall make no decision on the application until all adverse clearinghouse findings are resolved.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95.123); and Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., September 19, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

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Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R–80–871]

Section 8 Housing Assistance Payments Program—Existing Housing; Eviction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend eviction procedures in the Section 8 Existing Housing Assistance Payments Program to provide that the PHA shall have the sole right to issue the Notice to Vacate and to establish modified procedures for issuance of the Notice to Vacate. This revision is made in accordance with Section 8(d)(1)(B) of the United States Housing Act of 1937. An Owner may make representation to the PHA for termination of tenancy. The PHA notifies the tenant of the Owner's desire to evict and the tenant's right to present objections. If the PHA finds that the grounds for eviction are sufficient under the lease, the Notice to Vacate that is issued must comply with State and local law requirements. Comments due: January 2, 1981.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Edward C. Whipple, Office of Public Housing, Room 6240, (202) 755–5840 or Patricia Arnaudo, Office of Existing Housing and Moderate Rehabilitation, Room 6234, (202) 426–0910, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. These are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION: The Department proposes to revise 24 CFR § 882.215 to relieve the uncertainty about the regulation that has resulted from recent challenges to its legality.

Present Eviction Policy in § 882.215

The Department's present Existing Housing eviction policy has been in effect since May 6, 1975, the day after § 882.215 was initially published in the **Federal Register.** Section 882.215 currently requires an Owner who wishes to evict a Family to furnish the PHA and the Family with a written notice of the proposed eviction, stating the grounds for eviction and informing the Family that it has ten days (or such greater period of time as may be required by State or local law) within which to respond to the Owner's request to the PHA for authorization of eviction. The Owner is required to obtain PHA authorization before proceeding with the eviction. The PHA is required by Section 882.215 to examine the Owner's grounds for eviction for sufficiency under the terms of the Lease, and to notify the Owner and Family of its finding within twenty (20) days of the date of the notice of proposed eviction. Unless it finds the stated grounds for eviction to be insufficient under the Lease, the PHA is obliged to authorize the eviction. The PHA is deemed to have authorized the eviction if it does not respond within the 20-day period.

Litigation Challenges

Section 8(d)(1)(B) of the United States Housing Act of 1937 provides: "the agency shall have the sole right to give notice to vacate, with the owner having

the right to make representation to the agency for termination of tenancy." There have been several recent legal challenges to § 882.215 by plaintiffs claiming that the regulation is inconsistent with Section 8(d)(1)(B). Decisions in a number of these lawsuits have ruled that § 882.215 conflicts with this section of the statute.

The Department wishes to remove the uncertainties resulting from these decisions as to the procedure for eviction of a Section 8 existing housing tenant.

New Eviction Policy

The proposed revisions of § 882.215 include two basic elements:

(1) Procedures for the owner's representations to the PHA for termination of a family's tenancy, and

(2) Procedures for the PHA determination on the owner's representation, and for issuance of a Notice to Vacate by the PHA if the PHA finds that the grounds for eviction as stated by the Owner are sufficient under the lease.

Under the new rule, the period for the tenant to present objections to the owner's representation for termination of tenancy (ten days), and for the PHA to act on the owner's representation (twenty days) would not be changed. However, these periods would run from the time the PHA notifies the family of the owner's request (rather than from the owner's notice of a proposed eviction as provided under the current rule). The provision allowing the owner to proceed with eviction if the PHA fails to act on the owner's request within the twenty-day period has been deleted.

The new rule would explicitly provide that the Notice to Vacate, as issued by the PHA under Section 8(d)(1)(B), is also to be the Notice to Vacate required under State landlord and tenant law. For this reason, the owner would delegate to the PHA the right to issue the State Notice to Vacate as the owner's agent.

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

1. The PHA must be notified in writing by the Owner. The Owner's signed statement to the PHA must cite the relevant provisions of the lease when discussing the specific grounds for eviction. The Owner also must provide a written authorization for the PHA so that the PHA can act as the Owner's agent for the purpose of issuing the Notice to Vacate. A Notice to Vacate must be included. It must be signed and prepared by the Owner in the form required by State law.

2. After receiving the Owner's statement, the PHA must send it to the family immediately, along with a copy of the form *Notification of the Owner's Request to PHA for Termination of Tenancy* (the form is set forth in Appendix III of this Part). The form Notification informs the family that, while the Owner wishes to terminate the Lease, the Owner's notice to the PHA is not a Notice to Vacate. In addition, the Notification states that the Family has the opportunity, within 10 days, to present to the PHA any objections it has to the Owner's request. The family is also informed of its rights with respect to the issuance of another Certificate.

3. After the period for response by the Family has ended, the PHA must examine the Owner's grounds for eviction and consider any objections by the Family. The PHA must determine, within 20 days from the day the Owner's statement was sent to the family, whether the grounds for eviction are sufficient under the terms of the Lease.

4. If the grounds are insufficient under the Lease, the PHA must notify the Owner and Family. If the grounds are sufficient, the PHA, must issue a notice to Vacate. The PHA acts as the Owner's agent for the sole purpose of issuing the Notice to Vacate.

5. Any Notice to Vacate prepared by the Owner must comply with all applicable state and local requirements. The Notice to Vacate must be issued to the Family by the PHA. A copy of the Notice to Vacate must be sent to the Owner at the same time.

6. When the PHA issues the Notice to Vacate, the PHA must advise the Family in writing concerning the Family's rights with respect to the issuance of another Certificate. The Family must be told that before the family is determined to be ineligible for a new Certificate, the family will be notified in writing of the reasons and given an opportunity for an informal hearing within a reasonable time (as required by Section 882.209(f)).

7. After the Notice to Vacate has been served by the PHA, the Owner may proceed with the eviction in accordance with State and/or local law and the provisions of the Lease.

8. The revised rule would apply to all HAP Contracts including Contracts executed before the effective date of the new rule. However, owners with units previously placed under HAP Contract may elect not to follow those provisions relating to issuance by the PHA of the State law Notice to Vacate where the election does not derogate from the PHA's sole right to give Notice to Vacate under Section 8(d)(1)(B) of the United States Housing Act of 1937.

NEPA

The Department has determined that these regulations do not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, a Finding of Inapplicability of Environmental Impact has been prepared and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address specified above. In addition, the Chairmen and Ranking Minority Members of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives have waived the prepublication review of this rule provided for in Section 7(o)(2) of the Department of Housing and Urban Development Act.

This Rule is not listed in HUD's semiannual agenda of significant rules, published pursuant to Executive Order 12221.

Accordingly, it is proposed to amend 24 CFR Part 882, Subpart B, as follows:

1. By revising § 882.215 to read as follows:

§ 882.215 Evictions.

(a) *General.*

Eviction of a Family must comply with the requirements of this section. The Owner may make representation to the PHA for termination of tenancy, and the representations shall be in accordance with paragraph (b) of this section. The PHA shall, however, have the sole right to give Notice to Vacate in accordance with Section 8(d)(1)(B) of the United States Housing Act of 1937, and the Notice to Vacate shall be given in accordance with paragraph (c) of this section.

(b) *Owner's representation for termination of tenancy.*

(1) If the Owner desires to evict a Family, the Owner shall provide the PHA:

(i) A written statement of the grounds for eviction. The statement shall cite the relevant provisions of the lease. The statement must be signed by, or for, the Owner.

(ii) A written authorization designating the PHA as the Owner's agent for the sole purpose of issuing, prior to the commencement of eviction proceedings, any Notice to Vacate required under State or local law.

(iii)(A) A Notice to Vacate, as prepared by the Owner in the form required under State or local law, for execution by the PHA on behalf of the Owner. If any information or dates needed for the Notice to Vacate are not yet known or determined, the Owner may leave the items blank, to be filled in by the PHA prior to service on the Family.

(B) The Notice to Vacate shall be signed by the Owner to indicate the Owner's concurrence.

(2) Immediately after receiving the Owner's representation for termination of tenancy, the Owner's statement (as described in paragraph 882.215(b)(1)(i)(d)) shall be attached to the form of Notification of Owner's Request to PHA for Termination of Tenancy shown in Appendix III, and the PHA shall send the statement and notification to the Family.

(c) *Proceedings for issuance of Notice to Vacate by PHA.*

(1)(i) The Family may present any objections to the Owner's representation for termination of tenancy within ten days after the PHA sends the Owner's statement of the grounds for eviction to the Family.

(ii) The PHA's determination of the Owner's representation shall be made within twenty days after the PHA sends the Owner's statement of the grounds for eviction to the Family.

(2) In making the determination, the PHA shall examine the grounds for eviction, as contained in the Owner's statement, and shall consider any objections submitted by the Family.

(3) The PHA shall not issue the Notice to Vacate if the PHA finds that the stated grounds for eviction are not sufficient under the lease. The PHA shall give separate written notifications to the Family and the Owner of the determination not to issue a Notice to Vacate.

(4) The PHA shall issue the Notice to Vacate as requested by the Owner if the PHA finds that the stated grounds for eviction are sufficient under the lease.

(5) (i) If the PHA decides to issue the Notice to Vacate, the Notice to Vacate shall be served by the PHA within twenty days after the PHA sends the Owner's statement of the grounds for eviction to the Family.

(ii) The Notice to Vacate shall be in writing. A copy of the Notice to Vacate shall be sent to the Owner at the same time that the Notice is served by the PHA on the Family.

(iii) The Notice to Vacate shall comply with any requirements of form and procedure for issuance of a Notice to Vacate under State and local law. The Notice to Vacate shall be served by the PHA in accordance with State and local law.

(iv) At the same time as the PHA serves the Notice to Vacate, the PHA shall advise the Family in writing of the Family's rights with respect to issuance of another Certificate. In particular, the Family shall be advised of the right to an informal hearing in accordance with Section 882.209(f) before a determination by the PHA not to issue a new Certificate.

(d) Procedures for HAP Contracts executed before [*effective date of this revised rule*]

Owners under Contracts executed before [*the effective date of this revised rule*] may elect not to follow § 882.215(b)(1) (ii) and (iii) and § 882.215(c)(5)(iii) where the election does not derogate from the PHA's sole right to give Notice to Vacate under Section 8(d)(1)(B) of the United States Housing Act of 1937.

2. By revising paragraph (e) of the Addendum to Lease in Appendix I to read as follows:

Appendix I

* * * * *

(e) The Owner may not evict the Family unless the Owner complies with the provisions of the Housing Assistance Payments Contract between the Owner and the PHA, as affected by HUD requirements. A copy of the applicable eviction procedures is attached to and made a part of this Lease.

* * * * *

3. By adding after Appendix II a new Appendix III to read as follows:

Appendix III

Notification of the Owner's Request to PHA for Termination of Tenancy

THIS IS NOT A NOTICE TO VACATE

(Fill in name of owner)

the owner of your dwelling, located at

(Fill in address of family)

has asked this Agency to issue you a Notice to Vacate. Since the rent for your dwelling is assisted under the Section 8 Existing Housing Assistance Payments Program, only we can issue a Notice to Vacate. A copy of the owner's request to us is attached. It gives the owner's reasons for requesting the eviction.

You have the right to tell us your objections to the owner's request. You may tell us your objections in writing or in person. You must tell us the objections by

(Fill in date that is 10 days after owner's statement is sent to the family)

If we decide to approve the eviction and to issue a Notice to Vacate, you may be entitled to another Certificate of Family Participation to use at another location. If we find that you are ineligible for another Certificate, we will tell you why. You have the right to an informal hearing before we make the final decision not to give you another Certificate.

(Print Name of Housing Authority)

By: —

(Signature of person signing notification for PHA)

(Print name of person signing notification for PHA)

(Print position of person signing notification for PHA)

(Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).)

Issued at Washington, D.C., September 19, 1980.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 80-34151 Filed 10-31-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 103a and 103b

Indian Moneys, Proceeds of Labor; Special Deposits 1980

September 25, 1980.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes rules to establish two new internal accounting procedures. Part 103a establishes regulations dealing with the source, deposit, investment, and use of Federal moneys classified as "Indian Moneys, Proceeds of Labor". Part 103b will prescribe policies governing the handling of "special Deposits" by the Bureau.

DATES: Comments must be received on or before December 3, 1980.

ADDRESSES: Submit written comments to the Bureau of Indian Affairs, Division of Program Development and Implementation (Code 720), Room 355, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Thomas A. Stangl, Program Analysis Officer, Bureau of Indian Affairs, Room 355, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, telephone (202) 343-4807.

SUPPLEMENTARY INFORMATION: "Indian Moneys, Proceeds of Labor," are miscellaneous receipts collected by the Bureau of Indian Affairs at BIA agencies and schools. Although these "IMPL" funds originally included moneys belonging to Indian tribes, different laws now govern the collection, deposit, and use of tribal funds and the proposed regulations therefore deal only with income from BIA agencies and schools which belongs to the federal government as opposed to tribes or individual Indians.

The proposed regulations on "IMPL" funds would made several changes with respect to the types of income which

have been considered IMPL receipts. For example, interest earned on "special deposits" will no longer be included as IMPL receipts, as a general rule.

Part 103a also requires that IMPL funds be used to support Bureau programs at the agency or school in accordance with approved program plans for the expenditure of such funds. Under Federal law, IMPL funds may be expended only for the benefit of the agency or school at which the funds were collected.

Part 103b revises Bureau policy with respect to the investment of "special deposits". As noted above, prior to this time, any interest earned from the investment of special deposits was included as IMPL receipts. Under the proposed regulations, interest earned on special deposits will, with certain limitations, be distributed to the owners of the principal account which earned the interest. This means that tribes and individual Indians will now receive the interest earned on special deposit funds which belong to them rather than having such interest paid to the Bureau. The $500/60 day limitation on payment of interest earned on special deposits has been established because the administrative workload required to manually determine the precise distribution of interest to every principal account would be excessive and economically infeasible.

The proposed regulations were drafted by a BIA task force group established at the direction of the Assistant Secretary—Indian Affairs. The primary author of this document is Thomas A. Stangl, Division of Program Development and Implementation, BIA.

The Department has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. It has been determined that these proposed regulations are not a major Federal action within the scope of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (a), (c)).

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

It is proposed to add a new part 103a and a new part 103b to Subchapter J, Chapter 1 of Title 25 of the Code of Federal Regulations to read as follows:

PART 103a—INDIAN MONEYS, PROCEEDS OF LABOR (IMPL)

Sec.

103a.1 Purpose and scope.
103a.2 Definitions.
103a.3 Sources of IMPL funds.
103a.4 Collection and deposit of IMPL funds.
103a.5 Investment of IMPL funds.
103a.6 Expenditure and use of IMPL funds.
103a.7 Development and approval of IMPL use plans.
103a.8 Limitations on use of IMPL funds.

Authority: 25 U.S.C. 2, 25 U.S.C. 9; 25 U.S.C. 155.

§ 103a.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the receipt, deposit, investment, and use of miscellaneous revenues derived from BIA agencies and schools under the Act of March 3, 1883, as amended (25 U.S.C. 155). These regulations apply only to income belonging to the federal government and not to tribal funds or moneys belonging to individual Indians.

§ 103a.2 Definitions.

(a) "Agency" means any field office of the Bureau officially designated as an Indian agency and which provides direct services at the local level to Indians and Indian tribes, who are recognized by the Bureau as eligible for federal services to Indians because of their status as Indians.

(b) "Agency Superintendent" means the Bureau official in charge of a Bureau agency.

(c) "Bureau" or "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(d) "Enterprise operation" means an economic activity operated at a Bureau agency or school which is designated to provide goods or services where such goods or services are not available or are not provided in an effective or satisfactory manner, or which has as its primary purpose enhancement of the educational experience of Indian students and is only incidentally commercial in nature.

(e) "IMPL funds" means all miscellaneous revenues included within the definition of IMPL receipts under section 103a.3 of this Part which are covered into the U.S. Treasury as federal trust funds under Account 14x8500, Indian Moneys, Proceeds of Labor.

(f) "P.L. 638" means the Indian Self-Determination Act, Act of January 4, 1975, Title I, Public Law 93-638 (25 U.S.C. 450 et seq.).

(g) "Project basis" means short-term Bureau program at an agency or school aimed at a specific objective which can usually be accomplished within one year's time, and which supplements on-going Bureau programs of a more permanent nature.

(h) "School" includes any school operated directly by the Bureau or by an Indian tribe or organization pursuant to a P.L. 638 contract, except that tribally controlled previously private contract schools are not included within the term "school" for the purpose of section 103a.3(a)(1) of this Part.

(i) "School Supervisor" means the Bureau official in charge of a Bureau school.

§ 103a.3 Sources of IMPL funds.

(a) IMPL receipts include—

(1) All miscellaneous revenues collected on behalf of the Bureau through Bureau agencies and schools as income from the sale of goods or services by the Bureau, gross receipts from leases, rentals, permits, licenses, and fees for the use of federal lands, facilities, and property and revenues from other Bureau activities, including gross receipts from activities financed by appropriated funds, except as otherwise provided by federal statute superseding 25 U.S.C. 155, and

(2) Interest from the investment of IMPL funds.

(b) IMPL receipts do not include—

(1) Special deposits and interest on special deposits except to the extent provided under Part 103b;

(2) Funds belonging to individual Indians or Indian tribes;

(3) Fees collected under 25 U.S.C. 413 to cover the cost of work performed by the Bureau of Indian tribes or individual Indians;

(4) Fees collected under 40 U.S.C. 490 (k) as charges for space and services in Bureau facilities not in excess of actual operating and maintenance costs of providing such space or services; or

(5) Fees collected from the lease of federal buildings or the sale of supplies, equipment, or services to other government bureaus and departments under 31 U.S.C. 686 (b) or 40 U.S.C. 303b.

§ 104a.4 Collection and deposit of IMPL funds.

IMPL receipts will be handled in accordance with the procedures set forth in Chapter 3—Collections, Title 7 Fiscal Procedures, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. IMPL receipts will be deposited to appropriate income codes for Activity 2660, "IMPL", as contained in the Bureau Financial Management Accounts Handbook, as revised.

§ 103a.5 Investment of IMPL funds.

IMPL funds not immediately required for expenditure will be invested by the Bureau as part of its regular investment program and will remain invested until notice is given that the funds are being allotted from the trust account for

expenditure under an approved program plan.

§ 103a.6 Expenditure and use of IMPL funds.

(a) IMPL funds may be used only for the benefit of the agency or school for which such receipts were collected, and in accordance with an approved program plan under § 103a.7.

(b) In general, IMPL funds may be expended for any program at an agency or school which the Bureau has statutory authority to operate. However, they should not be used to fund projects specifically reduced or disallowed by the Congress. IMPL funds may be expended directly by the Bureau or pursuant to a P.L. 638 contract covering tribal operation of an authorized agency or school program. As a matter of policy, however, IMPL funds will not generally be used to finance the full costs of an on-going Bureau program on a permanent basis, either directly or through contract. IMPL funds may be used up to three (3) years to fund the full cost of authorized Bureau programs for which appropriations have been requested but not received or for which appropriations are not currently available, and to fund the full cost of temporarily expanding regular Bureau programs, whether directly or through contract. IMPL funds may also be used to support Bureau enterprise operations at Bureau agencies and schools without any limitation on time. IMPL funds may also be used to supplement regular Bureau programs on a project basis, either directly or through contract.

§ 103a.7 Development and approval of IMPL use plans.

(a) Each agency superintendent, school supervisor, or other Bureau official responsible for a Bureau school or agency shall submit an annual IMPL program plan for the expenditure of IMPL funds held for, and IMPL receipts accruing to, such agency or school. Program plans will be developed within the budget cycle and will utilize guidelines, formats, exhibits, justification, costs principles, and other procedures developed within the Bureau's financial management system.

(b) Each program plan shall be reviewed and approved or disapproved by the Bureau official having direct line authority over such agency superintendent, school supervisor, or other appropriate Bureau official.

(c) All expenditures of IMPL funds shall be in accordance with such program plan and any amendments or revisions thereto. Expenditures under "IMPL" use plans are subject to the same audit, review, and investigation as expenditures of appropriated funds under other Bureau programs.

§ 103a.8 Limitations on use of IMPL funds.

(a) IMPL funds may not be expended as part of a P.L. 638 grant, but may be expended under a separate P.L. 638 contract which supplements a program pursuant to a P.L. 638 grant.

(b) IMPL funds will not be expended for the construction or major alteration and improvement of federal facilities, except as specifically authorized in the Bureau's annual budget or in case of emergency approved by the Commissioner of Indian Affairs.

(c) IMPL funds may not be expended to acquire lands for tribes or for the construction of tribal facilities, or for the operation and maintenance of tribal facilities except where such expenditure represents a portion of Bureau program costs in situations where such costs are paid by the Bureau in lieu of rent.

(d) IMPL funds may not be expended for any other use which, from time to time, may be excluded by executive order or by administrative limitations issued by the Secretary of the Interior, or his authorized representative.

PART 103b—SPECIAL DEPOSITS

Sec.

103b.1 Purpose and scope.
103b.2 Definitions.
103b.3 Investment of special deposit funds.
103b.4 Payment and distribution of interest on special deposit funds.

Authority: 25 U.S.C. 2, 25 U.S.C. 9.

§ 103b.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the deposit, investment, and distribution of interest on funds held by the Bureau in special deposits.

§ 103b.2 Definitions.

(a) "Bureau" or "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(b) "Eligible principal account" means a principal account which has been on deposit for at least 60 calendar days during the investment period and which has an average month-end balance of at least $500 during the investment period.

(c) "IMPL account" means Account 14X8500, Indian Moneys, Proceeds of Labor, U.S. Treasury.

(d) "Principal account" means each separate payment or deposit of money to the Bureau which is held as a special deposit.

(e) "Proportionately" means in the same proportion that the amount of an eligible principal account bears to the total amount of all eligible principal accounts.

(f) "Special deposit" means any suspense account used for the temporary deposit of funds which cannot be credited to specific accounts or readily distributed, including, but not limited to, (1) advance deposits required when bidding on and awaiting approval of mining leases on trust or restricted Indian lands, including oil, gas, coal, and other minerals, (2) advance deposits on other leases and permits for such Indian lands, (3) advance payments and advance deposits required on sales of timber and other natural resources from such Indian lands, (4) deposits for rights of way over such Indian lands and anticipated right-of-way damages held until such damages are determined, and (5) deposits for grazing fees on such Indian lands.

(g) "Special deposit funds" means those funds held in special deposits.

§ 103b.3 Investment of special deposit funds.

(a) It is the policy of the Bureau to invest all special deposit funds which have been paid to the Bureau on behalf of Indians or Indian tribes pending the eventual payment for the sale, lease, or other transfer of tribal or individual Indian property.

(b) It is the policy of the Bureau not to invest special deposit funds which are (1) deposited solely for the purpose of guaranteeing performance, or (2) subject to immediate return on demand of the depositor.

§ 103b.4 Payment and distribution of interest on special deposit funds.

(a) It is the general policy of the Bureau that interest and earnings from the investment of special deposit funds will be credited to subsidiary interest accounts for principal accounts upon which the interest was earned. Therefore, interest and earnings from special deposit funds will not be deposited into the Bureau's IMPL account, except as expressly provided in this section.

(b) Interest earned through investment of special deposit funds shall be deposited every six months into a subsidiary interest account for each eligible principal account, subject to the limitations contained in paragraph (c), and shall be distributed on the same basis as the principal account.

(c) Interest earned through investment of special deposit funds shall not be distributed to any principal account which is on deposit less than 60 calendar days during the investment period or which has an average month-end balance of less than $500 during the investment period, and earnings attributable to such accounts shall be

distributed under subsection (b), along with the remaining earnings, to all eligibile principal accounts proportionately, or, if there are no remaining eligible principal accounts, to the Bureau's IMPL account to the credit of the Bureau agency or school where the special deposit was made.

(d) Payment of the principal from special deposits shall not be delayed because of computation and distribution of interest, if any, payable to such principal account.

Thomas W. Fredericks,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-34175 Filed 10-31-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 354; Re: Notice No. 333]

Cider; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: This document withdraws Notice No. 333 (45 FR 2855) in which the Bureau of Alcohol, Tobacco and Firearms (ATF) solicited public comment as to whether the standard of identity for cider should be changed to allow the designation "cider" on wine derived from a mixture of apple and pear juices if not more than 25 percent of the mixture is pear juice. Presently, fruit wine which is designated "cider" must be derived entirely from apple juice. ATF is withdrawing the advance notice as a result of comments received from the public and the industry.

FOR FURTHER INFORMATION CONTACT: Thomas Minton, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington DC, 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Notice No. 333

ATF originally issued Notice No. 333 on January 15, 1980, (45 FR 2855) in response to a petition from a trade association representing the cider industry. ATF did not propose any regulatory changes in Notice No. 333, but solicited input from interested persons on the desirability of changing the standard of identity for cider. ATF also sought information concerning the current consumer understanding of cider.

Summary of Comments

ATF received 104 comments in response to Notice No. 333. The overwhelming majority of the commenters felt that ATF should not allow fruit wine designated as "cider" to be dervied from a mixture of apple and pear juices. Most of the commenters felt that the consumer understanding of cider is that cider is produced entirely from apples. The commenters generally felt that by allowing pear juice as an ingredient in cider, ATF would promote consumer deception and would lower the quality of the cider available in this country.

Among the comments, was one from the petitioning trade association. The association changed its position on its proposal and stated that the use of pears in cidermaking in the United States is neither traditional, necessary, nor desirable.

ATF agrees that fruit wine derived from apple and pear juices should not be designated as cider. ATF, therefore, withdraws Notice No. 333.

Drafting Information

The principal author of this document is Thomas L. Minton of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This document is issued under the authority of 27 U.S.C. 205.

Signed: October 2, 1980.

G. R. Dickerson,

Director.

Approved: October 27, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-34125 Filed 10-31-80; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL 1653-4]

Interstate Pollution Abatement; Notice of Proceedings Under Section 126 of the Clean Air Act and Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of proceedings under Section 126 of the Clean Air Act (Interstate Pollution Abatement).

SUMMARY: This notice concerns a public hearing to discuss the interstate air pollution impact of particulate matter and sulfur dioxide within the New Jersey-New York-Connecticut metropolitan area. Section 126 of the Clean Air Act provides a mechanism for any state or political subdivision to petition the Environmental Protection Agency to determine after public hearing whether a major pollution source in another state is causing or has the potential to cause an interstate air pollution problem. Such petitions have been filed by the State of Connecticut and the State of New Jersey. Findings with respect to these petitions will be made on the basis of the record of this public hearing and other information contained in the proceedings.

Petitions from both Connecticut and New Jersey deal with the air quality impact of the use of 1.5 percent sulfur content fuel oil by the Consolidated Edison Company of New York, Inc. at its Arthur Kill and Ravenswood plants in New York City. An additional petition from Connecticut deals with the air quality impact resulting from the use of 2.8 percent sulfur content fuel oil by the Long Island Lighting Company at certain units of its Northport and Port Jefferson generating stations, located in Suffolk County, New York. In addition, all the petitions generally raise the issue of potential interstate air pollution resulting from the possible conversion of many power facilities in New Jersey-New York-Connecticut metropolitan area from fuel oil to coal. The New Jersey petition raises this issue specifically. Such conversions can be required by the U.S. Department of Energy.

DATES: The hearing will be held on December 3 and 4, 1980. Requests to present testimony at the hearing should be received by November 25, 1980. EPA requests an advance copy of written testimony and factual information wherever possible; however, written material will be accepted up until the close of the public hearing record on January 5, 1981.

ADDRESSES: The hearing will be held at: The Federal Office Building, 26 Federal Plaza (on Broadway between Worth and Duane Streets), Room 305B, New York, New York 10278.

The hearing will convene on December 3, 1980 at 10:00 a.m. and recess at 5:00 p.m. (or such time as all speakers scheduled for the afternoon have completed their testimony); it will reconvene at 9:00 a.m. on December 4, 1980 and adjourn when all scheduled testimony has been completed.

Individuals wishing to be scheduled to present testimony at the hearing must contact by letter or phone: Robert A.

Predale, Environmental Protection Agency, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278 (212) 264–9800.

Copies of the technical and background documents are available for public inspection during normal business hours at:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

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

New York State Department of Environmental Conservation, Region 2, Two World Trade Center, 61st Floor, New York, New York 10047.

New York State Department of Environmental Conservation, Region 1, Building 40, State University of New York, Stony Brook, New York 11794.

New Jersey Department of Environmental Protection, Bureau of Air Quality Management and Surveillance, Room 1110, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

Connecticut Department of Environmental Protection, Air Compliance Unit, Room 144, State Office Building, Hartford, Connecticut 06115.

In addition, EPA is establishing a docket for these proceedings. The docket, 2A–80–1, will be maintained in the Environmental Protection Agency Public Information Unit and in the Environmental Protection Agency Region II Office at the preceding addresses and will be available for public inspection during normal business hours. All correspondence, comments or other written submissions pertaining to the proceedings announced in today's notice should reference "Docket No. 2A–80–1."

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 3 and 4, 1980 the Environmental Protection Agency will hold a public hearing in response to petitions filed by the States of New Jersey and Connecticut pursuant to the provisions of Section 126 of the Clean Air Act (see Section II of today's notice for a description of "Section 126 Provisions"). The time and location of the hearing plus information on arranging for an opportunity to testify can be found in the preceding dates and addresses sections of this notice. Additional information on the "Hearing Format" can be found in Section VI of today's notice.

The petitions filed by the State of Connecticut and the State of New Jersey were in response to State Implementation Plan (SIP) revisions submitted to EPA by the New York State Department of Environmental Conservation (NYSDEC) and deal with potential particulate matter and sulfur dioxide interstate air quality impacts. The details of these SIP revisions, affecting the Consolidated Edison Company of New York, Inc. (Con Edison) and the Long Island Lighting Company (LILCO), are discussed in Section III of today's notice under the heading of "Actions Leading to Petitions." A description of the petitions filed by New Jersey and Connecticut is presented under the heading of "Petition Contents and Background Data" in Section IV of today's notice. Section V of today's notice presents the issues to be considered at the hearing.

II. Section 126 Provisions

Section 126(b) of the Clean Air Act authorizes any State or political subdivision to petition the Administrator of the EPA for a finding that any major source emits or will emit an air pollutant in violation of the prohibition of Section 110(a)(2)(E)(i) of the Clean Air Act. This latter section prohibits any stationary source within a state from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state under Part C of the Act to prevent significant deterioration of air quality or to protect visibility. After public hearings, the Administrator either makes a finding that Section 110(a)(2)(E)(i) is being violated or denies the petition. If a finding of violation is made, Section 126(c) provides that operation of the source for more than three months after the finding has been made shall be a violation of the applicable implementation plan unless the Administrator permits continued operation of the source conditioned on its compliance with emission limitations and compliance schedules provided by the Administrator. Compliance with the requirements contained in Section 110(a)(2)(E)(i) must be as expeditious as practicable, but no later than three years after the date of such finding.

III. Actions Leading to Petitions

A. Long Island Lighting Company

On April 29, 1980 New York State submitted to EPA a proposed revision to its SIP to allow LILCO to continue using fuel oil with a maximum sulfur content of 2.8 percent, by weight, in units 1, 2 and 3 of its Northport generating facility and in units 3 and 4 of its Port Jefferson generating facility, all located in Suffolk County, New York. This "special limitation" if approved by EPA would be in effect for a maximum period of three years from the date of EPA's final approval action. "Special limitations" are authorized by Section 225.2 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and are subject to approval as SIP revisions by EPA (40 CFR 52.1675(e)). The affected LILCO units have never burned fuel oil with a maximum sulfur content of 1.0 percent, by weight, as normally rquired by State regulation for sources in Suffolk County.

The use of high sulfur content fuel oil was first proposed for approval by EPA on May 25, 1976 (41 FR 21360) and subsequently approved on July 20, 1976 (41 FR 29817). This "special limitation," which expired on May 31, 1977, allowed the use of fuel oil with sulfur content of 2.5 percent, by weight, at units 1, 2 and 3 of the Northport generating facility and 2.8 percent, by weight, at units 3 and 4 of the Port Jefferson generating facility. EPA approved a renewal until May 31, 1980 of this initial "special limitation" on August 26, 1977 (42 FR 43078). This renewed "special limitation" increased the allowable sulfur content for the applicable units at the Northport generating facility from 2.5 to 2.8 percent, by weight, and kept the existing limitation of 2.8 percent, by weight, for the applicable units at the Port Jefferson generating facility.

The State's April 29, 1980 submittal for further renewal included a technical support document which purported to show that the continued use of 2.8 percent sulfur content fuel oil would not result in a contravention of any health or welfare related national ambient air quality standard. Moreover, since the emission levels associated with the burning of 2.8 percent sulfur content fuel oil were included in the baseline as defined in EPA's prevention of significant deterioration (PSD) regulation (45 FR 52675, August 7, 1980), no PSD increment would be consumed as a result of its use.

EPA reviewed the technical material submitted by New York State and concurred with the State's determination that no violation of national ambient air quality standards would occur. Based

upon this review and EPA's own analysis of the technical material submitted, EPA proposed to approve the State's SIP revision submittal on July 31, 1980 (45 FR 50833). In this **Federal Register** notice EPA advised the public that comments, received on or before September 2, 1980, would be considered in the administrator's final decision.

On August 28, 1980 the State of Connecticut filed a petition with EPA in accordance with Section 126 of the Clean Air Act requesting a finding that the continued burning of 2.8 percent sulfur content fuel oil would result in emissions that would violate the prohibition of Section 110(a)(2)(E)(i) of the Clean Air Act. The contents of this petition in this regard are discussed in Subsection IV.A.1. of today's notice.

B. Consolidated Edison Company of New York, Inc.

On November 29, 1979 New York State submitted to EPA a proposed revision to its SIP to allow Con Edison to use fuel oil with a maximum sulfur content of 1.5 percent, by weight, in units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and in unit 3 of its Ravenswood generating station in Queens, New York. These units were limited by State regulation to the use of 0.30 percent, by weight, sulfur content fuel oil. The use of the higher sulfur content fuel oil was permitted for a maximum period of one year from August 12, 1980, which was the date Con Edison first used the high sulfur content fuel oil. This test burn was undertaken by Con Edison as a prelude to the use of coal at its Ravenswood and Arthur Kill generating facilities.

A notice of proposed rulemaking on the State's SIP revision request was published in the **Federal Register** on January 17, 1980 (45 FR 3331). The reader is referred to this January 17 notice where a detailed description of the revision request is provided. The comment period established by this notice ended on February 19, 1980 and was subsequently extended to March 5, 1980 by another **Federal Register** notice (45 FR 12266, February 25, 1980). In these notices EPA advised the public that comments would be accepted as to whether the proposed revision to the New York SIP should be approved or disapproved. During the comment period, EPA received numerous comments. Based on the significant public comment received regarding the implications of the State's proposed action upon regional growth potential and based on the acquisition of new air quality data which indicated a violation in lower Manhattan of the national annual ambient air quality standard for sulfur oxides, on April 17, 1980 (45 FR 26101), EPA reopened its comment period. As a result of this extension, which ended on May 19, 1980, EPA received additional comments on the proposed SIP revision.

Based on its review of all available information, including the numerous public comments received, EPA found the State's SIP revision request to be approvable. Action to promulgate this determination was taken in the August 11, 1980 issue of the **Federal Register** (45 FR 53139), where a detailed discussion of the comments received is provided.

On April 29, 1980 and May 16, 1980 the States of New Jersey and Connecticut, respectively, filed petitions under Section 126 of the Clean Air Act regarding emissions from the Con Edison facilities. The contents of these petitions as they relay to the Con Edison facilities are discussed in Subsections IV.A.2. and IV.B.1. of today's notice.

C. Regional Coal Conversion

EPA, during the public comment period established on the New York SIP revision request with regard to Con Edison, received numerous letters from units of government and elected officials, most notably from New Jersey, expressing concern that EPA's proposal to approve the "special limitation" could affect future new source development and regional economic growth. The basis for this concern was Con Edison's stated purpose to use its temporary "special limitation" to demonstrate its ability to permanently burn 1.0 percent sulfur content coal at the affected units without sulfur dioxide controls. This fact, coupled with the likelihood that many power plants in the New York City metropolitan area may be required by the U.S. Department of Energy to convert to coal, led many commentors to recommend that the cumulative impact of all such conversions should be analyzed before proceeding with approval of any individual application. Commentors noted that such conversions should be based on a comprehensive areawide fuel use strategy.

EPA in its review of these comments concluded that there were substantial reasons for concern with respect to interstate air quality impacts, assuming long term high sulfur content fuel use by Con Edison and other utilities in the metropolitan area (45 FR 53138, August 11, 1980). EPA further stated, that it intended to convene a future hearing under Section 126 of the Clean Air Act for the purpose of addressing whether and under what circumstances the long term use of high sulfur content fuels by utilities in the metropolitan area has an acceptable interstate air quality impact. In addition, EPA's decision to incorporate the regional coal conversion issue in the Section 126 hearing is in direct response to the State of New Jersey's Section 126 petition on Con Edison, as discussed in Subsection IV.B.2. of today's notice.

IV. Petition Contents and Background Data

A. State of Connecticut

1. *Long Island Lighting Company.* On August 28, 1980, EPA was petitioned by the State of Connecticut Department of Environmental Protection, pursuant to Section 126 (b) and (c) of the Clean Air Act, to make a finding that the sulfur dioxide and particulate matter emissions from the continued use of high sulfur content fuel oil at LILCO's Northport and Port Jefferson generating facilities are interfering with attainment of particulate matter and sulfur dioxide ambient air quality standards in Connecticut and are otherwise in violation of Section 110(a)(2)(E)(i) of the Act. Specifically, the State of Connecticut requested the Administrator of EPA to disapprove the New York SIP revision request to allow the continued use of high sulfur content fuel oil at LILCO's Northport and Port Jefferson generating facilities. Connecticut's reasons were as follows:

- Section 110(a)(2)(E)(i) of the Act prohibits adoption of this proposal as a final rule in that it would exacerbate existing violations of the national ambient air quality standards (NAAQS) for total suspended particulates (TSP) in the State of Connecticut. All of the State of Connecticut has been designated non-attainment for the secondary TSP standard, and Greenwich, Connecticut, which would be among the most severely impacted by the granting of New York's SIP revision request, has been designated non-attainment for the primary TSP standard. In view of the anticipated interference with NAAQS for TSP in Connecticut that would result from the granting of the approval of this SIP revision, said approval should be withheld by EPA.
- The proposed SIP revision, if approved by the Administrator, would interfere with attainment and maintenance of the State of Connecticut's secondary 24-hour sulfur dioxide ambient air quality standard. This standard, although no longer a NAAQS, is nevertheless a part of Connecticut's federally approved SIP.
- Inadequate consideration is being given by EPA to the aggregate impact

of adjacent sources of sulfur dioxide and TSP which impact is especially significant when assessing the subject SIP revision's effect upon applicable 24-hour ambient air quality standards. Connecticut claims that the significance of this source's impact must be assessed in the context of the aggregate impact on the region within which this source is located. In this particular instance, Connecticut offers to demonstrate an already existing significant impact from the New York Metropolitan Region (as much as 60 percent or more of a given 24-hour reading) upon Connecticut's ambient air based upon data collected from monitors located within the State of Connecticut. Therefore, any increase in emissions from these sources, however, "insignificant" in and of themselves, exacerbate existing significant impacts when considering the impact of the aggregate of emissions from the New York Metropolitan Region upon Connecticut's ambient air. It is submitted that EPA's failure to make such an assessment of the aggregate emissions impact in evaluating whether or not emissions from the subject source complies with Section 110(a)(2)(E)(i) would be an error.

- Even in areas within Connecticut where applicable ambient air quality standards will not be exceeded as a result of the impact from the LILCO emissions, such emissions nevertheless add to Connecticut's air pollution and thus make it more difficult if not impossible for Connecticut to attain and maintain applicable ambient air quality standards within its borders pursuant to its federally approved SIP. Thus, LILCO's emissions will contribute to preventing attainment and maintenance of applicable air quality standards in Connecticut.

EPA, in proposing to approve the continued use of high sulfur content fuel oil by LILCO, had determined that no violation of the national ambient air quality standards would occur. Furthermore, no consumption of any applicable PSD increment would result since the emissions levels associated with the burning of 2.8 percent sulfur content are included in the baseline as defined in the PSD regulations. In reaching this determination, EPA had conducted an extensive review of the air quality modeling conducted by LILCO and New York State and the available air monitoring data from New York and Connecticut.

The air quality modeling indicated that under worse-case conditions the maximum 24-hour sulfur dioxide impact in Connecticut from the Northport and Port Jefferson generating facilities (including units not affected by the "special limitation") is 233 $\mu g/m^3$. Sulfur dioxide collected by the State of Connecticut, which includes a final data compilation for 1978 and a preliminary data compilation for 1979, are summarized below for several locations in southern Connecticut:

Site	Maximum 24-hour SO^2 1978	Concentration ($\mu g/m^3$) 1979
New Haven	239	207
Bridgeport	237	207
Stamford	230	231
Greenwich	151	116

Since the affected LILCO units were burning 2.8 percent sulfur fuel oil at this time, EPA believes that the impact from LILCO's emissions is included within these measured values. It should be noted that no violation of either the primary 24-hour national ambient air quality standard for sulfur dioxide of 365 $\mu g/m^3$ or the State of Connecticut's secondary 24-hour standard for sulfur dioxide of 260 $\mu g/m^3$ has occurred. Furthermore, LILCO has submitted for EPA review a supplemental air quality modeling analysis which indicates that on the day of the recorded maximum 24-hour concentration of 239 $\mu g/m^3$, only 14.6 $\mu g/m^3$ could be attributed to LILCO's emissions.

There are no measured or predicted violations of the primary annual (80 $\mu g/m^3$) or secondary 3-hour (1300 $\mu g/m^3$) national ambient air quality standard for sulfur dioxide.

With respect to particulate matter emissions, EPA had determined that there were no discernable increases in particulate matter emissions associated with this SIP revision. Particulate matter emission control equipment is operated at each affected unit, and stack tests have demonstrated compliance with the New York State particulate matter emission limitation of 0.1 lbs./million BTU. However, in response to the Connecticut petition, EPA has determined that the maximum particulate matter impact in Connecticut resulting from emissions from the Northport and Port Jefferson generating facilities is 0.10 $\mu g/m^3$ on an annual basis and 2.06 $\mu g/m^3$ for a 24-hour period. The primary annual standard for particulate matter is 75 $\mu g/m^3$, the secondary annual guideline is 60 $\mu g/m^3$ and the secondary 24-hour standard for particulate matter is 150 $\mu g/m^3$.

2. *Consolidated Edison Company of New York, Inc.* The State of Connecticut filed a Section 126 petition with EPA on May 16, 1980, requesting EPA to disapprove New York State's proposed SIP revision to allow Con Edison to use fuel oil with a maximum sulfur content of 1.5 percent, by weight, for a one-year period at two units of its Arthur Kill generating station and at one unit of its Ravenswood generating station.

Connecticut requested the Administrator of EPA to disapprove the proposed SIP revision for the following reasons:

- Section 110(a)(2)(E)(i) of the Act prohibits adoption of this proposal as a final rule in that it would interfere with Connecticut's SIP by consuming, according to EPA, approximately 21 percent of the PSD increment for sulfur dioxide for a 24-hour period in the Connecticut portion of the New Jersey-New York-Connecticut Air Quality Control Region. Furthermore, to permit such a large increment for one utility would demonstrate EPA's total failure to consider a regional approach to an air quality issue that clearly cuts across state lines. It would further threaten to restrict economic growth in parts of Connecticut during a time in which there is great concern over the region's economic stability and unemployment. In addition, it would prejudice the State of Connecticut in its attempt to marshal its clean air resources under its SIP as approved by the EPA and will most certainly inhibit the establishment of any state-run PSD program within the State of Connecticut in the future. Also, the lack of competent technical data for purposes of establishing the baseline in the Connecticut portion of the New Jersey-New York-Connecticut Air Quality Control Region renders any final determination as the impact on existing clean air margins within the State of Connecticut and elsewhere by the subject proposed SIP revision incompetent at this time and, therefore, requires that the subject proposal be denied. Finally, failure on the part of the applicant to scrupulously follow EPA modeling guidelines renders any determination as to the amount of increment consumed in Connecticut unreliable at best.
- Section 110(a)(2)(E)(i) of the Act further prohibits adoption of this proposal as a final rule in that it would exacerbate existing violations of the NAAQS for TSP in the State of Connecticut. All of the State of Connecticut has been designated non-attainment for the secondary TSP standard, and Greenwich,

Connecticut, which would be among the most severely impacted by the granting of New York's SIP revision, has been designated non-attainment for the primary TSP standard. In view of the anticipated interference with NAAQS for TSP in Connecticut that would result from the granting of the approval of this SIP revision, said approval should be withheld by EPA.

As indicated earlier in this notice, in Subsection III.B., EPA approved New York State's proposed SIP revision on August 11, 1980 (45 FR 53138). EPA in approving the New York SIP revision had determined that the use of high sulfur content fuel oil by the two Con Edison generating stations for a one-year period would not cause any primary or secondary ambient air quality standard to be exceeded. With regard to the issue of PSD increment consumption, EPA had determined that the use of high sulfur fuel oil would not violate any PSD increment and, since its use had only been approved for one year, would not preclude regional growth. It was further stated that any extension of EPA approval of this action would have to be initiated by a new SIP revision request from New York State. EPA would then be required to evaluate this new request on the basis of the amounts of PSD increment which remain available at the time of the request, considering the emissions growth which had occurred on a "first come-first served" basis in the intervening period.

If a source wished to locate within the impact area of this action it presumably could fulfill all PSD requirements and receive a PSD permit during this intervening period of time. In this event, the amount of PSD increment used by the source would not be available to accommodate a permanent relaxation of fuel sulfur requirements for oil contained in the New York SIP.

In establishing the air quality baseline for PSD increment analysis within the Connecticut portion of the New Jersey-New York-Connecticut Air Quality Control Region, EPA utilized data generated by the Connecticut Department of Environmental Protection. Furthermore, EPA had determined that the air quality modeling submitted by the State of New York met EPA's modeling requirements.

As noted in the May 21, 1980 **Federal Register** (45 FR 33981), New York State is currently revising its SIP for the New York City metropolitan area to provide for attainment of the secondary national ambient air quality standard for particulate matter. The particulate matter emission limitations in the currently approved SIP were being met by Con Edison prior to the approval of the SIP revision and must continue to be met with the use of high sulfur content fuel oil. EPA intends to assure that these limitations are currently being met by requiring, under Section 114 of the Clean Air Act, stack sampling of the affected sources. This sampling is expected to be conducted in November. With regard to the impact within Connecticut from particulate matter emissions from the affected Con Edison units, EPA in its analysis had predicted a maximum impact of 1.44 $\mu g/m^3$ on a 24-hour basis and 0.10 $\mu g/m^3$ on an annual basis.

B. New Jersey

1. *Consolidated Edison Company of New York, Inc.* On April 29, 1980 the State of New Jersey petitioned EPA in accordance with Section 126 of Clean Air Act to request that EPA disapprove New York State's proposed SIP revision which allows the use of high sulfur content fuel oil at two plants operated by Con Edison.

The State of New Jersey requested the Administrator of EPA to disapprove the proposed SIP revision for the following reasons:

- Section 110(a)(2)(E)(i) of the Act prohibits adoption of this proposal as a final rule in that it would interfere with New Jersey's SIP by consuming approximately 46 percent of the PSD increment for sulfur dioxide for a 24-hour period in parts of New Jersey. Furthermore, to permit such a large increment for one utility would demonstrate EPA's total failure to consider a regional approach to an air quality issue that clearly cuts across state lines. It would further threaten to restrict economic growth in parts of New Jersey during a time in which there is great concern over the region's economic stability and unemployment.
- Section 110(a)(2)(E)(i) of the Act further prohibits adoption of this proposal as a final rule in that it would exacerbate the particulate emissions problem in a non-attainment area for the secondary ambient air quality standard for particulates. The estimate submitted by Con Ed of the increment to be consumed for particulate emisssions is unsubstantiated and deserves further analysis by EPA.

For background information on PSD increment consumption and regional economic growth, the reader is referred to the discussion in Subsection IV.A.2. of today's notice.

Regarding the issue of particulate matter emission factors as calculated by Con Edison, EPA reviewed these factors and found them acceptable. Even if the emission factors suggested by New Jersey were used, the predicted impacts would not change significantly. EPA also projected the particulate matter impact within New Jersey from the affected Con Edison units and calculated a maximum 24-hour impact of 3.18 $\mu g/m^3$ and an annual impact of 0.25 $\mu g/m^3$.

2. *Regional Coal Conversion.* As noted earlier, the State of New Jersey petitioned EPA under the provisions of Section 126 of the Clean Air Act to disapprove the New York SIP revision affecting Con Edison. In its petition the State also requested that its comments submitted on February 19, 1980, in response to EPA's proposed approval, be incorporated as a part of the State's petition. In its February 19, 1980 submittal the State made the following statements dealing with regional coal conversion:

"It makes little sense to use the limited, remaining dilutive capacity of our air in the New York-New Jersey region for the buring of high sulfur fuel oil. The proposal does nothing to promote President Carter's national energy policy; not one more ounce of coal will be burned as a result of this action. The remaining dilutive capacity of the atmosphere to absorb additional contaminants must be reserved for the increased air pollution that will necessarily result from anticipated coal conversions at utility and industrial plants in the region and for new economic growth. The idea of this as a test for a future decision on coal burning is so flimsy as to not deserve comment."

The State continued by noting that:

"Before any sulfur-in-fuel or coal conversion changes are approved, it is incumbent upon EPA and the states to determine precisely the full extent of all reasonably foreseeable changes in emission limits, and then develop a comprehensive and equitable regional strategy for limiting sulfur pollution."

In the State's concluding comments, it recommends that EPA reject the SIP revision in the hope that this action will encourage the early development of a common policy by New York and New Jersey with respect to the air pollution control problems generated by the coming need for clean coal conversions.

Concern about the problems resulting from anticipated coal conversions can also be inferred from the Connecticut petitions.

As a first step in quantifying the magnitude of potential particulate matter and sulfur dioxide interstate air quality impacts associated with anticipated regional coal conversions, EPA will present at the public hearing initial findings from a modeling study EPA has undertaken after discussion

with the states. This study considers the emissions from 17 power plants in and around the New Jersey—New York—Connecticut metropolitan area which are being considered by the U.S. Department of Energy as coal conversion candidates. Opportunity for the public to examine and comment for the record on this initial modeling effort will be available until the January 5, 1981 date when the record closes. In the future this model will be refined so as to be capable of being used by the states in the selection of various mutually acceptable control strategy scenarios governing future coal use.

V. Hearing Issues

EPA considers that the degree of protection afforded by the interstate pollution provisions of Section 126 include not only protection against national ambient air quality standard violations, but also protection against unreasonable interference with a maintenance program or margin for growth in a SIP. In reaching this conclusion, the Agency has reviewed the interstate pollution provisions of the Act, including Sections 101, 110, 126 and 301, their legislative history and pertinent case law. The Agency is of the opinion that these provisions evidence Congressional intent to protect against unreasonable interstate interference with State programs to maintain national ambient air quality standards and create margins of growth, as well as efforts to attain the standards, prevent significant deterioration of air quality and protect visibility. Such efforts may include State adoption of emission limitations that are more stringent than needed to attain federal standards. In addition, EPA believes that the provisions are designed to protect against interstate interference with State or local ambient air standards or other measures more stringent than necessary to attain federal standards. See, H.R. Rep. No. 95–294, 95th Cong., 1st Sess., May 12, 1977, 331, n.14.

Issues that should be addressed at the hearing by the interested parties and the public are as follows:

A. Connecticut Petitions

Long Island Lighting Company. 1. Do the affected LILCO generating facilities by themselves cause or substantially contribute to air pollution concentrations in excess of the national ambient air quality standards in Connecticut?

2. Does the use of fuel oil with a sulfur content of 2.8 percent, by weight, in five units at the affected LILCO generating facilities interfere with measures contained in the Connecticut SIP to provide a program for air quality maintenance or create a margin for future growth for attainment or PSD purposes?

3. Should the fact that the use of fuel oil with a sulfur content of 2.8 percent, by weight, is reviewable at three year intervals, and hence can be reevaluated in light of future SIP measures which may be developed by Connecticut, be considered by EPA in making its findings?

4. Should approval of the LILCO "special limitation" be accompanied by the establishment of an appropriate air monitoring network in Connecticut?

5. Whether and to what extent EPA should consider the aggregate impact upon Connecticut from emissions originating in the New York City metropolitan area in determining whether emissions from the LILCO facilities violate the prohibitions of Section 110(a)(2)(E)(i) of the Clean Air Act?

Consolidated Edison Company of New York, Inc. 6. Do the affected Con Edison generating facilities by themselves cause or substantially contribute to air pollution concentrations in excess of the national ambient air quality standards in Connecticut?

7. Does the use of fuel oil with a sulfur content of 1.5 percent, by weight, in three units at the affected Con Edison generating facilities interfere with Connecticut's program to maintain or prevent significant deterioration of air quality?

8. Should the fact that the use of fuel oil with a sulfur content of 1.5 percent, by weight, is reviewable at a one year interval, and hence can be reevaluated in light of future SIP measures which may be developed by Connecticut be considered by EPA in making its findings?

B. New Jersey Petition

Consolidated Edison Company of New York, Inc. 9. Do the affected Con Edison generating facilities by themselves cause or substantially contribute to air pollution concentrations in excess of the national ambient air quality standards in New Jersey?

10. Does the use of fuel oil with a sulfur content of 1.5 percent, by weight, in three units at the affected Con Edison generating facilities, interfere with New Jersey's program to maintain or prevent significant deterioration of air quality?

11. Should the fact that the use of fuel oil with a sulfur content of 1.5 percent, by weight, is reviewable at a one year interval, and hence can be reevaluated in light of future SIP measures which may be developed by New Jersey be considered by EPA in making a finding?

Regional Coal Conversion. 12. To what extent should regional coal conversion issues be considered in EPA's review of the pending Section 126 petitions affected LILCO and Con Edison?

13. How should projections of the aggregate air quality impact of anticipated coal conversions at 17 candidate power plants in the New Jersey-New York-Connecticut metropolitan area under existing SIP emission limits and other control assumptions be factored into the findings to made as a result of the Section 126 petitions?

14. Assuming an unacceptable air quality impact is determined to occur, what is an appropriate forum for ensuring, consistent with the nation's oil independence objectives, that the maximum amount of coal is used while minimizing adverse air quality impacts? What are the states' roles in this decision?

15. What control strategy development actions should be considered in light of the impact of coal conversions on acid rain?

16. Should any actions be taken by the states to revise their current regulations governing coal burning in the New Jersey-New York-Connecticut metropolitan area?

C. Generic Issues

17. Suggestions are also solicited on other appropriate criteria for EPA arbitration of interstate disputes. Suggestions should include consideration of the following questions:

a. What constitutes an unacceptable interstate air quality impact?

b. How should differences between state emission limits generally be compared against the estimated air quality impacts of out-of-state sources and comparable in-state sources.

c. What criteria should EPA utilize when air quality impacts may be difficult to ascertain, for example, when multiple sources and pollution transport over considerable distances may be involved?

d. In such a situation, should EPA give a lesser weight to air quality impacts and a greater weight to differences in emission limits?

e. Under what circumstances should the Agency consider the application of reasonably available control technology by the contested sources to be sufficient in and of itself to avoid a finding of impermissible interstate pollution?

f. Under what circumstances should EPA require regionally uniform emission limits or uniform control technologies?

VI. Hearing Procedures

A. Hearing Format

A panel of EPA officials will conduct an informal public hearing on the issues identified in Section V of today's notice. Although no cross-examination will take place at the hearings, the panel may ask questions of witnesses to clarify issues or to make the record complete. Written questions directed at the witnesses may be submitted to the panel by members of the audience. Any person wishing to make a presentation or submit material for inclusion in the hearing record should provide written notice of this intention by November 25, 1980, to: Robert A. Predale, Environmental Protection Agency, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264–9800.

This notice should include: (1) the name(s), title(s), and affiliation(s) of the person testifying, (2) an estimate of the amount of time necessary for the presentation and (3) an identification by number of the specific issue identified in Section V, "Hearing Issues," of today's notice which will be addressed by the commentor. If an individual believes that any of his comments will not address an issue explicitly identified by EPA in Section V, EPA requests that the individual petition to which the comment applies be identified. The petitions are described in Section IV, "Petition Contents and Background" of today's notice. The time allotted for each presentation will depend on the number of persons seeking an opportunity to appear.

A verbatim transcript of the hearing, copies of written statements, and copies of other material will be made available for public inspection and copying during normal working hours at the EPA Region II Air Programs Branch (New York), and the EPA Public Information Reference Unit (Washington). The same documents will be available for inspection at the New Jersey Department of Environmental Protection (Trenton), the New York State Department of Environmental Conservation (New York City and Stony Brook) and the Connecticut State Department of Environmental Protection (Hartford). The addresses for these locations are listed in the ADDRESSES section at the beginning of this notice.

B. Submission of Written Material

EPA solicits and will accept from all interested parties written materials relevant to the issues set forth above. Ten copies of the material should be submitted. EPA encourages the filing of written statements prior to the hearing, but they may be filed at the hearing itself. The public hearing record will be kept open until January 5, 1981 to provide an opportunity for the public to submit rebuttal and supplementary information on the data presented at the hearing. Written materials should be submitted to Robert A. Predale, Air Programs Branch at the address provided earlier and should include reference to "Docket No. 2A–80–1."

EPA recognizes that interested persons may require a period of time prior to the hearing to read the written submissions of other interested parties so that informed comments can be made at the public hearing. All written comments submitted prior to the public hearing will be available for public inspection and copying during normal business hours at the following addresses: Environmental Protection Agency, Region II, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278 and Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

C. Final Determination

EPA's final determination in these proceedings will be based upon evidence in the record and will be announced in the **Federal Register.** If EPA finds that emissions from those major sources which are the subject of these proceedings violate the prohibitions of section 110(a)(2)(E)(i) of the Clean Air Act, it may propose the establishment of emission limitations, and compliance schedules as may be necessary to ensure compliance with the requirements of Section 110(a)(2)(E)(i) as expeditiously as practicable, but no later than three years after the finding. Such proposals will be published in the **Federal Register.**

Dated: October 29, 1980.

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 80-34287 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 163

[FRL 1541-2; OPP-250027]

Guidelines for Registering Pesticides in the United States; Notification of the Secretary of Agriculture of Final and Proposed Regulations

Correction

In FR Doc. 80–21716 appearing on page 48170 in the issue of Friday, July 18, 1980, make the following correction:

In column three of page 48170, the second paragraph under **Supplementary Information** contained several errors. For the convenience of the reader, the entire paragraph is reprinted below:

For a proposed regulation, Section (a)(2)(A) of FIFRA requires that the Administrator shall provide the Secretary of Agriculture a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the **Federal Register** (with the proposed regulation) the comments of the Secretary, and the response thereto of the Administrator. If the Secretary does not comment within 30 days of receiving the final regulation, the Administrator may sign such regulation for publication in the **Federal Register** any time after such 30-day period.

BILLING CODE: 1505-01-M

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40 CFR Part 180

[PH-FRL 1652-7; PP OE2323/P153]

Acephate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite methamidophos (*O,S*-dimethyl phosphoramidothioate) in or on mint hay at 15 parts per million (ppm) (of which no more than 1 ppm is methamidophos). This proposal was submitted by the Interregional Research Project No. 4 (IR–4). This amendment will establish a maximum permissible level for residues of acephate on mint hay.

DATE: Comments must be received on or before December 3, 1980.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–124, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher (202–426–0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, has submitted a pesticide petition

(OE2323) to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Idaho, Indiana, Michigan, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite methamidophos (*O,S*-dimethyl phosphoramidothioate) in or on the raw agricultural commodity mint hay at 15 ppm (of which no more than 1 ppm is methamidophos).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance were a two-year oral dog feeding study with a no-observed-effect-level (NOEL) of 100 ppm, based on a systemic toxicity; a rat teratology study with a NOEL of 200 mg/kg; a 90-day cholinesterase rat study with a NOEL of 5 ppm, based on brain, plasma, and red blood cell activity; an interim (12 months) report on an ongoing two-year rat feeding/oncogenic study which indicates a NOEL of 5 ppm for cholinesterase activity for red blood cells and plasma for both male and female rats, and 5 ppm for female rats and less than 5 ppm for male rats for brain cholinesterase activity. On the basis of this incomplete report and an interim report of oncogenic effects in the mouse, acephate does not appear to be a carcinogen. Acephate did not display mutagenic activity in a recently conducted micronucleus test (mouse bone marrow).

The metabolism of acephate is adequately understood and an adequate analytical method (gas chromatograph equipped with a themionic detector) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical. No detectable residues (less than 0.02 ppm) were found in the mint oil.

Thus, based on the above information considered by the Agency, the significance of mint in the human diet, and the fact that the currently established tolerances for meat and milk are adequate to cover any residues from spent mint hay as a animal feed, it is concluded that the tolerance of 15 ppm in or on mint hay established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register**, that the rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "PP OE2323/P153." All written comments filed in response to the notice of proposed rulemaking will be available for public inspection at the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays.

Note.—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." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 516, (21 U.S.C. 346a(e))

Dated: October 28, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting "mint hay" in the table under § 180.108 to read as follow:

§ 180.108 Acephate; tolerances for residues.

* * * * *

Commodity	Parts per million
Mint hay	15 (of which no more than 1 ppm is *O,S*-dimethyl phosphoramidothioate)

[FR Doc. 80-34111 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 257

[SW-FRL 1650-3]

Criteria for Classification of Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing modifications to and clarifying its interpretation of its Criteria for Classification of Solid Waste Disposal Facilities and Practices. The proposed modifications and clarifications concern the criteria for ground water, surface water and air protection. The modifications also clarify the exclusion for mining overburden returned to the mine site. EPA is proposing this rule as part of a settlement agreement reached with industrial groups which have challenged the criteria in Federal court.

DATES: EPA will accept public comments on the proposed modifications until December 3, 1980.

ADDRESSES: Comments should be addressed to Albert A. Peter, Jr., Director, Land Disposal Division, Office of solid Waste [WH–564], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 4004."

The public docket for this proposed rulemaking is located in room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Shuster, Office of Solid Waste (WH–564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–9125.

SUPPLEMENTARY INFORMATION: On September 13, 1979, EPA published a final rule establishing Criteria for the Classification of Solid Waste Disposal Facilities and Practices. 44 FR 53438. These Criteria were issued pursuant to Sections 1008(a)(3) and 4004(a) of the Solid Waste Disposal Act (the Act), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6907(a)(3), 6944(a), and Section 405(d) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1345(d).

These Criteria serve two purposes

under RCRA. First. under Section 4004(a) they provide criteria for classifying disposal facilities as "sanitary landfills" and "open dumps." As part of their solid waste management planning programs funded under Subtitle D of RCRA. the States will use these Criteria to classify existing disposal facilities. Under 4005(b) of RCRA, EPA will publish an inventory of facilities classified as open dumps. As part of its plan, the state must provide for the closing or upgrading of existing open dumps. the state will use the inventory in setting priorities for its state planning activities.

Second, under Section 1008(a)(3) the Criteria define those solid waste disposal practices that constitute "open dumping." Section 4005 of RCRA prohibits open dumping. Under Section 7002 citizens may bring suit in Federal district court to enjoin acts that constitute open dumping. For both purposes the Criteria establish the level of protection necessary to assure that there will be "no reasonable probability of adverse effects on health or the environment."

A number of trade associations petitioned for review of the Criteria. Their concerns focused on the ground water, surface water and air portions of the Criteria as well as the applicability of the Criteria to mining wastes. After discussing these issues with the petitioners, EPA has decided to reconsider certain portions of the Criteria and clarify other portions. While EPA anticipates that the finalization of these proposed modifications will provide a basis for settlement of the litigation affecting these regulations, EPA will consider carefully all public comments on this proposal before making its final decision.

EPA recognizes that the 30-day comment period for this proposed rule is somewhat shorter than that which is provided for in other Agency proposals. EPA believes, however, that two factors justify the shorter time period. First the issues involved should not require lengthy analysis by public commentes. The proposed modifications involve a limited number of primarily procedural changes. Since the proposal does not raise major technical questions requiring the development and presentation of scientific data, commenters should be able to address the issues adequately in the 30-day period. Second, there is a need to clarify these issues quickly because they are related to the ongoing Subtitle D planning program. In particular the States will need a prompt clarification of the extent of their discretion in implmenting the ground-water portion of the Criteria as they conduct the open dump inventory.

I. Ground Water (§ 257.3–4)

The existing ground water standard requires that the facility or practice "not contaminate an underground drinking water source beyond the solid waste boundary or beyond an alternative boundary" specified by the State. An "underground drinking water source" is an aquifer that supplies drinking water for human consumption or that contains less than 10,000 mg/liter of total dissolved solids. The "solid waste boundary" is defined as "the outermost perimeter of the solid waste (projected in the horizontial plane) as it would exist at completion of the disposal activity."

"Contamination" as used in the standard refers to increases in the level of certain specified pollutants that exceed maximum contaminant limits (MCL's) specified for each pollutant. These MCL's, contained in Appendix I of the existing regulation, are based on standards established by EPA in the National Interim Primary Drinking Water Regulation under the Safe Drinking Water Act, as amended, 42 U.S.C. § 300f *et seq.* EPA also has proposed (44 FR 53465) adding the MCL's established under the National Secondary Drinking Water Regulations to Appendix I.

While EPA decided that the solid waste boundary was the appropriate point of application of the standard as a general rule, it recongized that in particular situations it may not actually be possible or probable that ground water downgradient from a facility would be needed or used as a drinking water source. EPA, therefore, believed that it was appropriate to allow the State to modify the point of application of the standard (establish an alternative boundary) for particular facilites. In order to establish such an alternative boundary, the State has to make a finding that "such a change would not result in contamination of ground water which may be needed or used for human consumption." This finding has to be based on the consideration of seven specified factors. In addition, only a State with a solid waste management plan approved by the Administrator pursuant to section 4007 can move the boundary.

The petitioners have argued that the alternative boundary mechanism under the regulation is too inflexible for at least two reasons. First, it does not allow the State to fix alternative boundaries unless the State has an approved State plan. The petitioners contend that the plan development and approval process may be time-consuming. They argue that a State which wishes to make alternative boundary determinations will be forced to wait until the plan is approved. In the interim such a State would be basing its decisions on compliance at the solid waste boundary. even though it believed that an alternative boundary was more appropriate for that facility.

Second. the petitioners contend that defendants in open dumping suits should be allowed to argue for the appropriateness of an alternative boundary designation in assessing their compliance with the Criteria. The petitioners contend that the right to demonstrate that an alternative boundary is appropriate is particularly necessary in an open dumping suit, where legal sanctions attach to violations of the Criteria.

After examining these contentions EPA has decided to propose modifications to the regulations which respond to those two concerns. First, EPA proposes to drop the requirement that the State have an approved plan before it may establish alternative boundaries. Many States are currently conducting the inventory. EPA has not yet received many draft State plans and, therefore, anticipates that plans will not be approved for several months in many States. EPA acknowledges that this situation limits the flexibility of a State which believes that alternative boundaries are appropriate for particular facilities.

While EPA believes that the alternative boundary decision is best made in the context of a comprehensive solid waste mangement plan as contemplated by Subtitle D of RCRA, EPA also recognizes that existing State planning programs for solid waste management and ground water protection may provide an adequate framework for making such decisions. In addition the elimination of the "approved-State plan" limit on the alternative boundary decision does not alter the substantive finding which the State must make in order to establish an alternative boundary. Under this proposal the State still could establish such a boundary only after considering the seven factors set forth in § 257.3–4(b) and concluding that the change "would not result in contamination of ground water which may be needed or used for human consumption."

Second, EPA proposes to allow defendants in open dumping suits to argue that an alternative boundary is appropriate in determining its compliance with the Criteria. The court hearing the open dumping claim would then be allowed to set such an alternative boundary if it determined, based on evidence presented by the

defendant, that the change "would not result in contamination of ground water which may be needed or used for human consumption," after a consideration of the seven factors in § 257.3–4(b).

In making this modification EPA must draw a distinction in the Criteria between the two purposes of the regulation under RCRA. Under Section 1008(a)(3) the Criteria define open dumping, practices which are prohibited under Section 4005(c). The question of whether acts of open dumping have occurred is one for the courts to resolve after reviewing the evidence presented in citizen suits. Therefore, for purposes of the open dumping prohibition, EPA believes that the court, rather than the State, is the appropriate public decision-maker to determine whether an alternative boundary is appropriate in a given case. (The State is not necessarily a party to open dumping suits.) Thus this proposal would make clear that for purposes of Section 1008(a)(3) the court could establish alternative boundaries based on evidence presented by the parties in a citizen suit.

EPA believes that a *de novo* determination that a party has engaged in open dumping should be made only after that party has had an opportunity to demonstrate that an alternative boundary should be established for the facility. Because a finding of "open dumping," unlike listing a facility on the inventory, is an adjudication that a particular party is in violation of the law, EPA believes that careful consideration should be given to the appropriateness of establishing an alternative boundary. If the court determines that a particular alternative boundary should be set, and that the ground-water criterion is satisfied at that alternative boundary, then (under today's proposal) it could not find that the owner had engaged in the practice of "open dumping."

Under Section 4004(a), the Criteria provide a benchmark for the State to use in classifying facilities for purposes of its solid waste management planning program. As part of that planning program the States will be developing a State-wide strategy for protecting ground water from the adverse effects of solid waste disposal. In such a situation it is appropriate for the State to make the decision about alternative boundaries in consideration of the ground-water needs of its communities. EPA believes that alternative boundaries will be appropriate in particular circumstances. It also believes, however, that the decision about setting such boundaries for purposes of solid waste planning must be a State option. Therefore, for purposes of section 4004(a), this proposal would retain the State's role in establishing alternative boundaries.

The petitioners challenging the Criteria have raised another issue that should be noted. The existing language of section 257.3–4 does not include provisions, as contained in the proposed regulation of February 6, 1978 (43 FR 4954), authorizing States to designate "Case II" aquifers which would not be protected for use as drinking water supplies. The petitioners are concerned that States may interpret the final EPA regulations as discouraging long-range ground-water planning efforts that identify those aquifers which may or may not have importance as potential drinking water sources. EPA is currently reviewing its overall approach to ground-water protection under Subtitles C and D of RCRA. The comprehensive ground-water policy which it is developing may incorporate the concept that aquifers may be designated for different uses. Thus State designation of particular aquifers as not for drinking water use may eventually become part of the Subtitle D program.

EPA is not prepared at this time to provide specific guidance to the States regarding criteria to be used in designating aquifers that would not need to be protected for use as drinking water supplies. However, the Agency definitely does not intend to discourage the development and continuation of ground-water planning efforts by the States. *See* 40 CFR 256.11(c) (1979). Nor does EPA intend that State ground-water planning decisions presently cannot be considered in implementing the Subtitle D program. In particular, where a State has determined that a certain aquifer need not be protected for drinking water use, such a determination may be used in establishing an alternative boundary under section 257.3–4(b), providing that the State has considered the factors and made the finding required in the Criteria.

Finally EPA wishes to clarify its intent regarding the inclusion of the National Secondary Drinking Water Regulation MCL's in Appendix I. While EPA is considering using those standards as part of its overall ground-water strategy, it has no immediate plans to incorporate them into Appendix I.

II. Surface Water (§ 257.3–3)

Section 257.3–3 states that a facility or practice shall not cause (1) a discharge of pollutants into waters of the United States in violation of NPDES requirements under Section 402 of the Clean Water Act (CWA), (2) a discharge of dredge or fill material into waters of the United States in violation of requirements under Section 404 of the CWA, or (3) non-point source pollution of waters of the United States that violates legal requirements implementing an approved water quality management plan under Section 208 of the CWA.

The petitioners have expressed concern that the Criteria make a violation of the CWA also a violation of RCRA. They argue that this raises the possibility that parties will simultaneously be subject to penalties under the CWA and citizen suits to enjoin open dumping under RCRA.

EPA does not believe that a solid waste disposal facility or practice which violates the CWA is environmentally acceptable. At the same time EPA believes that the CWA provides adequate sanctions to deter violations of that Act. It is not necessary to make violations of the CWA subject to sanctions under RCRA. Therefore EPA proposes to eliminate this possibility by deleting the references to NPDES permits and 404 permits in the Criteria for purposes of Section 1008(a)(3). This assures that a violation of Sections 402 or 404 of the CWA is not automatically open dumping, a violation of Section 4005(c) of RCRA.

EPA does not propose to change the NPDES and 404 permit requirement for purposes of Section 4004(a). The open dump inventory is a planning tool and does not subject a facility to direct sanctions under RCRA. Therefore the prospect of legal exposure under both acts is not present. Likewise EPA does not propose to change the reference to legal requirements implementing Section 208 water quality management plans. Such requirements are matters of State or local law, and violations are not directly enforceable under the CWA. Therefore the prospect of sanctions under both acts is not present.

III. Air (§ 257.3–7)

Section 257.3–7 states that a facility or practice shall not violate applicable requirements developed under an approved State implementation plan (SIP) under Section 110 of the Clean Air Act (CAA). In addition that section bans open burning except in certain special situations (e.g. emergency clean-up operations, burning of agricultural wastes in the field.)

The petitioners have expressed concern that violations of a SIP may evoke sanctions under both the Clean Air Act and RCRA. Since SIP requirements may be enforced by EPA and by citizens under the CAA such a possibility exists. While EPA does not

believe that solid waste management activities which violate a SIP are acceptable, it also believes that such violations can be adequately enforced under the CAA. Therefore EPA is proposing to delete the reference to SIP's in the air portion of the Criteria for purposes of Section 1008(a)(3).

With respect to the "open burning" prohibition set forth in § 257.3–7(a) of the regulations, petitioners have asked whether EPA intended to subject incinerators to regulation under Subtitle D of RCRA. Subtitle D applies only to disposal facilities. As defined in Section 1004(3), "disposal" is the "discharge, deposit, injection, dumping, spilling, leaching, or placing of any solid waste or hazardous waste *into or on any land or water*. . . ." Accordingly, EPA does not intend that conventional incinerators be covered by Subtitle D since they do not typically involve burning of waste in direct contact with the land. Trench or pit incinerators, which do involve burning of waste in direct contact with the land, are covered by the Criteria. EPA believes that this preamble statement should eliminate any confusion or concern on the application of the open burning prohibition to incinerators. Therefore no actual amendment to the Criteria is necessary.

IV. Mining Overburden (§ 257.1(c)(2))

Currently the Criteria, at § 257.1(c)(2), exclude from regulation "overburden resulting from mining operations intended for return to the mine site." That term is not defined in the existing regulations. Several of the petitioners representing the mining industry have sought clarification of the scope of this exclusion.

The exclusion is drawn from the legislative history of RCRA and applies to both solid and hazardous waste. The hazardous waste regulations issued May 19, 1980 (45 FR 33066) include an exclusion for "mining overburden returned to the mine site" based on the same legislative history. To provide consistency between the two programs EPA will use the term "mining overburden returned to the mine site" when referring to this exclusion under either program.

As indicated, this exclusion is based on RCRA's legislative history. In enacting RCRA, the Congress specifically included mining wastes within the Section 1004(27) definition of "solid waste." Therefore unless the statute or legislative history clearly indicate that mining wastes are to be exempt the presumption is that they are to be regulated like any other solid or hazardous waste. Portions of RCRA's legislative history in both the Senate and House of Representatives suggest, however, that certain kinds of mining overburden are not within the Act's jurisdiction. In discussing RCRA's scope the House Report states:

> [O]verburden resulting from mining operations and intended for return to the mine site is not considered to be discarded material within the meaning of this legislation. This however does not preclude any finding by the Administrator that specific mine wastes are hazardous within the scope of this legislation.

In the Senate this issue was discussed during the floor debate when Senator Domenici asked about the effect the RCRA on mining operations, particularly strip mining. As part of his response Senator Randolph stated:

> The measure would not affect surface mining activities. Reclamation is not solid waste disposal.

Reclamation of surface mines will commonly involve the return to the mine site of waste overburden that has been removed to gain access to the ore deposit. Since it is assumed that both the Senate and House had similar objectives in passing RCRA, the "returned to the mine site" language in the House Report must be read in light of the Senate's concern that mining wastes used to reclaim surface mines should not be subject to RCRA. EPA believes, therefore, that the most reasonable interpretation of the "returned to the mine site" phrase is one that limits the exemption to mining waste used to reclaim surface mines.

In defining "overburden" it is necessary to distinguish that material from the underlying strata of material to which the mining operator seeks to gain access. EPA considered referring to this underlying material as the "economic mineral" or the "mineral being mined for use." While both terms basically convey the same meaning, EPA has decided to use "economic mineral" because it may have a clearer meaning to mining operators. The intent of the term is to identify the material that the mining operator is in the business to extract from the ground.

In keeping with the Congressional intent that this exclusion is designed for overburden used to reclaim surface mines, the definition is limited to overburden "overlying" a mineral deposit. The Department of Interior makes a similar distinction in the definition of overburden in its regulations under the Surface Mining Control and Reclamation Act. EPA does not intend this definition of overburden to be limited exclusively to the material located directly above a mineral deposit. Some material is removed from the sides of a mining pit to permit safe access to the economic mineral, and such material should be treated as overburden. EPA urges the public to provide suggestions about how the definition may be refined if there appears to be any confusion about the meaning of "overlying" in this context.

Overburden material must be "returned to the mine site" before it is excluded from regulation under RCRA. As indicated earlier, the purpose of the exemption is to assure that mining wastes used to reclaim surface mines are not subject to regulation as solid or hazardous waste. EPA recognizes that reclamation does not necessarily involve replacement of overburden into the portion of the ground from which it was taken. EPA also recognizes that surface mining reclamation may be subject to State or Federal regulation, making it difficult to provide a national definition of what constitutes reclamation. In particular it is difficult to provide a general definition of "mine site" that will fit with the various State and Federal requirements for reclamation.

EPA has decided, therefore, not to define what is meant by reclamation of a surface mine. Several commenters indicated that most reclamation activities are subject to State or Federal regulation. EPA expects that any permits or reclamation plans developed to satisfy such regulatory agencies will specify the reclaimed area, and these actions should provide an acceptable and understandable specification of the "mine site" as that term is used in this definition. EPA contemplated limiting the exemption to reclamation that was approved by State or Federal agencies. While such a requirement is not part of this proposed regulation, EPA is considering whether such a requirement should be part of the final definition. EPA seeks public comment on such a modification and is particularly interested to discover the extent to which environmentally sound reclamation activity occurs in the absence of Federal and State regulation.

This approach addresses two specific concerns. First, it clarifies the time component of the "returned to the mine site" concept because it ties the exemption to reclamation activity. Particularly where the mining operation is subject to State or Federal regulation, it should be reasonably clear what portion of the mine's overburden will be used over what period of time to implement a reclamation plan. Second, as indicated above, it eliminates the

need for a specific definition of mine site.

Dated: October 20, 1980.

Douglas M. Costle,

Administrator.

Accordingly it is proposed to amend Title 40 CFR, Part 257 by amending 40 CFR Part 257 as follows:

1. Revise § 257.1(c)(2) as follows:

§ 257.1 Scope and purpose.

* * * * *

(c)* * *

(2) The criteria do not apply to mining overburden returned to the mine site. "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

2. Revise § 257.3–3 (a) and (b) as follows:

§ 257.3–3 Surface water.

(a) For purposes of Section 4004(a), a facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the Clean Water Act, as amended.

[Note.—Solid waste management practices that violate Section 402 are subject to enforcement actions under the Clean Water Act.]

(b) For purposes of section 4004(a), a facility shall not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under section 404 of the Clean Water Act, as amended.

[Note.—Solid waste management practices that violate Section 404 are subject to enforcement actions under the Clean Water Act.]

3. Revise § 257.3–4(b) as follows:

§ 257.3–4 Ground water.

* * * * *

(b)(1) For purposes of Section 1008(a)(3), a party charged with open dumping may demonstrate that compliance should be determined at an alternative boundary in lieu of the solid waste boundary. The court shall establish such an alternative boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption. This finding shall be based on analysis and consideration of all of the following factors that are relevant:

(i) The hydrogeological characteristics of the facility and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, and direction of flow of ground water underlying the facility;

(iv) The proximity and withdrawal rates of ground water users;

(v) The availability of alternative drinking water supplies;

(vi) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water;

(vii) Public health, safety, and welfare effects.

(2) For purposes of Section 4004(a), the State may establish an alternative boundary for a facility to be used in lieu of the solid waste boundary only if it finds that such a change would not result in the contamination of ground water which may be needed or used for human consumption. Such a finding shall be based on an analysis and consideration of all of the factors identified in paragraph (b)(1) of this section that are relevant.

4. Revise § 257.3–7(b) as follows:

§ 257.3–7 Air.

* * * * *

(b) For purposes of Section 4004(a), the facility shall not violate applicable requirements developed under a State implementation plan (SIP) approved or promulgated by the Administrator pursuant to Section 110 of the Clean Air Act, as amended.

[Note.—Solid waste management practices that violate SIP requirements are subject to enforcement actions under the Clean Air Act.]

[FR Doc. 80–34027 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–01–M

40 CFR Part 423

[WH–FRL 1652–3]

Steam Electric Power Generating Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Public hearing.

SUMMARY: Notice is hereby given of a hearing open to the public to discuss and receive comments on pretreatment regulations proposed in the **Federal Register** as follows:

Proposal Date—October 14, 1980 (40 FR 68328)

Category—Steam Electric Power Generating.

DATES: A public hearing has been scheduled for the following date and place: December 9, 1980—Washington, D.C.

ADDRESS: The public hearing will be held at the following address: Hall of States, Skyline Inn, South Capitol and I Streets, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harold B. Coughlin, Effluent Guidelines Division (WH–552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 426–2560.

Anyone wishing to make an oral statement and submit written testimony at the hearing should indicate so in writing to the above address.

SUPPLEMENTARY INFORMATION: Registration for the Hearing will be held from 9:30 to 10:00 a.m. Oral testimony will be presented as follows: 10:30 to 11:30 a.m.; 1:00 to 3:00 p.m. Following the registration period there will be a brief presentation by an EPA official covering the development of effluent limitations and standards under the Clean Water Act of 1977. Also, opportunity will be given through the day for audience participants to submit written questions to the Presiding Officer. These questions will be addressed during a thirty minute question and answer session which will follow the presentation of oral testimony.

A court recorder will be present at the public hearing. Official transcripts will be available upon request.

Dated: October 29, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80–34103 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–29–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

41 CFR Part 101–20

Management of Buildings and Grounds; Display of the Code of Ethics for Government Service

AGENCY: Public Buildings Service, GSA.

ACTION: Proposed rule.

SUMMARY: This regulation implements Pub. L. 96–303, an Act to provide for the display of the Code of Ethics for Government Service. The Act requires the Administrator to provide for the publication and distribution of the code; to prescribe regulations by which each agency (Executive agency, the United States Postal Service, and the Postal Rate Commission) shall display the

Code in appropriate areas of buildings in which at least 20 individuals are regularly employed by an agency as civilian employees; and to accept any unconditional gift made for the purpose of the Act. The Act further stipulates that there shall be no cost imposed on the Federal Government for the printing, framing, or other preparation of the Code, which does not mean that appropriate hardware cannot be utilized for display. This regulation also requires that the Code be appropriately displayed in public space in Government-owned or fully Government-occupied leased buildings such as lobbies, auditoriums, cafeterias, and other high traffic areas.

DATE: Comments must be received on or before January 2, 1981.

ADDRESS: Comments should be addressed to the General Services Administration (PBOP), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Saul Katz, Special Counsel for Ethics, Office of the Administrator, General Services Administration, Washington, D.C. 20405, telephone (202) 566–1212, or Mr. Virgil Ostrander, Director, Operations Division, Office of Buildings Management, General Services Administration, Washington, D.C. 20405, telephone (202) 566–1563.

Subpart 101–20.4 is added to read as follows:

Subpart 101–20.4—Display of the Code of Ethics for Government Service

Sec.

101–20.400 Applicability.
101–20.401 General Services Administration responsibility.
101–20.402 Applicability in Government owned buildings and fully Government-leased buildings.
101–20.403 Applicability to partially leased buildings and Government controlled space in other buildings and facilities.
101–20.404 Availability.

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

Subpart 101–20.4—Display of the Code of Ethics for Government Service

§ 101–20.400 Applicability.

These regulations apply to all Executive agencies (as defined by section 105 of title 5, U.S. Code), the United States Postal Service, and the Postal Rate Commission in accord with the contents of Pub. L. 96–303. The head of each such agency shall be responsible for observance of these rules and regulations.

§ 101–20.401 General Services Administration responsibility.

The Administrator of the General Services is charged by Pub. L. 96–303 to prescribe regulations by which each agency shall display the Code; to provide for the publication and distribution of the Code; and is authorized to accept unconditional gifts for the purposes of the Act.

§ 101–20.402 Applicability in Government owned buildings and fully Government-leased buildings.

Each agency, as defined in 101–20.400, shall display copies of the Code in the space they occupy in Government-owned buildings or fully Government-leased buildings. Operating agencies shall also display the Code in appropriate locations in lobbies, auditoriums, cafeterias, and other high traffic areas. The act is not interpreted to prohibit the use of additional hardware and materials for appropriate mounting or displaying of the Code. This should be accomplished in a manner consistent with the display of the building rules and regulations. Display shall be consistent with the decor and architecture of the building space. Installation shall cause no permanent damage to stonework or other difficult to maintain or repair surfaces.

§ 101–20.403 Applicability to partially leased buildings and Government controlled space in other buildings and facilities.

Agencies shall display the Code in government occupied space in buildings not covered by 101–20.402 where at least 20 individuals are regularly employed by an agency as civilian employees.

§ 101–20.404 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 (NSN) 7690–01–099–8167; unit of issue—ea.; and unit price—50 cents to cover shipping and handling.

Dated: October 28, 1980.

A. R. Marschall,

Commissioner, Public Buildings Service.

[FR Doc. 80–34084 Filed 10–31–80; 8:45 am]

BILLING CODE 6820–32–M

41 CFR Part 105–60

Revisions to Public Access Regulations

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide procedures for public access to GSA records under the Freedom of Information Act (5 U.S.C. 552). The Administrator of General Services is required by law to issue these regulations.

DATE: Comments must be received by: January 2, 1981.

ADDRESS: Written comments should be sent to the General Services Administration (LR), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Rebecca P. Thompson, Attorney-Advisor, Information and Privacy (202–566–1460).

SUPPLEMENTARY INFORMATION: On February 26, 1975, the Administrator of General Services published in the **Federal Register** (40 FR 8200) public access regulations implementing the Freedom of Information Act (5 U.S.C. 552, "FOIA"). Those regulations combined instructions to the public on reviewing and obtaining copies of GSA records and provided guidance to GSA officers and employees on processing FOIA requests. This proposed rule will simplify procedures for the public's review of GSA records by separating the procedures for the public access rules from the procedures for GSA employees to follow. Procedures for access to records on deposit from other agencies in the Federal record centers are found in Part 105–61 of Title 41, Code of Federal Regulations. GSA's newly revised internal procedures for processing FOIA requests will appear as part of the GSA order system. Accordingly, GSA proposes to revise Part 105–60 to read as follows:

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.

105–60.000 Scope of part.

Subpart 105–60.1—General Provisions

105–60.101 Purpose.
105–60.102 Application.
105–60.103 Policy.
105–60.103–1 Availability of records.
105–60.103 2–Applying exemptions.
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Subpart 105-60.2—Publication of General Agency Information and in the Federal Register

Sec.

105-60.201 Published information and rules.
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Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

105-60.301 General.
105-60.302 Available materials.
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105-60.305-1 Scope of section.
105-60.305-2 Record material available without charge.
105-60.305-3 Copy of GSA records available at a fee.
105-60.305-4 Waiver of fee.
105-60.305-5 Searches.
105-60.305-6 Prepayment of fees over $10.
105-60.305-7 Form of payment.
105-60.305-8 Fee schedule.
105-60.305-9 Fees for authenticated and attested copies.

Subpart 105-60.4—Described Records

105-60.401 General.
105-60.402 Procedures for making records available.
105-60.402-1 Submission of requests for described records.
105-60.402-2 Response to initial requests.
105-60.403 Appeal within GSA.
105-60.404 Extension of time limits.

Subpart 105-60.5—Exemptions

105-60.501 Categories of records exempt from disclosure under FOIA.

Subpart 105-60.6—Subpoenas or Other Legal Demands for Records and Authentication of Copies of Records

105-60.601 Service of subpoena or other legal demand.
105-60.601-1 GSA administrative records.
105-60.601-2 Records transferred to the National Archives and Records Service.

Authority: The provisions of this Part 105-60 are issued under section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90-23, as amended by Pub. L. 93-502).

§ 105-60.000 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of records held by GSA with respect to: (a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability, (b) agency final opinions and orders, including policy statements and staff manuals, (c) operational and other appropriate agency records, and (d) agency proceedings. This part also covers exemptions from disclosure of these records; procedures for the guidance of the public in inspecting and obtaining copies of GSA records; and the service of a subpoena or other legal demand with respect to records.

Subpart 105-60.1—General Provisions

§ 105-60.101 Purpose.

This Part 105-60 implements the provisions of the Freedom of Information Act, 5 U.S.C. 552 ("FOIA") (Pub. L. 90-23, which codified Pub. L. 89-487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.); and Pub. L. 93-502, popularly known as the Freedom of Information Act Amendments of 1974.) This part prescribes procedures by which the public may inspect and obtain copes of GSA records under the FOIA.

§ 105-60.102 Application.

This Part 105-60 applies to all records and informational materials generated, developed, or held by GSA which come within the scope of 5 U.S.C. 552.

§ 105-60.103 Policy.

§ 105-60.103-1 Availability of records.

GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will furnish them promptly to any member of the public upon request addressed to the office designated in § 105-60.402-1 at fees specified in § 105-60.305-8. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of the FOIA that records be available to the public refers only to records in being at the date of the request and imposes no obligation on GSA to compile a record in response to a request.

§ 105-60.103-2 Applying exemptions.

GSA may deny a request for a GSA record if the records falls within an exemption to the FOIA as outlined in Subpart 105-60.5. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so. In the absence of a compelling reason, GSA will disclose a record although it otherwise is subject to exemption.

§ 105-60.104 Records of other agencies.

(a) *Other agencies' records managed and administered by GSA.* The availability of records of other agencies located in the National Archives of the United States and Federal Archives and Records Centers is governed by Part 105-61 (Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Record Service).

(b) *Current records of other agencies.* If GSA receives a request to make available current records that are the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. GSA will inform the requester that GSA has forwarded the request to the responsible agency.

§ 105-60.105 Inconsistent directives of GSA superseded.

Any policies and procedures in any GSA directive that are inconsistent with the policies and procedures set forth in this Part 105-60 are superseded to the extent of that inconsistency.

Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register

§ 105-60.201 Published information and rules.

In accordance with paragraph (a)(1) of the FOIA (5 U.S.C. 552(a)(1)), GSA publishes in the **Federal Register**, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statements of the general courses and methods by which GSA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by GSA.

(e) Each amendment, revision, or repeal of the materials described in this § 105-60.201.

§ 105-60.202 Published materials available for sale to the public.

Substantive rules of general applicability adopted by GSA as authorized by law which this agency publishes in the **Federal Register** and which GSA makes available for sale to the public are the Federal Procurement Regulations, the General Services Administration Procurement Regulations, the Federal Property Management Regulations, and the

General Services Administration Office of Acquisition Policy Regulations. These series of regulations are codified in Title 41 of the Code of Federal Regulations and also are published in looseleaf volume form. The looseleaf version of the Federal Procurement regulations is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at prices established by that office. In addition, all of these regulations are available for sale by the Superintendent of Documents in (a) daily **Federal Register** form and (b) Code of Federal Regulations form, at prices established by that office.

Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105-60.301 General.

GSA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 105-60.302, and an Index of those materials as described in § 105-60.304, at convenient locations and times. Central Office materials are located in Washington, DC; some are also available at GSA regional offices. Each regional office has the materials of its region. All locations provide public reading rooms or selected areas for the inspection and copying of documents. Reasonable copying services are furnished at fees specified in § 105-60.305.

§ 105-60.302 Available materials.

GSA materials available under this Subpart 105-60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by GSA and are not published in the **Federal Register.**

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale. (Any materials published and offered for sale also will be available in each reading room.)

§ 105-60.303 Rules for public inspection and copying.

(a) *Locations.* Reading rooms or selected areas containing the materials available for public inspection and copying, described in § 105-60.302, are located in the following places:

Central Office

(GSA Headquarters), Washington, DC, Telephone: 202-566-1240

General Services Administration, 18th & F Sts. NW., Library (Room 1033), Washington, DC 20405

Region 1

Boston, Massachusetts (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). Telephone: 617-223-2868

Business Service Center, General Services Administration, John W. McCormack Building, Post Office & Courthouse, Boston, MA 02109

Region 2

New York, New York (Comprising the States of New Jersey, New York, the Commonwealth of Puerto Rico and the Virgin Islands). Telephone: 212-264-1234

Business Service Center, General Services Administration, 26 Federal Plaza, NY, NY 10007

National Capital Area

Washington, DC (Comprising the District of Columbia and the metropolitan area). Telephone: 202-472-1804

Business Service Center, General Services Administration, 7th & D Streets SW., Rm. 1050, Washington, DC 20407

Region 3

Philadelphia, Pennsylvania (Comprising the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). Telephone: 215-597-9613

Business Service Center, General Services Administration, 9th & Market Sts., Rm. 5142, Philadelphia, PA 19107

Region 4

Atlanta, Georgia (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). Telephone: 404-221-5103

Business Service Center, General Services Administration, Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street SW., Atlanta, GA 30303

Region 5

Chicago, Illinois (Comprising the States of Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin). Telephone: 312-353-5383

Business Service Center, General Services Administration, 230 South Dearborn Street, Chicago, IL 60604

Region 6

Kansas City, Missouri (Comprising the States of Iowa, Kansas, Missouri, and Nebraska). Telephone: 816-926-7203

Business Service Center, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131

Region 7

Fort Worth, Texas (Comprising the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma). Telephone: 817-334-3284

Business Service Center, General Services Administration, 819 Taylor Street, Fort Worth, TX 76102

Region 8

Denver, Colorado (Comprising the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming). Telephone: 303-324-2216

Business Service Center, General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225

Region 9

San Francisco, California (Comprising the States of Hawaii, California, Nevada, and Arizona). Telephone: 415-556-0877

Business Service Center, General Services Administration, 525 Market Street, San Francisco, CA 94105

Region 10

Seattle, Washington (Comprising the States of Alaska, Idaho, Oregon, and Washington). Telephone: 206-442-5556

Business Service Center, General Services Administration, 440 Federal Building, 915 Second Avenue, Seattle, WA 98174

(b) *Time.* The reading rooms or selected areas will be open to the public during the hours of business of the GSA office in which they are located.

(c) *Copying.* GSA will furnish reasonable copying services at fees specified in § 105-60.305. The fees will be posted in each reading room or selected area. In suitable circumstances, a member of the public may receive authorization to copy materials personally under the procedures determined by the authorizing official (the Director of Public Information in the Central Office or the Assistant Regional Administrator for External Affairs in the regional offices).

(d) *Reading room and selected area rules.* (1) *Age.* GSA will not give permission to inspect materials to a person under 16 years of age unless accompanied by an adult who agrees to

remain with the minor while the minor uses the materials.

(2) *Handling of materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book, or other article that could contain GSA informational materials.

(3) *Reproduction services.* The GSA Central Office Library or the Regional Business Service Centers will furnish reasonable reporduction services for available materials at the fees specified in § 105–60–305.

§ 105-60.304 Index.

GSA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 105–60.302. GSA will publish quarterly and make available copies of each index or supplements thereto. The index will be maintained for public inspection in each reading room.

§ 105-60.305 Fees.

§ 105-60.305-1 Scope of section.

This section set forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search and reproduction of GSA records.

§ 105-60.305-2 Record material available without charge.

Each GSA reading room or selected area provides a rack displaying GSA records available to the public in that region. Certain material related to bids (excluding construction plans and specifications) and any material displayed on the rack are available without charge upon request.

§ 105-60.305-3 Copy of GSA records available at a fee.

GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester. GSA will agree either to (a) show the originals to the requester, (b) make one copy available at a fee, or (c) a combination of these alternatives. In the case of voluminous materials, GSA will make copies as quickly as possible. GSA may make a reasonable number of additional copies at a fee when commercial reproduction services are not available to the requester.

§ 105-60.305-4 Waiver of fee.

Any request for waiver or reduction of a fee should be included in the initial letter requesting access to GSA records under § 105–60.402–1. The waiver request should explain how waiver of fees primarily would benefit the public and should comment on the following:

(a) How release of the records in whole or in part primarily will benefit the general public interest rather than a commercial, financial or other private interest, specifically;

(1) whether the requested information is available to the general public through other sources;

(2) how disclosure of the records will enhance civic activities or the quality of national life (e.g., in the areas of public safety, public health, economic well-being, and integrity and efficiency in government);

(3) how the requester intends to disseminate the records (or the public benefits resulting from the disclosure of the records) to a substantial part of the general public.

(b) How waiver of fees will meet the needs of indigent persons or relieve substantial personal hardship.

(c) How the cooperation of the requester has limited a costly request resulting in a reduction of GSA processing costs.

§ 105-60.305-5 Searches.

(a) GSA may charge for the time spent in the following activities in determining "search time" subject to applicable fees as provided in § 105–60.305–8:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spend in the following activities in determining "search time" subject to applicable fees as provided in § 105–60.305–8:

(1) Time spent in examining a requested record to determine whether GSA can or should assert an exemption; or

(2) Time spent in deleting exempt matter being withheld from records otherwise made available; or

(3) Time spent in monitoring a requester's inspection of disclosed agency records; or

(4) Time spent in operating reproduction facilities.

§ 105-60.305-6 Prepayment of fees over $10.

GSA will require prepayment of fees for search and reproduction which are likely to exceed $10. When the anticipated total fee exceeds $10, the requester will receive notice to prepay, and GSA will remit the excess paid by the requester or will bill the requester an additional amount according to variations between the final fee and the amount prepaid.

§ 105-60.305-7 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence.

§ 105-60.305-8 Fee schedule.

In computing applicable fees, GSA will consider only the following costs in providing the requested records:

(a) *Reproduction fees.* (1) The fee for reproducing copies of GSA records (by routine electrostatic copying) up to and including 8½ by 14 inches is $0.10 per page.

(2) The fee for reproducing copies of GSA records over 8½ by 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying or which require reduction, enlargement, or other special technical services is the direct cost of reproducing the records through Government or commerical sources.

(b) *Search fees.* (1) The standard search fee is $5 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(2) When GSA must use professional staff to search for the requested records because clerical staff would be unable to locate them, the search fee is $10 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(3) When the search includes nonpersonnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee is the direct cost to GSA.

§ 105-60.305-9 Fees for authenticated and attested copies.

The fees set forth in § 105–60.305–8 apply to requests for authenticated and attested copies of GSA records.

Subpart 105-60.4—Described Records

§ 105-60.401 General.

(a) Except for records made available in accordance with Subparts 105–60.2 and 105–60.3, GSA promptly will make records available to a requester when the request reasonably describes the

records unless GSA invokes an exemption in accordance with Subpart 105–60.5. Although the burden of reasonable description of the records rests with the requester, GSA will assist in identification.

(b) Upon receipt of a request that does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 receives a request reasonably describing the records.

§ 105–60.402 Procedures for making records available.

This section sets forth initial procedures for making records available when they are requested. These procedures do not apply to records of other agencies that have been transferred to the National Archives and Records Service in accordance with the Federal Records Act of 1950 (44 U.S.C. 2103 and 3103); in those cases, the procedures in Part 105–61 govern.

§ 105–60.402–1 Submission of requests for described records.

For records located in the GSA Central Office, the requester should submit a request in writing to the director of Public Information, General Services Administration (XI), Washington, DC 20405. For records located in the GSA regional offices, the requester should submit a request to the Assistant Regional Administrator for External Affairs for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words, "FREEDOM OF INFORMATION REQUEST," prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the appropriate official identified in this section. A requester who has questions concerning an FOIA request may consult the GSA Director of Public Information, 18th and F Streets NW., Washington, DC 20405 (202) 566–1231.

§ 105–60.402–2 Response to initial requests.

GSA will mail a response to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal public holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. In unusual circumstances, GSA will inform the requester of the agency's need to take an extension of time.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial, in whole or in part, of a request may appeal that decision within GSA. The requester shall direct the appeal to the Director of Public Information, General Services Administration (XI), Washington, DC 20405, regardless whether the denial being appealed was made by a Central Office official or by a Regional Administrator.

(b) The Director of Public Information must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester must appeal in writing and include a brief statement of the reasons he or she thinks GSA should release the records and enclose copies of the initial request and denial. The appeal letter should include the words, "Freedom of Information Appeal," on both the face of the appeal letter and on the envelope. GSA has 20 workdays after the receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the office of the Director of Public Information receives the appeal.

(d) If the Administrator of General Services made the initial denial, there shall be no right to appeal within GSA.

(e) A requester who has received a denial of an appeal, or who has no right of appeal within GSA, may seek judicial review of GAS's decision in the United States district court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the District of Columbia.

§ 105–60.404 Extension of time limits.

In unusual circumstances the Director Public Information may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. GSA will provide a written notice to the requester of any extension of time limits.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute, other than the Privacy Act, provided that the statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of these records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) GSA will invoke no exemption under this section if the requested records would be available under the Privacy Act of 1974 and implementing regulations, Part 105–64, or if disclosure would cause no demonstrable harm to any public or private interest.

Subpart 105–60.6—Subpoenas or Other Legal Demands for Records

§ 105–60.601 Service of subpoena or other legal demand.

§ 105–60.601–1 GSA administrative records.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA should be addressed to the General Counsel, General Services Administration (L), Washington, DC 20405, with respect to GSA Central Office records; to the appropriate Regional Counsel, for records in GSA regional offices; or to the Administrator of General Services.

(b) The General Counsel, Deputy General Counsel, Assistant General Counsels, Inspector General, and, with respect to records in a GSA regional office, also the Regional Administrator and Regional Counsel are the only GSA employees authorized to accept service of a subpoena duces tecum or other legal demands on behalf of GSA.

§ 105.60.601–2 Records Transferred to the National Archives and Records Service.

(a) Access to records transferred to a Federal Archives and Records Center (see § 105–61.001–3) is controlled by the instructions and restrictions imposed on GSA by the Federal agency that transferred the records to the Federal Records Center. GSA will honor a subpoena duces tecum or other legal demand for the production of these records, to the extent required by law, if the transferring agency has imposed no restrictions. In contrast, when the transferring agency has imposed restrictions, GSA will notify the authority issuing the subpoena or other legal demand and will request authority to pursue the matter directly with the transferring agency.

(b) The Administrator of General Services, the Archivist of the United States, the General Counsel, the Deputy General Counsel, the Assistant General Counsels, the Regional Administrators, and the Regional Counsels, as appropriate, and the Director of the Federal Archives and Records Center in which records are stored are the only GSA officials authorized to accept a subpoena or other legal demand for records transferred to a Federal Archives and Records Center.

(c) A subpoena duces tecum or other legal demand for the production of records designated as "archives" or "donated historical materials" administered by the National Archives and Records Service (see §§ 105–61.001–2 and 105–61.001–4) may be served only on the Administrator of General Services, the Archivist of the United States, the General Counsel, or the appropriate Assistant Archivist, Regional Counsel, Director of a Federal Archives and Records Center, or Director of a Presidential Library.

Dated: October 20, 1980.

Allie B. Latimer,

General Counsel.

[FR Doc. 80–34236 Filed 10–31–80; 8:45 am]

BILLING CODE 6820–38–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 80.603; FCC 80.565]

Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This Notice requests comment on two Staff Reports discussing direct broadcast satellites, one describing technical characteristics, the other discussing appropriate long-term regulatory policies. The Notice also requests comment on appropriate regulation of interim direct broadcast satellite systems approved before 1983 Regional Administrative Radio Conference. The Federal Communications Commission must decide on allocation of spectrum and regulatory policies for satellite-to-home television transmission. Public comment will help the Commission make informed decisions.

DATE: Comments on interim regulations must be received on or before: November 28, 1980. Comments on rest of Notice must be received on or before January 31, 1980.

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

FOR FURTHER INFORMATION CONTACT: Florence Setzer, Office of Plans & Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION:

In the matter of inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Radio Conference, Gen Docket No. 80–603.

Adopted: October 2, 1980.

Released: October 29, 1980.

By the Commission: Commissioners Ferris, Chairman; Lee, Washburn and Fogarty issuing separate statements.

I. Introduction

1. A Direct Broadcast Satellite service (DBS), which would provide video programming transmitted by satellite directly to small parabolic receiving antennas that can be located at individual homes, has been operated experimentally and has been shown to be viable, at least from the technical point of view.[1] Frequencies have been allocated for such a service by the 1979 World Administrative Radio Conference, though final allotments to the United States will not be made until the Western Hemisphere Regional Administrative Radio Conference (RARC) in 1983. We are today beginning a process to establish regulatory policies for DBS to ensure that is serves the public interest. We think the public interest requires that we pursue three goals: Efficient use of the spectrum (including the balance between DBS and other services), opening new channels to allow an opportunity for diversity of voices in order to further the goals of the First Amendment, and satisfaction of consumers' preferences for programming.

II. Commission Preparations for DBS

2. Our consideration of broadcast satellite issues extends from the basic question of whether any broadcast satellite service is appropriate for the United States through the detailed issues of implementation of a DBS service. In order to resolve the public interest considerations early so that the policy debate does not delay the introduction of service that we may find in the public interest, the Commission has begun to plan for DBS in advance of any formal application by a potential service provider. In a *Notice of Inquiry* issued recently, the Commission initiated formal preparation for the 1983 RARC.[2] At that conference the United States delegation will attempt to obtain provisions for frequencies and orbital positions for DBS use by the United States that will be conducive to efficient spectrum use and technical flexibility in order to provide the most valued services from the radio spectrum.

3. In addition, the Commission staff has prepared and released two reports that are today being put into the record of this proceeding. The opinions

[1] Community reception using larger antennas and more complex equipment than individual reception is also included in the broadcasting-satellite service under the ITU definition. ITU Radio Regulation 84AP Spa2.

[2] *Notice of Inquiry* in General Docket No. 80–398, adopted July 17, 1980, Released July 25, 1980, 45 FR 51914. We retain the right to use those frequencies for services other than DBS, in conformity with the ITU allocations.

expressed in the reports are those of authors and do no necessarily reflect a position of the Federal Communications Commission. The first, Technical Aspects Related to Direct Broadcasting Satellite Systems, was prepared by the Office of Science and Technology and describes the technical characteristics of a DBS system. The second, *Policies for Regulation of Direct Broadcast Satellites,* by the Office of Plans and Policy with a legal appendix by the Office of General Counsel, addresses the form of regulation that would be most appropriate for DBS, given its technical characteristics and the market in which it would be likely to function.[3] Since final regulations for DBS cannot be established until the outcome of the 1983 RARC is known, this Staff Report deals with regulation for the period following implementation of the Conference results, beginning roughly in 1985.

III. Request for Comments on Permanent Regulatory Policies

4. In order to determine the opinions of the interested public concerning the best form of regulation for DBS, and to receive informed judgments concerning the accuracy and validity of the staff's analyses, the Commission requests comment on the issues set forth in the two Staff Reports cited above. We welcome comment on any issues that members of the public consider relevant to decisions concerning the approval of applications to provide a satellite-to-home video programming service and the requirements that should be imposed on providers of such a service.[4] We particularly seek comment on the enumeration of necessary Commission functions set forth in the Conclusion of *Policies for Regulation of Direct Broadcast Satellites.* We solicit the opinion of interested parties concerning whether the specific functions set forth there would be appropriate for DBS, whether any important Commission policy issues have been omitted, and whether the general regulatory strategy described in the Staff Report would be appropriate for DBS. We also request comments on any of the technical parameters or analyses set forth in *Technical Aspects Related to Direct Broadcast Systems.*

5. In order to provide a framework so that respondents can discuss these issues in an organized fashion, the Commission requests comment in any or all of the following specific questions, which are arranged by subject:

A. The Market for Video Programming

(a) Is the analysis of the market for DBS presented in the OPP Staff Report correct? Specifically, are cable, STV, MDS, and video discs and cassettes close enough substitutes for DBS to provide competitive restraints on its behavior? The Commission would like to see any information interested parties can provide on likely prices of the alternative program sources, their likely penetration rates, and their availability in various geographic areas and types of communities by 1985.

(b) Will abundance of channels and competition among program sources make regulation of program content, types of service, and prices unnecessary?

(c) Will DBS service constitute a threat to any existing sources of programming? If so, which ones? What will be the costs and benefits to the public? Should regulatory policy take account of the effects of one programming source on others?

(d) To what extent can competition among DBS systems be expected to occur?

B. Spectrum Allocation and Assignment

(a) What method of spectrum allocation and orbit allotment should be used for DBS? For example, should the United States attempt to acquire the full use of several obital positions of should fewer channels be spread among many orbital positions? (Responses to this question may also be considered in Gen. Docket No. 80–398.)

(b) Are the advantages cited in the OPP Staff Report for a block allocation scheme valid? If so, what is the proper block of spectrum to assign to one DBS operator? Adequate space for one TV channel? Contiguous space for several channels? If large contiguous blocks are assigned, should any constraints be placed on an operator's use of the block?

(c) Studies undertaken to date appear to indicate that frequency sharing in the same geographic area between existing terrestrial microwave systems and DBS may not be feasible due to interference caused to the DBS receiver. If this is true, how can the adverse effects on DBS reception be minimized? What kinds of sharing arrangements are feasible?

(d) If sharing with other services is not possible, how much spectrum should be allocated to DBS systems? How much to terrestrial systems? On what basis should choices between the two systems be made?

(e) If the terrestrial fixed services now in the broadcasting-satellite band were required to change frequency, what would be the costs involved, what lead time would be necessary, and what alternative frequency bands would be suitable?

(f) Are auctions, lotteries, and paper proceedings useful means of choosing among mutually exclusive license applicants?

C. Technology and Technical Standards

(a) In what areas of DBS technology are advances most likely to occur in the near term? How would these advances be most likely to affect DBS system configurations, and what might be the implications of these advances for DBS policy decisions?

(b) Should the Commission set technical standards for DBS systems? For example, should the Commission set standards to insure receiver compatibility for signals from different satellites or to insure some minimum signal quality? One operator may wish to provide fewer channels of high-resolution video service while another may wish to provide more channels of conventional television. Should the Commission allow different operators to provide different types of services, even though they may not be receivable by the same receivers? What are the costs and benefits of setting technical standards?

(c) Under what conditions, if any, should DBS receiver systems be leased rather than sold? If so, would the public be less likely to be locked in to one level of technology and its attendant standards?

(d) Should the Commission set standards to insure efficient use of spectrum and orbit space? What kinds of regulations would be most likely to result in efficient use of the electromagnetic spectrum?

D. Ownership and Control

(a) Is the local geographic market the relevant unit to consider in determining

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[3] Bruno Pattan, *Technical Aspects Related to Direct Broadcast Satellite Systems* (Federal Communications Commission, September 1980) and Florence O. Setzer, Bruce A. Franca, and Nina W. Cornell, *Policies for Regulation of Direct Broadcast Satellites* (Federal Communications Commission, 1980).

[4] The National Black Media Coalition (NBMC) filed a petition for rulemaking (RM–3502) on October 5, 1979 dealing with rules and policies to further the advancement of black Americans in mass communications. Proposal 33 of this petition included 12 suggestions for regulatory policies to be applied to Direct Broadcast Satellites (DBS) and was referred to the Office of Plans and Policy's working group on DBS for their consideration. In addition, comments filed in response to Proposal 33 by the Satellite Program Network (SPN) were also forwarded to the working group. We believe that the interests of the viewing public will be served best if the regulatory policies to be applied to DBS are considered in a uniform manner in the context of the overall proceeding on DBS. Accordingly, we are placing the NBMC's Proposal 33 and the comments of SPN into the record and will consider them as comments in this proceeding.

whether competition among program sources exists?

(b) Are the antitrust laws sufficient to prevent excessive concentration of control of video programming? Is there any reason to require greater diversity of control of communications media than of other industries?

(c) Under what conditions, if any, should cross-ownership limits be applied to DBS operators (or programmers of specific channels)? Should constraints be placed on the control of multiple DBS channels by one entity? What regulatory distinctions and constraints should be established with respect to the ability to own, operate and lease DBS channels?

(d) What constraints, if any, should apply to the transfer of DBS licenses?

E. Program Content

(a) What should the liability of DBS operators be with respect to the issue of copyright?

(b) To the extent that DBS fosters diversity will it tend to increase the quantity of material, the number types of material produced, or the number of producers? How will these effects occur?

F. Appropriate Regulatory Classification

(a) If the Commission decided to structure DBS as a common carrier service, and if some program content requirements were found to be in the public interest or required by the Communications Act, who would be accountable to the Commission for ensuring compliance with these provisions? The common carrier licensee? The carrier's customers? What practical problems might be encountered in enforcing such requirements? Does Section 301 of the Act envision a two-tiered licensing scheme whereby the same radio facility may be licensed both to a common carrier operator and to the carrier's customers, who are licensed as radio broadcasters? As a practical matter, would it be possible to administer such a two-tiered licensing scheme?

(b) What effect, if any, does Section 3(h) of the Act have on the Commission's authority to require a DBS operator to function, at least in part, as a common carrier? To the extent Section 3(h) is relevant at all, does it make any difference that programming services are provided to the public on a subscription rather than on a non-subscription basis?

(c) Should each transponder on a satellite be licensed individually as a separate radio station or is it only the satellite that should be licensed? Does the Commission have the discretion to choose whether to license individual transponders or the entire satellite?

(d) Does the Commission have authority under the Act to establish a hybrid classification for subscription direct-to-home services as discussed in Appendix C of the Staff Report? If such a hybrid classification is legally permissible, may the Commission exempt these hybrid services from statutory provisions that apply to broadcasting stations?

(e) Would Section 605 of the Act, 47 U.S.C. § 605, apply to DBS subscription programming services?

(f) DBS operators were to offer direct-to-home programming services on a non-subscription basis, would there be any legal basis for distinguishing such services from "broadcasting" as defined in Section 3(o) of the Act?

(g) Are there any legal consequences that flow from the differences between the definition of "broadcasting" in the Communications Act and the definition of the "broadcast satellite service" in the international Radio Regulations in light of the legal status accorded treaties ratified by the United States in relation to domestic law such as the Communications Act? Does the legal status of the international Radio Regulations afford any ground for viewing satellite broadcasting services as a unique regulatory classification that may not be subject to the mandatory requirements applicable to broadcasting stations in Title III of the Act?

G. General

(a) Do the regulatory strategies pursued by other countries initiating DBS systems provide useful lessons for the United States?

(b) Are the services of DBS likely to be of equal value to all segments of the population, or will its services be of particular value to certain population groups such as rural residents or ethnic minorities? If so, to which groups is it likely to be most valuable?

(c) Are any regulatory models not discussed in the staff report relevant to DBS?

(d) Would there be any advantage to imposing regulation on DBS gradually, as experience is gained with the system, rather than at the outset?

(e) Should the Commission set standards with respect to the geographic coverage required of a DBS system?

(f) Are there any reasons for the Commission to require either advertiser-supported or for-pay programming? Is there any reason to provide different technical or behavioral regulations for advertiser-supported and subscription services? Are any other financing methods likely to be useful for DBS?

Interested parties may file comments on the above issues on or before January 31, 1981 and reply comments on or before March 31, 1981. For further information concerning the OPP Report on regulatory issues, contact Florence Setzer, Office of Plans and Policy, (202) 653–5940. For information concerning the technical Report, contact Bruno Pattan, Office of Science and Technology, (202) 653–8116.

IV. Request for Comments on Regulation of Interim Systems

6. Footnote 3787E to the allocations table adopted by the 1979 WARC recognizes that administrations may implement broadcasting-satellite systems prior to the 1983 Region 2 broadcasting-satellite conference. We will consider the public interest implications of exercising this authority in the context of receiving and processing any applications for interim systems that may be filed before completion of the Region 2 conference. Potential interim operators should be advised that we have reached no determination at this time concerning whether such applications will be processed under Parts 5, 74, some other existing part of the Commission's rules, or a new part of the Commission's rules, and that we are not at this time prescribing the particular form for such an application. We invite comments on the public interest standard that should be applied in deciding to grant interim applications, and on what standards and procedures should be applied in processing applications in the interim period. Specifically, we invite comment on the following issues:

(a) Should the Commission permit a DBS system to operate on an experimental basis prior to the 1983 RARC? If so, under what conditions? For example, should the experiment include nationwide coverage?

(b) If the Commission permits an interim DBS system, how should it be authorized? For example, should the experiment be authorized under Part 5 of the Commission's rules, *Experimental Radio Services (Other than Broadcast)*; under Part 74, *Experimental, Auxiliary, and Other Program Distributional Services;* under some other existing part of the Commission's rules; or should it be authorized under some new part where all the requirements unique to this service may be covered? Would a new part be more in keeping with the notion that the Commission is not prejudging the issue of what regulatory framework should be applied to DBS?

(c) What regulatory or other constraints, if any, should be placed on a DBS experiment?

(d) How much spectrum should be made available to an interim DBS system? Should the DBS experiment share spectrum with existing terrestrial microwave systems or should exclusive frequencies be made available?

Comments related specifically to the authorization of interim systems are due on or before November 28, 1980, and reply comments are due on or before December 15, 1980. For information concerning interim systems contact Bruce Franca, Office of Plans and Policy, (202) 653–5940.

7. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i), 303, and 403 of the Communications Act of 1934, as amended. All relevant and timely comments and reply comments filed in response to this Notice will be considered by the Commission. In accordance with the provisions of § 1.419 of the rules, an original and five copies of all comments, replies, briefs, and other documents filed in this proceeding shall be furnished the Commission. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 6 copies. Copies of all filings will be available for public inspection during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C.

Federal Communications Commission.[5]

William J. Tricarico,

Secretary.

October 2, 1980.

Separate Statement of Charles D. Ferris, Chairman

Re: Direct Broadcast Satellites

In 1976, then Commissioner Glen O. Robinson described the apparent regulatory philosophy of this Commission in the following terms:

> If it moves, regulate it; if it doesn't move, kick it—and when it moves, regulate it. (60 FCC 2d 340–41)

Today, our staff recommended deregulating a service, Direct Broadcasting Satellites, that does not even exist yet. We have come a long way in a short time.

A Direct Broadcast Satellite may or may not fly. I believe the point of today's action is that the question of whether there should be such a service should be decided by consumer demand and the capability of the technology—not by the costs of regulation.

Separate Statement of Commissioner Robert E. Lee in re: DBS Notice of Inquiry

I hope that my fellow Commissioners are approaching this with an open mind and that everyone who should have an interest in DBS—the public, broadcasters, common carriers, manufacturers, programmers, and the Congress—will provide us with data and participate in the debate the Staff Reports should stimulate. The impact of DBS could range from nothing to a complete undermining of the locally oriented broadcasting system we have today. Open, robust debate is important.

Separate Statement of Commissioner Abbott Washburn

Re: Notice of Inquiry for Direct Broadcast Satellites

October 2, 1980.

I hope for, and urge, the fullest possible public response to the two DBS staff studies to be released in accordance with today's action. We are just at the threshold of assessing the nature and parameters of this new service. We need all the data and comment we can get—to help us reach, later on, a determination as to what regulatory role the Commission should play with respect to it.

The Commission directed that a sentence be added to the NOI making it unequivocal that the views expressed in the two staff studies are solely those of the staff—that the recommendations and conclusions reached are not endorsed by the Commissioners. This leaves the members of the Commission free to react to the contents of the studies along with everyone else.

In the weeks ahead I will be further analyzing each study and commenting, particularly, on the OPP study on regulatory policies. The projections it makes for 1985 and beyond, on which many of the conclusions are based, require a giant leap of faith . . . a leap which I am unprepared to make without considerably more evidence. The legal underpinning for the recommendations also appears deficient. There are, as well, significant omissions, such as the question of impact on local TV service to the community.

The two studies are excellent vehicles to get the public-discussion ball rolling and to funnel needed data and comments to the Commission.

Meantime, as the Commission makes clear in the NOI, there are no obstacles to potential DBS operators filing applications with the FCC.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Inquiry into the Development of Regulatory Policy in regard to Direct Broadcast Satellites for the Period following the 1983 Regional Administrative Radio Conference.

The prospect of Direct Broadcast Satellite service (DBS) is exciting. It offers a significant opportunity for the larger and more effective use of radio in the public interest and for enhancing the variety and quality of video programming sources and services available to the consumer. In light of the considerable anticipation and speculation concerning the possible advent of DBS, I am pleased that the Commission has activated the regulatory process in advance of the 1983 RARC so that decision on the required rule and policy will not obstruct or delay the realization of this service's full potential.

The central issues here are "What is DBS?" and "How should it be regulated?". The staff report takes the position that DBS is like nothing we have ever seen before, falls into none of our traditional regulatory categories, and therefore should be essentially "non-regulated" except in the most basic necessities of spectrum allocation. While the staff report advances a serviceable broad-brush argument in favor of this decidedly "hands off," free marketplace approach to DBS, I frankly would have preferred a bit more detailed analysis and a little less advocacy. There is another regulatory perspective which deserves serious consideration here, and that is the view that a somewhat more deliberate regulatory structure, particularly with respect to technical parameters and standards, might better serve the public interest in seeing that DBS has an adequate chance to get off the ground and join the competition. On the whole, however, I tend to subscribe to the basic "minimal regulation" approach of the staff report, at least at this early juncture, and believe it serves as an adequate vehicle for seeking full public comment in this initial inquiry.

Turning to the specifics of the staff report, I would note that some of the observations and conclusions on which its policy recommendations are based are highly problematical. There is a certain cloudy crystal ball quality to the prediction of a virtual cornucopia of video program sources and services in the offing for 1985 and after. It is not at all clear to me that the demand for video programming, on a pay basis, is as open-ended as predicted by the staff, particularly in these inflationary times.

[5] See attached statements of Commissioners Ferris, Chairman; Lee, Washburn and Fogarty.

This comment and question in turn point out that DBS is likely to be a relatively risky venture in terms of capital investment, operations, and marketing development. DBS will not come into the competitive arena until cable television, STV, MDS, and video cassettes and discs, in addition to conventional TV, have all had the opportunity to gain a solid foothold in the video programming marketpace. This observation does not suggest that we should be "laid back" on DBS. On the contrary, it means that the Commission should move all the more expeditiously to decide the issues of policy and regulatory structure, and to allow DBS to enter the competitive fray sooner rather than later, if that entry is deemed to be in the public interest. In this connection, the Commission should also invite and expeditiously consider interim applications for experimental or developmental DBS service. One year of real-world experience would be worth two years of paper proceedings in terms of fully understanding this new technology and its public interest ramifications.

The staff's speculation as to video programming abundance in the 1985 time frame also raises a fundamental issue concerning our existing regulation which is not addressed or even alluded to in the report. If the staff report's predictions of vast pay program source and service diversity are fulfilled, that development will of necessity raise a question as to whether "scarcity", as a rationale for the purpose of justifying conventional broadcast content- and conduct-related regulation, will have lost its validity. I believe that the prospect of the death of scarcity and consequent broadcast deregulation should not be cause for alarm, but rather the occasion for public interest rejoicing. And, I look forward to the comments of the various parties interested in this DBS *Inquiry*, including those of the established broadcast industy, which may be addressed to this possibility. However, I also believe that the Commission has a great responsibility to make certain that preliminary reports of scarcity's death are not greatly exaggerated, and that any proposed finding of abundant programming diversity is supported by real-world fact as well as general economic theory.

As a final comment at the outset of this *Inquiry*, I note that the staff report expends a good deal of ink and paper on the auction spectrum allocation alternative, despite the rather plain ultimate holding that auctions are not within this Commission's statutory authority. Similarly, while lottery and "streamlined" paper hearing alternatives are worthy of pursuit in this proceeding, it would have been useful for the staff report to have addressed at least equal time to the matter of whether comparative criteria consistent with existing Commission and judicial precedent could be developed to resolve competing DBS applications expeditiously.

[FR Doc. 80-34068 Filed 10-31-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Parts 2, 21, 74, and 94

[Gen Docket 80-112]

Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and Private Operational Fixed Microwave Service

AGENCY: Federal Communication Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This order extends the time for filing reply comments to a proposed rule. The proposed rule would reallocate the 2500–2690 MHz frequency band that is now allocated to Instructional Television Fixed Service and to the Operational Fixed Service and would permit equal sharing of the band among those services and the Multipoint Distribution Service.

The original proposed rule was published at 45 FR 29323 on May 2, 1980, and the correction to the proposed rule was published at 45 FR 45601 on July 7, 1980.

DATES: Reply comments are due on or before November 12, 1980.

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

FOR FURTHER INFORMATION CONTACT: Kevin Kelley, Domestic Facilities Division, Common Carrier Bureau, (202) 632-6430.

In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and Private Operational Fixed Microwave Service; and Inquiry into the development of regulatory policy with regard to future service offerings and expected growth in the Multipoint Distribution Service and Private Operational Fixed Microwave Service, and into the development of provisions of the Commission's Rules and Regulations in regard to the compatibility of the operation of satellite services with other services authorized to operate in the 2500–2690 MHz band; *Order extending time reply comments.*

Adopted: October 23, 1980.

Released: October 27, 1980.

By the Chief, Common Carrier Bureau:

1. The Commission has before it a number of timely filed motions to extend the time for filing reply comments in the above-captioned proceeding. The date for filing reply comments is October 27, 1980.

2. The motions request extensions until late November. The reasons given for requiring more time to prepare reply comments are: (1) there were an extraordinarily large number of comments, more than 100, filed in this proceeding; (2) because of the considerable interest in this docket many who wish to file reply comments have experienced difficulty in getting copies of the comments filed; and (3) the comments of Microband, the largest MDS licensee, were not filed until October 6, 1980 and public notice of the availability of Microband's comments was not issued until October 9, 1980, 13 days after the due date of September 26, 1980.

3. Section 1.46(a) of the Commission Rules, 47 C.F.R. § 1.46(a) (1977), clearly provides it is not the policy of the Commission to routinely grant extensions of time. However, we do recognize our responsibility to make as complete a record as possible in all proceedings and to give all those who wish to do so a reasonable opportunity to comment. We also recognize our responsibility to insure that all proceedings move forward in an orderly and expeditious fashion. Upon consideration of our responsibilities and the arguments contained in the motions, we have concluded that granting a brief extension of time for filing reply comments would be in the public interest. However, we do not believe that the reasons given warrant as much additional time as was requested in the

motions. We have concluded that an extension of time for filing reply comments to November 12, 1980 would be appropriate.

4. Therefore, it is Ordered, That the date for filing reply comments IS EXTENDED to and including November 12, 1980.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

6. The Secretary shall cause this order to be published in the **Federal Register.**

Federal Communications Commission.

Thomas J. Casey,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 80-34428 Filed 10-31-80; 12:17 p.m.]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 214
Monday, November 3, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service Richland Creek Watershed, Miss.

Correction

In FR Doc. 80-32820 appearing on page 70035 in the issue for Wednesday, October 22, 1980, please insert the following signature immediately above the "FR Doc. file line (see end of document):

James W. Mitchell,
Associate Deputy Chief for Natural Resource Projects.

BILLING CODE 1505-01-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 24, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming application in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Oct. 21, 1980	38867	Braniff Airways, Inc., Braniff World Headquarters, Braniff Blvd., Dallas/Ft. Worth Regional Airport, Dallas, Texas 75261. Application of Braniff Airways, Inc. pursuant to Section 401(e)(7)(B) of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment to its cetificate of public convenience and necessity for Route 153 and 151, segment 1, to remove the restriction against nonstop service between Sao Paulo and Buenos Aires. Conforming Applications and Answers may be filed by November 4, 1980.
Oct. 20, 1980	38862	American Airlines, Inc., P.O. Box 61616, DFW Airport, Texas 75261. Application of American Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests amendment of its certificate of public convenience and necessity for Route 4 so as to add the following points: Amarillo, Tex., Baton Rouge, La., Birmingham, Ala., Boise, Idaho, Charleston, S.C., Columbia, S.C., Corpus Christi, Tex., Jackson, Miss., Lubbock, Tex., Midland-Odessa, Tex., Santa Barbara, Calif., and Shreveport, La. Conforming Applications and Answers are due November 17, 1980.
Oct. 22, 1980	38873	ALM Antillean Airlines, Bruce H. Rabinovitz, Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Application of ALM Antillean Airlines pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to serve Santo Domingo as an intermediate stop on its existing flights between the Netherlands Antilles and San Juan, Puerto Rico. Conforming Applications and Answers may be filed by November 19, 1980.
Oct. 24, 1980	38888	Great American Airways, Inc., Suite 260, 1005 Terminal Way, Reno, Nevada 89502. Application of Great American Airways, Inc. pursuant to Section 418 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity authorizing it to engage in: Domestic air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia or any territory or possession of the United States. Conforming Applications and Answers are due November 21, 1980.
Oct. 24, 1980	38889	Great American Airways, Inc., Suite 260, 1005 Terminal Way, Reno, Nevada 89502. Application of Great American Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certrificate of public convenience and necessity authorizing it to engage in: Foreign charter air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States and any point in Greenland, Iceland, the Azores, Europe, Africa and Asia as far east as, and including, India. Conforming Applications and Answers are due November 21, 1980.

Phyllis T. Kaylor,
Secretary.

FR Doc. 80-34170 Filed 10-31-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38770; Order 80-10-158]

Peninsula Airways, Inc., Service Mail Rates Investigation; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of October, 1980.

By this order, we institute an investigation to determine the fair and reasonable service mail rates to be paid Peninsula Airways, Inc. by the Postmaster General for the transportation of mail by aircraft in its certificated services and establish temporary service mail rates for such transportation pending conclusion of the investigation.

By Order 80-9-149, we granted a certificate of public convenience and

necessity to Peninsula authorizing the transportation of persons, property, and mail between and among a number of points in the Bristol Bay area of Alaska. Mail is currently being transported in the Bristol Bay area by Kodiak-Western Alaska Airlines under temporary mail rates established by Orders 80–1–96 and 80–1–185. Since Peninsula will be providing the same mail service as Kodiak-Western is now providing in the Bristol Bay area, we see no reason why these rates should not apply as temporary rates for Peninsula's certificated mail operations as well. We will therefore establish Kodiak-Western's service mail rates as temporary rates for Peninsula.

Ordinarily, mail rates are established after notice and opportunity for comment by the Postal Service (14 CFR 302.310). Here, however, we are dealing with rates that went through the full notice and comment procedures when they were originally established for Kodiak-Western, and that are currently being paid by the Postal Service for the same services that Peninsula will perform in the Bristol Bay area. We conclude, therefore, that the institution of show-cause procedures on these rates is unnecessary and that they should be made effective on and after September 30, 1980, the date on which Peninsula filed its rate petition.[1] Based on the foregoing, we waive the procedural requirements of Rule 310.[2]

Accordingly, under 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 final service mail rates to be paid by the Postmaster General to Peninsula Airways, Inc., for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith over Route 242, on and after September 30, 1980;

2. We set the fair and reasonable temporary rates of compensation to be paid by the Postmaster General to Peninsula Airways, Inc., on and after September 30, 1980, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for operations between points on Route 242, at the rates established for Kodiak-Western Alaska Airlines, Inc., by Orders 80–1–96 and 80–1–185;

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 September 30, 1980, as may be required by the order establishing final service mail rates in the investigation instituted by this order;

4. Peninsula Airways, 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 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; and

5. We will serve this order upon the Postmaster General and Peninsula Airways, Inc.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board:

Phyllis T. Kaylor,[3]

Secretary.

[FR Doc. 80–34172 Filed 10–31–80; 8:45 am]

BILLING CODE 6320–01–M

[1] We will make these rates subject to the customary provisions that allow for rate equalization.

[2] As requested by Peninsula, we also waive the Rule 303 requirement that it specify a fair and reasonable final rate in its petition. We accept Peninsula's statement that it is unable at this time accurately to determine the cost of carrying mail in scheduled operations; and therefore cannot now suggest a final rate. However, Peninsula will be expected to state what it considers to be a fair and reasonable final rate prior to the conclusion of this investigation.

[3] All Members concurred.

Sea Airmotive, Inc., Service Mail Rate Investigation; Order

[Docket 38180; Order 80–10–159]

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 27th day of October, 1980.

By this order, we institute an investigation to determine the fair and reasonable final service mail rates to be paid Sea Airmotive Inc. by the Postmaster General for the transportation of mail by aircraft in its certificated services and establish temporary service mail rates for such transportation pending conclusion of the investigation.

By Order 80–9–149, we granted a certificate of public convenience and necessity to Seair authorizing it to engage in air transportation of persons, property, and mail over Route 244. Mail is currently being transported in the same general area by Wien Air Alaska under final mail rates established by Order 80–4–53. Since Seair will be providing substantially the same mail service as Wien is now providing, we see no reason why these rates should not apply as temporary rates for Seair's certificated mail operations as well. We will therefore establish Wien's service mail rates as temporary rates for Seair.

Ordinarily, mail rates are established after notice and opportunity for comment by the Postal Service (14 CFR 302.310). Here, however, we are dealing with rates that went through the full notice and comment procedures when they were originally established for Wien, and that are currently being paid by the Postal Service for substantially the same services that Seair will perform over its newly certificated route. We conclude, therefore, that the institution of show-cause procedures on these rates is unnecessary and that they should be made effective on and after September 29, 1980, the date on which Seair updated its mail rate petition.[1] Based on the foregoing we waive the procedural requirements of Rule 310.[2]

Accordingly, under 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 final service mail rates to be paid by the Postmaster General to Sea Airmotive, Inc., for the transportation of mail by

[1] We will make these rates subject to the customary provisions that allow for rate equalization.

[2] We also waive the Rule 303 requirement that Seair specify a fair and reasonable final rate in its petition. In the absence of operating experience over its new route, it would be difficult for Seair at this time accurately to determine the cost of carrying mail in scheduled operations; and therefore state what it believes to be a fair and reasonable final rate. However, Seair will be expected to specify the rate prior to the conclusion of this investigation.

aircraft, the facilities used and useful therefor, and the services connected therewith over Route 244, on and after September 29, 1980;

2. We set the fair and reasonable temporary rates of compensation to be paid by the Postmaster General to Sea Airmotive, Inc., on and after September 29, 1980, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for operations between points on Route 244 at the rates established for Wien Air Alaska, Inc., 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 September 29, 1980, as may be required by the order established final service mail rates in the investigation instituted by this order;

4. Sea Airmotive, 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 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; and

5. We will serve this order upon the Postmaster General and Sea Airmotive, Inc.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board:

Phyllis T. Kaylor,[3]
Secretary.

[FR Doc. 80-34171 Filed 10-31-80; 8:45 am]

BILLING CODE 6320-01-M

[3] All members concurred.

DEPARTMENT OF COMMERCE

International Trade Administration

Plastic Animal Identification Tags From New Zealand; Preliminary Affirmative Countervailing Duty Determination

AGENCY: United States Department of Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: The Department of Commerce has made a preliminary determination, under section 303 of the Tariff Act of 1930, that the Government of New Zealand has given subsidies within the meaning of the countervailing duty law, to the manufacturers, producers or exporters of plastic animal identification tags.

The Department also has determined that critical circumstances do not exist in this case. The Department, therefore, will instruct Customs officers to suspend liquidation on all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after November 3, 1980.

The Department will make a final determination no later than January 8, 1981.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Jr., Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202–377–4087).

SUPPLEMENTARY INFORMATION

Procedural Background

On August 1, 1980, the Department of Commerce ("the Department") received a petition in proper form from Y-Tex Corporation, Cody, Wyoming, alleging, on behalf of U.S. producers of plastic animal identification tags, that the Government of New Zealand provides to manufacturers, producers or exporters of such animal identification tags certain benefits which are bounties or grants ("subsidies") within the meaning of section 303, Tariff Act of 1930 (19 U.S.C. 1303) ("the Act").

On August 25, 1980, the Department published a notice of initiation of this countervailing duty investigation which stated that because New Zealand is not a country under the Agreement within the meaning of section 701(b) of the Act (19 U.S.C. 1671(b)), section 303 of the Act applies to this investigation (45 Fed. Reg. 56380). Usually a determination of injury to a domestic industry is not required in investigations under section 303. It is required, however, in investigations concerning non-dutiable merchandise not subject to normal customs duties. Since animal identification tags are non-dutiable, the International Trade Commission (ITC), under section 303 of the Act, conducted an investigation and, on September 25, 1980, issued a preliminary determination that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports of plastic animal identification tags from New Zealand (45 FR 63573).

Foreign Producer and Product Description

According to information submitted to the Department, Delta Plastics, Ltd., a subsidiary of Allflex Holdings, Ltd., Palmerston North, New Zealand, is the only producer of animal identification tags in New Zealand. The four U.S. companies importing Allflex animal identification tags from New Zealand are: (1) Allflex Tag Co., Culver City, Calif.; (2) G. C. Hanford Manufacturing Co., Syracuse, N.Y.; (3) Vet Brand, Inc., Torrance, Calif.; and (4) Diamond Shamrock Corp., Cleveland, Ohio. The Allflex Tag Co., a wholly owned subsidiary of Delta Plastics, Ltd. (New Zealand), acts as agent for its parent company in the United States by conducting a retail mail order business for Allflex tags and maintaining a complete stamping operation for numbering and personalizing tags.

Plastic animal identification tags are used for the temporary or permanent identification of animals such as cattle, hogs, sheep, and goats. The tags vary between 1.75 and 7.5 square inches of surface area. Numbers stamped into the plastic tags are used for identification or information purposes. One-piece tags are attached to the animal with a knife-like applicator called a trocar. Two-piece tags are attached by means of an applicator similar to a pair of pliers with a needle point on one side and a clamp on the other. All of these tags are classifiable under the provision for "other" agricultural and horticultural machinery and implements, in item 666.00 of the Tariff Schedules of the United States.

The Program Investigated

The New Zealand Government has several programs which allow special income tax deductions. One of these is the "Export Performance Taxation Incentive" (EPTI) program identified in the August 25, 1980, **Federal Register** Notice. The Government of New Zealand has informed the Department that no New Zealand exporter of animal

identification tags to the United States has received any tax credits from the EPTI.

However, the Government of New Zealand has informed the Department that Delta Plastics has qualified for another program, the Increased Export Taxation Incentive Scheme (IETI). Authorized by section 156 of the New Zealand Income Tax Act of 1976, as amended, the IETI provides the taxpayer with a deduction from income for increases in export sales of qualifying goods during the income tax year. Where (a) there is an increase in export sales for the income tax year, or (b) there are export sales for the income tax year and an increase in export sales for the income tax year immediately preceding that income year, section 156(5) of the Income Tax Act allows the taxpayer to deduct from assessable (taxable) income the greater of the following amounts: (1) 25 percent of the value of the qualifying f.o.b. export sales in excess of the average annual level of export sales in the base period, or (2) an amount equal to the value of the export sales during the income tax year divided by the value of the export sales during the income tax year immediately preceding that income tax year multiplied by 25 percent of the increase in export sales for the income year immediateely preceding that income year. The base period is defined as the first 3 of the 7 years immediately preceding the income tax year.

Because of confidentiality restrictions in the New Zealand Revenue Department Act, the Government of New Zealand has refused to release specific tax information for specific taxpayers. However, the Government noted that in the Consolidated 1980 Annual Report of Allflex Holdings, the company reported that it received $438,819 (New Zealand dollars) in "tax credits" for its worldwide export sales in fiscal year 1980. We have been advised by counsel for Allflex Holdings that animal identification tags and applicators were the only export products for which the company recieved the $438,819 "tax credit," and that this money was received under the IETI program discussed above. This tax credit is 6.7 percent of the company's total export sales for fiscal year 1980.

A special deduction from income taxes which is related to export performance, such as provided under the IETI program, is clearly a subsidy within the meaning of the countervailing duty law. (See The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariff and Trade, Annex, "Illustrative List of Export Subsidies," (a) and (e)).

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that the IETI program established by section 156 of the New Zealand Income Tax Act, as amended, is a subsidy within the meaning of the U.S. countervailing dury law (19 U.S.C. 1303). Based on figures supplied by the Government of New Zealand, the amount of the subsidy 6.7 percent *ad valorem* on exports to the United States.

Critical Circumstance Determination

The petitioner alleged critical circumstances, under section 703(e) of the Act (19 U.S.C. 1671b(e)), due to massive imports of animal identification tags during a relatively short period. The petitioner provided United States sales figures for the period April 1, 1974 through March 31, 1980.

Section 303(b) of the Act, as amended (19 U.S.C. 1303(b)), provides, in effect, that the critical circumstance provision applies to duty-free merchandise from a country that is not a country under the Agreement. Therefore, section 703(e) applies to this case.

Imports of animal identification tags have increased substantially between 1977 and 1979. However, the rate of increase at which imports are penetrating the U.S. market appears to have been leveling off during the 18 months prior to June 1980. Moreover, while imports from New Zealand, have had an overwhelming share of the market of two-piece animal identification tags, U.S. producers have been capturing increasingly larger share of this subsector of the animal identification tag market.

"Critical circumstances" was introduced in the legislation to provide retroactive application of countervailing duties in cases where recent actions on the part of exporters or the exporting country led to a significant increase in exports in absolute terms or relative to the U.S. market share. We have not found such a situation in this case, nor have we found that such a situation is likely to develop.

Therefore, I preliminarily conclude that there have not been massive imports of animal identification tags from New Zealand over a relatively short period, within the meaning of section 703(e)(1)(B). Accordingly, liquidations will not be suspended retroactively, as provided in section 703(e)(2).

Administrative Procedures

In accordance with § 355.34 of the Commerce Department Regulations (19 CFR 355.34, 45 FR 4946), interested parties may submit information or written views concerning this proceeding to the address indicated above in at least 10 copies, not later than December 3, 1980.

The Department will afford interested parties an opportunity to present oral views in accordance with § 355.35 of the Commerce Department Regulations. This hearing is scheduled to be held, if requested, at the U.S. Department of Commerce, Room 3817, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 beginning at 10:00 a.m. on December 4, 1980. Interested parties who wish to have such a conference should submit a written request to the Office of Deputy Assistant Secretary for Import Administration, Room 2800 at the address shown above. These requests should contain (1) the name, address and telephone number of the requester (2) the number of participants and (3) a statement outlining the issues to be discussed. The Deputy Assistant Secretary for Import Administration must receive the requests no later than November 13, 1980.

Interested parties must submit pre-hearing briefs no later than November 28, 1980, to the Office of the Deputy Assistant Secretary at the address noted above. Oral presentations by persons submitting pre-hearing briefs will be limited to those issues raised in the briefs. All written views must be filed in accordance with § 355.34 of the Department of Commerce Regulations.

In accordance with section 703(d) of the Act (19 U.S.C. 1671b(d)), Customs officers will be advised to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise on or after the date of publication of this notice in the **Federal Register**. This suspension of liquidation shall remain in effect until further notice. The posting of a cash deposit, bond, or other security, in the amount of 6.7 percent *ad valorem*, will be required as of that date.

We will issue a final determination no later than January 8, 1981.

This determination is published in accordance with section 703(f) of the Act (19 U.S.C. 1671b(f)).

John D. Greenwald,

Deputy Assistant Secretary (Import Administration).

October 28, 1980.

[FR Doc. 80-34060 Filed 10-31-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing An Import Restraint Level for Certain Man-Made Fiber Textile Products Under a New Bilateral Agreement with Costa Rica

October 28, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing an import restraint level for man-made fiber brassieres in Category 649, produced or manufactured in Costa Rica and exported to the United States during the twelve-month period which began on January 1, 1980

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1978 (45 FR 13172), as amended on april 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

SUMMARY: On September 22, 1980, the Governments of the United States and costa Rica exchanged diplomatic notes establishing a cotton, wool and man-made fiber textile agreement beginning on January 1, 1980 and extending for four years through December 31, 1983. The agreement establishes a specific level of restraint for man-made fiber textile products in Category 649 during the agreement year which began on January 1, 1980 and extends through December 31, 1980. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Category 649, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980, in excess of the designated level of restraint.

EFFECTIVE DATE: November 4, 1980.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

This letter and the actions taken pursuant to it are not designed to implement all of the provisins of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

October 28, 19880.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11961 of January 6, 1977, you are directed to prohibit, effective on November 4, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649 in excess of 1,575,000 dozen.[1]

In carrying out this directive, entries of man-made fiber textile products in Category 649 produced or manufactured in Costa Rica, that have been exported to the United States before January 1, 1980 shall not be subject to this directive.

Man-made fiber textile products in Category 649 that have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of September 22, 1980 between the Governments of the United States and Costa Rica which provide, in part, that: (1) the specific limit may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Costa Rica and with respect to imports of man-made fiber textile products from Costa Rica 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 Commissioner 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. 80-34135 Filed 10-31-80; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted to reflect any entries after December 31, 1979. Imports during the January 1980 through August 1980 period have amounted to 895,8111 dozen.

Additional Import Controls on Certain Apparel Products from the Republic of Korea

October 24, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in the Republic of Korea, at a level of 195,196 dozen (2,342,348 pieces) during the twelve-month period which began on January 1, 1980.

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, it has been agreed that imports from the Republic of Korea of down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 will not exceed a level of 195,196 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, the United States Government has decided to control imports at the agreed level.

DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 27, 1979, there was published in the **Federal Register** (44 FR 76573) 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, wool and man-made fibe textile products, produced or manufactured in the Republic of Korea, which may be

entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs also to prohibit entry for consumption, or withdrawal from warehouse for consumption, of down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 in excess of 195,196 dozen.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 20, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 7, 1980, and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in the Republic of Korea in excess of 195,196 dozen.[1] Merchandise in the foregoing T.S.U.S.A. numbers which has been exported before January 1, 1981 is not subject to the export visa requirement.

The foregoing feather-filled textile products which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Further, such products which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to feather-filled textile products in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 from the Republic of Korea 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 Commissioner 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,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-34134 Filed 10-31-80; 8:45 am]

BILLING CODE 3510-25-M

[1]The level of restraint has not been adjusted to reflect any imports after December 31, 1979. Imports in the designated T.S.U.S.A. numbers have amounted to 93,574 dozens during the January-August period of 1980.

Adjusting Import Restraint Levels for Certain Wool Textile Products From the Republic of Korea

October 29, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting increases for swing and carryover for wool sweaters in Category 445/446, produced or manufactured in Korea and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506))

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea provides for percentage increases in certain specific category ceilings during an agreement year (swing) and for the carryover of shortfalls in certain categories from the previous agreement year (carryover). Pursuant to the terms of the bilateral agreement, and at the request of the Government of the Republic of Korea, the import restraint level established for Category 445/446 is being increased for the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: November 4, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, 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 a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (44 FR 76573), which established import restraint levels for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported to the United States during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

On September 9, 1980, a further letter, dated September 5, 1980, was published in the **Federal Register** (45 FR 59371), which established import controls on wool sweaters in Category 445/446, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980.

In accordance with the terms of the bilateral agreement and at the request of the Government of the Republic of Korea, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs in the letter published below to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the Republic of Korea, in excess of the adjusted level of 57,901 dozen, during the twelve-month period which began on January 1, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

October 29, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

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, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1]The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United

Footnotes continued on next page

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 December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; 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 November 4, 1980, to amend the twelve-month level of restraint established for wool textile products in Category 445/446 to the following:

Category 445/446: Amended twelve-month level of restraint, 57,901 dozen.[2]

The action taken with respect to the Government of the Republic of Korea and with respect to imports of wool textile products from the Republic of Korea has 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 Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-34136 Filed 10-31-80; 8:45 am]

BILLING CODE 3510-25-M

Additional Import Controls on Certain Apparel Products from Taiwan

October 24, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in Taiwan, at a level of 200,914 dozen (2,410,963 pieces) during the twelve-month period which began on January 1, 1980.

SUMMARY: In discussions between the American Institute in Taiwan and the Coordination Council for North American Affairs concerning the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, it has been agreed that imports from Taiwan of down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 will not exceed a level of 200,914 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, the United States Government has decided to control imports at the agreed level.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 28, 1979, there was published in the **Federal Register** (44 FR 76839) a letter dated December 21, 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, wool and man-made fiber textile products, produced or manufactured in Taiwan, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs also to prohibit entry for consumption, or withdrawal from warehouse for consumption, of down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 in excess of 200,914 dozen.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1980.

Committee for The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan.

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 June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 7, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in Taiwan, in excess of 200,914 dozen.[1]

The foregoing feather-filled textile products which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Further, such products which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the authorities in Taiwan and with respect to feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 from Taiwan 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 Commissioner 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,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 34133 Filed 10.31.80; 8:45 am]

BILLING CODE 3510-25-M

Further Amending the Export Visa Requirement to Include Certain Down and Feather-Filled Apparel Products From Taiwan

October 24, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Further amending the export visa requirement previously established for textile products from Taiwan to include men's and boys' women's, girls' and infants' down and feather-filled jackets/coats/vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and

Footnotes continued from last page

States and the Republic of Korea, which provide, in part, that (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2]The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

[1]The level of restraint has not been adjusted to reflect any imports after December 31, 1979. Imports in the designated T.S.U.S.A. numbers have amounted to 122,607 dozens during the January-August period of 1980.

748.4062, produced or manufactured in Taiwan. It is anticipated that new categories will be established for these products, effective on January 1, 1981.

SUMMARY: Under the terms of the visa arrangement concerning cotton, wool and man-made fiber textile products exported from Taiwan, it has been agreed to include down and feather-filled jackets/coats/vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 within the export visa requirement previously established. In place of the category designation on the visa, the words "down filled jackets/coats/vests" will appear. The appropriate unit of measure shown on the visa will be dozens. Shipments which fail to show the correct category and quantity descriptions on the visas will not be denied entry until January 1, 1981.

EFFECTIVE DATE: November 7, 1980 for the designated products exported on and after that date. Such products exported before November 7, 1980 shall not be denied entry.

FOR FURTHER INFORMATION CONTACT: Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On October 3, 1972, there was published in the **Federal Register** (37 FR 20745) a letter from the Chairman of the Committee for the Implementation of Textile Agreements, which established an export visa requirement for cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported to the United States. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of down and feather-filled jackets/coats/vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in Taiwan and exported on and after November 7, 1980 which are not accompanied by an appropriate export visa.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan for which the authorities in Taiwan had not issued an export visa.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 7, 1980, and until further notice, entry into the United States for consumption, and withdrawal from warehouse for consumption, of feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, produced or manufactured in Taiwan and exported on an after November 7, 1980, that are not accompanied by an export visa. Feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 that have been exported before November 7, 1980 shall not be denied entry for lack of a visa. In place of the textile category designation on the visa, the following description will be used: Down-filled jackets/coats/vests. The appropriate unit of measure on the visa will be dozens. Shipments in the foregoing T.S.U.S.A. numbers which have visas that do not include the correct category description and correct quantity in dozens shall not be denied entry until January 1, 1981.

The actions taken with respect to the autorities in Taiwan and with respect to imports of the designated feather-filled apparel products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, 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,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80–34137 Filed 10–31–80; 8:45 am]

BILLING CODE 3510–25–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Correction of Additions

FR Doc. 80–33171 published on October 24, 1980 (45 FR 70538) is amended to correct the Effective Date to October 24, 1980 for the following:

Class 2090

Weight, Canvas Bag
2090–00–845–9150.

Class 5140

Bag, Tool
5140–00–473–6256.

C. W. Fletcher,

Executive Director.

[FR Doc. 80–34097 Filed 10–31–80; 8:45 am]

BILLING CODE 6820–33–M

COMMUNITY SERVICES ADMINISTRATION

Decision to Fund Ten (10) Conduit Migrant and Seasonal Farmworker Emergency Energy Assistance Programs Operating in Every State Except Hawaii and Alaska

Note.—This document was originally published on Friday, October 31, 1980. It is republished to comply with CSA's Day of the Week Program.

AGENCY: Community Services Administration.

ACTION: Notice to all Boards of Directors of CAA(s) and SEOO(s).

SUMMARY: The Community Services Administration is notifying all Boards of Directors of Community Action Agencies (CAAs) and State Economic Opportunity Offices (SEOOs), in accordance with Section 222(a) of the Economic Opportunity Act of 1964, as amended, that a decision has been made to fund ten (10) conduit migrant and seasonal farmworker Emergency Energy Assistance Programs in every state except Hawaii and Alaska.

Grants are being awarded to the following organizations for operation in the following states: New England Farmworker Council (serving Maine, Connecticut, Rhode Island, New Hampshire, Vermont, Massachusetts); Rural New York Farmworker Opportunities, Inc. (serving: New York and New Jersey); Farmworker Corporation of New Jersey, Inc. (serving: Delaware, Maryland, Pennsylvania, Virginia, West Virginia); Mississippi Delta Housing Corporation (serving: Alabama, Georgia, Louisiana, Tennessee, Kentucky, North Carolina, South Carolina, Florida, Mississippi); Minnesota Migrant Council (serving: Illinois, Indiana, Michigan, Minnesota, Ohio, South Dakota, Wisconsin); Colonias del Valle (serving: New Mexico, Oklahoma, Texas, Arkansas); ORO Development Corporation (serving: Kansas, Nebraska, Missouri, Iowa); North Dakota Migrant Council (serving: North Dakota, Montana, Wyoming, Utah, Colorado); Campesinos Unidos

(serving: California, Arizona, Nevada); and Idaho Migrant Council (serving: Idaho, Oregon, Washington). These organizations will directly engage in Emergency Energy Assistance and delegate activities in those areas where the conduit has no direct delivery system.

DATE: This notice becomes effective October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Eduardo Gutierrez or Mr. Tom Blackburn-Rodriguez, 1200 19th Street, NW., Washington, D.C. 20506, Telephone: (202) 254–5400, Teletypewriter (202) 254–6218.

Authority: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

William W. Allison,

Acting Director.

[FR Doc. 80-34037 Filed 10-30-80; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

[DOE/EIS-0071-D]

Medium Btu Industrial Fuel Gas Demonstration Plant Project, Memphis, Shelby County, Tennessee; Public Hearing; Draft Environmental Impact Statement

The Department of Energy (DOE) has filed a draft Environmental Impact Statememt (EIS), DOE/EIS–0071–D, Medium Btu Industrial Fuel Gas Demonstration Plant Project, with the Environmental Protection Agency on October 24, 1980. The 45-day public review and comment period will begin on October 31, 1980, and close on December 15, 1980. Notice is hereby given that a public hearing on the draft EIS will be held on December 3, 1980.

The draft EIS was prepared in compliance with the National Environmental Policy Act of 1969, to assess the environmental impacts of and alternatives to a proposed DOE action to cost share the design, construction and operation of a medium Btu industrial fuel gas demonstration plant with a 3155 tons-of-coal per day capacity at a site in Shelby County, Memphis, Tennessee. The facility is intended to demonstrate the technical operability, economic viability and environmental acceptability of the Institute of Gas Technology's "U" Gas process for converting coal into fuel gas.

The environmental impacts assessed include the effects of the project resulting from the production of industrial fuel gas from coal using the "U" gas process; potential impacts on terrestrial and aquatic ecology, including state and Federal threatened and endangered species; potential and expected impacts on land use; withdrawal and alteration of prime agricultural land; projected effects on floodplains and wetlands areas; effects on ambient air quality; and socioeconomic impacts in the project area. The effects of continued operation of the demonstration plant, mothballing, conversion to another use and decommissioning are also included. The development of a construction and operational monitoring plan for the duration of the demonstration phase to assess the effectiveness of mitigation measures is also discussed.

The range of alternatives assessed in the draft EIS includes programmatic alternatives, as well as proceeding with the proposed project, modifying the action and subsequently continuing the project, and terminating with no further action. An evaluation of alternate plant designs and alternate plant sites is included.

DOE will conduct the public hearing in connection with the draft EIS on Wednesday, December 3, 1980, from 2 p.m. to 5 p.m., and 7 p.m. to 10 p.m. in the Christian Brothers College Science Auditorium, 650 East Parkway South, Memphis, Tennessee. The purpose of the public hearing is to receive additional public comments and to assure maximum public participation in the EIS process. The substantive comments received at the public hearing, as well as those received within the public comment period, will be addressed and revisions will be incorporated, where appropriate, in the final EIS.

The public hearing will be conducted by a Presiding Board selected by DOE. The Presiding Board will not attempt to undertake a resolution of issues or render judgments concerning the Medium Btu Industrial Fuel Gas Demonstration Plant Project.

The public hearing will not be conducted as an evidentiary hearing and those who choose to make statements may not be questioned by anyone other than the members of the Presiding Board.

In order to facilitate arrangements for the public hearing, those wishing to participate are requested to contact: Dr. Robert Laza, Memphis Project Public Hearing, Chicago Operations and Regional Office, 9700 South Cass Avenue, Argonne, Illinois 60439, Phone: (312) 972–2306, by 5 p.m., C.S.T., November 21, 1980.

Written comments or suggestions may also be submitted to Dr. Laza at the address noted above. Written and oral comments will be given equal weight. Speakers are requested to provide a telephone number and mailing location so that they can be contacted prior to the meeting regarding scheduling information. Those who desire a copy of the draft EIS for review prior to the public hearing may obtain a copy by contacting Dr. Laza.

Persons, organizations or government agencies wishing to participate, but who have not submitted a request in advance, may register at the time of the hearing. DOE reserves the right to arrange the schedule of presentations and to establish procedures governing the conduct of the meeting. DOE desires to maximize the number of participants and to assure a broad spectrum of viewpoints. However, the actual allocation of time for speakers will depend upon the number of persons requesting to be heard. Total time allocated for statements will be limited to the two 3-hour periods noted at the beginning of this notice. DOE may allow more time for representatives of organizations than for individuals.

Those persons wishing to speak on behalf of an organization should identify their organizational affiliation in their request. Should any speaker desire to provide further information for the record subsequent to the meeting, it may be submitted in writing no later than 5 p.m., C.S.T., December 15, 1980.

Any further procedural rules needed for the proper conduct of the hearing will be announced at the start of the hearing.

A transcript of the public hearing will be made available for public inspection at:

Government Document Room, Memphis-Shelby County Public Library and Information Center, 1850 Peabody Avenue, Memphis, Tennessee,

and also in DOE's Public Document Rooms located at:

Public Reading Room, FOI–Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C.

Chicago Operations and Regional Office, Project Management Division, 9800 South Cass Avenue, Argonne, Illinois.

Chicago Operations and Regional Office, 175 West Jackson Boulevard, Chicago, Illinois.

Copies of the draft EIS and documents used in preparing the EIS are available for inspection at the above locations. Upon completion of the final EIS, its availability will be announced in the **Federal Register.**

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

George Fumich Jr.,

Assistant Secretary for Fossil Energy.

[FR Doc. 80-34244 Filed 10-30-80; 11:47 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Domestic Crude Oil Allocation Program; Entitlements Notice for August 1980

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: August 1980 Entitlements Notice.

SUMMARY: Under the Department of Energy's (DOE) Domestic Crude Oil Allocation (Entitlements) Program, this is the monthly Entitlements Notice which sets forth the entitlements purchase or sale requirements of domestic refiners and eligible firms for August 1980.

DATES: Payments for entitlements required to be purchased under this notice must be made by October 31, 1980. The monthly transaction report specified in § 211.66(i) shall be filed with the DOE by November 10, 1980.

FOR FURTHER INFORMATION CONTACT:

David A. Welsh (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street, N.W., Room 6128Q, Washington, D.C. 20461, (202) 653-3459.

Jeffrey Stoermer (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Room 6A.127, Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 10 CFR 211.67 relating to the Domestic Crude Oil Allocation Program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (ERA), the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for August 1980 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports, eligible petroleum substitutes, and imported naphtha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlements adjustment for residual fuel oil production shipped in foreign flag tankers for sale in the East Coast market and Michigan provided in § 211.67(d)(4); application of the entitlement adjustments for California lower tier and upper tier crude oil provided in § 211.67(a)(4); September 1980 deliveries of crude oil to the Strategic Petroleum Reserve; and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for August is calculated to be .176659.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of August 1980 each barrel of old oil is equal to one barrel of deemed old oil each barrel of upper tier crude (excluding ANS upper tier) oil is equal to .702376 of a barrel of deemed old oil and each barrel of ANS upper tier crude oil is equal to .381239 of a barrel of deemed old oil.

The issuance of entitlements for the month of August 1980 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm, including the Strategic Petroleum Reserve (SPR), to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of August 1980 is hereby fixed at $26.86, which is the exact differential as reported for the month of August between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of August 1980 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of August 1980 equal to the difference between the number of barrels of of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of August 1980 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for the month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements.

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

Included in the Appendix are entitlements issued pursuant to the provisions of 10 CFR § 211.67(a)(5) under which ERA may approve a firm's application for designation as a producer of a petroleum substitute.

In accordance with 10 CFR 211.67(a)(7), adopted effective August 29, 1980 (45 FR 56788, August 25, 1980), the Strategic Petroleum Reserve (SPR) has been issued entitlements for crude oil purchased, delivered and accepted for delivery into the SPR in the month of September. An entry in the Appendix for the SPR has been included.

The listing contained in the Appendix identifies, in a separate column labeled "Exceptions and Corrections", additional entitlements issued to refiners pursuant to relief granted by the Office of Hearings and Appeals (prior to March 30, 1978, the Office of Administrative Review of the Economic Regulatory Administration). Also set forth in this column are adjustments for relief granted by the Office of Hearings and Appeals for 1975 and 1976, which adjustments are reflected in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company, et al.*, 4 FEA par. 87,024 (November 5, 1976).

The listing in the Appendix indicates that a correction has been made to Arizona Fuels' entitlements position. A negative adjustment of 1898 entitlements is based upon on OHA exception decision and order. A negative adjustment of 6601 entitlements reflects Arizona Fuels' outstanding and continuing purchase obligation. *See* Entitlements Notice for October 1977, 42 FR 64401 (Decemberr 23, 1977). Thus, Arizona Fuels' outstanding and continuing purchase obligation has been reduced by an amount equal to 6601 times the entitlement price for August 1980. Moreover, this notice constitutes a direction to Arizona Fuels to sell 6601 entitlements to Arizona Fuels at the entitlement price for August 1980, or $26.86. *See* 10 CFR 211.67(k).

For the month of August 1980 imports of residual fuel oil eligible for entitlement issuances totaled 21,822,521 barrels.

In accordance with § 211.67(a)(4), the number of barrels of California lower tier and upper tier crude oil, as reported by refiners to the DOE, and the weighted average gravity thereof are as follows:

	Volumes	Weighted average gravity
California Lower Tier Crude Oil	927,530	23
California Upper Tier Crude Oil	2,405,712	28

The total number of entitlements required to be purchased and sold under this notice is 18,132,695.

Based on reports submitted to the DOE by refiners as to their adjusted crude oil receipts for August 1980 the pricing composition and weighted average costs thereof are as follows:

	Volumes in thousands of barrels per day	Weighed average cost	Percent of total volumes[1]
Lower tier	1183	$7.15	8.6
Upper tier (Excluding ANS)	1709	15.14	12.4
ANS upper tier	872	23.77	6.3
Exempt domestic:			
Other ANS	550	29.26	4.0
Heavy and market tier	1582	33.24	11.5
Naval Petroleum Reserve	82	33.77	0.6
Newly discovered	412	37.82	3.0
Stripper	1921	33.98	14.0
Tertiary	34	33.21	0.2
Total Domestic	8345	24.98	60.7
Imported	5412	34.44	39.3
Total uncontrolled (Exempt domestic and imported)	9993	34.01	72.6
Total reported crude oil receipts	13757	28.70	
Total reported crude oil runs to stills	13541		

[1] Volumes may not total 100% due to rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for August 1980 must be made by October 31, 1980.

On or prior to November 10, 1980, each firm which is required to purchase or sell entitlements for the month of August shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of August 1980.

The monthly transaction report forms (ERA–116) for the month of August 1980 have been mailed to all reporting firms. Firms that have been unable to locate other firms for the required entitlements transactions by October 31, 1980, are requested to contact the ERA at (202) 653–3873 to expedite consummation of these transactions. For firms that have failed to consummate required entitlements tranactions on or prior to October 31, 1980, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with the Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before December 3, 1980.

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

Hazel R. Rollings,

Administrator, Economic Regulatory Administration.

BILLING CODE 6450-01-M

NOTICE OF ENTITLEMENTS FOR COMESTIC CRUDE CIL
AUGUST 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
A-JOHNSON	0	78,479	0	31,360	0	0	78,479
ADM	0	9,573	0	0	0	0	9,573
AKRON-OHIO	0	1,317	0	0	0	0	1,317
ALEXANDRIA-VA	0	38	0	0	0	0	38
ALLIED	22,297	48,402	0	0	0	0	26,105
AMER-AGRI-FUELS	0	393	0	0	0	0	393
AMER-PETROFINA	520,093	779,806	0	0	0	0	259,713
AMERADA-HESS	3,119,569	2,390,497	0	98,463	0	729,072	0
AMERICAN-CAN-CO	0	1,796	0	0	0	0	1,796
AMES-IOWA	0	656	0	0	0	0	656
AMOCO	7,049,610	4,685,208	0	0	0	2,364,402	0
ANCHOR	0	43,739	0	0	0	0	43,739
APEX	0	29,087	0	29,087	0	0	29,087
ARCO	3,405,826	3,281,412	0	0	4,666	128,414	0
ARIZONA	14,083	14,083	-8,499 5/ 1/	0	333	0	0 1/
ARIZONA-CHEM	0	3,454	0	0	0	0	3,454
ASAMERA	72,930	181,690	56,652 5/	0	0	0	108,760
ASHLAND	547,410	1,870,831	0	0	0	0	1,323,421
BAYOU	20,140	9,680	0	0	0	10,460	0
BEACON	4,516	101,291	0	0	116	0	96,775
BELCHER	0	121,776	0	121,776	0	0	121,776
BELOIT-WI	0	87	0	0	0	0	87
BERGEN-COUNTY	0	223	0	0	0	0	223
BI-PETRO	1,574	0	0	0	0	1,574	0
BOSTON-QUINCY	0	7,589	0	0	0	0	7,589
BRONCO	0	7,656	0	0	0	0	7,656
BRUIN	14,995	72,447	0	0	0	0	57,452
C&H	0	76	0	0	0	0	76
CALCASIEU	6,649	72,095	0	0	0	0	65,446
CALUMET	6,337	14,766	0	0	0	0	8,429
CANAL	4,439	39,473	0	0	0	0	35,034
CARBONIT	0	34,794	0	0	0	0	34,794
CARIBOU	63,123	40,685	4,074 5/	0	0	22,438	0
CASTLE	0	8,813	0	8,813	0	0	8,813

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
CEA	0	311	0	0	0	0	311
CHAMPLIN	-45,482	434,299	0	0	14,962	0	479,781
CHARTER	0	388,521	0	0	0	0	388,521
CHEVRON	6,531,389	6,492,063	0	0	38,964	39,326	0
CIBRO	0	56,215	0	56,215	0	0	56,215
CITGO	2,160,380	944,161	-97,192 4/	0	0	1,216,219	0
CITY-OF-WICHITA	0	210	0	0	0	0	210
CLAIBORNE	28,170	27,260	0	0	0	910	0
CLARK	271,946	581,270	56 4/	0	0	0	309,324
COASTAL	-109,861	1,043,119	0	52,777	0	0	1,152,980
COASTAL-PETRO	0	38,839	0	0	0	0	38,839
COLDWATER	0	279	0	0	0	0	279
COLONIAL	0	19,736	0	19,736	0	0	19,736
COLUMBUS-OHIO	0	92	0	0	0	0	92
CON-CO	0	26,330	0	26,330	0	0	26,330
CONOCO	1,096,205	1,541,315	0	0	2,257	154,890	0
CONSUMERS-POWER	0	39,056	0	39,056	0	0	39,056
COPANO	0	32,166	0	0	0	0	32,166
CORAL	0	310,245	0	10,668	0	0	310,245
CORCO	0	506,378	-300,321 5/	440,899	0	0	506,378
CRA-FARMLAND	201,049	301,428	0	0	0	0	100,379
CROSS	36,316	48,522	0	0	0	0	12,206
CROWN	-19,329	385,417	0	0	0	0	404,746
CRYSTAL-OIL	58,423	90,028	0	0	0	0	31,605
CRYSTAL-REF	0	18,040	0	0	0	0	18,040
CUMBERLAND	0	3	0	0	0	0	3
DELTA	168,260	307,768	0	0	0	0	139,508
DEMENNO	0	50,638	0	0	0	0	50,638
DETROIT-ED	0	42,798	0	42,798	0	0	42,798
DFSC	0	12,246	0	12,246	0	0	12,246
DIAMOND	528,070	307,209	0	0	0	20,861	0
DILLMAN	0	285	0	0	0	0	285
DORCHESTER	7,194	137,562	0	0	0	0	130,368
DOW	62,229	245,174	0	0	0	0	182,945

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
DOWNERS-GROVE	0	141	0	0	0	0	141
E-SEABOARD	0	60,685	0	60,685	0	0	60,685
EAGLE-REFINING	1,939	5,939	0	0	0	0	4,010
EAST-BAY-MUD	0	142	0	0	0	0	142
EASTERN-MUD	0	1,986	0	0	0	0	1,986
ECO	0	56,742	0	0	0	0	56,742
EDDY	19,747	18,585	0	0	0	1,162	0
ELGIN-IL	0	5	0	0	0	0	5
ENERGY-COOP	0	129,971	0	0	0	0	129,971
ERGON	-1,275	0	0	0	0	0	1,275
ERICKSON	2,879	166,218	0	0	0	0	163,339
ESSEX-UNION	0	139	0	0	0	0	139
EVANGELINE	-11,797	14,753	0	0	0	0	26,550
EWING-LAWRENCE	0	411	0	0	0	0	411
EXXON	10,898,014	6,357,760	0	392,606	0	4,530,254	0
EZ-SERVE	1,743	15,811	0	0	0	0	14,068
FARMERS-UN	160,233	152,229	0	0	0	8,004	0
FLETCHER	0	231,373	0	0	0	0	231,373
FLINT	2,832	5,250	0	0	0	0	2,418
FRIENDSWOOD	8,540	62,256	0	0	0	0	53,716
FUNDING	23,530	27,645	0	0	0	0	4,015
GARY	79,295	61,373	0	0	0	17,922	0
GETTY	437,326	1,272,127	0	0	8,396	0	434,263
GETTY-SYN	0	921	0	0	0	0	921
GIANT	12,939	39,378	0	0	0	0	26,379
GIBSON	0	22,364	0	0	0	0	22,364
GLACIER-PARK	-2,403	0	0	0	0	0	2,403
GLADIEUX	33,577	10,975	0	0	0	22,602	0
GLENROCK	0	8,825	0	0	0	0	8,825
GOLDEN-EAGLE	0	28,185	0	0	0	0	28,185
GOLDKING	17,147	99,179	0	0	0	0	82,032
GOOD-HOP	2,803	374,544	0	0	0	0	371,741
GRAFTON-WI	0	34	0	0	0	0	34
GUAM	0	95,018	0	0	0	0	95,018

REPORTING FIRM SHORT NAME	CEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFCRNIA	REQUIREC TO EUY	REGLIREC TC SELL
GULF	5,665,755	3,703,918	C	33,774	6,036	1,962,041	C
GULF-ENERGY	11,468	9,358	C	0	0	2,110	C
GULF-STS	21,125	117,987	0	0	0	C	96,862
HARRISBURG-PA	C	3,834	0	C	0	C	3,834
HEALTH-CARE	0	77	0	C	0	C	77
HEMPSTEAD-TOWN	C	1,248	0	C	0	C	1,248
HIRI	15,478	309,506	0	0	0	0	294,028
HOWELL	468,839	154,749	0	0	0	314,090	C
HUDSON-OIL	-27,674	89,902	0	0	0	C	117,576
HUNT	160,760	147,915	0	C	0	12,845	C
HUNTWAY	C	27,271	0	0	0	0	27,271
HUSKY	314,602	314,602	52,862 2/	C	0	C	0
INDEPENDENT-REF	0	56,262	0	0	0	0	66,262
INDIANA-FARM	12,889	88,828	C	0	0	C	75,939
INDUST-FUEL	9,906	16,443	0	0	0	C	6,537
INTER-PROCESS	-1,260	124,319	0	C	0	0	125,579
IRVING	C	19,537	0	19,537	C	C	19,537
KENCO	39,398	24,068	C	C	0	15,930	C
KENTUCKY	14,605	14,419	2,391 5/	0	0	186	C
KERN	-6,337	130,417	0	0	125	0	136,754
KERR-MCGEE	780,386	546,639	0	0	0	233,747	C
KOCH	298,267	696,658	0	10,668	0	C	397,991
LA-COUNTY	0	3,825	0	0	0	0	3,825
LA-CROSSE	0	19	0	C	0	C	19
LAGLORIA	239,563	269,543	0	C	0	C	29,980
LAKE-CHARLES	C	73,100	C	C	0	C	73,100
LAKESIDE	14,172	15,457	0	0	0	0	1,285
LAKETON	49,868	91,464	75,806 5/	C	0	C	41,596
LIQUID-ENERGY	0	39,457	C	0	0	C	39,457
LITTLE-AMER	638,153	373,306	-51,735 5/	C	0	264,847	C
LOS-ANGELES-CA	0	2,970	C	C	0	0	2,970
LOUISIANA-LAND	487,930	240,622	0	C	0	247,308	C
MACMILLAN	6,221	100,275	0	C	77	C	93,654
MADISON-CHATHAM	0	11	C	0	0	C	11

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL — PAGE: 15
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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
MADISON-CITY-MI	0	892	0	0	0	0	892
MADISON-WI	0	137	0	0	0	0	137
MALLARD	5,759	23,045	0	0	0	0	17,286
MARATHON	4,033,540	2,153,786	0	0	0	1,879,754	0
MARION	730	109,115	0	0	0	0	108,385
MARLEX	348	65,997	0	0	22	0	65,649
METRO-DENVER	0	1,293	0	0	0	0	1,293
METRO-SEATTLE	0	265	0	0	0	0	265
METROPOLITAN	0	25,170	0	25,170	0	0	25,170
MID-AMER	3,505	37,316	18,405 5/	0	0	0	33,711
MIDWEST-SOLV	0	650	0	0	0	0	650
MILWAUKEE-WI	0	554	0	0	0	0	554
MOBIL	4,415,500	4,073,681	0	35,930	8,466	341,819	0
MOBILE-BAY	1,776	69,862	0	0	0	0	68,086
MONOCO	0	3,738	0	3,738	0	0	3,738
MONROE-WI	0	21	0	0	0	0	21
MONSANTO	295,501	61,571	0	0	0	233,930	0
MORRISON	47,902	18,120	0	0	0	29,782	0
MOUNTAINEER	3,949	3,096	0	0	0	853	0
MSDOC	0	1,219	0	0	0	0	1,219
MT-AIRY	-5,723	91,595	0	0	0	0	97,318
MURPHY	496,793	479,967	0	0	0	16,826	0
N-AMER-PETRO	113,743	75,792	0	0	0	37,951	0
N-LITTLE-ROCK	0	687	0	0	0	0	687
N-SAN-MATEO	0	22	0	0	0	0	22
NASHVILLE-TENN	0	3,093	0	0	0	0	3,093
NASSAU-COUNTY	0	213	0	0	0	0	213
NATL-COOP	43,736	236,140	0	0	0	0	192,204
NAVAJO	255,340	164,724	1,913 5/	0	0	90,616	0
NEPTUNE	0	10	0	0	0	0	10
NEVADA	0	12,607	0	0	0	0	12,607
NEW-HOLLYWOOD	22,685	140,325	0	0	2,079	0	117,640
NEW-ENGL-PETRO	0	201,383	0	201,383	0	0	201,383
NEW-ENGL-POWER	0	31,182	0	31,182	0	0	31,182

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
NEW-YORK-EP	0	2,881	0	C	C	C	2,881
NEWHALL	304	105,640	C	C	25	C	105,336
NORTHEAST-PETRC	0	13,468	0	13,468	0	0	13,468
NORTHVILLE	C	4,977	C	4,977	0	C	4,977
OCEAN-TOWNSHIP	0	4	0	C	0	C	4
OCEAN-UTILITIES	0	78	0	C	0	C	78
OCONOMOWOC-WI	0	156	C	C	0	0	156
OKC	5,584	135,510	0	C	0	C	129,926
OKLA-REF	4,351	85,447	C	C	0	C	81,096
ORANGE-COUNTY	0	1,166	C	C	0	C	1,166
OSCEOLA-AR	0	188	0	C	0	C	188
OXNARD	0	17,736	C	0	0	C	17,736
PEERLESS	0	27,984	C	C	0	C	27,984
PENNZOIL	151,526	276,457	C	C	0	C	124,931
PESTER	128,464	139,483	C	C	0	C	11,029
PETRACO-VALLEY	0	19,256	0	0	0	0	19,256
PHILADELPHIA-PA	C	243	C	C	0	C	243
PHILLIPS	1,259,953	1,309,849	0	0	0	C	49,886
PHILLIPS-PR	0	168,166	C	168,166	0	C	168,166
PIONEER	15,377	30,500	C	C	0	C	15,123
PLACID	277,676	248,274	C	C	0	29,402	C
PLATEAU	108,773	157,652	43,283[5]/	C	0	C	48,879
PORT	0	37,545	C	0	0	C	37,545
POWERINE	54,948	169,733	0	0	1,800	C	134,785
PRIDE	0	171,486	C	C	0	C	171,486
QUAKER-ST	11,960	148,299	C	C	0	C	136,739
QUITMAN	0	36,413	0	0	0	0	36,413
RACINE-WASTE-WI	0	53	0	C	0	0	53
RAHWAY	C	103	C	C	C	C	103
RESCO	0	8,122	0	C	C	C	8,122
RICHARDS	0	241	C	C	0	C	241
ROAD-OIL	0	26,848	0	C	0	0	26,848
ROCK-ISLAND	34,137	215,258	C	C	0	C	181,121
SABER-TEX	8,813	33,385	0	0	0	C	24,572

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
AUGUST 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
SABRE-CAL	0	16,715	-2,052 5/	0	0	0	16,715
SAGE-CREEK	2,550	1,613	1,427 5/	0	0	1,047	0
SALEM-VA	0	402	0	0	0	0	402
SAN-JOAQUIN	0	119,023	0	0	0	0	119,023
SAN-JOSE-CA	0	13,478	0	0	0	0	13,478
SANTA-CRUZ-CA	0	777	0	0	0	0	777
SCALLOP	0	178,020	0	178,020	0	0	178,020
SCANOIL	0	45,639	0	45,639	0	0	45,639
SCHULZE	0	4,654	0	0	0	0	4,654
SEAVIEW	0	139,574	0	0	0	0	139,574
SEMINOLE	17,043	71,228	0	0	0	0	54,185
SENTRY	0	65,645	0	0	0	0	65,645
SHELL	1,156,455	4,543,740	0	0	3,297	2,622,719	0
SHEPHERD	1,334	23,746	0	0	0	0	22,412
SIGMOR	1,858	168,786	0	0	0	0	166,928
SILVER-EAGLE	1,848	5,292	0	0	0	0	3,444
SIOUX-FALLS	0	47	0	0	0	0	47
SLAPCO	-2,457	59,610	0	0	0	0	62,067
SMRSA	0	25	0	0	0	0	25
SO-HAMPTON	106	94,262	0	0	0	0	54,156
SOHIO	2,257,142	2,080,190	0	0	0	176,952	0
SOMERSET	16,745	24,945	0	0	0	0	8,196
SOONER	0	24,253	0	0	0	0	24,253
SOUND	14,087	32,744	0	0	0	0	18,657
SOUTHERN-UNION	130,764	157,297	0	0	0	0	26,533
SOUTHLAND	100,435	170,018	45,248 5/	0	0	0	69,613
SOUTHWEST-PETRO	0	18,749	0	0	0	0	18,749
SOUTHWESTERN	14,634	3,954	12	0	0	10,680	0
SPR	0	1,612,342	1,612,342 6/	0	0	0	1,612,342
SPRAGUE	0	41,567	0	41,567	0	0	41,567
ST&SAN-CHICAGO	0	8,201	0	0	0	0	8,201
ST-CLOUD-MINN	0	26	0	0	0	0	26
STEVENS-PT-WI	0	65	0	0	0	0	65
STINNES-INTER	0	32,492	0	32,492	0	0	32,492

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
STOCKTON-CA	0	264	0	0	0	0	264
SUNLAND	-20,790	70,843	0	0	-293	0	91,632
SUNOCO	2,354,320	2,222,939	0	39,815	0	131,881	0
SWANN	0	67,380	0	67,380	0	0	67,380
T&S	349	8,007	0	0	0	0	7,658
TARCO	17,258	5,023	0	0	0	12,235 3/	0
TENNECO	235,538	487,050	0	0	2,094	0	251,512
TESORO	447,775	335,904	0	0	0	112,071	0
TEXACO	4,389,681	4,345,705	0	124,372	8,784	43,976	0
TEXAS-AMERICAN	14,905	38,966	0	0	0	0	24,061
TEXAS-CITY	448,274	431,281	0	0	0	16,993	0
TEXAS-STANDARD	0	5,732	0	0	0	0	5,732
THAGARD	-84,072	46,950	0	0	-2,731	0	131,022
THORN-CREEK	0	21	0	0	0	0	21
THRIFTWAY	19,843	25,500	6,815 5/	0	0	0	5,657
THUNDERBIRD	34,436	47,994	0	0	0	0	13,558
TIPPERARY	1,261	38,041	0	0	0	0	36,780
TONKAWA	-4,330	73,514	0	0	0	0	78,104
TOSCO	891,749	910,425	0	0	18,456	0	18,676
TOTAL-PETROLEUM	-24,905	451,044	0	0	0	0	475,995
UCC-CARIBE	0	111,559	3,229 4/	108,330	0	0	111,559
UNI-REF	0	127,848	0	0	0	0	127,848
UNION-OIL	2,026,812	2,023,831	0	0	1,655	2,981	0
UNO-REF	45,998	221,066	0	0	0	0	135,068
US-OIL	0	88,029	0	0	0	0	88,029
USA-PETROCHEM	4,937	122,338	0	0	12	0	117,341
VAL-VERDE	0	1,740	0	0	0	0	1,740
VICKERS	77,333	322,877	0	0	0	0	245,544
VICKSBURG	-1,470	17,830	0	0	0	0	19,300
WARRIOR	17,526	30,974	10,486 5/	0	0	0	13,448
WATSON	0	572	0	0	0	0	572
WEST-COAST	0	136,877	0	0	0	0	136,877
WEST-MONMOUTH	0	26	0	0	0	0	26
WESTCHESTER-NY	0	2,922	0	0	0	0	2,922

NOTICE OF ENTITLEMENTS FOR COMESTIC CRUDE CIL
AUGLST 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	CALIFORNIA	REQUIRED TO BUY	********** REQUIRED TO SELL
WESTERN	0	52,881	0	0	0	0	52,881
WINSTON	75,079	63,033	0	0	0	12,046	0
WIREBACK	0	333	0	0	0	0	333
WITCO	1,364	113,607	0	0	0	0	111,643
WOOSTER	0	23	0	0	0	0	23
WYATT	0	15,838	0	15,838	0	0	15,838
WYOMING	26,442	58,967	0	0	0	0	32,525
YOUNG	43,895	37,373	13,494 5/	0	0	6,526	0
TOTAL	80,125,940	80,125,940	1,481,801	2,644,965	115,598	18,132,695	18,132,695

1/ See discussion in Notice.

2/ This is consistent with the court's order prohibiting any further entitlement purchase requirements by this firm pursuant to the terms of the court's judgment in Husky Oil Co. v. DOE, et al., Civ. Action No. C77-190-B (D. Wyo., filed March 14, 1978), remanded 582 F.2D 644 (TECA, August 10, 1978).

3/ This does not include the purchase obligation stayed by court order in Texas Asphalt & Refinery Co. v. FEA, Civ. Action No. 4-75-268 (N.D. Tex., filed October 31, 1975).

4/ Correction of prior month.

5/ Exception from Office of Hearings and Appeals.

6/ Value accrued from SPR deliveries. See discussion in Notice.

[FR Doc. 80-34180 Filed 10-31-80; 8:45 am]
BILLING CODE 6450-01-C

[Docket Number ERA-TA-80-07]

Champlin Petroleum Co.; Issuance of Final Decision and Order

On August 28, 1980, the Economic Regulatory Administration issued a Proposed Decision and Order to Champlin Petroleum Company (Champlin) that would, pursuant 10 CFR 212.78(e)(1) and (e)(3) permit tertiary incremental production from the Champlin Fault Block III Unit, Wilmington Field, California to be sold at market prices and allow Champlin to recover certain tertiary incentive expenses, in addition to those allowed in the Appendix section 212.78, for immiscible fluid flooding projects. The Proposed Decision and Order was published in the **Federal Register** on September 5, 1980, (45 FR 58951). No comments were received during the prescribed period. Accordingly, a final Decision and Order, substantially as proposed, has been issued.

A copy of the final Decision Order is available in the Public Affairs Office, Room B-110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays), and in the DOE Reading Room, Room 1E-190, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, (except Federal holidays).

Issued in Washington, D.C., on October 28, 1980.

Paul T. Burke,

Acting Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-34181 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, D.C. 20461, phone 202/653-3569. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 27th day of October 1980.

James J. Fenton,

Acting Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Washington, D.C., Metro Area				
Hillcrest Shell	2721 Naylor Road SE, Washington, D.C. 20020.	10-23-80	$1,252.09	0.4
Braxton's Sunoco	424 Rhode Island Avenue, NE, Washington, D.C. 20002.	10-24-80	20,082.69	2.6
Proposed Remedial Order—Western District				
Osko's Service Center	731 Santa Monica Blvd., Santa Monica, CA 90401.	7-29-80	$1,551.63	4.1
Jim Daniel's Texaco Service	5153 Old Redwood Highway, Petaluma, CA 94952.	8-15-80	3,064.15	6.9
Shaw & 99 Chevron	5270 West Shaw, Fresno, CA 93711	8-25-80	6,722.27	6.0

[FR Doc. 80-34182 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Hearing Procedures; Change in Date of Meeting

October 28, 1980.

In FR Doc. 80-32826 appearing at page 70077 in the issue for Wednesday, October 22, 1980, the November 6 meeting of the Subcommittee on Review of Hearing Procedure has been changed to November 18, 1980. All other information is correct as appears.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34223 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 27, 1980.

JD	FERC	API	SEQ - FILE NUMB	FIELD NAME	PROD	PURCHASER
********** PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES **********						
-FOX O & G INC			RECEIVED: 10/09/80 JA: PA			
8101380	5598	3712521185 103	C B WELCH JR #4	FALLOWFIELD	3.8	COLUMBIA GAS TRANSMI
8101382	5600	3706324927 103	CARL DECKER #1	GREEN TWP	2.6	COLUMBIA GAS TRANSMI
8101409	5628	3706324932 103	CHARLES ARFORD #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101387	5605	3706324835 103	CLAIR ARMSTRONG #1	GRANT TWP	2.6	COLUMBIA GAS TRANSMI
8101415	5635	3706325071 103	CLARK ESTATE #5	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101413	5631	3706325326 103	DELBERT BAKER #2	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101401	5619	3706324869 103	EDGAR LEWIS #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101412	5630	3706324926 103	EDWARD FURMAN #2	GREEN	2.6	COLUMBIA GAS TRANS C
8101393	5611	3706324645 103	ELMER LEAMER #1	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101402	5620	3706324443 103	FLORENCE CHARRAM #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101379	5597	3712521165 103	G A L CONSTRUCTION INC #3	FALLOWFIELD	2.6	COLUMBIA GAS TRANSMI
8101419	5639	3706325002 103	GENEVIEVE LOCKARD	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101403	5621	3706324453 103	GENEVIEVE LOCKARD #2	GREEN TWP	2.6	COLUMBIA GAS TRANS C
8101407	5625	3706324971 103	GEORGE BAKER #1	GREEN TWP	2.6	COLUMBIA GAS TRANS C
8101420	5640	3706324943 103	GERALD FLEMING #1	MONTGOMERY	2.6	COLUMBIA GAS TRANS C
8101408	5626	3706324945 103	GREEN TOWNSHIP COMM ASSOC #1	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANS C
8101410	5627	3706324849 103	HARRY GARDNER #2	MONTGOMERY	2.6	COLUMBIA GAS TRANS C
8101400	5618	3706324468 103	HARRY GARDNER JR #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101414	5632	3706325328 103	HARRY LYDICK #1	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANS C
8101394	5617	3706324491 103	IRVIN BISS #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101391	5609	3706324670 103	J GASTON #1	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101394	5612	3700324454 103	J O CLARK #2	MONTGOMERY TOWNSHIP	2.6	COL GAS TRANSMISSION
8101405	5623	3706324412 103	J O CLARK JR #1	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANS C
8101396	5614	3706324647 103	J O CLARK JR #4	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101397	5615	3706324564 103	JACK HAZELET #1	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101383	5601	3706324842 103	JAMES DOUGLASS #3	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANSMI
8101417	5637	3706325053 103	JAMES GASTON	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101385	5603	3706324848 103	JAMES MCANULTY #1	MONTGOMERY	2.6	COLUMBIA GAS TRANSMI
8101418	5638	3706325004 103	LOY A CROMLEY	MONTGOMERY TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101384	5602	3706324894 103	MICHAEL GLUBUN #2	MONTGOMERY TWP	2.6	COLUMBIA GAS TRANSMI
8101406	5624	3706324990 103	MILDRED SMITH #1	GREEN TWP	2.6	COLUMBIA GAS TRANS C
8101404	5622	3706324434 103	NESBIT SHAFFER #1	GREEN TWP	2.6	COLUMBIA GAS TRANS C
8101395	5613	3706324696 103	RALPH SHERWIN #1	GREEN TOWNSHIP	2.6	COLUMBIA GAS TRANSMI
8101423	5633	3706325112 103	RICHARD HELLER #1	GREEN TOWNSHIP	0.0	COLUMBIA GAS TRANSMI
8101411	5629	3706324845 103	RICHARD HELLER #2	GREEN TWP	2.6	COLUMBIA GAS TRANS C
8101386	5604	3706324843 103	RICHARD KIRKLAND	GREEN TWP	2.6	COLUMBIA GAS TRANSMI
8101389	5607	3706324810 103	RUTH A KEITH #3	GREEN TWP	2.6	COLUMBIA GAS TRANSMI
8101388	5606	3706324808 103	RUTH KEITH #1	GREEN TWP	2.6	COLUMBIA GAS TRANSMI
8101501	5599	3712521167 103	THOMAS E WILLIAMSON #3	FOLLOWFIELD	2.6	COLUMBIA GAS TRANSMI
8101398	5616	3706324562 103	VERNON HENRY #1	GREEN TWP	2.6	COLUMBIA GAS TRANS C

JD NO	JA DRT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101422	5634	3706325098	103		WILLIAM BUTERBAUGH #1	MONTGOMERY TOWNSHIP	2,6	COLUMBIA GAS TRANSMI
8101390	5608	3706324650	103		WILLIAM DEGENKULB #1	MONTGOMERY TOWNSHIP	0,0	COLUMBIA GAS TRANSMI
8101392	5610	3706324672	103		WILLIAM LEWIS #1	MONTGOMERY TOWNSHIP	2,6	COLUMBIA GAS TRANSMI
8101416	5636	3706325062	103		WILLIAM LEWIS #2	BARNESBORO TOWNSHIP	2,6	COLUMBIA GAS TRANSMI
•KARL O KOCH					RECEIVED: 10/09/80 JA: PA			
8101421	5642	3703920661	102		LAIRD #1	LIMESVILLE	10,0	NATIONAL FUEL GAS
•NATIONAL FUEL GAS SUPPLY CORP					RECEIVED: 10/09/80 JA: PA			
8101367	3284	3704720352	108		ALLEGHENY NATIONAL FOREST 1718 (P)	APPALACHIAN SHALLOW DEVO	2,6	
•WAINOCO OIL & GAS COMPANY					RECEIVED: 10/09/80 JA: PA			
8101378	5596	3703920672	102		DAVID PRUCHENSKI NO 1 (W=51)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101373	5591	3703920663	102		FLOYD H & RUBY I CHILDS #1 (W=41)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101369	5587	3703920574	102		GEO W & LUIS L BANCROFT NO 1 (W=8)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101377	5595	3703920667	102		HARLEY & RUTH HALL NO 1 (W=45)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101375	5593	3703920662	102		JOSEPH W ARNOLD NO 1 (W=42)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101372	5590	3703920596	102		MICHAEL & GLORIA J KELLY #1 (W=37)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101376	5594	3703920665	102		O RAYMOND CREACRAFT #1 (W=44)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101370	5588	3703920572	102		RAY H & EVA BUCHANAN NO 1 (W=10)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101371	5589	3703920651	102		RICHARD A HEATH NO 1 (W=35)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101368	5586	3703920567	102		SCOTT J PRESTON NO 1 (W=7)	ATHENS	40,0	COLUMBIA GAS TRANSMI
8101374	5592	3703920664	102		WILLIAM E STEIN NO 1 (W=43)	ATHENS	40,0	COLUMBIA GAS TRANSMI
**********								
TEXAS RAILROAD COMMISSION								
**********								
•ADOBE OIL & GAS CORPORATION					RECEIVED: 10/09/80 JA: TX			
8101479	20364	42475318 97	103		BARSTOW NO 16	SCOTT (CHERRY CANYON)	1080,0	TRANSWESTERN PIPELIN
•ALLEN & SHUMATE INC					RECEIVED: 10/09/80 JA: TX			
8101572	22506	42249310 92	103		A J BAKER HEIRS NO 5	TERESA (5110) FIELD	110,0	COASTAL STATES GAS P
•AMOCO PRODUCTION CO					RECEIVED: 10/09/80 JA: TX			
8101545	22297	42201308 69	103		DRILLING DISTRICT 24 #5	HOUSTON SOUTH (OLIGOCENE	5,5	AMOCO GAS CO
8101538	22071	42135327 20	103		WEST GRAYBURG UNIT #33	COWDEN SOUTH	23,9	PIONEER NATURAL GAS
•ANDERSON PETROLEUM INC					RECEIVED: 10/09/80 JA: TX			
8101562	22384	42105324 08	103		AUSTIN MILLSPAUGH A #2=32	UZUNA (CANYON SAND)	35,0	ANDERSON PIPELINE CO
•ARCO OIL AND GAS COMPANY					RECEIVED: 10/09/80 JA: TX			
8101527	21666	42295307 06	102		CHARLINE PAINE #1	KIOWA CREEK N (MORROW UP	1095,0	TRANSWESTERN PIPELIN
8101574	22523	42135054 43	108		TXL P #3	GOLDSMITH (5600)	7,0	PHILLIPS PETROLEUM C
8101565	22458	42065307 36	103		WARE A #1=38	PANHANDLE CARSON COUNTY	4,0	GETTY OIL CO
•ARKLA EXPLORATION COMPANY					RECEIVED: 10/09/80 JA: TX			
8101469	19010	42365308 91	103		M JERNIGAN #2	CARTHAGE (COTTON VALLEY)	365,0	ARKANSAS LOUISIANA G
•BASS ENTERPRISES PRODUCTION CO					RECEIVED: 10/09/80 JA: TX			
8101548	22301	42495311 55	103		BEN JENKINS ET AL A NO 16	KEYSTONE (COLBY)	5,5	TRANSWESTERN PIPELIN
8101547	22300	42495311 56	103		BEN JENKINS ET AL A NO 17	KEYSTONE (COLBY)	5,5	TRANSWESTERN PIPELIN
8101546	22299	42495311 31	103		W E BAIRD NO 14	KEYSTONE (COLBY)	5,5	TRANSWESTERN PIPELIN
•BELCO PETROLEUM CORPORATION					RECEIVED: 10/09/80 JA: TX			
8101534	21979	42235314 00	102		SUGG 07768 114 1	SUGG (ELLENBURGER)	44,0	EL PASO NATURAL GAS
•BETTIS BOYLE & STOVALL					RECEIVED: 10/09/80 JA: TX			
8101509	18659	42483000 00	108		C L NICKELL NO 1	PANHANDLE EAST	3,1	WARREN PETROLEUM CO
8101505	18634	42483000 00	108		HOLMES #1	PANHANDLE EAST	2,0	PHILLIPS PETROLEUM C
8101504	18601	42483000 00	108		IVY CLUSE 13	PANHANDLE EAST	0,1	WARREN PETROLEUM
8101487	18683	42483000 00	108		J W STAUFFER	PANHANDLE EAST	8,9	WARREN PETROLEUM
8101507	18657	42483000 00	108		NELSON #3	PANHANDLE EAST	16,6	PHILLIPS PETROLEUM C
8101508	18658	42483000 00	108		NELSON #5	PANHANDLE EAST	1,0	PHILLIPS PETROLEUM C
8101510	18661	42483000 00	108		PARSONS NO 1	PANHANDLE EAST	15,0	WARREN PETROLEUM CO

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101511	18664	4248300000	108	PITSCH #1	PANHANDLE EAST	6,0	WARREN PETROLEUM
8101512	18665	4208700000	108	POWELL #1A	PANHANDLE EAST	6,1	WARREN PETROLEUM
8101513	18666	4208700000	108	POWELL B-1	PANHANDLE EAST	6,4	WARREN PETROLEUM
8101514	18667	4248300000	108	POWELL B-2	PANHANDLE EAST	1,0	WARREN PETROLEUM
8101515	18675	4248300000	108	RIPPY NO 1	PANHANDLE EAST	9,4	WARREN PETROLEUM
8101517	18678	4248300000	108	SMITH #1	PANHANDLE EAST	3,0	PHILLIPS PETROLEUM C
8101518	18679	4248300000	108	SMUCK #1	PANHANDLE EAST	5,2	PHILLIPS PETROLEUM C
8101486	18681	4208700000	108	STAFFORD #3	PANHANDLE EAST	7,5	WARREN PETROLEUM
8101488	18687	4248300000	108	UNION GEORGE #1	PANHANDLE EAST	7,1	WARREN PETROLEUM
8101489	18688	4248300000	108	UNION MUSMER #1	PANHANDLE EAST	14,2	WARREN PETROLEUM
8101516	18676	4248300000	108	VERNA MITCHEY #1	PANHANDLE EAST	7,1	WARREN PETROLEUM
8101506	18640	4217900000	108	W P LATHAM #1	PANHANDLE WEST	11,8	CITIES SERVICE CO
8101491	18691	4248300000	108	WALLACE #1 (#26899)	PANHANDLE EAST	4,6	WARREN PETROLEUM
8101490	18690	4248300000	108	WALLACE #1 (#26977)	PANHANDLE EAST	9,8	WARREN PETROLEUM
•CENTEX OIL & GAS INC				RECEIVED: 10/09/80 JA: TX			
8101443	16847	4224500000	103	HIGH ISLAND BLOCK 10-L NO 1	HIGH ISLAND BLOCK 10-L G	365,0	TRANSCONTINENTAL GAS
•CHALMERS OPERATING CO INC				RECEIVED: 10/09/80 JA: TX			
8101475	20226	4242932265	103	LULA BEN MASON #1 RRC # 85803	MASON (STRAWN LOWER)	120,0	SOUTHWESTERN GAS PIP
•CHAMPLIN PETROLEUM COMPANY				RECEIVED: 10/09/80 JA: TX			
8101503	18516	4236500000	103	CARTHAGE GAS UNIT NO 21-2	CARTHAGE (COTTON VALLEY)	730,0	TENNESSEE GAS PIPELI
•CHAPARROSA OIL CO				RECEIVED: 10/09/80 JA: TX			
8101440	11273	4250731071	102	B K JOHNSON #13	PRESA (ULMUS)	176,3	LOVACA GATHERING CO
8101440	11273	4250731071	103	B K JOHNSON #13	PRESA (ULMUS)	176,3	LOVACA GATHERING CO
•CHEVRON U S A INC				RECEIVED: 10/09/80 JA: TX			
8101485	21539	4249531081	103	M E LOVETT 9CL	KEYSTONE	185,0	TRANSWESTERN PIPELIN
•CLAYTON W WILLIAMS JR				RECEIVED: 10/09/80 JA: TX			
8101439	10853	4236500000	103	NED DEAN NO 1 RRC #76016	CARTHAGE S E (COTTON VAL	550,0	
•COLA PETROLEUM INC				RECEIVED: 10/09/80 JA: TX			
*8101476	20228	4222731869	105	REID #1	COAHOMA N (FUSSEL)	144,0	GETTY OIL CO
•COLUMBIA GAS DEVELOPMENT CORP				RECEIVED: 10/09/80 JA: TX			
8101530	21891	4205130538	102	RAYMOND ZGABAY NO 2	GIDDINGS (AUSTIN CHALK)	120,0	FERGUSON CROSSING PI
8101531	21896	4205130596	102	SCOTT TYSON NO 2	GIDDINGS (AUSTIN CHALK)	70,0	FERGUSON CROSSING PI
•CONOCO INC				RECEIVED: 10/09/80 JA: TX			
8101457	17730	4222731005	108	M R CLAY A #53 ID #18992	HOWARD GLASSCOCK	0,1	PHILLIPS PET CO
•DALLAS PRODUCTION INC				RECEIVED: 10/09/80 JA: TX			
8101561	22369	4242530100	103	DAVIS A NO 1	MCINTOSH (STRAWN)	410,0	WARREN PETROLEUM CO
•DIAMOND SHAMROCK CORPORATION				RECEIVED: 10/09/80 JA: TX			
8101436	05015	4235700000	108	CARL ELLIS ET AL A NO 1 (U&L)	ELLIS RANCH (CLEV & MORR	8,0	NATURAL GAS PIPELINE
8101529	21860	4242130212	103	CARLANDER NO 2	TEXAS HUGOTON	100,0	NORTHERN NATURAL GAS
•DISCOVERY OPERATING INC				RECEIVED: 10/09/80 JA: TX			
*8101567	22465	4241330791	103	DELONG A #2	KA-ZE-SA (CANYON)	45,0	CRA INC
•DONALD C SLAWSON				RECEIVED: 10/09/80 JA: TX			
8101521	18079	4221131152	103	#1-108 YORLEY	CANADIAN WEST (MURROW UP	400,0	NORTHERN NATURAL GAS
•ENSERCH EXPLORATION INC				RECEIVED: 10/09/80 JA: TX			
8101522	18186	4242900000	108	A W MUELLER B NO 1	CHANEY	15,0	PETROLEUM CORP OF TE
•EXXON CORPORATION				RECEIVED: 10/09/80 JA: TX			
8101501	18377	4239330671	103	FLOWERS TRUST A #2L	MENDOTA NW (GRANITE WASH	187,0	TRANSWESTERN PIPELIN
*8101558	22348	4200332166	103	FULLERTON CLFK UNIT #1835	FULLERTON	14,0	PHILLIPS PETROLEUM C
8101468	18959	4210332113	103	J B A/C 1 #2000	SAND HILLS (JUDKINS)	20,0	EL PASO NATURAL GAS
8101477	20281	4210332140	103	J B TUBB A/C 1 #2080	SAND HILLS (MCKNIGHT)	77,0	EL PASO NATURAL GAS
8101555	22344	4210332210	103	J B TUBB A/C 2 #2130	SAND HILLS (MCKNIGHT)	101,0	EL PASO NATURAL GAS
8101554	22343	4210332182	103	J B TUBB B #220	SAND HILLS (MCKNIGHT)	45,0	EL PASO NATURAL GAS

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JD NO	JA DAT	API NO	SEC	D WELL NAME	FIELD NAME	PRIN	PURCHASER
8101557	22347	4216531693	103	ROBERTSON CLFK UNIT #1072	ROBERTSON CLFK UNIT #107	16,0	PHILLIPS PETROLEUM C
8101556	22346	4216531726	103	ROBERTSON CLFK UNIT #1152	ROBERTSON N (CLFK 7100)	25,0	PHILLIPS PETROLEUM C
•FAIR OIL LTD				RECEIVED: 10/09/80 JA: TX			
8101458	17777	4249930698	103	G T LEE UNIT #1	QUITMAN NE (RODESSA)	54,0	ARKANSAS LOUISIANA G
•FISHER•WEBB INC				RECEIVED: 10/09/80 JA: TX			
8101525	18343	4208130694	103	GARTMAN NO 3	ARLEDGE (PENN SAND)	150,0	SUN GAS CO
•GALAXY OIL COMPANY				RECEIVED: 10/09/80 JA: TX			
8101426	15928	4223300000	108	RILEY I #3-01669	PANHANDLE FIELD	10,0	J M HUBER CORP
•GARY D TURNER DBA TURNER PROPERTIES				RECEIVED: 10/09/80 JA: TX			
8101480	20647	4243130830	103	COPELAND NO 1	JAMESON (STRAWN)	0,0	SUN GAS CO
8101519	17954	4208130817	103	TUBB NO 1 (FORM NORWOOD #1)	JAMESON (STRAWN)	73,0	SUN GAS CO
•GETTY OIL COMPANY				RECEIVED: 10/09/80 JA: TX			
8101494	18727	4236500000	103	WERNER E NO 2	CARTHAGE (COTTON VALLEY)	250,0	DELHI GAS PIPELINE C
•GRACE PETROLEUM CORPORATION				RECEIVED: 10/09/80 JA: TX			
8101425	14993	4224931041	103	STELZIG•ZWERNEMAN 12	AMARGOSA 2300	73,0	NATURAL GAS PIPELINE
•GULF OIL CORPORATION				RECEIVED: 10/09/80 JA: TX			
8101448	17165	4213500000	108	C A GOLDSMITH ET AL NO 586	GOLDSMITH (5600)	1,2	PHILLIPS PETROLEUM C
8101449	17166	4213500000	108	C A GOLDSMITH ET AL NO 608	GOLDSMITH (5600)	3,5	PHILLIPS PETROLEUM C
8101450	17167	4213500000	108	C A GOLDSMITH ET AL NO 737	GOLDSMITH (5600)	1,6	PHILLIPS PETROLEUM C
8101451	17168	4213500000	108	C A GOLDSMITH ET AL NO 949	GOLDSMITH (5600)	1,4	PHILLIPS PETROLEUM C
8101564	22456	4223700000	108	C B CROWLEY NO 1	BOONSVILLE BEND (CONGL G	10,0	NATURAL GAS PIPELINE
8101495	18733	4203330473	108	CANON RANCH UNIT NO 1009	JO•MILL (SPRABERRY)	6,2	GETTY OIL CO
8101496	18734	4203330478	108	CANON RANCH UNIT NO 1120	JO•MILL (SPRABERRY)	10,0	GETTY OIL CO
8101497	18735	4203330472	108	CANON RANCH UNIT NO 1121	JO•MILL (SPRABERRY)	1,6	GETTY OIL CO
8101498	18736	4203330457	108	CANON RANCH UNIT NO 1403	JO•MILL (SPRABERRY)	2,3	GETTY OIL CO
8101499	18737	4203330478	108	CANON RANCH UNIT NO 1806	JO•MILL (SPRABERRY)	5,3	GETTY OIL CO
8101539	22205	4247532010	103	HUTCHINGS STOCK ASSN NO 1067	WAGON WHEEL (PENN)	109,0	CABOT CORP
8101541	22207	4247532008	103	HUTCHINGS STOCK ASSN NO 1069	WAGON WHEEL (PENN)	217,0	CABOT CORP
8101563	22432	4249531113	103	KEYSTONE CATTLE CO NO 349	KEYSTONE (CULBY)	263,0	CABOT CORP
*8101578	22536	4249531089	103	KEYSTONE HULT UNIT NO 9334	KEYSTONE (HULT)	95,0	CABOT CORP
8101528	21858	4215730426	103	R A WOLTERS ET AL B #24 (#04153)	THOMPSON	15,0	UNITED TEXAS TRANSMI
8101570	22493	4235505997	108	TEXAS STATE #32973 #3 (ID#72745)	CORPUS CHRISTI BAY W (FB	15,0	FLORIDA GAS TRANSMIS
•M L BROWN JR				RECEIVED: 10/09/80 JA: TX			
8101559	22354	4231732135	103	SLAUGHTER•HANCOCK NO 4	SULPHUR DRAW (DEAN 8790)	29,2	GETTY OIL CO
•MIGH CHAPPARAL OIL CO				RECEIVED: 10/09/80 JA: TX			
8101481	20791	4247330317	102	COWAN•ZULLMAN•MIGH CHAPPARAL #1	COROLLA (WILCOX 10300)	365,0	LONE STAR GAS CO
•MILLIARD OIL & GAS INC				RECEIVED: 10/09/80 JA: TX			
8101526	21611	4206730307	102	RAWLES ET AL NO 1	KILDARE (COTTON VALLEY U	50,0	TEXAS EASTERN TRANSM
•MNG OIL COMPANY				RECEIVED: 10/09/80 JA: TX			
8101462	17815	4243130195	108	MCENTIRE 15 #1 64095	CREDO E (CISCO UPPER)	20,0	INTRATEX GAS CO
8101461	17814	4243130151	108	MCENTIRE 16 #1 61192	CREDO E (CISCO UPPER)	11,0	INTRATEX GAS CO
8101460	17813	4243130186	108	MCENTIRE 22 #1 64092	CREDO E (CISCO UPPER)	17,0	INTRATEX GAS CO
•INTERNATIONAL OIL & GAS CORP				RECEIVED: 10/09/80 JA: TX			
8101459	17789	4210532229	103	INGHAM 44-1	INGHAM (DEVONIAN)	704,0	EL PASO NATURAL GAS
•J A LEONARD				RECEIVED: 10/09/80 JA: TX			
8101454	17569	4205130409	103	COOKSEY A 3	INEZ JAMESON (NAVARRO A)	36,5	
•J CLEO THOMPSON				RECEIVED: 10/09/80 JA: TX			
8101435	02216	4213500000	103	WEST SOUTH COWDEN UNIT 3-6	SOUTH COWDEN	2,0	PHILLIPS PETRO CO
•JAKE L HAMON				RECEIVED: 10/09/80 JA: TX			
8101549	22302	4221131150	103	ORSCHEL #1-50	TWISTER (DOUGLAS)	545,0	CITIES SERVICE GAS C
•KOMANCHE OIL & GAS				RECEIVED: 10/09/80 JA: TX			
8101437	06488	4217900000	108	SOUTH JACKSON #3 00549	WEST PANHANDLE	21,0	PHILLIPS PETROLEUM C

JD NO	JA DKT	API NO	SEC	D WELL NAME	FIELD NAME	PRIOR	PURCHASER
*L & L PETROLEUM CORPORATION				RECEIVED: 10/09/80 JA: TX			
8101433	00574	4246931274	102	C K MCCAN JR #2	SALEM	73.0	TEXAS EASTERN TRANSM
8101434	00718	4246931384	102	C K MCCAN JR ET AL #4-T	SALEM	85.0	TEXAS EASTERN TRANSM
*L E WINDHAM				RECEIVED: 10/09/80 JA: TX			
8101470	19844	4213500000	108	J E PARKER A (EU) NO 1	HARPER	1.6	PHILLIPS PETROLEUM C
*L&M OIL CO				RECEIVED: 10/09/80 JA: TX			
8101445	16969	4208331589	103	W C HENDERSON B #4	BURKETT SW (DUFFER GAS)	55.0	WEST CENTEX GAS CO
8101444	16968	4208331749	103	W C HENDERSON B #6	BURKETT SW (DUFFER GAS)	55.0	WEST CENTEX GAS CO
8101446	16970	4208331690	103	WILLIE HENDERSON #2	BURKETT SW (DUFFER GAS)	55.0	WEST CENTEX GAS CO
*LEAR PETROLEUM EXPLORATION INC				RECEIVED: 10/09/80 JA: TX			
8101502	18492	4245930423	102	BLASINGAME #1		730.0	ARKANSAS LOUISIANA G
*MCCULLOCH OIL CORP OF TEXAS				RECEIVED: 10/09/80 JA: TX			
*8101429	09347	4221100000	103	YOUNG NO 11-66	GRANITE WASH FORMATION	500.0	PIONEER NATURAL GAS
*MCDONALD & MIDKIFF (HUNTER MIDKIFF)				RECEIVED: 10/09/80 JA: TX			
8101441	12640	4246100000	108	MIDKIFF-ARCO A NO 1 56800	SPRABERRY TREND (CLEARFO	3.8	EL PASO NATURAL GAS
8101442	12641	4246100000	108	MIDKIFF-ARCO B NO 1 06171	SPRABERRY TREND (CLEARFO	10.6	EL PASO NATURAL GAS
*MEADCO PROPERTIES				RECEIVED: 10/09/80 JA: TX			
8101533	21963	4223531409	102	A SUGG 1904 RRC #08042	ELA SUGG (CISCO)	0.0	NORTHERN NATURAL GAS
*MESA PETROLEUM				RECEIVED: 10/09/80 JA: TX			
8101523	18252	4210531045	108	HOOVER 1-64	AMERICAN (CLEAR FORK)	0.0	DELHI GAS PIPELINE C
*MGF OIL CORP				RECEIVED: 10/09/80 JA: TX			
8101544	22257	4231732127	103	HERZOG A #1 (25860)	SPRABERRY (TREND AREA)	35.1	PHILLIPS PETROLEUM C
8101569	22489	4232930852	103	STIMSON-BURLEY NO 2	SPRABERRY (TREND AREA)	20.1	NORTHERN NATURAL GAS
8101568	22488	4232930854	103	STIMSON-BURLEY NO 4	SPRABERRY (TREND AREA)	18.7	NORTHERN NATURAL GAS
*MILLS BENNETT ESTATE				RECEIVED: 10/09/80 JA: TX			
8101588	22628	4204700000	108	BENNETT MILLS ESTATE FEE #30	MILLS BENNETT (A SAND SE	14.4	TEXAS EASTERN TRANSM
*MITCHELL M J				RECEIVED: 10/09/80 JA: TX			
8101520	18063	4200100000	108	A G WILLIAMS #1	CAYUGA TRINITY (RUDESSA)	14.0	LONE STAR GAS CO
*MOBIL OIL CORP				RECEIVED: 10/09/80 JA: TX			
8101427	16332	4237100000	108	STATE BALDWIN B NO 1	ABELL (CLEARFORK)	10.6	PGP GAS PRODUCTS INC
*MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 10/09/80 JA: TX			
8101551	22312	4233531630	103	MARY FOSTER NO 132	IATAN-EAST HOWARD	0.4	GETTY OIL CO
8101550	22311	4233531631	103	MARY FOSTER NO 133	IATAN-EAST HOWARD	0.4	GETTY OIL CO
*8101553	22317	4247531979	103	STATE AK NO 2	CAPRITO (DELAWARE MIDDLE	56.2	LONE STAR GAS CO
*8101552	22316	4247532003	103	STATE AK NO 4	CAPRITO (DELAWARE MIDDLE	68.1	LONE STAR GAS CO
*MORAN EXPLORATION INC				RECEIVED: 10/09/80 JA: TX			
8101532	21909	4223531466	103	RUCKER B G #5	SPRABERRY (TREND AREA)	0.0	NORTHERN NATURAL GAS
*MURJO OIL & ROYALTY CO				RECEIVED: 10/09/80 JA: TX			
8101428	08792	4236700000	103	LADD-CARR M #2	BRAZOS EAST (MARBLE FALL	55.0	LONE STAR GAS CO
*PHILCON DEVELOPMENT CO				RECEIVED: 10/09/80 JA: TX			
8101573	22516	4229500000	108	BROWN #1	KIOWA CREEK (MORROW UPPE	10.0	NORTHERN NATURAL GAS
*PHILLIPS PETROLEUM COMPANY				RECEIVED: 10/09/80 JA: TX			
8101447	17107	4223300000	108	JOHNSON L NO 1	PANHANDLE WEST	20.0	EL PASO NATURAL GAS
8101500	18782	4234100000	108	YOUNGER A NO 1	WEST PANHANDLE	18.0	EL PASO NATURAL GAS
*R L ADKINS CORP				RECEIVED: 10/09/80 JA: TX			
8101543	22226	4215131019	103	WICKHAM B #1	WICKHAM (PALO PINTO)	1215.0	PALO DURO PIPELINE C
*R L BURNS CORP				RECEIVED: 10/09/80 JA: TX			
8101473	19856	4243530520	108	HICKS 23 #1	SAWYER (CANYON) FIELD	12.8	LOVACA GATHERING CO
8101472	19855	4243530959	108	MAYER 1 #1	SAWYER (CANYON) FIELD	11.3	LOVACA GATHERING CO
8101471	19854	4243530553	108	MAYER 17 #1	SAWYER (CANYON)	5.2	LOVACA GATHERING CO
8101474	19857	4243531149	108	MAYER 5 #1	SAWYER (CANYON) FIELD	6.8	LOVACA GATHERING CO
*RALPH L WAY INC				RECEIVED: 10/09/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101576	22533	4238331568	103		UNIVERSITY 9A #2	FARMER (SAN ANDRES)	36,7	NORTHERN NATURAL GAS
8101577	22534	4238331569	103		UNIVERSITY 9A #3	FARMER (SAN ANDRES)	6,5	NORTHERN NATURAL GAS
•RHODES DRILLING CO					RECEIVED: 10/09/80 JA: TX			
8101566	22460	4244131434	103		JAMES GRIFFIN F #1 ID=15545	ROBERTSON=GRIFFIN (GRAY	23,0	UNION TEXAS PETROLEU
•RICHEY EXPLORATION CO					RECEIVED: 10/09/80 JA: TX			
8101478	20289	4249731541	103		M R NORTH NO 1 (#85910)	GAS FINDERS (CONGL)	280,0	NATURAL GAS PIPELINE
•ROWE PRODUCTION CO					RECEIVED: 10/09/80 JA: TX			
8101484	21438	4205730935	102		GENE TRAYLOR NO 1	LAURA (8100)	7,0	HOUSTON PIPE LINE CO
•S K BARRY					RECEIVED: 10/09/80 JA: TX			
*8101438	10823	4208300000	102		BRAGG #1	BRAGG (FRY=LO)	137,4	EL PASO NATURAL GAS
•SHELL OIL CO					RECEIVED: 10/09/80 JA: TX			
8101575	22529	4210500000	108		MITCHELL 15	JM	4,0	EL PASO NATURAL GAS
•SIMPSON=MANN OIL PRODUCERS					RECEIVED: 10/09/80 JA: TX			
8101432	14860	4245100000	102		HAZEL JONES #1	HAZEL JONES (STRAWN LIME	144,0	LONE STAR GAS CO
•SOUTHWESTERN GAS EXPLORATION					RECEIVED: 10/09/80 JA: TX			
8101542	22212	4249731538	103		W B MITCHELL #1	BOUNSVILLE (BEND CONG GA	40,0	
•SUBURBAN PROPANE GAS CORP					RECEIVED: 10/09/80 JA: TX			
8101455	17635	4223531419	103		BAKER 1217 #1	BAKER RANCH (CANYON)	22,0	NORTHERN NATURAL GAS
•SUN OIL COMPANY (DELAWARE)					RECEIVED: 10/09/80 JA: TX			
8101424	16449	4227330570	103		A T CANALES NO 50	TIJERINA=CANALES=BLUCHER	2209,0	FLORIDA GAS TRANSMIS
8101482	21159	4242731323	102		B G DEGARCIA NO 34	FROST	888,0	
8101483	21164	4223732675	103		DURHAM GAS UNIT F NO 2	BOUNSVILLE (BEND CONGL G	48,5	LONE STAR GAS CO
8101464	18929	4213500000	108		FOSTER JOHNSON UNIT NO 10=1	FOSTER FIELD	0,4	ODESSA NATURAL CORP
8101465	18930	4213500000	108		FOSTER JOHNSON UNIT NO 14=1	FOSTER FIELD	0,2	ODESSA NATURAL CORP
8101466	18932	4213500000	108		FOSTER JOHNSON UNIT NO 14=13	FOSTER FIELD	0,1	ODESSA NATURAL CORP
8101467	18933	4213500000	108		FOSTER JOHNSON UNIT NO 15=15	FOSTER FIELD	0,2	ODESSA NATURAL CORP
8101463	18928	4213500000	108		FOSTER JOHNSON UNIT NO 5=8	FOSTER FIELD	1,5	ODESSA NATURAL CORP
8101430	13582	4242700000	108		MRS AMANDA MCKINNEY NO 25	SUN	22,0	
•TAHOE OIL & CATTLE CO					RECEIVED: 10/09/80 JA: TX			
8101584	22592	4237102184	108		STATE UNIVERSITY A&D #1	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101583	22591	4237102194	108		STATE UNIVERSITY A&D #2	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101582	22590	4237102195	108		STATE UNIVERSITY A&D #3	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101581	22588	4237102301	108		STATE UNIVERSITY A&D #5	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101580	22587	4237110391	108		STATE UNIVERSITY A&D #6	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101587	22597	4237110650	108		STATE UNIVERSITY A&D #7	LEON VALLEY (OBRIEN)	1,5	LARCO GAS CORP
8101586	22596	4237110908	108		UNIVERSITY #2=B	LEON VALLEY E (OBRIEN)	3,3	LARCO GAS CORP
8101585	22593	4237111292	108		UNIVERSITY #5=B	LEON VALLEY E (OBRIEN)	3,3	LARCO GAS CORP
•TAUBERT & STEED					RECEIVED: 10/09/80 JA: TX			
8101535	22027	4249900000	102		HAINESVILLE COMM CENTER UNIT #1	NEUHOFF (WOODBINE)	70,0	UNITED GAS PIPELINE
8101536	22028	4249900000	102		HOWARD MOORE NO 1	NEUHOFF (PALUXY)	55,0	UNITED GAS PIPELINE
8101537	22029	4249900000	102		VELMA CRAWFORD NO 2	NEUHOFF (PALUXY)	55,0	UNITED GAS PIPELINE
•TENNECO OIL COMPANY					RECEIVED: 10/09/80 JA: TX			
8101456	17636	4221131103	103		FRED A HUBART #3	HEMPHILL (GRANITE WASH)	288,0	PIONEER NATURAL GAS
•TEXACO INC					RECEIVED: 10/09/80 JA: TX			
8101540	22206	4210532488	103		C E DAVIDSON JR B #8=U	OZONA (CANYON SAND)	116,0	NORTHERN NATURAL GAS
8101579	22555	4221932719	103		I P DELOACHE #3	LEVELLAND	6,2	AMOCO PRODUCTION CO
•TEXCAN RESOURCES CORP					RECEIVED: 10/09/80 JA: TX			
*8101431	14820	4208931042	102		A J HRUSEK NO 1	MUDD (3700)	140,0	NATURAL GAS PIPELINE
8101453	17506	4208931070	102		R LOESER NO 1	MUDD (2900 FHIU)	120,0	NATURAL GAS PIPELINE
•U B OPERATING INC					RECEIVED: 10/09/80 JA: TX			
8101571	22496	4228730637	103		VIVIAN #1	GIDDINGS (AUSTIN CHALK)	190,0	PGP GAS PRODUCTS INC
•W L COTTON					RECEIVED: 10/09/80 JA: TX			
8101492	18709	4224730909	103		HORSESHOE RANCH GAS UNIT #1=A	STROMAN (OMERN A)	182,0	NATURAL GAS PIPELINE

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101493	18710	4224730910	103		PAUL NETH GAS UNIT #1-A	STROMAN (OHERN 3575)	75,0	NATURAL GAS PIPELINE
-W T WAGGONER ESTATE					RECEIVED: 10/09/80 JA: TX			
8101560	22362	4249700000	103		TOBOLOWSKY 1-A	ALVORD SOUTH (ATOKA)	360,0	
-WALTER EXPLORATION INC					RECEIVED: 10/09/80 JA: TX			
8101524	18223	4242931951	103		REPASS NO 1	IVAN NE	70,0	SOUTHWESTERN GAS PIP
-WARREN PETR CO A DIV OF GULF OIL CO					RECEIVED: 10/09/80 JA: TX			
8101452	17269	4210332057	103		W N WADDELL ET AL NO 1119	SAND HILLS (JUDKINS)	203,0	H & T GATHERING CO

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** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM

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-DUGAN PRODUCTION CORP					RECEIVED: 10/14/80 JA: NM 4			
8101589	NM-0005-80ER	3004522265	108	D	RACHEL #2	WAW FRUITLAND PC	14,0	EL PASO NATURAL GAS

OTHER PURCHASERS VOLUME NO :305

8101429	NORTHERN NATURAL GAS CO
8101431	[illegible] CO OF AMERICA
8101432	[illegible] TEXAS PETROLEUM
8101476	EL PASO NATURAL GAS CO
8101552	[illegible] GAS CO
8101553	[illegible] GAS CO
8101558	[illegible] PRODUCTION CO
8101567	NORTHERN NATURAL GAS CO
8101572	[illegible] GASOLINE CO

BILLING CODE 6450-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative Determinations are indicated by a "D" after the section Code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these procedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Person objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 18, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33983 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA81-1-000]

Armco Inc.; Application for Adjustment and for Interim Relief

Issued: October 28, 1980.

Take notice that on October 7, 1980, Armco Inc., P.O. Box 600, Middletown, Ohio 45043 (Armco), filed with the Federal Energy Regulatory Commission (Commission) an application for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301 *et seq.*), and § 1.41 of the Commission's regulations. Armco seeks relief from certain alternative fuel price ceilings set forth in 18 CFR 282.404.

Specifically, Armco states that its steelworks plant in Ashland, Kentucky consumes natural gas subject to the incremental pricing program of Title II of the NGPA. Armco states that the alternative fuel price ceilings published by the Energy Information Administration for the months of September and October, 1980, for the State of Kentucky were $3.51 per MMbtu and $3.53 per MMbtu, respectively. Armco believes that these fuel price ceilings are based on an incorrect methodology and are unrealistic and excessive. Armco requests that the alternate fuel price ceilings for the State of Kentucky be adjusted to $2.60 per MMbtu for both the months of September and October, 1980. The $2.60 per MMbtu ceiling is based, according to Armco's application, on both the purchase price in Ohio of Low Sulphur #6 fuel oil and the cost of transporting the fuel oil to the Ashland, Kentucky plant. (Armco states that Low Sulphur #6 is more expensive than High Sulphur #6, the benchmark for calculating alternate fuel price ceilings).

In addition, Armco requests interim relief, pursuant to § 1.41(m) and seeks a stay of the operation of the application alternative fuel price ceilings, pursuant to § 286.101 of the Commission's regulations (18 CFR 286.101).

The procedures applicable to the conduct of this adjustment proceeding are found in 18 CFR 1.41 (44 FR 18961, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed by November 18, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34202 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3447]

Cascade Waterpower Development Corp.; Application for Preliminary Permit

October 27, 1980.

Take notice that Cascade Waterpower Development Corporation (Applicant) filed on September 8, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)] for proposed Project No. 3447 to be known as Warm Springs Project located on the Middle Fork of the Malheur River in Malheur County, Oregon. The proposed project would affect U.S. lands under the administration of the U.S. Water and Power Resources Service. Correspondence with the Applicant should be directed to: Mr. David Holzman, P.O. Box 246, June Lake, California 93529; and Philip Merrill Esq., Special Counsel, 5 Moulton Street, Portland, Maine 04111.

Project Description.—The proposed project would consist of: (1) two penstocks through the existing Water and Power Resources' 106-foot high, thin-arch concrete Warm Springs Dam; (2) a powerhouse containing two generating units, each rated at 1.5 MW; and (3) a transmission line.

The average annual energy generation is estimated to be 15.4 million kWh and would be based on the irrigation water releases.

Purpose of Project.—The energy output from the project would be sold to the Idaho Power Company.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct engineering and geotechnical studies, perform preliminary designs and a feasibility analysis, prepare cost estimates, consult with agencies, conduct environmental studies, and prepare a FERC license application.

The estimated cost of the work to be performed under the preliminary permit is $72,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before January 2, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 3, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a)

and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 2, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34195 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-32-001 (PGA81-1) (IPR81-1)]

Colorado Interstate Gas Co.; Compliance Filing

October 28, 1980.

Take notice that Colorado Interstate Gas Company (CIG) on October 22, 1980, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1980. Such changes, according to CIG, are in compliance with the Commission's September 29, 1980, Order in this docket.

Copies of the compliance filing have been served on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Nov. 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34183 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3369, etc.]

Continental Hydro Corp. et al; Applications for Preliminary Permit

October 24, 1980

Continental Hydro Corporation, Project No. 3369, and Pennsylvania Renewable Resources, Inc., Project No. 3418, and Noah Corp. and the Town of Clintwood, Virginia, Project No. 3475.

Take notice that Continental Hydro Corporation (CHC), Pennsylvania Renewable Resources, Inc. (PRR), and Noah Corp. and the Town of Clintwood, Virginia (NCC) filed on August 25, 1980, September 2, 1980, and September 15, 1980, respectively, competing applications for preliminary permits (pursuant to the Federal Power Act, 16 U.S.C. Sections 791(a)–825(r)) for proposed hydroelectric projects, each to be known as the John W. Flannagan Project, FERC Projects Nos. 3369, 3418, and 3475, respectively, located on the Pound River in Dickenson County, Virginia. Correspondence with CHC should be directed to: Mr. A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Correspondence with PRR should be addressed to: Mr. Jeffrey M. Kossak, Pennsylvania Renewable Resources, Inc., Suite 1900, 14 Wall Street, New York, NY 10005. Correspondence with NCC should be addressed to: Mr. James B. Price, Ph.D., President, Noah Corp., P.O. Drawer 640, Aiken, South Carolina 29801.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers' John W. Flannagan Dam and would consist of: (1) A 100-foot long penstock located along the right (east) bank (CHC) or investigation of several methods of conducting water (PRR) or a 100-foot long penstock attached to the existing outlet (NCC); (2) a powerhouse containing generating unit(s) having a rated capacity of 3,500–kW (CHC) or 1,500–kW (PRR) or 7,000–kW (NCC); (3) a tailrace; and (4) appurtenant facilities. CHC would deliver project energy to existing powerlines serving the dam or to Appalachian Power Company's 138–kV transmission lines within 4,000 feet of the project. PRR would deliver project energy to an existing substation through a 3-mile long transmission line. NCC would deliver project energy to Appalachian Power Company's 69–kV transmission lines through a project switchyard and a 1.7-mile long 69–kV transmission line. CHC estimates the annual generation would average about 13,800,000 kWh; PRR estimates the annual generation would average about 6,500,000 kWh. NCC estimates the annual generation would average about 15,000,000 kWh.

Purpose of Project.—CHC would sell the project energy to Appalachian Power Company. PRR would conduct studies to identify a purchaser of the project energy. NCC would sell the project energy to a public or private utility.

Proposed Scope and Cost of Studies Under Permit.—Each Applicant seeks issuance of a preliminary permit for a period of 36 months. Each Applicant proposes that it would perform data acquisition, investigations, studies, feasibility evaluation, would consult with Federal, State, and local government agencies, and prepare an application for an FERC license, including an environmental report. CHC, PRR, and NCC estimate that the cost of studies under the permit would not exceed $58,000, $55,500, and $100,000, respectively.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permit. (A copy of the applications may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice

of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended*, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), *as amended* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the Requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in Section 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comment, protest, or petition to intervene must be filed on or before January 5, 1981, and must specify which of the above applications is being addressed. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34196 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF81-4-000]

Dickerson Lumber Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 28, 1980.

On October 14, 1980, Dickerson Lumber Company 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 proposed facility is located in Glasgow, Barren County, Kentucky. Dickerson Lumber Company states that it intends to construct, wholly and solely own, and operate a facility which will utilize heat energy of the sawmill developed sawdust and bark to fuel a series of low pressure (150 psi) boilers, producing steam to operate a noncondensing steam turbine-generator with a capacity to develop 1,000 kilowatts of power. Dickerson Lumber Company further states that the entire fuel source will be biomass fuel constituted of wood bark and sawdust. No natural gas, coal, or oil will be used.

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 within 30 days after the date of publication of this notice 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34203 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-8-000]

El Paso Natural Gas Co.; Application

October 24, 1980.

Take notice that on October 2, 1980, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP81-8-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by conveyance to Samedan Oil Corporation (Samedan) certain pipeline facilities with appurtenances located offshore Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that in Docket No. CP79-335 it was conditionally authorized to construct and operate certain natural gas facilities located offshore Texas, in order to permit it to connect certain new production platforms in the Mustang Island Area, offshore Texas, to the existing intrastate pipeline facilities of Houston Pipe Line Company (Houston) located on Padre Island, Kleberg County, Texas. Applicant further states that pursuant to such authorization it constructed, *inter alia*, the Lateral A-2 pipeline commencing at the proposed site of Platform "E" and terminating at a point of interconnection with Applicant's 20-inch O.D. Trunk "A" pipeline in order to receive and transport certain quantities of natural gas produced by Samedan in the North Chevron gas field, offshore Texas.

Applicant asserts that subsequent to its construction of the Lateral A-2 pipeline Samedan acquired Gulf Oil Corporation's 100 percent interest in State Tract 942-S. Applicant further asserts that inasmuch as Applicant had secured the right to purchase all natural gas produced by Samedan from State Tract 818-L, Samedan also elected to sell all the natural gas produced from State Tract 942-S to Applicant and that as a result of Samedan's acquisition of the interest in State Tract 942-S, Samedan's personnel responsible for the construction of Platform "E" further investigated the requirements of such platform. Applicant submits that based upon this evaluation, it has been advised by Samedan that Samedan no longer intends to construct and operate Platform "E" and that Platform "F" currently under construction would be utilized by Samedan to gather and compress the natural gas produced in the vicinity of Platform "F" as well as natural gas produced in the vicinity of the previously proposed Platform "E". Samedan has also advised Applicant that its decision not to construct and operate Platform "E" would not result in any loss of natural gas supplies which were to be purchased by Applicant from Samedan at Platform "E".

Applicant believes that in view of Samedan's decision not to construct and operate Platform "E" it has no further operational need for the Lateral A-2 pipeline. However, Applicant states that it has been advised by Samedan that the Lateral A-2 pipeline could be utilized by Samedan in conjunction with the gathering of natural gas located in proximity to Platform "E" and the ultimate transportation of such natural gas to Platform "F". Accordingly, Applicant proposes to abandon by conveyance to Samedan the Lateral A-2 pipeline.

It is further stated that Samedan has agreed to pay Applicant $388,432 for such facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34204 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-527]

El Paso Natural Gas Co.; Notice of Application

October 24, 1980.

Take notice that on August 28, 1980, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP80-527 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term transportation of up to 4,000 Mcf of natural gas per day for the account of Phelps Dodge Corporation (Phelps Dodge) on a best-efforts basis, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that on December 29, 1979, it commenced the transportation of natural gas pursuant to Section 284.202(a)(1) of Subpart F of the Commission's Regulations. The subject gas, it is stated, is purchased by Phelps Dodge from Ike Lovelady, Inc., *et al.*, (Lovelady) pursuant to a gas purchase agreement dated October 22, 1979, from the Garza No. 1A well located in Live Oak County, Texas. Applicant further states that Seagull Pipeline Corporation (Seagull), an intrastate pipeline company, accepts the gas at the wellhead and transports such gas to Valero Transmission Company (Valero), also an intrastate pipeline company, for delivery to Applicant. Applicant, it is asserted, delivers the natural gas to Phelps Dodge at existing delivery points located on Applicant's interstate pipeline transmission system. Applicant asserts that although it anticipated the service would terminate on June 1, 1980, the Commission permitted transportation of fuel oil displacement gas to continue through August 31, 1980.

Applicant submits that as a result of the Commission's Order No. 30-D issued August 15, 1980, in Docket No. RM79-34 the transportation service rendered by Applicant for the account of Phelps Dodge would no longer be exempted from the requirements of Section 7(c) of the Natural Gas Act after August 31, 1980, and that as a consequence by telegram dated August 28, 1980, it *inter alia*, requested pursuant to Section 284.208(c) of the Commission's Regulations issuance of a temporary certificate in order to continue without interruption the transportation service for Phelps Dodge. Temporary authorization was granted by order dated September 5, 1980, in Docket No. CP80-527 conditioned upon Applicant's filing a formal application within 30 days of the date of such order, it is said. Accordingly, Applicant now seeks permanent authorization to continue the transportation service for Phelps Dodge for the duration of the fuel shortage emergency period including any extensions thereof.

Applicant, it is stated, has agreed to accept on a best-efforts basis from Valero at an existing point of interconnection between the pipeline systems of Valero and Applicant located in Sterling County, Texas, such quantities of natural gas as Phelps Dodge shall cause to be tendered to Valero by Seagull in Live Oak County, Texas. Applicant proposes to deliver to Phelps Dodge equivalent quantities of gas at existing delivery points in New Mexico and Arizona less 5 percent of such volumes retained for fuel and line loss. Applicant asserts that it and Phelps Dodge have agreed to eliminate any imbalances within 30 days after such imbalances are known to the parties.

Applicant states that Phelps Dodge has agreed to pay it for transportation volumes delivered in New Mexico the rate in effect and reflected from time to time as the mainline transmission charge—New Mexico, and for gas delivered in Arizona the rate in effect and reflected from time to time as the mainline transmission charge—Arizona all as set forth on Sheet No. 1-D.2 of Applicant's FERC Gas Tariff, Third Revised Volume No. 2, or superseded tariff.

Applicant additionally states that Phelps Dodge has agreed to reimburse it for all fees and/or charges billed by Valero to Applicant. Valero, it is asserted, would charge 14.5 cents per million Btu's per month for the first year of operation (December 28, 1979, through December 28, 1980), 15.5 cents per million Btu's per month for the second year of operation (December 28, 1980, through December 28, 1981), and thereafter as mutually agreed to by Applicant and Valero. Furthermore, pursuant to the terms and conditions of a gas transportation agreement dated December 28, 1979, between Phelps Dodge and Seagull, Seagull would bill Phelps Dodge 5.0 cents for each Mcf per month transported, it is said.

Applicant states that the proposed extension of service would be accomplished by use of available excess capacity existing from time to time in its existing interstate pipeline system and would not entail the construction of any new facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34205 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-9262, G-18338, CP61-94, CP63-14, CP65-26, CP70-104, CP73-17]

Florida Gas Transmission Co.; Petition to Amend

October 24, 1980.

Take notice that on September 15, 1980, Florida Gas Transmission Company (Petitioner), P.O. Box 44, Winter Park, Florida 32790, filed in Docket Nos. G-9262, G-18338, CP61-94, CP63-14, CP65-26, CP70-104, and CP73-17, a petition to amend the certificates issued in the above dockets [1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the extension of the service agreements with certain distribution company customers as set forth in the appendix hereto, 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 under the above proceedings it was authorized to sell and deliver natural gas to various distribution customers within Florida and Alabama. It is stated that Petitioner purchases and receives natural gas from suppliers in the Gulf Coast Areas of Texas, Louisiana, Mississippi, Alabama, Florida and the offshore Federal Domain, and transports, sells and delivers said natural gas into Florida for both resale and direct consumption.

Petitioner proposes herein to continue the sale of natural gas to the distribution company customers for an extended period to July 1, 1999, and from year to year thereafter.

It is stated that the sales to the various distribution companies would be made on the same basis as was made prior to the new service agreements and no change would be made in the volumetric entitlements under the new service agreements.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Appendix

Distribution Companies Served:

Blountstown, Florida City of
Central Florida Gas Corporation (St. Cloud)
Central Florida Gas Corporation (Winter Haven, Haines City, Auburndale, Lake Wales, Bartow and Lake Alfred)
Chattahoochee, Florida City of
Chipley, Florida City of
City Gas Company of Florida (Cocoa and Eau Gallie)
City Gas Company of Florida (Cutler Ridge, West Miami and South Miami)
City Gas Company of Florida (Hialeah, Opa Locka and Lake Forrest)
City Gas Company of Florida (Melbourne)
City Gas Company of Florida (Titusville)
Clearwater, Florida City of
Crescent City, Florida City of
Florida Public Utilities Company (DeLand)
Florida Public Utilities Company (Sanford)
Florida Public Utilities Company (West Palm Beach, Lake Worth, Riviera Beach, Boynton Beach and Boca Raton)
Fort Meade, Florida City of
Fort Pierce Utilities Authority, City of
Gainesville Gas Company
Geneva County Gas District
Gulf Natural Gas Corporation (Ocala Division)
Gulf Natural Gas Corporation (Panama City Division)
Indiantown Gas Company
Jay, Florida, Town of
Lake Apopka Natural Gas District (Apopka)
Lake Apopka Natural Gas District (Plymouth)
Lake Apopka Natural Gas District (Winter Garden)
Lake City, Florida City of
Leesburg, Florida City of
Live Oak, Florida City of
Madison, Florida City of
Mariana, Florida City of
Miller Gas Company
Palatka Gas Authority
Peoples Gas System, Inc. (Avon Park Division)
Peoples Gas System, Inc. (Daytona Beach Division)
Peoples Gas System, Inc. (East Coast Division)
Peoples Gas System, Inc. (Frostproof Division)
Peoples Gas System, Inc. (Jacksonville Division)
Peoples Gas System, Inc. (Lakeland Division)
Peoples Gas System, Inc. (Miami Division)
Peoples Gas System, Inc. (Orlando Division)
Peoples Gas System, Inc. (St. Petersburg Division)
Peoples Gas System, Inc. (Triangle Division)
Peoples Gas System, Inc. (West Coast Division)
Perry, Florida City of
Plant City Natural Gas Company
Reedy Creek Utilities Company, Inc. (Residential)
Reedy Creek Utilities Company, Inc. (Theme Park)
St. Joe Natural Gas Company, Inc.
Seacoast Gas Corporation
South Florida Natural Gas Company
Southern Gas Company
Starke, Florida City of
Sunrise, Florida City of
Utilities Board of the City of Florala, Alabama
Williston, Florida City of

[FR Doc. 80-34206 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA80-1-51 (PGA81-2)]

Great Lakes Gas Transmission Co.; Filing

October 28, 1980.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on October 14, 1980, tendered for filing First Revised Sheet No. 57-A, to its FERC Gas Tariff First Revised Volume No. 1, proposed to be effective November 1, 1980.

Great Lakes states that the revised tariff sheet reflects the projected incremental pricing surcharge for the November 1, 1980 through April 30, 1981 period in which it is estimated that Great Lakes will incur no incremental costs subject to passthrough.

Great Lakes further states that copies of this filing have been served upon its customers and the Public Service Commission of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

[1] These proceedings were commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the Commission.

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34184 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. E-9329, ER76-792, ER76-716]

Indiana and Michigan Electric Co.; Filing

October 28, 1980.

The filing company submits the following:

Take notice that on October 9, 1980, Indiana and Michigan Electric Company submitted for filing a compliance report pursuant to Commission Opinion No. 95, issued September 2, 1980, in the above-captioned proceeding.

A copy of this filing has been sent to the parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34207 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-380]

Indiana and Michigan Electric Co.; of Filing

October 28, 1980.

The filing company submits the following:

Take notice that on October 9, 1980, Indiana and Michigan Electric Company, (I&M) submitted for filing a revised supplement to I&M's F.E.R.C. Rate Schedule No. 22, and revised exhibits A, B, C, and D.

These documents are being filed to replace documents submitted for filing on September 3, 1980, in the above-captioned proceeding. It has been determined by the parties that the documents submitted on September 3 contained incorrect calculations.

A copy of this filing has been sent to Northern Indiana Public Service Company.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34208 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-9-000]

Lone Star Gas Co. a Division of Enserch Corp., Application

October 24, 1980.

Take notice that on October 8, 1980, Lone Star Gas Company, a Division of Enserch Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP81-9-000 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 a tap for the delivery of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a tap for the sale and delivery of natural gas to Mr. Aaron Wood III. It is stated that Mr. Wood operates a commercial ethanol distilling plant in Waurika, Oklahoma, for the production of ethanol which is then blended with gasoline to produce gasohol. It is stated that in order to supply the plant with a constant heat source Applicant would provide Mr. Wood with an estimated annual requirement of 19,710 Mcf from the H3-4-inch mainland pipeline

Applicant states that it has sufficient natural gas supplies in the area to serve this relatively small facility and meet its high priority demand and further that sales to this customer would be curtailable as necessary to provide for all current and future high priority consumption.

Applicant states that the estimated total cost of $2,751.00 would be financed from working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34209 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3389]

MacGregor Downs, Inc.; Application for Preliminary Permit

October 27, 1980.

Take notice that MacGregor Downs, Inc. (Applicant) filed on August 26, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for proposed Project No. 3389 to be known as the Lockville Dam Project located on the Deep River in Chatham and Lee Counties in North Carolina. Correspondence with the Applicant should be directed to: Mr. Peter

Reynolds, MacGregor Downs, Inc., P.O. Box 790 Cary, North Carolina 27511.

Project Description.—The proposed project would consist of: (1) An existing dam, including embankments and gate structures, with a height of 15 feet and an overall length of 950 feet; (2) an existing, 2,300-foot long headrace canal; (3) an existing powerhouse with a proposed installed generating capacity of 1,840 kW; (4) an existing 20 acre reservoir with a gross storage capacity estimated at 150 acre-feet; and (5) appurtenant facilities. The average annual energy generation is estimated to be 8,400 MWh.

Purpose of Project.—MacGregor Downs, Inc. proposes to develop the hydroelectric potential of the project and sell the power output to Carolina Power and Light.

Proposed Scope and Cost of Studies Under Permit.—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic, and financial aspects of the project will be defined, investigated and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, describe the steps required for implementation. The report will be prepared so that the information presented will be useful in preparing applications for a license, and a State Water Quality Certificate for the project. The Applicant's estimated total cost for performing a feasibility study is $100,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to the Lockville Dam Project No. 3159 on the Deep River in North Carolina under 18 CFR 4.33 *as amended*, 44 FR 61328 (October 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions To Intervene.—Anyone desiring to be heard or to make any portest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34197 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF81-2-000]

Merced Irrigation District; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 28, 1980.

On October 3, 1980, Merced Irrigation District 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 proposed small hydroelectric facility is located on Merced Irrigation District's Main Canal in Merced County, approximately 12 miles north of the City of Merced, California. Merced Irrigation District states that the hydroelectric plant will have a capacity of approximately 2.8 megawatts, with an annual estimated energy generation of approximately 9.75 million kilowatt hours. The facility will generate hydroelectric power by utilizing the water flows on the Applicant's main irrigation canal as water is delivered to the agricultural users. Merced Irrigation District also states that it will be the sole owner of the facility.

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.W., 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 within 30 days after the date of publication of this notice 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34210 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP78-77]

Mississippi River Transmission Co.; Settlement Conference

October 27, 1980.

Take notice that an informal settlement conference in the subject proceeding will be convened on November 6, 1980, at 10:00 a.m. in a conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance at the conference will not be deemed to authorize intervention as a party in the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34198 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80.463]

National Fuel Gas Supply Corp.; Amendment to Application

October 28, 1980.

Take notice that on September 25, 1980,[1] National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14240, filed in Docket No. CP80.463 an amendment to its application pending in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Commission's Regulations (18 CFR 187.7 (b)) so as to reflect an increase in total expenditures for gas purchase facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states in its application filed in the instant docket on July 25, 1980, it requested authorization to construct and operate certain gas purchase facilities in order to improve its supply deliverability and to offset depletion of its existing reserves. Applicant states that its application indicated that total expenditures for the proposed facilities would not exceed two percent of its gas plant account.

Applicant asserts that recent developments have given rise to a reassessment of necessary facilities which revisions would result in expenditures exceeding the originally requested level of two percent of Applicant's plant account. Accordingly, Applicant by this amendment seeks authorization for total expenditures of three percent of its plant account.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 19, 1980, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34211 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[1] This application was initially tendered for filing on September 25, 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 October 7, 1980; thus the filing was not complete until the latter date.

[Docket No. CP81-2-000]

Natural Gas Pipeline Company of America; Application

October 24, 1980.

Take notice that on October 1, 1980, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81-2-000 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 lateral pipeline and other facilities (High Plains "B" project) to attach new gas supplies to its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under its High Plains "B" project to construct and operate lateral pipeline consisting of approximately 130 miles of 4, 6, 8 and 10-inch pipeline, approximately 4,000 horsepower of compression, and other appurtenant facilities in Yuma, Sedgwick and Phillips Counties, Colorado. Applicant states that it would also install communication facilities. It is stated that the pipeline and facilities would deliver up to 28,000 Mcf of natural gas per day from Applicant's area of interest in eastern Colorado and Western Nebraska to a point of connection on Trailbrazer Pipeline Company's proposed pipeline located in Sedgwick County, Colorado. Applicant states that this construction is necessary because the new and developing gas fields, located at a considerable distance from Applicant's transmission system represent some of the best and most economical sources of new long-term gas reserves.

Applicant projects that approximately 35,000,000 Mcf of combined proved gas reserves and probable and possible potential gas supply are contained in Niobnana Chalk Formation within the evaluated area. Applicant would purchase gas found in the Niobnana Chalk formation and from any other zones producing under contracted acreage available to it.

Applicant states that the total estimated cost of the High Plains "B" Project would be $19,946,000. Said cost would be financed initially, it is stated, with funds on hand, borrowings under Applicant's revolving credit arrangements or short-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34213 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-579]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

October 24, 1980.

Take notice that on September 29, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-579 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Panhandle Eastern Pipe Line Company

(Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the Exploration and Production Division of Internorth, Inc. has a ten percent leasehold interest in Eugene Island Block 39 (Block 39) and that in order to accommodate the transportation of such gas to its system it has entered into an agreement with Michigan Wisconsin Pipe Line Company (Mich Wis) dated October 30, 1979, for transportation of such gas attributable to Block 39. By such agreement, Applicant asserts that Mich Wis would transport Applicant's Block 39 gas onshore and deliver such gas to Trunkline Gas Company (Trunkline) for Applicant's account at an existing point of Interconnection between the facilities of Mich Wis and Trunkline on the discharge side of Mich Wis' Patterson compressor station in St. Mary Parish, Louisiana.

Applicant proposes herein to implement the terms of its transportation and sales agreement with Panhandle and Trunkline dated July 10, 1980, which provides for the transportation of Applicant's Block 39 gas and the sale of up to 20 percent of such gas to Panhandle. Trunkline would receive Applicant's Block 39 gas at the Patterson compressor station and transport such gas to its Longville, Louisiana, compressor station located in Beauregard Parish, Louisiana. Such gas, it is asserted, would be transported from Trunkline's Longville compressor station to Applicant's system by Trunkline and Panhandle pursuant to the terms of a transportation agreement between the parties dated September 24, 1976, it is asserted.

It is submitted that the gas would be sold to Panhandle on a monthly cost of service basis which cost represents Applicant's cost of gas at the point of delivery to Trunkline with average cost of service per Mcf for the first year of operation estimated to be $2.66. It is further submitted that the option by Panhandle to purchase up to 20 percent of the volumes delivered to Trunkline would be partial consideration for the transportation of Applicant's Block 39 gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34214 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-118]

Oklahoma Corporation; Request for Withdrawal of Well Category Determination

October 28, 1980.

Oklahoma Corp., Section 108 NGPA Determination, Mobil Oil Corporation, J. L. Martin No. 7 Well, FERC JD No. 80-29206.

Take notice that on June 26, 1980, the Oklahoma Corporation Commission, Oklahoma City, Oklahoma (Corporation Commission) filed with the Federal Energy Regulatory Commission (Commission) a request to withdraw its determination that the J.L. Martin No. 7 Well did not qualify as a stripper well pursuant to section 108 of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301, *et seq.* The determination of eligibility for the subject well became final by operation of § 275.202 of the Commission's regulations on June 9, 1980, prior to the date on which the Corporation Commission filed its request for withdrawal of its determination of eligibility.

In its request to withdraw its determination of eligibility, the USGS states that Mobil Oil Corporation (applicant) has furnished additional production records which should be considered by the Corporation Commission.

Any person desiring to be heard or to protest this request should, within 30 days after publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered but will not make the protestant parties to the proceeding. Any person wishing to become a party to proceeding or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34215 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-7-000]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application

October 24, 1980.

Take notice that on October 2, 1980, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP81-7-000 a joint 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 for Northern Natural Gas Company, Division of Inter-North, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport and redeliver to Northern gas purchased by Northern from Vermilion Block 372, offshore Louisiana. It is stated that pursuant to a transportation and sales agreement dated September 18, 1980, between Applicants and Northern, Trunkline would receive the natural gas at an existing interconnection of facilities of Trunkline and Michigan Wisconsin Pipe Line Company (Mich Wis) in Cameron Parish, Louisiana, or St. Mary Parish, Louisiana, through arrangements made by Northern with Mich Wis. Applicants state that

Trunkline would redeliver the natural gas for Northern's account at Trunkline's Longville, Louisiana, compressor station in Beauregard Parish, Louisiana.

It is stated that by order issued in Docket No. CP77-17, the Commission approved two transportation arrangements between Applicants and Northern. Under one, it is stated, Trunkline would receive natural gas for Northern's account at its Longville, Louisiana, compressor station and redeliver the natural gas to Panhandle at the interconnection of Applicants' facilities in Douglas County, Illinois, for further delivery by Panhandle to Northern in Kiowa County, Kansas. Applicants state that under the second agreement, Trunkline would transport natural gas for Northern from offshore Louisiana to the Longville, Louisiana, compressor station. Applicants state that the proposal herein is to provide for the transportation of gas purchased by Northern from Vermilion Block 372 to Longville for further transportation and delivery under the previous arrangements.

Applicants state that under the September 18, 1980, agreement, up to 16,500 Mcf per day would be delivered during the period of five years from the date of first delivery and in the sixth and subsequent years no less than 50 percent of the initial volumes. It is stated that Northern would sell to Panhandle up to 20 percent of said volumes. It also is stated that Panhandle would purchase additional natural gas as Northern would deem it available.

It is stated that Northern would pay Panhandle a monthly charge of $6,102 based on a firm volume of 13,200 Mcf per day for transportation service between Cameron Parish, Louisiana, and Trunkline's Longville, Louisiana, compressor station and an additional charge of 8.51 cents per Mcf for natural gas from St. Mary Parish, Louisiana. Furthermore, it is stated, an adjustment of 1.52 cents per Mcf would be made for any deficiency or excess in quantities taken. It is stated that Panhandle would pay Trunkline its *pro rata* share of the transportation service for amounts paid by Northern. It is asserted Northern would reimburse Trunkline for fuel usage and line loss.

Applicants further state that they have agreed that Trunkline would transport the natural gas Panhandle would purchase, up to 20 percent of the volumes transported, to an existing point in Douglas County, Illinois. It is stated that Panhandle would pay Trunkline a monthly charge of $23,826 based on a firm volume of 3,300 Mcf per day for five years from the date of first delivery and an additional 8.51 cents per Mcf for natural gas delivered at the St. Mary Parish, Louisiana, point of receipt. It is stated that an adjustment of 23.73 cents per Mcf would be applied to any deviation from the 3,300 Mcf per day. Applicants assert that Panhandle might reduce the quantity in the sixth and subsequent years to no less than 50 percent of the initial volume. In addition, it is asserted that Trunkline would retain gas for fuel and line loss.

It is asserted that the purchase price for gas purchased by Panhandle would be Northern Exploration and Production Division's unit modified cost of service reflected in the cost of service underlying Northern's then effective jurisdictional sales rate plus associated transportation charges paid to others to effectuate delivery to Trunkline plus associated cost of service charges applicable to facilities Northern installs or causes to be installed to provide service to effect deliveries.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 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 Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34216 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-581]

Pataya Storage Co.; Application

October 24, 1980.

Take notice that on September 30, 1980, Pataya Storage Company (Applicant), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP80-581 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 underground natural gas storage facilities in Mohave County, Arizona, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate facilities necessary to develop two underground storage caverns capable of storing 4,000,000 Mcf of natural gas of which 3,000,000 Mcf would be top or working gas and 1,000,000 Mcf would be base gas. Applicant states it would utilize a salt body approximately 12 miles long, 5 miles wide and 2 miles thick located on the northern part of the Hualapai Valley, Mohave County, Arizona. Applicant also proposes to construct and operate a compressor station and 30 miles of 16-inch pipeline to tie the storage field into the main line transmission system of El Paso Natural Gas Company (El Paso) near Kingman, Arizona.

Applicant further proposes to render natural gas service under its proposed Rate Schedule SCS-1, Salt Cavern Storage Service, to its parent company, Southwest Gas Corporation (Southwest). It is stated that under its Rate Schedule SCS-1, Applicant would make a demand charge of $4.98 per Mcf, a capacity charge of .1573 cents per Mcf, an injection charge of .0307 cent per Mcf and a withdrawal charge of .01 cent per Mcf. Applicant estimates that withdrawals from the Pataya Storage Field would total 100,000 Mcf per day and 3,000,000 Mcf annually.

Moreover, it is stated, El Paso would deliver the volumes from storage to Southwest at various receipt points in Nevada and Arizona in order to enable Southwest to ensure service to its Priority 1 and 2 requirements on a firm basis and to supply its Priority 3 requirements on a best-efforts basis. It is stated that since 1973 Southwest has

been experiencing curtailment in gas deliveries for its Priority 3 and Priority 5 requirements throughout its gas service areas in southern Nevada, central Arizona, and southern Arizona. Moreover, Applicant states that El Paso would have severely curtailed Priority 2 gas if it had not developed California back-off arrangements, the use of Rhodes Storage, and arrangements with the Clay Basin Storage System. It is stated that long-range gas supply forecasts prepared by El Paso indicate continued increasing curtailments in gas delivery to Southwest and that since 1975 Southwest has been engaged in a self-help supplemental gas procurement program for its service areas in an effort to attain gas supplies from sources other than El Paso. It is asserted that to make the purchases of supplemental gas supplies, Southwest has had to make arrangements to sell off gas that it did not need due to take-or-pay obligations to purchase at a high load factor from the wellhead. It is stated that the sell-off of well gas can cease and the gas be more efficiently used after the development of the storage field.

Applicant estimates the cost of the proposed project to be $42,902,000 which would be financed by the creation of a construction trust capable of issuing commerical notes supported by bank letter of credit and/or notes payable to a bank.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 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 and 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 rquired herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34217 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER77-277 (Phase I)]

Pennsylvania Power Co.; Filing

October 28, 1980.

The filing Company submits the following:

Take notice that the Pennsylvania Power Company on October 1, 1980, tendered for filing Revised Cost of Service and Rate Schedule Amendments in compliance with Commission Order No. 89, issued July 18, 1980, in the above docket.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (1.8 and 1.10). All such protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34185 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF80-27]

Quaker Oats Co., Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 28, 1980.

On September 26, 1980, The Quaker Oats Company 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 Pekin, Illinois, and is a topping cycle cogeneration system which provides power, steam and hot water for the manufacture of paperboard from recycled waste paper and kraft clippings. Quaker Oats states that the primary energy source for the facility is natural gas which is used to produce high pressure, superheated steam in a boiler. Number 2 fuel oil serves as a stand-by boiler fuel. Quaker Oats further states that it is the sole owner of the facility. The turbine-generator has a power output capacity of 1500 kilowatts.

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, NE., 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 December 8, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34219 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3444]

Rocky Gorge Corp.; Application for Preliminary Permit

October 24, 1980.

Take notice that Rocky Gorge Corporation (Applicant) filed on September 8, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3444 to be known as the Rocky Gorge Project located on the Great Works River in the Town of South Berwick, York County, Maine. Correspondence with the Applicant should be directed to: Mr. Jon Truebe, Rocky Gorge Corporation, Box 84, South Berwick, Maine 03908.

Project Description—The proposed project would consist of: (1) an existing 16-foot high, 140-foot long stone based Ambursen timber dam; (2) an existing reservoir with a maximum storage capacity of 98 acre feet; (3) a new 65 or 300-foot long steel penstock; (4) a new powerhouse containing a single 300-kW turbine-generator; (5) a 150-foot long transmission line; and (6) appurtenant

facilities. The project could generate up to 1,500,000 kWh annually saving the equivalent of 2,500 barrels of oil or 700 tons of coal.

Purpose of Project—Power generated at the project would be sold to Central Maine Power Company or Public Service Company of New Hampshire for distribution to their customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $12,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commision's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34199 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ST80-336]

Sugar Bowl Gas Corp.; Application for Approval of Rates

October 24, 1980.

Take notice that on September 12, 1980, Sugar Bowl Gas Corporation (Applicant), 1200 Milam Street, Houston, Texas 77002, filed in Docket No. ST80-336 an application pursuant to Part 284 of the Commission's Regulations for approval of rates charged for transporting natural gas for Southern Natural Gas Corporation (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it and Southern have entered into an agreement whereby it would transport volumes of natural gas purchased by Southern pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978.

Under the terms of the stated agreement, the rate to be charged by Applicant for such transportation would be 20.0 cents per million Btu subject to a monthly inflation adjustment predicated upon the monthly increase in the Consumer Price Index, it is said.

Applicant submits that the unit transportation cost of service rate for the SGBC system is 19.5 cents per Mcf. Additionally, based on system operations, Applicant submits that it would incur incremental fuel costs of 2.3 percent for transporting the stated volumes, and that it would redeliver to Southern an equivalent number of Btu's to those delivered. Accordingly, Applicant asserts that the fair and equitable rate must be increased by the value of those additional volumes of fuel used to transport these volumes on behalf of Southern. Applicant further asserts that inasmuch as this is Section 107 gas with a first sale price of $6.53 per million Btu, the resulting fuel charge approximates 15.0 cents per Mcf which charge results in a total fair and equitable transportation rate of 34.5 cents per Mcf. However notwithstanding the higher demonstrated rate, Applicant states that it would not charge Southern a rate in excess of the above-referenced contract rate agreed to by the parties subject to the fair and equitable rate limitation.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 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 a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34218 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-139-001

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

October 28, 1980.

Take notice that on October 17, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing proposed tariff sheets to its FERC Gas Tariff, Ninth Revised Volume No. 1, consisting of the following:

Substitute First Revised Sheet No. 210
Substitute First Revised Sheet No. 220
Substitute First Revised Sheet No. 222

Tennessee states that the purpose of these tariff sheets is correct certain

typographical errors in the revision of Tennessee's tariff.

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 November 7, 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, provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34186 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-138-004]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

Third Revised Sheet No. 763

The purpose of this filing is to terminate Rate Schedule X-81, which is a transportation agreement dated January 17, 1977, as amended August 1, 1977, among Transco, Cannon Mills Company (Cannon), Public Service Company of North Carolina, Inc. (Public Service) and Piedmont Natural Gas Company, Inc. (Piedmont), authorized by certificate issued December 22, 1975 and subsequently amended by orders issued February 7, 1977 and December 22, 1977, in Docket No. CP76-138, and which terminated by its own terms on December 31, 1979. A copy of the instant filing has been served upon Cannon, Public Service, and Piedmont.

The proposed effective date of this sheet is December 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34187 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-241-008]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

Second Revised Sheet No. 826

The purpose of this filing is to terminate Rate Schedule X-90, which is a transportation agreement dated August 8, 1977, as amended May 23, 1978, among Transco, Nabisco, Inc. (Nabisco), Public Service Electric and Gas Company (PSE&G), CNG Transmission Company, now Commonwealth Gas Pipeline Corporation (Commonwealth), Natural Gas Pipeline Company of America (NGPL) and Texas Eastern Transmission Corporation (Texas Eastern), authorized by certificate issued May 24, 1976 and subsequently amended by orders issued June 6, 1977, October 18, 1978 and December 20, 1978, in Docket No. CP76-241, and which terminated by its own terms on June 23, 1980. A copy of the instant filing has been served upon Nabisco, PSE&G, Commonwealth, NGPL and Texas Eastern.

The proposed effective date of this sheet is December 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34188 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-369-001]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 1340

The purpose of this filing is to terminate Rate Schedule X-145, which is a transportation agreement dated February 15, 1977, among Transco, Laurens Glass Company (LGC), the City of Laurens, South Carolina (Laurens) and Public Service Company of North Carolina, Inc. (Public Service), authorized by certificate issued September 21, 1977, in Docket No. CP77-369, and which terminated by its own terms on September 14, 1979. A copy of the instant filing has been served upon LGC, Laurens and Public Service.

The proposed effective date of this sheet is December 1, 1980.

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 November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34189 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-370-001]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 1347

The purpose of this filing is to terminate Rate Schedule X-146, which is a transportation agreement dated February 15, 1977, among Transco, Minnesota Mining and Manufacturing Company (3M) and the City of Laurens, South Carolina (Laurens), authorized by certificate issued September 21, 1977, in Docket No. CP77-370, and which terminated by its own terms on September 14, 1979. A copy of the instant filing has been served upon 3M and Laurens.

The proposed effective date of this sheet is December 1, 1980.

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 November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34190 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-392-003]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 1353

The purpose of this filing is to terminate Rate Schedule X-147, which is a transportation agreement dated May 3, 1977, among Transco, South Jersey Gas Company (South Jersey) and Texas Eastern Transmission Corporation (Texas Eastern), authorized by certificate issued September 30, 1977, in Transco/Texas Eastern joint Docket No. CP77-392, and which terminated by its own terms on April 15, 1980. A copy of the instant filing has been served upon South Jersey and Texas Eastern.

The proposed effective date of this sheet is December 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34191 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-3-002]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

Second Revised Sheet No. 914

The purpose of this filing is to terminate Rate Schedule X-100, which is a transportation agreement dated September 14, 1977, among Transco, Pine Hall Brick & Pipe Company (Pine Hall) and North Carolina Gas Service Division of Pennsylvania & Southern Gas Company (N.C. Gas), authorized by certificate issued January 5, 1978, in Docket No. CP78-3, and which terminated by its own terms on January 4, 1980. A copy of the instant filing has been served upon Pine Hall and N.C. Gas.

The proposed effective date of this sheet is December 1, 1980.

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 November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34192 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-351-002]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheet to its FERC Gas Tariff, Original Volume No. 2:

Second Revised Sheet No. 881

The purpose of this filing is to terminate Rate Schedule X-96, which is a transportation agreement dated April 26, 1978, among Transco, Ball Corporation (Ball) and Public Service Company of North Carolina, Inc. (Public Service), authorized by certificate issued June 8, 1979, in Docket No. CP78-351, and which terminated by its own terms on July 18, 1980. A copy of the instant filing has been served upon Ball and Public Service.

The proposed effective date of this sheet is December 1, 1980.

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 November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34193 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-280]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

October 24, 1980.

Take notice that on September 26, 1980, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-280 a petition to amend the order issued pursuant to Section 7(c) of the Natural Gas Act and § 2.79 of the Commission's Regulations (18 CFR 2.79) in the instant docket on August 5, 1977, as amended, so as to authorize the transportation of natural gas for Kerr Finishing Division of Allied Products Corporation (Kerr) for an additional term of one year, 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 August 5, 1977, it was authorized to transport on an interruptible basis up to 250 Mcf of natural gas per day for Kerr, an industrial customer of Public Service Company of North Carolina (PSNC), one of Petitioner's resale customers. Petitioner further states that the subject gas was purchased by Kerr from Trinidad Petroleum Corporation (Trinidad) from production of the McCants Well, Standard Field, LaSalle Parish, Louisiana, and that Texas Gas Transmission Corporation (Texas Gas) transported the purchased gas from said Parish to Petitioner at a point of interconnection near Eunice, Evangeline Parish, Louisiana, (Mamou) with Petitioner delivering equivalent quantities of gas less 3.8 percent for compressor fuel and line loss to PSNC for ultimate delivery to Kerr's Concord, North Carolina, plant. Transportation service began on July 16, 1977, and was authorized to continue until July 17, 1980, it is said.

Petitioner asserts that it has been informed by Kerr that Kerr's Concord, North Carolina, plant was substantially destroyed by fire on January 31, 1979, and that since that date Kerr has incurred take-or-pay obligations under its gas purchase contract with Trinidad to the extent that it has paid for but not taken 131,750 Mcf of gas as of July 16, 1980. It is further asserted that in order to resume operations previously accomplished at its Concord, North Carolina, plant Kerr has established a new facility at Travelers Rest, South Carolina, which is served by Piedmont Natural Gas Company, Inc. (Piedmont), one of Petitioner's resale customers.

Petitioner proposes to extend the term of the subject transportation service for an additional one-year period so as to allow Kerr to receive gas for which it has paid but not taken. It is asserted that Petitioner proposes to transport up to the dekatherm equivalent of 400 Mcf of gas per day pursuant to an agreement among Petitioner, Kerr and Piedmont dated July 10, 1980.

Petitioner submits that it would receive the gas from Texas Gas at the Mamou interconnection and other mutually agreeable existing points of interconnection between it and Texas Gas and would deliver thermally equivalent quantities to Piedmont for ultimate delivery to Kerr's Travelers Rest plant.

For such transportation service, Petitioner asserts that it would charge initially, 23.97 cents per dekatherm equivalent transported which rate includes .47 cents per dekatherm for GRI General R&D Funding Unit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 14, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34220 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-402-002]

Transcontinental Gas Pipe Line Corp.; Amendment to Application

October 24, 1980.

Take notice that on October 9, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-402-002 an amendment to its application filed May 20, 1977,[1] as amended July 31, 1979, pursuant to Section 7(c) of the Natural Gas Act in the instant docket so as to reflect an addition in the volumes of gas transported for Florida Gas Transmission Company (Florida), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that by temporary authorization issued August 3, 1977, Applicant now transports for Florida up to 40,000 Mcf of gas per day produced in Vermilion Area Block 22, offshore Louisiana, and delivered into Applicant's Central Louisiana gathering system onshore in the Pecan Island area, Vermilion Parish, through facilities jointly owned by Applicant, Florida and Sea Robin Pipeline Company. It is stated that Applicant redelivers equivalent volumes to Florida at the interconnection between the Central Louisiana gathering system and Florida's East White Lake Lateral in Vermilion Parish.

Applicant's amendment requests authorization to transport additional natural gas for Florida. It is stated that Florida has arranged to purchase approximately 10,000 Mcf of gas per day to be produced in Vermilion Area Block 21 and delivered to the jointly owned Vermilion 22 facilities by means of production facilities in Vermilion Area Block 22. Applicant proposes to receive such gas at the Pecan Island location and redeliver equipment volumes to Florida at the East White Lake Lateral.

It is stated that no additional facilities would be required by Applicant to perform the proposed service. Applicant states that the proposed service would help to maintain as adequate and reliable service as possible in Florida's marketing areas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 14, 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

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34221 Filed 10-31-80; 8:45 am]

BILLING COLDE 6450-85-M

[Docket No. CP79-389-001]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

October 28, 1980.

Take notice that on October 20, 1980, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

(1) Original Sheet Nos. 2169 through 2187 constituting Rate Schedule X-222, a transportation agreement dated June 22, 1979, between Transco and Public Service Electric and Gas Company (Public Service).

(2) First Revised Sheet No. 659, constituting Notice of Termination of Rate Schedule X-71.

Transco states that the subject transportation arrangement was authorized by the Commission in Transco Docket No. CP79-389 by certificate issued April 16, 1980, and that a copy of the instant filing has been served upon Public Service. As indicated therein, Rate Schedule X-222 supersedes and cancels the X-71 rate schedule, which was a transportation agreement between Transco and Public Service dated September 14, 1973.

The tariff sheets are proposed to become effective April 16, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34194 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-530]

Utah Power and Light Co.; Filing

October 28, 1980.

The filing company submits the following:

Take notice that on October 14, 1980, Utah Power and Light Company (Utah) submitted for filing a letter stating that charges by Utah to the City of Provo for Emergency Capacity have been changed so as to conform with Commission Order No. 84.

A copy of this filing has been sent to the City of Provo, Utah.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34222 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3423]

Water Power Development Corp.; Application for Preliminary Permit

October 27, 1980.

Take notice that Water Power Development Corporation (Applicant) filed on September 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3423 to be known as Birch Hill Project located on the Millers River in Worcester County, Massachusetts. Correspondence with the Applicant should be directed to: Mr. Kenneth E. Mayo, P.E., President, Water Power Development Corporation, 23 Temple Street, Nashua, New Hampshire 03060.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers Birch Hill Dam and would consist of: (1) a penstock which would utilize the existing outlet works; (2) a powerhouse containing generating units having a total rated capacity of 670 kW; (3) a tailrace; (4) a new transmission line; and (5) appurtenant facilities. Applicant estimates the annual generation would average about 2,700,000 kWh.

Purpose of Project.—Project energy would be sold to Massachusetts Electric Company or the New England Power Company. Other markets including another utility or a private customer, will be investigated.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before January 7, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this

application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in §1 .10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 7, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34200 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3417 and Project No. 3476]

West Virginia Renewable Resources, Inc. and Noah Corp.; Application for Preliminary Permit

October 24, 1980.

Take notice that West Virginia Renewable Resources, Inc. (Applicant/WVR) and Noah Corp. (Applicant/NC) filed on September 2, 1980 and September 15, 1980, respectively, competing applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project Nos. 3417 and 3476, respectively, each to be known as Tygart Hydro Project located on the Tygart River in Taylor County, West Virginia. Correspondence with the Applicants should be directed to: WVR: Jeffrey M. Kossak, West Virginia Renewable Resources, Inc., Suite 1900, 14 Wall Street, New York, N.Y. 10005 and to NC: James B. Price, Ph.D., President, Noah Corp, P.O. Drawer 640, Aiken, South Carolina 29801.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers Tygart Lake Dam and would consist of: (1) a powerhouse containing generating units having a total rated capacity of 6,000 KW (WVR) or 20,000 KW (NC); (2) a tailrace; (3) a new transmission line; and (4) appurtenant facilities. WVR estimates the annual generation would average about 26,000,000 KWH; NC estimates the annual generation would average about 34,000,000 KWH.

Purpose of Project.—Both applicants propose that project energy will be sold to public or private purchasers depending on studies to be made.

Proposed Scope and Cost of Studies under Permit.—Both applicants seek issuance of preliminary permits for a period of three years. Each applicant proposes that it would perform data acquisition, investigations, studies, feasibility evaluation; would consult with federal, state and local government agencies; and, depending on the results, would prepare an application for an FERC license. WVR and NC estimate that the cost of the studies under the permit would be $55,500 and $100,000, respectively.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 29, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-34201 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Extension of Time for Comments on Consent Order Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Extension of Comment Period.

SUMMARY: On September 10, 1980, the Department of Energy Office of Hearings and Appeals published a Notice soliciting comments on the manner in which Consent Order funds under the control of the DOE should be distributed. Six Consent Orders involving funds totalling approximately $89 million were specifically mentioned in the Notice. Comments were also sought regarding a proposal to distribute a portion of these funds through a "Public Energy Trust." That proposal had been submitted to the DOE by the Consumer Energy Council of America and nineteen allied groups represented by common counsel. The Notice requested that comments regarding these matters be submitted by October 27, 1980. To date 27 comments have been received. In addition, requests for extensions of the time in which to submit comments have been received by entities including a United States

cabinet department, public interest groups, and industry representatives. These entitles state that the Notice requesting comments only recently came to their attention, and that they intend to submit detailed, substantive comments on the issues involved. We are unaware of any person who would be injured by the extension requested, nor would any person appear to be inconvenienced by the extension. In view of the foregoing, we have determined that the comment period should be extended until November 24, 1980.

DATE: Comments by November 24, 1980.

ADDRESS: Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Room 8014, Washington, D.C. 20461.

Re: Consent Order Comments.

Issued in Washington, D.C. on October 28, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 80-34092 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Orders Filed with the Office of Hearings and Appeals

During the week of September 1 through September 5, 1980 the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

October 28, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

Hilliard's Chevron, Giants, New Mexico, BRO-1304, motor gasoline

On September 3, 1980, Hilliard's Chevron, 511 E. Santa Fe, Giants, New Mexico 87920, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE (Midland, Texas District Office of Enforcement) issued to the firm on June 16, 1980. In the PRO the Midland, Texas District found that during the period 5-16-80, the firm failed to post and maintain maximum legal selling prices for each grade of gasoline, charged prices in excess of the maximum lawful selling prices for certain grades of gasoline, and failed to keep and maintain books and records to support lawfulness of prices charged. According to the PRO, the Hilliard's Chevron violation resulted in $205.60 of overcharges. In connection with the PRO, in June, 1980 the DOE also assessed a penalty against Hilliard's of $500.

[FR Doc. 80-34093 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of September 29 through October 3, 1980

During the week of September 29 through October 3, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception procedings (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedual regulations, the date of service is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of objections within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: October 28, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Orders

A&B Holding Co., Inc., San Antonio, Tex., BEE-1210, gasohol

A&B Holding Company, Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 211, Subpart F. The exception request, if granted, would permit A&B Holding Company to receive an increased allocation of unleaded gasoline for the purpose of blending gasohol. On October 2, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted in part and that the firm's base period allocation should be increased by 130,000 gallons of unleaded gasoline per month.

Aminoil USA, Inc., Houston, Tex., BXE-1295 crude oil

Aminoil USA, Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at upper tier ceiling prices a certain portion of the crude oil produced for the benefit of the working interest owners from the California State Lease 392. On October 2, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Atlantic Richfield Co., Los Angeles, Calif., BEE-1294, crude oil

The Atlantic Richfield Company filed an Application for Exception from the provisions of the Entitlements Program, 10 C.F.R. § 212.67. The exception request, if granted, would require Chevron U.S.A. Inc. to purchase additional entitlements to equalize its imported crude oil costs with those of other refiners. On October 2, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

Charles H. Booth, Inc., Anniston, Ala., BEE-0874, gasohol

Charles H. Booth, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211, Subpart F. The exception request, if granted, would permit Booth to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On September 29, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Chevron U.S.A. Inc., San Francisco, Calif., BXE-1317, crude oil

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. The exception request, if granted, would result in an extension of

exception relief previously granted and would permit the firm to sell at upper tier ceiling prices a certain portion of the crude oil which it produces for the benefit of the working interest owners from the Greeley Unit, Rio-Bravo-Vedder Pool Lease. On September 30, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Raritan Oil Co., Inc, Edison, N.J., BEE-0411, gasohol

Raritan Oil Company, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211, Subpart F. The exception request, if granted, would permit Raritan to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On October 2, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

T.O.C. Inc., Indianapolis, Ind., BEE-0521, gasohol

T.O.C. Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211, Subpart F. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded gasoline for the purpose of blending gasohol. On September 30, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Company Name, Case No., and Location

T&H Automotive Enterprises, Inc., BEE-1466—Washington, DC.
Grogan's Marathon Service (Marathon Oil Co.), BEE-1428—Speedway, IN.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case No., and Location

Vantage Petroleum Corp., DEE-7275—Bohemia, NY.

[FR Doc. 80-34096 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Orders; Filed Week of September 22 through September 26, 1980

During the week of September 22 through September 26, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before November 24, 1980. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Office of Hearings and Appeals.

October 28, 1980.

Bailey's Standard Service, Lebec Calif., BRO.1313, motor gasoline

On September 22, 1980, Bailey's Standard Service, I-5 and Grapevine, Lebec, California 93243, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on July 30, 1980. In the Proposed Remedial Order, the Western District found that during the period August 1, 1979, through June 9, 1980, Bailey's committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order the Bailey's violations resulted in $3,953.86 of overcharges to its customers.

General Petroleum Products, Inc., Gary, Ind., Bro-1319, motor gasoline

On September 26, 1980, General Petroleum Products, Inc., 1122 E. 10th Place, Gary, Indiana, filed a Notice of Objection to a Proposed Remedial Order which the DOE Central District Office of Enforcement issued to the firm on September 12, 1980. In the Proposed Remedial Order, the Central District found that during the period November 1, 1973, through April 30, 1974, General Petroleum committed pricing violations in its sales of motor gasoline and Nos. 2, 5, 5-200, and 6 heating oil. According to the Proposed Remedial Order, the General Petroleum violations resulted in $195,125.12 of overcharges to its customers.

Glaser Gas, Inc., Calhan, Colo., Bro-1316, propane

On September 23, 1980, Glaser Gas, Inc. Calhan, Colorado, filed a Notice of Objection to a Proposed Remedial Order which the DOE Rocky Mountain District Office of Enforcement issued to the firm on August 15, 1980. In the Proposed Remedial Order, the Rocky Mountain District found that during the period November 1, 1973 through February 29, 1976, Glaser committed pricing violations in its sales of propane. According to the Proposed Remedial Order, the Glaser violations resulted in $87,712.46 of overcharges to its customers.

Jim's Texaco Service, Petallma, Calif., Bro-1314, motor gasoline

On September 22, 1980, Jim's Texaco Service, 5153 Old Redwood Highway, Petallma, California 94952, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on August 25, 1980. In the Proposed Remedial Order, the Western District found that during the period December 15, 1979, through June 10, 1980, Jim's Texaco committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order, the Jim's Texaco violations resulted in $3,064.15 of overcharges to its customers.

North Eastham Exxon, North Eastham, Mass., Bro-1318, motor gasoline

On September 25, 1980, North Eastham Exxon, Box AH, North Eastham, Massachusetts 02651, filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on September 3, 1980. In the Proposed Remedial Order, the Northeast District found that during the period August 1, 1979, through June 27, 1980, North Eastham Exxon committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order, the firm's violations resulted in $3,779.28 of overcharges to its customers.

Shaw & 99 Chevron, Fresno, Calif., BRO-1315, motor gasoline

On September 22, 1980, Shaw & 99 Chevron, 5270 W. Shaw, Fresno, California 93711, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on August 25, 1980. In the Proposed Remedial Order, the Western District found that during the period December 12, 1979, through July 7, 1980, Shaw committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order, the Shaw violations resulted in $6,722.27 of overcharges to its customers.

Traders Oil & Royalty, Seguin, Tex., BRO-1312, crude oil

On September 19, 1980, Traders Oil & Royalty, P.O. Box 188, Seguin, Texas 78155, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Office of Enforcement issued to the firm on June 17, 1980. In the Proposed Remedial Order, the Southwest District found that during the period September 1, 1973, through March 31, 1977, Traders Oil committed pricing violations in its sales of crude oil. According to the Proposed Remedial Order,

the Traders Oil violations resulted in $340,849.31 of overcharges to its customers.

[FR Doc. 80-34095 Filed 10-31-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66076; PH-FRL 1651-7]

Certain Pesticide Products; Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATES: December 3, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Lela Sykes, Process Coordination Branch (TS-767), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. E-228, 401 M St., SW., Washington, D.C. 20460 (202-426-8540).

SUPPLEMENTARY INFORMATION: EPA has been advised by Monsanto Co. of its intent to voluntarily cancel registration of the following pesticide products.

EPA Reg. No.	Product name	Registrant	Date reg.
524-3	2,4-D Acid	Monsanto Co., 1101 17th St., NW., Suite 604, Washington, DC 20036.	Jan. 19, 1948.
524-22	2,4-D Isopropyl Ester	do	May 26, 1948.
524-47	2,4,5-T Isopropyl Ester Technical Grade	do	Jan. 30, 1951.
524-48	2,4,5-T Acid	do	Jan. 30, 1951.
524-62	2,4,-D Butyl Ester Technical Grade	do	June 5, 1953.
524-67	Technical Grade 2,4,5-T Butyl Ester	do	May 3, 1954.
524-71	Monsanto Isopropyl and Butyl 2,4-D Mixed Esters.	do	May 11, 1954.
524-75	2,4-D-2,4,5-T Butyl Ester Brush Killer Code 22.	do	June 24, 1955.
524-76	2,4-D Isopropyl Ester Weed Killer	do	June 27, 1955.
524-78	Monsanto 2,4-D Amine Weed Killer	do	June 27, 1955.
524-79	Monsanto 2,4-D Ester Aerial Weed Killer Emulsifiable.	do	June 29, 1955.
524-80	Monsanto MCP Amine Weed Killer	do	June 29, 1955.
524-81	2,4,5-T Low Volatile Ester Brush Killer	do	June 29, 1955.
524-82	2,4-D Low Volatile Ester Weed Killer	do	June 30, 1955.
524-84	Monsanto 2,4-D Ester Aerial Non-Emulsifiable Weed Killer.	do	July 6, 1955.
524-85	Monsanto 2,4-D Butyl Ester Weed Killer	do	July 13, 1955.
524-86	Monsanto 2,4-D Butyl Ester Concentrate Weed Killer.	do	July 15, 1955.
524-94	D-Leet Herbicide	do	June 20, 1956.
524-95	Monsanto 2,4,5-T Isooctyl Ester	do	Aug. 24, 1956.
524-97	Monsanto 2,4,5-T Ester Brush Killer	do	Aug. 21, 1957.
524-99	2,4,5-T Amine Brush Killer	do	Dec. 16, 1957.
524-100	Monsanto 2,4,5-T Amine Brush Killer	do	Dec. 16, 1957.
524-110	Brush-O-Cide Brush Killer	do	Jan. 26, 1960.
524-111	Brush Blitz Brush Killer	do	Jan. 26, 1960.
524-112	Crop Guard Weed Killer	do	Jan. 26, 1960.
524-115	Field Clean Weed Killer	do	Feb. 16, 1960.
524-116	2,4-D Granular Weed Killer	do	Feb. 18, 1960.
524-125	2,4,-D Amine 5 Pounds Active Per Gallon	do	Feb. 26, 1962.
524-126	2,4-D Amine 6 Pounds Active Per Gallon	do	Feb. 26, 1962.
524-147	2,4-D Amine Concentrate Weed Killer	do	Sept. 3, 1963.
524-149	2,4-D—2,4,5-T Mixed Esters *N* -Butyl and Isobutyl.	do	Jan. 17, 1964.
524-150	2,4-D/2,4,5,-T Butyl Esters	do	Jan. 17, 1964.
524-254	2,4-D/2,4,5-T Low Volatile Ester Brush Killer.	do	Aug. 17, 1966.
524-257	2,4-D Mixed Esters *N* -Butyl and Isobutyl	do	Nov. 25, 1966.
524-258	2,4,5-T Isobutyl Ester Technical Grade	do	Nov. 25, 1966.
524-259	2,4-D Mixed Esters Isobutyl and *N* -Butyl	do	Nov. 25, 1966.
524-260	2,4-D Isobutyl Ester Technical Grade	do	Nov. 25, 1960.

The Agency has agreed that such cancellation shall be effective December 3, 1980, unless within this time Monsanto Co., or other interested person with the concurrence of the company, requests that the registration be continued in effect. Monsanto Co. was notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66076]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-447, at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136)

Dated: October 24, 1980

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-34104 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-02-M

[EW-9-FRL 1650-7]

Issuance of PSD Permit to Provident Energy Company

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Notice.

SUMMARY: Notice of Approval of Prevention of Significant Air Quality Deterioration (PSD) permit to: Provident Energy Company, Inc., Mobile, Arizona, EPA project number AZP 79-02.

SUPPLEMENTAL INFORMATION: Notice is hereby given that on March 4, 1980, the Environmental Protection Agency issued a PSD permit to the applicant named above for approval to construct and operate a 50,000 barrel per stream day oil refinery to be located in Mobile, Arizona.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR § 52.21) regulations and is subject to certain conditions including allowable emissions of: SO_2 at 1862 tons/year, NO_x at 1386 tons/year, particulates at 237 tons/year, CO at 193 tons/year and HC at 325 tons/year.

Best Available Control Technology (BACT) requirements include: for Total Suspended Particulates: Electrostatic Precipitator, filter fuel oil, paving; for SO_2: fuel oil desulfurized to 0.4% fuel gas H_2S content 0.1 gr/dscf, feed to Fluid Catalytic Cracking Unit (FCC) desulfurized to 0.1%; for NO_x: low NO_x burners, fuel bound nitrogen reduction; CO minimized by use of CO bioler; for HC: I/M program for valves, seals and flanges, covered separators, vapor recovery and double sealed floating roofs on tanks, hydrocarbon detector on cooling tower, vapor recovery on loading racks.

Continuous monitoring is required for opacity and CO on FCC catalyst regenerator, for H_2S content of fuel gas burned in any combustion device, for SO_2 from Claus sulfur recovery unit.

DATE: The PSD permit is reviewable under Section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by January 2, 1980.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address requests to: Cecelia Dougherty, Permits Clerk, E–4–1, U.S. Environmental Protection Agency, Region IX, Permits Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556–3450.

Dated: October 7, 1980.

Carl C. Kohnert, Jr.,

Acting Director, Enforcement Division, Region IX.

[FR Doc. 80–34109 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–38–M

[AD–FRL 1651–1]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, 41 FR 11255), has designated another reference method for the measurement of ambient concentrations of carbon monoxide. The new reference method is an automated method (analyzer) which utilizes a measurement principle based on non-dispersive infrared spectrometry. The method is:

RFCA–1180–048, "Horiba Model APMA 300E/300SE Ambient Carbon Monoxide Monitoring System," consisting of the following components:

300SE Sampler Module

300E Analyzer Module

Operated on the 0–20 ppm,* the 0–50 ppm, or the 0–100 ppm range, with a time constant switch setting of No. 5. The monitoring system may be operated at temperatures between 10° and 40° C.

*Note.—Users should be aware that designation of ranges less than 50 ppm are based on meeting the same absolute performance specifications required for the 0–50 ppm range. EPA is considering but has not yet established proportionately more restrictive performance specifications applicable to ranges less than 0–5. ppm. Thus, designation of a lower range does not guarantee commensurably better performance than that obtained on the 0–50 ppm range.

This method is available from Horiba Instruments, Incorporated, 1021 Duryea Avenue, Irvine, California 92714.

A notice of receipt of application for this method appeared in the **Federal Register**, Volume 45, August 27, 1980, page 57165.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method.

The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a reference method, this method is acceptable for use by States and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance (44 FR 27571, May 10, 1979). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to Part 58 (44 FR 27585).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as a reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation aplicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the States in establishing and operating their air

quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Stephen Gage,

Assistant Administrator for Research and Development.

[FR Doc. 80-34115 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-26-M

[OPTS-59034A, TSH-FRL 1640-6]

Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 4, 1980, EPA received an application for a test marketing exemption (TM-80-39) from the premanufacture notification requirements of section 5 of the Toxic Substances Control Act (TSCA) from E.I. du Pont de Nemours & Co., Inc. (du Pont).

EPA has determined that the manufacturer's test marketing of this chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted du Pont an expemtion from the TSCA premanufacture reporting requirements for test marketing of the substance in the manner described in the application.

FOR FURTHER INFORMATION CONTACT: David Dull, Chemical Control Division (PTS-794), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202/426-2601).

SUPPLEMENTAL INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Du Pont's application was assigned test marketing exemption number TM 80-39; receipt of the application was announced in the **Federal Register.** on September 24, 1980 (45 FR 63346).

Du Pont claimed the specific chemical identity, the production volume, the specific use, and physical and chemical property data as confidential business information.

The substance is described generically as "polyurethane polyacrylic block polymer"; its generic use is as an intermediate. Twenty gallons of the material will be used as an intermediate in 1200 gallons of a final product during a maximum test marketing period of 20 days.

EPA has established that the test marketing of TM 80-39, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment for the reasons explained below.

Du Pont submitted the results of an acute oral test (rats) showing a lethal dose (ALD) of greater than 11,000 mg/kg. In its risk assessment accompanying the application du Pont stated that the substance is to be mannufactured in a closed system with mechanical introduction of monomers, solvents, and reactants. After polymerization, the polymer in solvent solution will be mechanically filtered and drummed for later use as an intermediate. In addition to the use of protective clothing and equipment in all phases of the operation, workers transferring the substance will use airline masks. Du Pont further stressed the low monomer concentration in the polymeric product.

Based on the data and risk assessment provided by du Pont, and the limited exposure involved, and after independent examination of the structure of the polymer, its molecular weight and other properties, EPA concluded that test marketing of the substance poses no unreasonable risk to the health of persons engaged in its manufacture or processing.

Nor does EPA have concerns with regard to environmental release in connection with the test marketing of this polymer. All solvents used in the manufacture of TM 80-39 are recovered or recycled; still bottoms and solid wastes are incinerated or landfilled.

Due to the above considerations, EPA accordingly grants the manufacturer a test marketing exemption for TM 80—39, effective immediately, but subject to all conditions set out in the exemption application, and in particular those enumerated below:

1. This exemption is granted solely to du Pont;

2. The applicant must maintain records of the date(s) of shipment(s) to any customers who will test market the substance, and the qantities shipped in each shipment, and must make these records available to EPA upon request;

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application;

4. The production volume of the new substance may not exceed the quantity described in the test market application;

5. The test marketing activity approved in this notice is limited to a 20-day period commencing on the date of publication of the notice in the **Federal Register.**

Dated: October 28, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-34120 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-3-M

[OPTS-51131A; TSH-FRL 1652-1]

Benzene Propanoic Acid, 3,5-Bis (1,1-Dimethyl-Ethel)-4-Hydroxy-(1,2-Dioxo-1,2-Ethanediyl) Bis(Imino-2,1-Ethanediyl) Ester; Premanufacture Notice; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects certain information on a premanufacture notice (PMN) on the new substance benzene propanoic acid, 3,5-bis (1,1-dimethyl-ethyl)-4-hydroxy-(1,2-dioxo-1,2-ethanediyl) bis(imino-2,1-ethanediyl) ester submitted by the Uniroyal Chemical Co..

FOR FURTHER INFORMATION CONTACT: Carolyn C. Brown, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 N St., SW., Washington, D.C. 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: EPA issued a notice of receipt of a PMN identified as PMN 80–228 submitted by the Uniroyal Chemical Co., a Division of Uniroyal Inc., Naugatuck, CT 06770, on the above new chemical substance. The summary of the PMN was published in the **Federal Register** of September 18, 1980 (45 FR 62194) as provided for in section 5(a)(1) of the Toxic Substances Control Act (TSCA).

In the FR Doc. 80–28817 appearing at page 62194, the following information is corrected:

1. On page 62195, second column, under PMN 80–228, the entry following "Production Estimates." is corrected to read "Claimed confidential business information."

2. On page 62195, third column under "Toxicity Data." of PMN 80–228, the entry following "Oral LD_{50} (rats)—" is corrected to read ">10 g/kg."

Dated: October 26, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80–34101 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–31–M

[OPP–C31027C; PH–FRL 1652–2]

Chevron Chemical Co.; Approval of Application to Conditionally Register a Pesticide Product Entailing a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Chevron Chemical Co. has received approval to conditionally registered pesticide product Orthene Ornamental Insect Spray which contains the active ingredients acephate and resmethrin for indoor houseplant use.

FOR FURTHER INFORMATION CONTACT: William H. Miller, Product Manager (PM) 16, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–343, 401 M St., SW., Washington, D.C. 20460, (202–426–9458).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 17, 1980 (45 FR 26119) that Chevron Chemical Co. had submitted an application to amend the conditional registration of the pesticide product Orthene Ornamental Insect Spray which contains the active ingredient acephate and resmethrin. The application requested registration of the product Orthene Ornamental Insect Spray (EPA File Symbol 239–2440) containing 0.25% of the active ingredient acephate (*O,S*-dimethylacetylphosphoramidothioate) and 0.1% of the active ingredient resmethrin [5-benzyl-3-furyl)methyl 2,2-dimethyl-3-(methylpropenyl)cyclopropanecarboxylate]. The application proposed that the use pattern be changed from outdoor ornamental spray to indoor houseplant spray. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved September 9, 1980, and the product has been assigned the EPA registration No. 239–2440. A copy of the approval label and list of data references used to support registration are available for public inspection in the office of the product manager.

The data and other scientific information used to support registration, except for material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; (7 U.S.C. 136) will be available for public inspection in the Information Services Branch, Rm. EB–35, EPA, 202–426–8850 in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW., Washington, D.C. 20460. Such requests should (1) identify the product by name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 824; (7 U.S.C. 136))

Dated: October 24, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–34102 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–32–M

[SA–FRL 1651–6]

Science Advisory Board, Ecology Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Ecology Committee of the Science Advisory Board will be held on November 20 and 21, 1980, beginning at 9:00 a.m., in the Hall of States–A, Skyline Inn, South Capitol and I Streets, SW., Washington, D.C.

This is the twenty-third meeting of the Ecology Committee. The agenda includes a report on Science Advisory Board activities; a presentation on the need for an ecosystem basis in environmental impact assessment; briefing on the Ecosystem Research Center program; review of the Office of Research and Development's Pesticide Research Strategy; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Dr. J. Frances Allen, Executive Secretary, Ecology Committee, or Ms. Anita B. Najera (202) 472–9444.

Dated: October 28, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80–34119 Filed 10–31–80; 8:45 am]

BILLING CODE 6560–34–M

[OPTS–59037; TSH–FRL 1651–4]

1, 6 Hexanediamine, Distillation Residues—Amines, C_{4-6} Alkyl DI- and C_6Cyclic DI—Dichloroethane—Epichlorohydrin Polymer; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny this application by November 16, 1980. Persons should submit written comments on the application no later then November 18, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460 (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances,Environmental

Protection Agency, Rm. E–210, Washington, DC 20460 (202–426–3936).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substsance is any chemical substance that is not on the Inventory of existing chemical Substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558–Initial) and July 29, 1980 (45 FR 50544–Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorized EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.**

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Interested persons may, on or before November 18, 1980, submit to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–59037]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 24, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

TM 80–42

The following summary is taken from data submitted by the manufacturer in the test marketing exemption.

Close of Review Period. November 16, 1980.

Manufacturer's Identity. Monsanto Co., 800 Lindbergh Blvd., St. Louis, MO 63166.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. 1,6-Hexanediamine, distillation residues—amines, C_{4-6} alkyl di– and C_6 cyclic di—dichloroethane—epichlorohydrin polymer).

Use. Corrugating medium in paperboard production.

Production Estimates. Monsanto states a total of 60,000 pounds of the substance will be manufactured for test marketing purposes involving two customers.

Physical/Chemical Properties.

Viscosity—40–80 cps. typical.

Freezing point—25° F (−4° C) freeze/thaw stable.

Weight/gallon—9.25 lb.

Solids—35±1%

pH—4.5±0.5

Molecular weight—10–40K (number average) estimated.

Toxicity Data. The submitter states that the PMN substance is similar to four commercial products offered by Monsanto Co. The polymers have been identified as HDR–E,* ACA–DCE–E, HDR–DCE, and HD–DCE–E. The relationships and acute toxicity of these polymers are as follows:

	HDR–E*	ACA–DCE–E	HDR–DCE	HD–DCE–E
Oral LD_{50} (rats)	8,880	14,000	9,000	1,460
Single dose, mg/kg				11,300

*Nomenclature:
ACA = Amines, C_{4-6} alkyl di- and C_6 cyclic di-.
HD = 1,6-Hexanediamine.
HDR = 1,6-Hexanediamine, distillation residues.
DCE = 1,2-Dichloroethane.
E = Epichlorohydrin.

Exposure. The manufacturer states that potential exposure through inhalation, ingestion, and skin exists both in the manufacturer's and user's sites; that exposure will be incidental and momentary.

Environmental Release/Disposal. The submitter states that barring accidental

*Nomenclature:
ACA = Amines, C_{4-6} alkyl di- and C_6 cyclic di-.
HD = 1,6-Hexanediamine.
HDR = 1,6-Hexanediamine, distillation residues.
DCE = 1,2-Dichloroethane.
E = Epichlorohydrin.

spills, there will be no disposal of the new polymer at the manufacturing site.

[FR Doc. 80-34117 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-C30177B; PH-FRL 1652-6]

Mobay Chemical Corp.; Approval of Applications to Conditionally Register Pesticide Products Containing New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Mobay Chemical Corp. has received approval to conditionally register pesticide products containing a new active ingredient not previously registered in pesticide products.

FOR FURTHER INFORMATION CONTACT: William H. Miller, Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E.343, 401 M ST., SW., Washington, D.C. 20460 (202-426-9458).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 14, 1980 (45 FR 25125) that Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120 had submitted applications to register the following pesticide products:

AMAZE 6 Emulsifiable Insecticide—Actice Ingredient: 1-methylethyl 2-[[ethoxy[(1-methylethyl)amino]phosphinothioyl]oxy] benzoate at 66 percent for restricted use to control corn rootworm on corn.

AMAZE 15 percent Graunlar Insecticide—Active Ingredient: 1-methylethyl 2-[[ethoxy[(1-methylethyl)amino]phosphinothioyl]oxy] benzoate at 15 percent for general use on corn to control corn rootworm and on turf grasses to control Japanese beetle larvae.

AMAZE 20 percent Graunlar Insecticide—Active Ingredient: 1-methylethyl 2-[[ethoxy[(1-methylethyl)amino]phosphinothioyl]oxy] benzoate at 20 percent for general use on corn to control corn rootworm and on turf grasses to control Japanese beetle larvae.

The applications were conditionally approved for use on corn to control corn rootworm on August 22, 1980, and the products were assigned the following EPA registration numbers and classifications; AMAZE 6 Emulsifiable Insecticide, EPA Reg No. 3125-322 for restricted use; AMAZE 15 percent Granular Insecticide EPA Reg. No. 3125-323 for restricted use; and AMAZE 20 percent Granular Insecticide EPA Reg. No. 3125-324 for restricted use.

A copy of the label and list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in the Information Services Branch, Rm. EB-35, EPA, 202-425-8850 in accordance with section 3(c)(2) of FIFRA. Request for the data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA at the above address. Such requests should: (1) identify the product by name and the registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 824, (7 U.S.C. 136))

Dated: October 24, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-34099 Filed 10-31-80; 8:45]

BILLING CODE 6560-32-M

[OPTS 211002, TSH-FRL 1651-5]

Nitrilotriacetic Acid; Denial of Citizen's Petition to Initiate Regulatory Proceedings Prohibiting the Manufacture and Distribution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Citizen's Petition.

SUMMARY: On May 5, 1980, Mr. Walter Fitzpatrick of Stony Brook, New York filed a citizen's petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620. Mr. Fitzpatrick requested that EPA initiate a proceeding for the issuance of a rule to prohibit the manufacture and distribution of nitrilotriacetic acid (NTA). The Agency has denied the petition. The Agency's Decision and the reasons supporting it appear below.

ADDRESSES: The public record is available for inspection at: Document Control Officer, Management Support Division (TS-793), Office of Pesticides and Toxic Substances, Rm. E-447, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), Washington, D.C.: (554-1404).

Copies of the Agency's Decision may be obtained from the Industry Assistance Office.

SUPPLEMENTARY INFORMATION: The following Decision of the Agency was sent in response to a Petition filed by Mr. Walter Fitzpatrick of Stony Brook, New York under section 21 of The Toxic Substances Control Act, 15 U.S.C. § 2620, in regard to nitrilotriacetic acid (NTA).

Decision of the Agency

The Environmental Protection Agency (EPA) has received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2620, requesting that the Agency initiate rulemaking to prohibit the manufacturing, processing, or distribution in commerce of nitrilotriacetic acid (NTA) under section 6(a) of TSCA, 15 U.S.C. § 2605(a). The petition was filed on May 15, 1980 by Mr. Walter Fitzpatrick of Stony Brook, New York ("Mr. Fitzpatrick"). For the reasons set forth below, the petition is denied.

I. Background

Citizens' Petitions Under TSCA

Under section 21 of TSCA, a citizen may petition the EPA "to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 . . . [of TSCA]," 15 U.S.C. § 2620. Within 90 days after the filing of a section 21 petition, the Agency must either grant or deny the petition. If the Agency denies the petition, the reasons for the denial must be published in the **Federal Register.** This notice sets forth the reasons for the Agency's denial of Mr. Fitzpatrick's petition.

Petition Request

The petition filed by Mr. Fitzpatrick requested that EPA promulgate a rule, under section 6(a) of TSCA, banning the future use of NTA as a detergent additive. In his petition, Mr. Fitzpatrick expressed his reasons for believing that the use of NTA in detergents in the future would present unreasonable risks to people and the environment. Mr. Fitzpatrick's petition states that NTA is teratogenic, affects various body functions, and does not slow down or stop eutrophication in coastal and estuarine waters. Mr. Fitzpatrick's petition also asserts that there are safe and economically feasible alternatives to the use of NTA in detergents.

II. Reasons for the Agency's Decision to Deny the Petition

Each of the substantive points Mr. Fitzpatrick's petition raises, and the Agency's conclusions with respect to each, is summarized below. The Agency's conclusions are based on a document entitled "Final Report: NTA" ("NTA Risk Assessment"), a copy of which is in the public record established for this decision. The NTA Risk Assessment presents the results of a quantitative and qualitative assessment of the potential risk to human health and the environmental arising from the use of NTA in detergents. The NTA Risk Assessment reviews the findings and recommendations of committees that have examined NTA, and supplements these findings with recent information. The references to scientific studies appearing here are taken from the NTA Risk Assessment; complete bibliographic information is in that document.

A. *Human Toxicity of NTA.* 1. *Teratogenicity.* Mr. Fitzpatrick expressed concern that NTA may alter physio-chemical processes and cause teratogenic effects. He alleged that NTA may be teratogenic in combination with heavy metals, such as cadmium or mercury.

The NTA Risk Assessment (page 1) states that preliminary findings from a study performed at the National Institute of Environmental Health Sciences (1970) suggested that NTA might increase the teratogenic activity of methylmercury. To further evaluate the teratogenicity of NTA, Tjalva (1972) and Nolan et al. (1971, 1972) exposed mice and rabbits to NTA in drinking water during pregnancy (page 35, NTA Risk Assessment). Data from these studies failed to show any teratogenic or embryotoxic effects. Nolan et al., 1972 and Scharpf and co-workers, 1974 and 1975 exposed rats to heavy metals in the presence of NTA. Results of these studies showed that NTA does not increase toxicity or teratogenicity of heavy metals, such as mercury, iron, and cadmium (page 35, NTA Risk Assessment). The NTA Risk Assessment (page 36) concludes that NTA, even in the presence of heavy metals, does not cause teratogenic or reproductive effects.

2. *Carcinogenicity.* Mr. Fitzpatrick's petition did not raise the issue of carcinogenicity. It should be noted, however, that the Agency has conducted an assessment of NTA's carcinogenicity. The Agency has concluded that NTA appears to be a weak carcinogen and presents a relatively low human cancer risk. The text of a statement made on June 26, 1980 by Steven D. Jellinek, EPA's Assistant Administrator for Pesticides and Toxic Substances, to the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce has been made part of the public record for this decision. Mr. Jellinek's statement discusses, among other things, the Agency's conclusions with respect to NTA's carcinogenicity.

3. *Other toxic effects.* Mr. Fitzpatrick stated that NTA ingestion by humans affects certain body functions. He cited several effects observed in test animals (rats), such as reduced growth, increased kidney to body weight ratio, increased urinary calcium levels, hematuria, and the presence of crystals (calcium-sodium-NTA complex) in the urine. Mr. Fitzpatrick stated that NTA inhibits alkaline phosphatase activity in the liver of humans.

Available health data on hazards other than oncogenicity, mutagenicity, and teratogenicity, as presented on pages 28–33 of the NTA Risk Assessment, indicated that absorption of NTA from oral ingestion, inhalation or dermal exposure is relatively poor in humans. In addition, low doses (of NTA) produced no other toxic effects in animals. Hopping, 1979, found that biochemical and hematological parameters were not changed except at a high dietary level of NTA (0.15 percent). Nixon et al, 1972 and Anderson, 1979 found that urinary zinc levels increased, dose dependent increase of urinary calcium excretion occurred, and urinary crystals were present at high dietary levels of NTA. No significant toxic effects occurred below 0.15 percent. According to Thayer and Kensler, (1973) and Michael and Wakim (1973), no alterations in enzyme levels and activity have been found in dietary dosage of 20,000 ppm NTA for up to 90 days in kidney, liver and blood systems. The Agency has concluded that the risk to man from such effects is likely to be negligible at expected consumer, workplace, and environmental levels.

B. *Human Exposure to NTA—Contamination of Drinking Water Sources.*

Mr. Fitzpatrick expressed concern that the replacement of phosphates in detergents with NTA will lead to billions of pounds of this substance or its by-product's contaminating surface and groundwater yearly.

NTA is not expected to accumulate in groundwater and surface water in concentrations that would be harmful to human health. According to pages 21–23 of the NTA Risk Assessment, estimates allowing for dilution and biodegradation of NTA indicate that levels of NTA in U.S. drinking waters are expected to be in the low micrograms per liter range. Pages 12–19 present evidence from both laboratory and field studies that NTA biodegrades into innocuous intermediates or by-products in aerobic wastewater systems, fresh water, and groundwater. Relatively little is known about the degradation of NTA under anaerobic conditions. Nevertheless, studies have demonstrated that some degradation of NTA takes place under anaerobic conditions, such as those in flooded soils, lake sediments, and septic tanks.

C. *Ecological Effects of NTA.* 1. *Eutrophication.* Mr. Fitzpatrick stated that the use of nitrogenous compounds such as NTA as a replacement for phosphates does not confer the environmental benefit of retarding eutrophication in estuarine and coastal waters. Rather, Mr. Fitzpatrick asserted that the enrichment of these waters with nitrogen increases eutrophication.

According to the NTA Risk Assessment, pages 62–65, studies have shown that the nitrogen(N) contribution by NTA, assuming complete degradation, would reach a maximum of 2 mg N/l (milligrams of nitrogen per liter of water) with a median value of about 0.3 mg N/l. Therefore, it appears that the contribution of nitrogen from NTA would be of a magnitude that would not increase eutrophication significantly.

2. *Metal Solubilization.* Mr. Fitzpatrick stated that the use of NTA results in the formation of extremely stable toxic metal complexes such as NTA-mercury, -cadmium, -nickel and -copper, which contaminate surface and groundwaters by solubilizing transition metals from bottom sediments.

Theoretically, the introduction of NTA to an aqueous environment containing soluble metal ions, precipitated metal salts, or adsorbed metals ions may result in metal complexation with NTA and solubilization of previously insoluble metal. The extent of this solubilization, however, is dependent upon the concentration of NTA. Investigation by Gregor 1972; Barica et al., 1973; Sanchez and Lee, 1973; Banat et al., 1974; Allen and Boolayangoor, 1977 showed that significant release of metals from the sediments and subsequent solubilization as the NTA complex, generally occurs only when NTA is present at concentrations of 1 mg/l or higher (page 10, NTA Risk Assessment). Since the levels of NTA in U.S. drinking waters are expected to be in the low micrograms per liter range, it is unlikely that NTA will occur in concentration of 1 mg/l or higher.

D. *Alternatives to NTA Use in Detergents.* Mr. Fitzpatrick stated that there are safe and economically feasible alternatives to the use of NTA in detergents. The NTA Risk Assessment does not include an evaluation of alternatives to NTA or a comparison of the risks of using NTA with the risks of using other detergent builders. Because the Agency concluded that the risks of using laundry detergents containing NTA are not significant, it did not consider an evaluation of alternatives to be necessary. The Agency is not required to perform a full risk/benefit analysis with respect to every chemical substance which may present a risk.

III. Conclusions

Based on the findings presented in the NTA Risk Assessment, the Agency has concluded that projected levels of general population exposure from the use of NTA in laundry detergents would be generally low and that the associated risks to human health also would be low. In light of this conclusion, coupled with the need to deal with higher priority problems, the Agency denies Mr. Fitzpatrick's petition to initiate rulemaking proceedings under section 6(a) of TSCA with respect to NTA. If at any time the Agency receives substantial new evidence suggesting that NTA presents an unreasonable risk to health or the environment, it will reevaluate its position. Meanwhile, the Agency has taken some precautionary steps. In a letter to Procter and Gamble, EPA has urged manufacturers and processors of NTA to limit occupational exposure and to perform additional monitoring and environmental studies. The Agency also recommended that NTA not be used in consumer products to which there is direct dermal or oral exposure (such as shampoos, foods, and hand washing detergents).

Public Record

EPA has established a public record for this decision; it is available for inspection in the Document Control Office, Management Support Division, Office of Pesticides, Rm. E–447, 401 M St., SW, Washington, D.C. 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes the EPA risk assessment on NTA cited in this Notice; the Petition from Mr. Fitzpatrick; the testimony of Steven D. Jellinek, Assistant Administrator for Pesticides and Toxic Substances, to the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce; and any other correspondence between EPA and the Petitioner. Information about the public record may be obtained from Joni T. Repasch, Document Control Officer, at (202–755–8050).

Coordination

The Occupational Safety and Health Administration, the Consumer Product Safety Commission, the National Toxicology Program of the Department of Health and Human Services, and the Food and Drug Administration have commented upon the Agency's response to this petition; their comments have been taken into account in this response.

Dated: October 23, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-34118 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-180516; PH FRL 1651-8]

North Carolina; Issuance of Specific Exemption for Methomyl on Forage Grasses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the North Carolina Department of Agriculture (hereafter referred to as the "Applicant") to use methomyl to control the fall armyworm on 262,000 acres of forage grasses in North Carolina. The specific exemption is issued under the Federal Insecticide, Fungicide and Rodenticide Act.

DATE: The specific exemption expires on October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS–767), Office of Pesticide Programs, EPA, Rm. E–124, 401 M St. SW., Washington, D.C. 20460, (202—426–0223).

SUPPLEMENTARY INFORMATION: Forage grasses comprise a major portion of cool season forage grown in North Carolina. Many growers depend on these crops as the primary source of cattle feed. According to the Applicant, North Carolina growers cannot afford additional losses due to armyworm damage. Damages equal to or greater than those encountered in previous years are expected if an effective pesticide is not used. Fields where infestations are heavy may be stripped, eliminating grazing in the late fall months in a year when such grazing will be essential for maintenance of productive herds. According to the Applicant, growers may be forced to sell off their herds if forage or hay is not available at a price they can afford.

The fall armyworm overwinters in the Gulf Coast region and migrates northward each summer. The armyworms fluctuate greatly in abundance north of their overwinter sites and undergo cycles which reach destructive peaks. According to the Applicant, there is usually only one generation in each locality in North Carolina each season; however, several overlapping generations are known to occur. Like the true armyworm, the caterpillars often move from field to field in large number devouring the foliage and tender stems of field and vegetable crops. The Applicant indicates that the fall armyworm, if uncontrolled, can cause damage which could create an extreme financial hardship for the livestock industry throughout the State.

Carbaryl and trichlorfon are registered for control of the fall armyworm in North Carolina. However, under field conditions in North Carolina, carbaryl, the most widely used insecticide, generally did not give effective control, the Applicant reported. Methomyl was reported effective for fall armyworm control when used in several States as authorized by specific exemptions granted by EPA.

The Applicant proposed to treat forage grasses with applications of methomyl at a maximum dosage of one-half pound active ingredient per acre per application on 262,000 acres throughout North Carolina. A maximum of three applications will be made; applications will be by ground or aerial equipment.

Tolerances have been established for residues of methomyl on Bermudagrass and Bermudagrass hay. EPA has determined that residues of methomyl should not exceed 5 parts per million (ppm) in or on green grass, and 10 ppm in or on ground or pelletized meal, from the proposed use. These residue levels have been judged adequate to protect the public health. The proposed use is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the applicant has been granted a specific exemption to use the pesticide noted above until October 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The following products containing the active ingredient methomyl [S-methyl N-[(Methylcarbamoyl)oxy]thioacetimidate] may be used at a maximum dosage rate of one-half pound of active ingredient per acre: Dupont Lannate Insecticide (EPA Reg. No. 352–342), Dupont Lannate

WP Methomyl Insecticide (EPA Reg. No. 352–362), Dupont Lannate L Insecticide (EPA Reg. No. 352–370), Shell Nudrin 90 Methomyl Insecticide Water Soluble Powder (EPA Reg. No. 201–324), and Shell Nudrin 1.8 Insecticide Solution (EPA Reg. No. 201–347). If unregistered labels are used, they must contain the identical applicable precautions and restrictions which appear on the registered labels.

2. A maximum of three applications may be made.

3. A maximum of 65,000 pounds of active methomyl may be applied.

4. Applications may be made by either State-licensed commercial applicators or State-certified private applicators using air or ground equipment.

5. There must be a waiting period of seven days before grazing, feeding, or cutting for hay or for dehydration and processing into meal and pellets.

6. Green grass with residue levels of methomyl not exceeding 5.0 ppm, and cured hay and ground or pelletized meal with residues of methomyl not exceeding 10.0 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

7. Methomyl is toxic to fish and wildlife. All precautions must be taken to avoid spray drift to nontarget areas.

8. All applicable directions, restrictions, and precautions on the EPA-registered label must be followed.

9. The Applicant is responsible for insuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by April 1, 1981.

10. The EPA shall be immediately informed of any adverse effects resulting from the use of methomyl in connection with this exemption.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: October 24, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-34100 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-32-M

[W-4-FRL 1651-2]

Proposed Determination To Prohibit or Deny the Specification, or the Use for Specification, of an Area As a Disposal Site; Extension of Time

AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice of extension of time No. 80 FL 404–004—October 27, 1980.

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) provides that, if the Administrator of the U.S. EPA determines that unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas would result from the discharge of dredged or fill material, he may exercise his authority to withdraw, restrict, or prohibit the defined area from specification as a disposal site. The procedures for implementation of 404(c) are set forth in 40 CFR 231 (44 FR 8076, October 9, 1979).

On October 2, 1980, a Public Hearing was held on the proposed determination to prohibit or deny the specification of an area as a disposal site. The public hearing covered the Corps of Engineers permit No. 75B–0869 and proposed permit No. 77B–0376. The record was to remain open until October 15, 1980 for the submittal of comments. The State of Florida has requested that the record remain open for an additional fifteen days. Pursuant to 40 CFR 231.8 I have determined that good cause exists to extend the time for the record to remain open until November 15, 1980.

DATE: The date to submit comments is extended until November 15, 1980. Accordingly, the date by which I will either withdraw the proposed determination or prepare a recommended determination is extended until November 30, 1980.

ADDRESSES: Additional comments may be sent to Cheryn B. Jones, Record Clerk, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryn B. Jones, Record Clerk, Legal Branch, Enforcement Division, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881–3506.

Dated: October 24, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-34116 Filed 10-31-80; 8:45]

BILLING CODE 6560-32-M

[RD-FRL 1652-4]

Public Meeting on Indoor Air Quality Research Needs

AGENCIES: Environmental Protection Agency; Department of Energy; Department of Housing and Urban Development; National Institute for Occupational Safety and Health; Consumer Product Safety Commission.

ACTION: Notice of Public Meeting.

SUMMARY: A workshop on "Indoor Air Quality Research Needs" will be held to receive expert review and public comment on a draft research strategy/plan to guide federally sponsored activities. Statements by public participants will be scheduled to the extent that time permits and should be limited to the subjects of: (1) comments on the draft strategy/plan and (2) indoor air quality research needs and objectives. Additional opportunities for discussion will be afforded to all participants. Copies of the draft strategy/plan are available upon request and written comments submitted by mail will be accepted until December 10, 1980.

DATE: The workshop will be held on December 3–4–5, 1980 from 9:00 a.m. until 9:00 p.m. each day. *Individual Requests to attend must be made by November 19, 1980* and will be accommodated on a space available basis.

WORKSHOP LOCATION: Xerox International Center for Training and Management Development, P.O. Box 2000, Leesburg, Virginia 22075.

FOR FURTHER INFORMATION AND TO REQUEST ATTENDANCE CONTACT: Ms. Janet Ford, GEOMET Technologies, Inc. (GTI), 15 Firstfield Road, Gaithersburg, Maryland 20760, (301) 948–0755. Conference coordinators: David Berg, EPA (202) 755–0205; Howard Ross, DOE (202) 252–9187.

SUPPLEMENTARY INFORMATION: A number of Federal agencies (including Department of Housing and Urban Development, National Institute for Occupational Safety and Health, Consumer Product Safety Commission, Environmental Protection Agency and Department of Energy) are now pursuing research on indoor air quality. This meeting is intended to coordinate the federal research program involving all agencies. The workshop will address five major research and development areas: (1) monitoring (characterization of indoor air quality), (2) instrumentation, (3) health and welfare effects, (4) contaminant control, and (5) risk assessment. Government administrative and scientific representatives, indoor air quality experts outside the Federal Government, and the public are invited to participate. A lodging and meals fee of $171.60 ($57.20 per day) will be charged to overnight participants; a meals and

facilities fee of $78.00 ($26.00 per day) will be charged to commuters.

Kurt Riegel,

Associate Deputy Assistant Administrator for Environmental Engineering and Technology, Environmental Protection Agency.

October 28, 1980.

[FR Doc. 80-34098 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-35-M

[OPTS-53018; TSH.FRL; 1652-8]

Premanufacture Notices; Monthly Status Report for September, 1980

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last monthly summary. This is the report for September, 1980.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance..

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Robert Smith, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-208, 401 M St., SW, Washington, DC 20460 (202-426-8816).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979. EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

The monthly status report published in the **Federal Register** as required under section 5(d)(3), will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month. Therefore, EPA is publishing the September, 1980 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-53018]" and the specific PMN number. Nonconfidential portions of the PMN's written comments received on individual PMN's, and other documents in public record may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: October 26, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

Premanufacture Notices Monthly Status Report for September 1980

I. Premanufacture Notices Received during the Month

PMN No.	Identity/generic name	FR citation	Expiration date
80-237	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 63347 (9/24/80)	Dec. 1, 1980.
80-238	Generic name: Glycerine, 1-alkanoate, 3-substituted alkanoate	45 FR 65662 (10/3/80)	Dec. 2, 1980.
80-239	2,2,4-Trimethyl-1,3-pentanediol, trimethylol-propane, succinic anhydride, adipic acid, isophthalic acid.	45 FR 63919 (9/26/80)	Dec. 2, 1980.
80-240	Generic name: Ethene-alkene-vinyl carbonyl amine polymer	45 FR 65030 (10/1/80)	Dec. 1, 1980.
80-241	Generic name: Polyurethane polyacrylic polymer	45 FR 63345 (9/24/80)	Dec. 3, 1980.
80-242	*N*(2-Hydroxypropyl)-*N*-tris(5-hydroxy-2-oxopentyl)-ammonium acetate	45 FR 64245 (9/29/80)	Dec. 4, 1980.
80-243	2,2,4-Trimethyl-1,3-pentanediol, trimethylol-propane, succinic anhydride, trimellitic anhydride, adipic acid, and isophthalic acid.	45 FR 65033 (10/1/80)	Dec. 7, 1980.
80-244	1-Nitronaphthalene-6-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980.
80-245	1-Nitronaphthalene-7-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980.
80-246	Generic name: Disubstituted heptadecane	45 FR 65032 (10/1/80)	Dec. 7, 1980.
80-247	Generic name: Aliphatic diol	45 FR 65032 (10/1/80)	Dec. 7, 1980.
80-248	Azelaic acid, 1,4-cyclohexanedimethanol, dimer acid, dimethylol propionic acid, methylenebis (cyclohexyl isocyanate), neopentyl glycol, trimethylolpropane polymer.	45 FR 65033 (10/1/80)	Dec. 8, 1980.
80-249	Generic name: Aliphatic polyurethane waterborne dispersion	45 FR 65034 (10/1/80)	Dec. 9, 1980.
80-250	Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride, and maleic anhydride.	45 FR 65664 (10/3/80)	Dec. 11, 1980.
80-251	Generic name: Carbomonocyclic, carbopolycyclic polyester	In preparation	Dec. 11, 1980.
80-252	Generic name: Acryloxyethylheteromonocycle	45 FR 67449 (10/10/80)	Dec. 15, 1980.
80-253	Coconut fatty acids, benzoic acid, isophthalic acid, neopentyl glycol, propylene glycol.	45 FR 67450 (10/10/80)	Dec. 15, 1980.
80-254	Generic name: Dimer fatty acid polyamide	45 FR 67450 (10/10/80)	Dec. 15, 1980.
80-255	1-Octanamine, *N, N*-dimethyl-, phosphate salt	In preparation	Dec. 16, 1980.
80-256	Generic name: Methylaziridinylcarbonylimino oleyl triimido diisophorone poly(propylene glycol).	In preparation	Dec. 17, 1980.
80-257	Generic name: Unsaturated branched chain hydrocarbon having 10 carbon atoms.	In preparation	Dec. 17, 1980.
80-258	Generic name: Unsaturated branched chain ketone having 12 carbon atoms	In preparation	Dec. 17, 1980.
80-260	Generic name: Neutralized polymer of styrene, alkyl acrylates, and substituted alkyl methacrylates.	In preparation	Dec. 18, 1980.

PMN No.	Identity/generic name	FR citation	Expiration date
80-261	Polymer of: Palm oil, coconut oil pentaerythritol, benzoic acid, phthalic anhydride, and maleic anhydride.	In preparation	Dec. 21, 1980.
80-262	Generic name: Fatty acids, esters with polyols	In preparation	Dec. 21, 1980.
80-263	Linseed oil, styrene, glycerine, toluene diisocyanate	In preparation	Dec. 22, 1980.
80-264	Benzenamine, [*N*-(1-methylhexylidene)-*N*'-(1-methyl butylidene)-4,4-methylene bis].	In preparation	Dec. 25, 1980.
80-265	Generic name: Di (substituted alkyl) carbomonocyclic dicarboxylate	In preparation	Dec. 25, 1980.
80-266	Generic name: Polymer of alkanedioic acids, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol,2,2-dimethyl-1,3-propanediol.	In preparation	Dec. 25, 1980.
80-267	Generic name: Substituted phenol, reaction products with sulfur chloride	In preparation	Dec. 28, 1980.
80-268	Generic name: Esterified polyamic acid	In preparation	Dec. 28, 1980.
80-269	Generic name: Dineoalkyl ester of glycerine	In preparation	Dec. 28, 1980.
80-270	Polymer of glycidyl methacrylate, hydroxy propyl methacrylate, 12-hydroxystearic acid, methacrylic acid, methyl methacrylate polymer.	In preparation	Dec. 28, 1980.

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month

80-157	Generic name: Halogenated polyimide	45 FR 51264 (8/1/80)	Oct. 4, 1980.
80-158	Polymer of: Epoxy resin, maleic anhydride, butanol, styrene, methacrylic acid	45 FR 51264 (8/1/80)	Oct. 4, 1980.
80-159	Generic name: Resin from monocarboxylic acids, polyhydric alcohols, dibasic acid anhydride, polycarboxylic acid anhydride, and a silicone resin.	45 FR 56433 (8/25/80)	Nov. 3, 1980.
80-160	Generic name: Hydrolyzed starch-poly-(acrylonitrile) copolymer	45 FR 51262 (8/1/80)	Oct. 6, 1980.
80-161	Polymer of 2,2-dimethyl; 1,3-propanediol; 2,2,4-trimethyl, 1,3-pentanediol; butendioic acid.	45 FR 51646 (8/4/80)	Oct. 6, 1980.
80-162	Generic name: Lignosulfonate reaction product with an alkenoic acid and an inorganic salt.	45 FR 51274 (8/1/80)	Oct. 6, 1980.
80-163	Generic name: Monosubstituted dialkyl aniline	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-164	Generic name: Disubstituted indole	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-165	Ethanedioic acid, di-*N*-butyl ester	45 FR 51272 (8/1/80)	Oct. 13, 1980.
80-166	Generic name: Carbocyanine dye	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-167	Generic name: Arylhydrazide	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-168	Generic name: Disubstituted pyrazoloquinazolone	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-169	Generic name: Disubstituted pyrazoloquinazolone carboxaldehyde	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-170	Zinc dibutyl dithiocarbamate dibutylamine complex	45 FR 54423 (8/15/80)	Oct. 14, 1980.
80-171	Generic name: Polyester plasticizer	45 FR 54422 (8/15/80)	Oct. 14, 1980.
80-172	Generic name: Polyisobutenyl succinic anhydride reaction products with substituted ethanol.	45 FR 52241 (8/6/80)	Oct. 14, 1980.
80-173	Generic name: Polyester of: Adipic acid, phthalic anhydride, trimethylol propane, ethylene glycol, and diethylene glycol.	45 FR 54420 (8/15/80)	Oct. 15, 1980.
80-174	Generic name: Polyester reaction product with toluene diisolcyanate acrylate terminated.	45 FR 52243 (8/5/80)	Oct. 15, 1980.
80-175	Generic name: Alkyd resin polymer, fatty acid, and urethane modified	45 FR 54420 (8/15/80)	Oct. 16, 1980.
80-176	Generic name: Oxirane, polymer with methyl oxirane, 1,1'-methylenebis(4-isocyanatocyclo-hexane), and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-177	Generic name: Oxirane, polymer with methyl oxirane, 1,3-diisocyanatomethylbenzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-178	Generic name: Isocyanate terminated urethane prepolymer	45 FR 52445 (8/7/80)	Oct. 19, 1980.
80-179	Generic name: Polymer of mixed alkyl acrylates	45 FR 53866 (8/13/80)	Oct. 19, 1980.
80-180	Generic name: Polymer of: Carbomonocyclic carboxylic acid, alkanediol, and 2,5-furandiol.	45 FR 58200 (9/2/80)	Oct. 22, 1980.
80-181	Benzenemethanaminium, *ar*-bromoethenyl-*N,N,N*-trimethylchloride (or sulfate), polymer with diethenylbenzene, diisopropenylbenzene, and 2-methyl-1,3-butadiene.	45 FR 54423 (8/15/80)	Oct. 19, 1980.
80-182	Generic name: Alkanedioic acids mixed alkano-lamines salt	45 FR 54425 (8/15/80)	Oct. 21, 1980.
80-183	Generic name: Dimethylaminopropyl fluoroalkyl adducts	45 FR 58677 (9/4/80)	Oct. 22, 1980.
80-184	Polymer of: Castor oil fatty acid, benzoic acid, epoxy resin, fumaric acid, styrene, and *N,N*-dimethyl ethanol amine.	45 FR 56429 (8/25/80)	Oct. 28, 1980.
80-185	Generic name: Polymer of hydroxyethyl acrylate, styrene, 2-ethylhexyl acrylate, alkyl methacrylate, substituted alkyl acrylate, and alkyl mercaptan.	45 FR 58189 (9/2/80)	Oct. 28, 1980.
80-186	*N*-Methyl-2,4-dinitro-*N*-phenyl 6-(trifluoro-methyl) benzeneamine	45 FR 54425 (8/15/80)	Oct. 28, 1980.
80-187	Generic name: 1-Amino-4-substituted-9,10-dihydro-9,10-dioxo-2-anthracenesulfonic acid.	45 FR 54854 (8/18/80)	Oct. 28, 1980.
80-188	Generic name: Primary amyl nitrates	45 FR 55268 (8/19/80)	Oct. 28, 1980.
80-189	Bisphenol A-epoxy resin, 1,4-butanediol, para amino benzoic acid, and phthalic anhydride polymer.	45 FR 54854 (8/18/80)	Nov. 2, 1980.
80-190	Copolymer from dimethyl terephthalate, alpha, omega-hydroxy terminated aliphathic hydrocarbons; and a polyalkylene glycol.	45 FR 56429 (8/25/80)	Nov. 2, 1980.
80-191	Polymer of: Methylene bis (4-4-cyclohexyl isocyanate), poly propylene glycol, hydroxy ethyl acrylate, and polyoxy propylene diamine.	45 FR 59196 (9/8/80)	Nov. 3, 1980.
80-192	Generic name: Very short oil non-oxidizing alkyd resin	45 FR 58201 (9/2/80)	Nov. 3, 1980.
80-193	Neopentyl glycol, 1,6-hexanediol, adipic acid, phthalic anhydride, and trimellitic anhydride.	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-194	2,2,4-Trimethyl-1,3-pentanediol, 1,6-hexanediol phthalic anhydride	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-195	Generic name: Substituted alkyl oxamide	45 FR 58194 (9/2/80)	Nov. 3, 1980.
80-196	Generic name: Trimethyl monocyclic ethyl alkenal	45 FR 59196 (9/8/80)	Nov. 5, 1980.
80-197	Generic name: Trimethyl monocyclic ethyl alkenol	45 FR 59196 (9/8/80)	Nov. 5, 1980.
80-198	Generic name: Styrene acrylic terpolymer	45 FR 58194 (9/2/80)	Nov. 6, 1980.
80-199	Generic name: Methyl aminoheteropolycycle	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-200	Generic name: 1-Substituted-1-(*p*-substitutedphenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-201	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-202	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-203	Generic name: *p*-(Methylsubstituted) (substitutedbenzene), triethylammonium salt.	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-204	Generic name: 1-Substituted-4-(methyl-sbustituted)benzene	45 FR 60003 (9/11/80)	Nov. 6, 1980.

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
80-205	Generic name: 1-(Methylsubstituted)-4-(substitutedheteromonocyclic)benzene	45 FR 60003 (9/11/80)	Nov. 6, 1980.
80-208	2-Oxepanone, polymer with 1,4-butanediol, 1,3-diisocyanatomethyl benzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 59200 (9/8/80)	Nov. 9, 1980.
80-209	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-210	Generic name: Bis(1-polyamino-2-alkyl imidazolene)	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-211	Generic name: Polytetramethylene glycol, aliphatic polyglycol, and alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-212	Generic name: Adduct of polytetramethylene glycol, aliphatic polyglycol, aliphatic diisocyanate, and an alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980.
80-213	Generic name: Halogenated copolyester resin	45 FR 60008 (9/11/80)	Nov. 16, 1980.
80-214	Generic name: Polyester of aliphatic polyols and aromatic diacids	45 FR 60009 (9/11/80)	Nov. 16, 1980.
80-215	Generic name: Styrene-acrylate copolymer	45 FR 61023 (9/15/80)	Nov. 17, 1980.
80-216	Generic name: Methyl fatty acid ester	45 FR 61021 (9/15/80)	Nov. 17, 1980.
80-217	Generic name: Aromatic trisazo dye	45 FR 61021 (9/15/80)	Nov. 18, 1980.
80-218	Generic name: Aromatic trisazo diester dye	45 FR 61021 (9/15/80)	Nov. 18, 1980.
80-219	Generic name: An aliphatic ester	45 FR 62194 (9/18/80)	Nov. 18, 1980.
80-220	Generic name: Polybasic acid ester of mixed short alkyl mono alcohol and a polyol.	45 FR 62985 (9/22/80)	Nov. 19, 1980.
80-221	Cyclohexanecarbonitrile, 1,1'azobis	45 FR 62195 (9/18/80)	Nov. 24, 1980.
80-222	Cyclohexanecarbonitrile, 1-amino	45 FR 62195 (9/18/80)	Nov. 24, 1980.
80-223	Polymer of: 1,6-Hexanediol, terephthalic acid, neopentyl glycol, trimelletic anhydride, adipic acid, and isophthalic acid.	45 FR 61019 (9/15/80)	Nov. 24, 1980.
80-224	Polymer of: Isophthalic acid, (tall fatty acid, trimelletic anhydride, terephthalic acid, neopentyl glycol, and trimethyl propane.	45 FR 61019 (9/15/80)	Nov. 24, 1980.
80-225	Generic name: Mono di, and tri esters of polybasic acids	45 FR 62985 (9/22/80)	Nov. 24, 1980.
80-226	Dimethyl 1,4-cyclohexanedicarboxylate, maleic anhydride, neopentyl glycol phthalic anhydride, trimethylol ethane polymer.	45 FR 61022 (9/15/80)	Nov. 19, 1980.
80-227	Benzoic acid fatty acids C_{16-18} unsaturated maleic anhydride, and pentaerythritol polymer.	45 FR 61022 (9/15/80)	Nov. 24, 1980.
80-228	Benzene propanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-(1,2-dioxo-1,2-ethanediyl) bis (imino-2,1-ethandiyl) ester.	45 FR 62194 (9/18/80)	Nov. 24, 1980.
80-229	Generic name: Dichloro dimethoxy diethyl amino, azobenzene, sodium salt	45 FR 62987 (9/22/80)	Nov. 24, 1980.
80-230	Generic name: Fatty acid ester	45 FR 62898 (9/22/80)	Nov. 25, 1980.
80-231	Napthalene, 1,2,3,4-tetrahydro-1,2,4,4-tetramethyl	45 FR 62197 (9/18/80)	Nov. 26, 1980.
80-232	2-Napthalene ethanol, 5,6,7,8-tetrahydrobeta, 5,5,8,8-penta methyl	45 FR 65664 (10/3/80)	Nov. 26, 1980.
80-233	Polymer of adipic acid, benzoic acid, neopentyl glycol, phthalic anhydride, propylene glycol, trimethylol ethane, tall oil fatty acids.	45 FR 65662 (10/3/80)	Nov. 26, 1980.
80-234	Adipic acid, dimethyl 1,4-cyclohexane dicarboxylate, maleic anhydride, neopentyl glycol, phthalic anhydride, trimellitic anhydride, trimethylol ethane polymer.	45 FR 63343 (9/24/80)	Nov. 27, 1980.
80-235	2-Pyridinamine, *N, N*-dimethyl	45 FR 65034 (10/1/80)	Nov. 27, 1980.
80-236	Generic name: Aliphatic polyurethane water borne dispersion	45 FR 63347 (9/24/80)	Nov. 27, 1980.

III. Premanufacture Notices For Which the Notice Review Period Has Ended During the Month

[Expiration of the notice review period does not signify that the chemical has been added to the Inventory]

80-129	Generic name: Poly(amide-ester) resin X2-669	45 FR 44394 (7/1/80)	Sept. 3, 1980.
80-130	Generic name: Poly(amide-ester) resin X2-600	45 FR 44394 (7/1/80)	Sept. 3, 1980.
80-131	2-[2-[4-(2-hydroxyethoxy)phenyl] ethenyl]-4,6-bis(trichloromethyl)-1,3,5-triazine.	45 FR 43461 (6/27/80)	Sept. 3, 1980
80-132	Generic name: Acidic phenyltetrazole derivative	45 FR 43864 (6/30/80)	Sept. 10, 1980.
80-133	Generic name: Substituted nitroaromatic	45 FR 43864 (6/30/80)	Sept. 10, 1980.
80-134	Generic name: Nitro acid	45 FR 43864 (6/30/80)	Sept. 10, 1980.
80-135	Generic name: Substituted propane	45 FR 43864 (6/30/80)	Sept. 10, 1980.
80-136	12-Molybdosilicic acid	45 FR 46207 (7/9/80)	Sept. 15, 1980.
80-139	Generic name: Epon 1004, soya fatty acid, styrene acrylic acid, and di-tertiary butyl peroxide.	45 FR 46199 (7/9/80)	Sept. 15, 1980.
80-140	Generic name: Polyer of: Epoxy resin, styrene, diallyl amine, dimethyl amino propyl methacrylamide, 2-ethyl hexyl methacrylate, and isobutoxy methylacrylamide.	45 FR 46199 (7/9/80)	Sept. 15, 1980.
80-141	Generic name: Substituted-(substituted-alkenyl)-heteropolycyclic salt	45 FR 49157 (7/23/80)	Sept. 17, 1980.
80-142	Neopentyl glycol, dimerized fatty acid polymer	45 FR 49150 (7/23/89)	Sept. 21, 1980.
80-143	Generic name: Complex of *p*-phenylphenol and an alkyl amine	45 FR 46202 (7/9/80)	Sept. 21, 1980.
80-144	Generic name: Amineextended alpha-*w*-hydorxypoly[oxy(methyl-1,2-ethanediyl)]polymer with 1,3-diisocyanatomethylbenzene.	45 FR 49149 (7/23/80)	Sept. 21, 1980.
80-145	Generic name: Methyl-(substituted)-(disubstituted) carbomonocycle	4545 FR 49157 (7/23/80)	Sept. 21, 1980.
80-148	Supra castor fatty acid, tall oil fatty acid, trimethylolpropane, pentaerythritol, phthalic anhydride, and para-tert butylbenzoic acid alkyd polymer.	45 FR 49155 (7/23/80)	Sept. 24, 1980.
80-149	Generic name: Soya fatty acid, supra castor fatty acid, benzoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol alkyl polymer.	45 FR 49155 (7/23/80)	Sept. 24, 1980.
80-150	Generic name: Safflower fatty acid type, phthalic anhydride, maleic anhydride, trimethylolpropane, pentaerythritol alkyd polymer.	45 FR 49155 (7/23/80)	Sept. 24, 1980.
80-151	Generic name. Substituted-(substitutedvinyl)-heteropolycyclic salt	45 FR 49152 (7/23/80)	Sept. 25, 1980.
80-152	Poly(vinylacetate-co-butyl acrylate, tertoctylacrylamide)	45 FR 49151 (7/23/80)	Sept. 25, 1980.
80-154	Generic name: Reaction products of [(amino-disubstitutedcarbomonocyclic) azo]carbomono-cyclesulfonic acid and [(amino-monosubstituted-carbomonocyclicazo] carbomonocyclesulfonic acid with carbonic dichloride.	45 FR 51647 (8/4/80)	Sept. 30, 1980.
80-155	Cyclohexanehexacarboxylic acid, penta sodium	45 FR 51262 (8/1/80)	Sept. 30, 1980.

IV. New Substances Added to the Inventory During the Month

PMN No.	Manufacturer	Chemical identity	FR citation
80-23	Grow Group Inc., 3155 W. Big Beaver Road, Troy, MI 48084	Polymer of: Epichlorohydrinbis A; bisphenol A; *N*-methyl morpholine; and acetic acid.	45 FR 16006 (3/12/80).
80-31	Claimed confidential business information (CBI)	Generic name: Chloro organoaminofluoran dye.	45 FR 15644 (3/11/80).
80-57	Sun Petroleum Products Co., 1608 Walnut St., Philadelphia, PA 19103	Generic name: Alkyl biphenyls	45 FR 24696 (4/10/80).
80-70	CBI	Generic name: Sulfonic acid salt of ureylenebis-(hydroxy-[(sulfonaphthayl)azo])napthalene.	45 FR 27006 (4/24/80).
80-71	CBI	Generic name: Sulfonic acid of a ureylene-bis(hydroxy-[sulfonaphthayl)azo]) napthalene compound.	45 FR 24696 (4/10/80).
80-75	CBI	Polymer of: 12 Hydroxy stearic acid and epoxy resin.	45 FR 30127 (5/7/80).
80-84	CBI	Generic name: Polyester reaction product with isophorone diisocyanate and hydroxypropyl acrylate.	45 FR 30132 (5/7/80).
80-88	Ciba Geigy Corp., P.O. Box 114222, Greensboro, NC 27409	Generic name: Cyanalkyl carbomonocyclicsulfonate. (Added August 1980).	45 FR 32772 (5/19/80).

[FR Doc. 80-34105 Filed 10-31-80; 8:45 am]
BILLING CODE 6560-31-M

[AS-FRL 1653-2]

Renewal of Two Advisory Committees; National Air Pollution Control Techniques Advisory Committee and Management Advisory Group to the Municipal Construction Division

October 29, 1980.

The U.S. Environmental Protection Agency announces the renewal of the National Air Pollution Control Techniques Advisory Committee and the Management Advisory Group to the Municipal Construction Division. EPA has determined that renewal of these advisory committees is in the public interest in connection with the performance of duties imposed on the Agency by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, as required. The charters which continue the National Air Pollution Control Techniques Advisory Committee and the Management Advisory Group to the Municipal Construction Division until December 1, 1982, unless otherwise sooner terminated, will be filed with the appropriate Congressional Committees and the Library of Congress, in accordance with Section 14 of the Federal Advisory Committee Act (Pub. L. 92-463).

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM-213), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, 202-755-0866.

Dated: October 28, 1980.

Saul R. Rosoff,

Acting Assistant Administrator for Planning and Management.

[FR Doc. 80-34107 Filed 10-31-80; 8:45 am]
BILLING CODE 6560-36-M

[OPTS-51159; TSH-FRL 1653-1]

Substituted Phenol, Reaction Products With Sulfur Chloride; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Secton 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMM within 5 working days after receipt. This Notice announces receipt of a PMM and provides a summary.

DATES: Written comments by November 28, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW, Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitiled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 28, 1980, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51159]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)).

Dated: October 26, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-267.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. December 28, 1980.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identify. Claimed confidential business information. Generic name provided. Substituted phenol, reaction products with sulfur chloride.

Use. Claimed confidential business information. Generic use provided: Lubricant additive.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. (For a 50% weight solution of substituted phenol, rection products with sulfur chloride).

Estimated oral LD_{50} (rats)—≤16gm/kg body wt.

Primary skin irritation index—5.33.

Eye irritation score—11.9, 9.3, 6.0, 1.3, 0 at 24, 48, and 82 hours, 5 and 7 days respectively.

Exposure. Claimed confidential business information.

Environmental Release/Disposal. Claimed confidential business information.

[FR Doc. 80-34106 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A-19]

AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: October 28, 1980.

Cut-Off Date: December 5, 1980.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after December 5, 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 December 5, 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., not later than the close of business on December 5, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 5, 1980.

BP-800527AD (new), Hayden, Colorado, Z Broadcasters, Inc. Req: 1000 kHz, 10 kW (5 kW-Ch), D.

BP-800527AN, KCNO, Alturas, California, KCNO, Inc. Has: 570 kHz, 5 kW, D. Req: 570 kHz, 2.5 kW, 5 kW-LS, DA-N, U.

BP-800611AA (new), White Bluff, Tennessee, Dickson County Radio, Inc. Req: 1150 kHz, 500 W, DA-D.

BP-800611AC (new), Black Canyon, Arizona Black Canyon Broadcasting Corporation. Req: 710 kHz, 500 W, DA-D.

BP-800613AC, WCUB, Two Rivers, Wisconsin, CUB Radio, Inc. Has: 980 kHz, 5 kW, D (Manitowoc). Req: 980 kHz, 5 kW DA-2, U (Two Rivers).

BP-800619AF, WBME, Belfast, Maine, Seth Broadcasting Corporation, Has: 1230 kHz, 250 W, SH. Req: 1230 kHz, 250 W, 1 kW-LS, U.

BP-800624AK, WFBZ, Minocqua, Wisconsin, Frederick H. Bierbaum. Has: 1570 kHz, 1 kW, D. Req: 1570 kHz, 2.5 kW, D.

BP-800721AD (new), North Myrtle Beach, South Carolina, North Myrtle Beach Broadcasting Corp. Req: 900 kHz, 500 W, DA-D.

BP-800729AH, WTNR, Kingston, Tennessee, WTNR, Incorporated. Has: 1410 kHz, 500 W, D. Req: 1410 kHz, 1 kW, 500 W-LS, DA-N, U.

BP-800903AE, WRTR, Two Rivers, Wisconsin, Paragon Radio Network, Inc. Has: 1590 kHz, 1 kW, D. Req: 1590 kHz, 500 W, 1 kW-LS, DA-N, U.

BP-800908AC, WAXO, Lewisburg, Tennessee, Lewisburg Radio Co., Inc. Has: 1220 kHz, 250 W, D. Req: 1220 kHz, 1 kW, D.

BP-800911AG, KTBB, Tyler, Texas, Smith County Broadcasters. Has: 600 kHz, 1 kW, DA-N, U. Req: 600 kHz, 2.5 kW, 5 kW-LS, DA-2, U.

BP-801015AC (new), Cornwall, New York, Mid-Hudson Valley Broadcasting, Inc. Req: 1170 kHz, 1 kW, DA-D.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-34165 Filed 10-31-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-655, 80-656; File Nos. BPCT-5154, BPCT-5203]

International Panorama TV, Inc. (KTBN-TV) and Saddleback Broadcasting Co., Inc.; Designating Applications for Consolidated Hearing on Stated Issues; Hearing Designation Order

Adopted: October 10, 1980.
Released: October 28, 1980.

In re Applications of International Panorama TV, Inc. (KTBN-TV), Santa Ana, California, BC Docket No. 80-655, File No. BPCT-5154; and Saddleback Broadcasting Company, Inc., Santa Ana, California, BC Docket No. 80-656, File No. BPCT-5203; For a Television Station Construction Permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications, filed by International Panorama TV, Inc. (IPTV or International), for a major change in its existing facility [1] and Saddleback Broadcasting Company, Inc. (Saddleback) for a construction permit for a new commercial station to operate on Channel 40, Santa Ana, California; [2] and related pleadings.

Preliminary Matters

2. On August 29, 1980, IPTV filed a "Motion For Deferred Processing," of the above applications pending the outcome of an appeal seeking review by the U.S. Court of Appeals for the District of Columbia Circuit of the Commission's *Report and Order* in BC Docket No. 79-176, FCC 80-474, released August 12, 1980, in which the Commission determined that Channel 40, should remain assigned to Santa Ana and could not be reassigned to Riverside for use there by IPTV without necessitating the acceptance of competing applications for a new authorization.[3] IPTV asserts in the "Motion" that the relief requested satisfies the legal standards governing request for stays, as set forth in *Virginia Petroleum Jobbers Association v. FPC*, 259 F. 2d 921 (D.C. Circuit 1958). However, upon consideration of the information presented by IPTV, the Commission believes that the public interest will best be served by a denial of the motion and the designation of the above applications. This will avoid further delay if IPTV is unsuccessful in its appeal and will cause no irreparable injury to IPTV should the appeal be successful.

International Panorama TV, Inc.

3. International's ascertainment survey indicates that, as a growing community, Santa Ana is faced with many problems and needs such as transportation, ecology, government and tax related problems. International has not indicated how its programming will address these specific needs. Therefore, an appropriate issue will be specified.

4. From the information before the Commission, it appears that IPTV has failed to comply with certain requirements of the *Primar on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21RR 2d 1507 (1971). International has indicated that it has interviewed leaders of organizations representing minority and ethnic groups, but it is not possible to determine what minority or ethnic groups those persons represent. Accordingly, a limited ascertainment issue will be specified.

Saddleback Broadcasting Co., Inc.

5. Pursuant to § 1.65 of the Commission's Rules, 47 CFR 1.65, Saddleback submitted a copy of a complaint filed in U.S. District Court for the Eastern District of Pennsylvania. The complaint involves the alleged violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b) and rule 10b-5. Named as a defendant party is David H. Methvin, a principal in Saddleback. In the event of grant of the application of Saddleback, the construction permit will be conditioned on the final outcome of the civil proceeding.[4]

6. Except as indicated by the issues specified below, the Commission finds International Panorama TV, Inc. and Saddleback Broadcasting Co. legally, financially, technically and otherwise qualified. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that grant of the applications will serve the public interest, convenience and necessity. The applications must therefore be designated for hearing on the issues set out below.

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, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine, with respect to International:

(a) whether International interviewed leaders of minority and ethnic groups in Santa Ana.

(b) whether International's programming proposal is designed to respond to the ascertained needs and problems.

(c) whether, based on evidence adduced pursuant to the above, International is qualified.

(2) To determine, on a comparative basis, which of the applications would better serve the public interest.

(3) to determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That in the event of a grant of Saddleback's application, the construction permit will be conditioned upon the final outcome of the civil proceeding naming as a defendant party, David H. Methvin, a principal in Saddleback.

9. It is further ordered that the motion for deferred processing, filed by International IS DENIED.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within twenty (20) days of the mailing of this Order, shall file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. 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 of the Commission's Rules, 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 § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-34166 Filed 10-31-80; 8:45 am]

BILLING CODE 6712-01-M

[1] International is seeking to change the city of license of KTBN-TV, Channel 40, from Fontana to Santa Ana, California.

[2] These applications were filed under the procedures adopted in *Adjudicatory Re-regulation Proposals*, 58 FCC 2d 865 (1976). Subsequently, the Commission adopted new procedures, *Revised Procedures for the Processing of Contested Broadcast Applications*, 45 RR 2d 1220 (1979). Accordingly, these applications will be considered under the revised procedures. Therefore, as contemplated in the new procedures, "Petitions to Specify Issues" will not be considered.

[3] On September 12, 1980, Saddleback Broadcasting Company, Inc. filed an "Opposition" to IPTV's "Motion For Deferred Processing."

[4] See, *Violation by Applicants of Laws of United States*, 42 FCC 2d 399 (1951).

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. 77

"Committee to Revise the RTCM Marine Radiotelephone Handbook," Notice of 3rd Meeting, Wednesday, November 19, 1980—9:30 a.m., Conference Room A–106, F.C.C. Annex, 1229 20th Street, N.W., Washington, D.C.

Agenda

1. Call to Order; Chairman's Report.
2. Review of draft revision of Marine Radiotelephone Handbook.
3. Assignment of work projects.
4. Establishment of future meeting schedule.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632–6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–34167 Filed 10–31–80; 8:45 am]

BILLING CODE 6712–01–M

SES Performance Award Schedule

The Federal Communications Commission plans to grant performance awards to SES members on or about November 12, 1980. For further information contact Joan C. McDonald, Director of Personnel, at 632–7120.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–34067 Filed 10–31–80; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA 5925]

National Flood Insurance Program; Communities With Flood-Prone Areas Subject to Section 202(A), Prohibition of Federal and Federally Related Assistance

Correction

In FR Doc. 80–32860, appearing on page 70111, in the issue of Wednesday, October 22, 1980, make the following correction.

On page 70124, second column, the following entries were inadvertently omitted at the beginning of the listing for "**Oklahoma**":

Ident. and community name		County	Original hazard date
Oklahoma			
400255	Achille, town of	Bryan County	760402
400256	Adair, town of	Mayes County	760402
400074	Addington, town of	Jefferson County	741018
400259	Asher, town of	Pottawatomie County	760604
400260	Bennington, town of	Bryan County	760813
400261	Bessie, town of	Washita County	750815
400346	Bethel Acres, town of	Pottawatomie County	761231
400347	Billings, town of	Noble County	760813
400263	Bradley, town of	Grady County	760813
400465	Bridgeport, town of	Caddo County	770401
400482	Bryan County*	Bryan County	771206
400149	Burbank, town of	Osage County	750110
400266	Butler, town of	Custer County	761105
400479	Caddo County*	Caddo County	780103
400270	Camargo, town of	Dewey County	750919
400273	Caney, town of	Atoka County	760409
400355	Carmen, town of	Alfalfa County	750919
400030	Carter County	Carter County	770705
400276	Carter, town of	Beckham County	760402
400278	Castle, town of	Okfuskee County	760507
400187	Chelsea, city of	Rogers County	731228
400488	Cherokee County*	Cherokee County	780110
400281	Colcord, town of	Delaware County	761119
400253	Colony, town of	Washita County	760813
400489	Comanche County*	Comanche County	780620
400156	Commerce, city of	Ottawa County	760604
400225	Corn, town of	Washita County	750110
400122	Council Hill, town of	Muskogee County	741213
400363	Cowlington, town of	LeFlore County	770311
400097	Coyle, town of	Logan County	760813
400282	Cromwell, town of	Seminole County	760813
400364	Cyril, town of	Caddo County	760402
400226	Dacoma, town of	Woods County	741108
400367	Delaware, town of	Nowata County	760409
400369	Dickson, town of	Carter County	760730
400377	Fairland, town of	Ottawa County	760409
400379	Forest Park, town of	Oklahoma County	760625
400381	Geary, city of	Blaine County	761029
400032	Gene Autry, town of	Carter County	741108
400013	Greenfield, town of	Blaine County	740830
400243	Guymon, city of	Texas County	770520
400388	Helena, town of	Alfalfa County	760402
400467	Hughes County*	Hughes County	770809
400024	Hydro, town of	Caddo County	740726
400288	Indianola, town of	Pittsburg County	760402
400007	Jet, town of	Alfalfa County	741206
400290	Kansas, town of	Delaware County	750926
400392	Keyes, town of	Cimarron County	760813
400394	Kingston, town of	Marshall County	760402
400168	Kiowa, town of	Pittsburg County	760625
400294	Lahoma, town of	Garfield County	761203
400295	Lamont, town of	Grant County	760409
400484	LeFlore County*	LeFlore County	780110
400299	Lehigh, city of	Coal County	761029
400301	Lima, town of	Seminole County	761210
400096	Logan County*	Logan County	741227
400083	Loyal, town of	Kingfisher County	750425
400399	Mannford, town of	Creek County	761112
400303	Mannsville, town of	Johnston County	750926
400400	Marietta, city of	Love County	761029
400305	Marland, town of	Noble County	760813
400306	Marshall, town of	Logan County	760813
400458	Mayes County	Mayes County	771122
400106	McCurtain County	McCurtain County	780711

FEDERAL MARITIME COMMISSION

[Docket No. 80–71]

Royal Hawaiian Cruises, Inc.; Order To Show Cause

Royal Hawaiian Cruises, Inc. (Royal Hawaiian Cruises), World Trade Center, Ferry Building, San Francisco, California, is presently the holder of Certificate (Performance) No. P–201 covering the SS *Monterey*. Certificate (Performance) No. P–201 was issued on January 18, 1980. Royal Hawaiian Cruises qualified for its Certificate (Performance) by submitting a surety bond issued by the Aetna Casualty and Surety Company in the amount of $1,600,000.

In July 1979, Mr. Othmar G. Grueninger, who is now President of Royal Hawaiian Cruises, advised the Commission of a sailing schedule for the SS *Monterey* which was to commence on October 29, 1979 with a five-day cruise between San Francisco,

California and Honolulu, Hawaii. By letter dated November 13, 1979, Mr. Grueninger submitted the application of Royal Hawaiian Cruise Lines, Inc. for a Certificate (Performance) covering the SS *Monterey* and advised the Commission that Royal Hawaiian Cruise Lines, Inc. intended to commence operating the vessel on February 4, 1980. In January, 1980, a new application in the name of Royal Hawaiian Cruises, Inc. was filed by Mr. Grueninger for a Certificate (Performance) covering the SS *Monterey*. In that application, it was stated that Royal Hawaiian Cruises had contracted to purchase the SS *Monterey* from World Airways, Inc., Oakland, California, and that Royal Hawaiian Cruises planned to commence operations on March 31, 1980, with a five-day cruise between San Francisco, California and Honolulu, Hawaii.

Effective January 18, 1980, Certificate (Performance) No. P–201 covering the SS *Monterey* was issued to Royal Hawaiian Cruises. The Commission approved the issuance of the Certificate (Performance) based upon an understanding that Royal Hawaiian Cruises would obtain title to the SS *Monterey* on March 1, 1980, and commence operations on March 31, 1980.

In the January 7, 1980 *Travel Weekly's Cruise Guide*, an advertisement of Royal Hawaiian Cruise Lines, Inc. appeared promoting, among other cruises, and inaugural cruise of the SS *Monterey* on March 2, 1980. In late January, 1980, the Commission received a brochure of Royal Hawaiian Cruises indicating the 1980 Hawaiian sailings of the SS *Monterey*. This schedule specified initial departures from San Francisco, California on March 30 and from Los Angeles, California on March 31, with an arrival in Honolulu, Hawaii on April 5.

As of the date of service of this Order, Royal Hawaiian Cruises has not taken delivery of the SS *Monterey* and the Commission has received information that negotiations for the purchase of the vessel by Royal Hawaiian Cruises may have been terminated. Despite Royal Hawaiian Cruises' failure to take delivery of the SS *Monterey*, a large amount of money has apparently been collected by Royal Hawaiian Cruises and its agents in the form of passenger deposits and fares for cruises of the SS *Monterey*, which subsequently have been cancelled.

The Commission has been advised that Royal Hawaiian Cruises and its agent, Dolphin Cruises, Inc., Laguana Hills, California, have failed to make timely refunds of the deposits and fares collected for cruises on the SS *Monterey* which have not been performed.

On August 26, 1980, the Commission's Managing Director sent a letter to Royal Hawaiian Cruises inquiring into its alleged failure to make refunds of passenger deposits and fares collected for cruises on the SS *Monterey* which have not been performed. To date, the company has failed to respond to that inquiry.

Section 3(a) of Pub. L. No. 89–77, 46 U.S.C. § 817e, provides that:

> No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

Section 540.3 of Commission General Order 20, 46 CFR 540.3, provides as follows:

> No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

Section 540.8 of Commission General Order 20, 46 CFR 540.8, provides in pertinent part that:

> (b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:
>
> (1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);
>
> (2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;
>
> (3) Failure to comply with or respond to lawful inquiries, rules, regulations or orders of the Commission pursuant to the rules of this subpart.

Section 540.9(k) of Commission General Order 20, 46 CFR 540.9(k), provides as follows:

> (k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

Therefore, it is ordered, that pursuant to Section 22, Shipping Act, 1916, 46 U.S.C. 821, section 3 of Pub. L. No. 89–777, 46 U.S.C. 817e, §§ 540.3, 540.8 and 540.9(k) of the Commission's General Order 20, 46 CFR 540.3, 540.8 and 540.9, and Rule 66 of the Commission's Rules of Practice and Procedure, 46 CFR 502.66, Royal Hawaiian Cruises is hereby ordered to show cause why Certificate (Performance) No. 201 should not be revoked for the following reasons:

(a) For failure to take title to the SS *Monterey* and commence sailings of that vessel on March 31, 1980 as stated in its application for a Certificate (Performance), correspondence and promotional literature; and

(b) Royal Hawaiian Cruises' failure to respond to a lawful inquiry of the Commission, dated August 26, 1980, concerning its failure to make refunds of passenger deposits and fares collected for cruises on the SS *Monterey* which have not been performed;

It is further ordered, that Royal Hawaiian Cruises show cause why it should not be ordered to cease and desist from arranging, offering and advertising passage on the SS *Monterey* and collecting passage fares and deposits for such passage;

It is further ordered, that in accordance with Rule 42 of the Commission's rules of practice and procedure (46 CFR 502.42), Hearing Counsel shall be a party to this proceeding;

It is further ordered, that this proceeding shall be limited to the submission of affidavits of facts and memoranda of law and replies thereto. Oral argument may also be scheduled if deemed necessary by the Commission. Should any party believe that an evidentiary hearing is required that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding and why such proof cannot be submitted through affidavit. Affidavits of fact and memoranda of law shall be filed by respondents and served upon all nonrespondent parties of record no later than close of business on November 28, 1980. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing

Counsel no later than close of business on December 15, 1980. Intervenors shall file as their interests shall appear. Requests for hearing or for oral argument shall be filed on or before December 22, 1980; and

It is further ordered, that notice of this Order be puslished in the **Federal Register**, and a copy be served upon all parties of record.

It is further ordered, that any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, that all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.[1]

Francis C. Hurney,

Secretary.

[FR Doc. 80-34069 Filed 10-31-80; 8:45 am]

BILLING CODE 6780-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reaons written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 27, 1980.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. CITICORP, New York, New York (consumer and commercial finance and insurance activities; Texas): to engage through existing offices of its indirect subsidiary, Nationwide Financial Corporation, located in the cities of Irving, Lubbock and Houston, in the following previously approved activities: the purchasing for its own account and servicing of sales finance contracts; the sale of credit related life and accident and health, decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Nationwide Financial Corporation and to the extent permissible under applicable State insurance laws and regulations; and the making of loans to individuals and businesses secured by real and personnel property, the proceeds of which may be for purposes other than personal, family or household usage, including but not limited to the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes. In addition, the Irving and Lubbock offices engage in the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes. Citicorp is applying to expand the service areas of all three offices to include the entire State of Texas, and to expand the activities of the Houston office so that it will also engage in the making or acquiring of loans and other extensions of credit secured or unsecured, for consumer and other purposes.

2. CITICORP, New York, New York (consumer and commercial finance and insurance activities; Oklahoma): to engage through its indirect subsidiary, Citicorp Person-to-Person Financial Center, Inc., in conducting the following activities: the purchasing for its own account and servicing sales finance contracts; the sale of credit related life and accident and health, decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; and the making of loans to individuals and businesses secured by real and personal property, the proceeds of which may be for purposes other than personal, family or household usage, incuding but not limited to the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. These activities would be conducted from an office in Tulsa, Oklahoma, serving the entire State of Oklahoma.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 28, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34157 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Enterprise Bancorp; Formation of Bank Holding Company

Enterprise Bancorp, Oakland, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Enterprise Bank, Oakland, California. 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 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, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

[1] Commissioner Peter N. Teige not participating.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34158 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Lamoni Bancshares, Inc.; Formation of Bank Holding Company

Lamoni Bancshares, Inc., Lamoni, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of State Bank of Lamoni, Lamoni, Iowa. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34159 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Mountain Financial Services, Inc.; Acquisition of Bank

Mountain Financial Services, Inc., Denver, Colorado, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Southeast National Bank, Denver, Colorado, a proposed new bank. 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 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34160 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

North Side Bancshares, Inc.; Formation of Bank Holding Company

North Side Bancshares, Inc., Tulsa, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 81 per cent or more of the voting shares of North Side State Bank, Tulsa, Oklahoma. 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 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34161 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Oakdale Bancshares, Inc.; Formation of Bank Holding Company

Oakdale Bancshares, Inc., Oakdale, 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 99.5 percent or more of the voting shares of First State Bank, Oakdale, Nebraska. 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 21, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34162 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

South Banking Co.; Formation of Bank Holding Company

South Banking Company, Alma, Georgia, 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 aquiring 54.5 percent or more of the voting shares of Alma Exchange Bank and Trust, Alma, Georgia, and 60.2 percent or more of the voting shares of Citizens State Bank, Kingsland, Georgia. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 26, 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 28, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34163 Filed 10-31-80; 8:45 am]

BILLING COLDE 6210-01-M

Temple Bancorporation, Inc.; Formation of Bank Holding Company

Temple Bancorporation, Inc., Temple, Oklahoma, 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 First National Bank of Temple, Temple, Oklahoma. 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 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34164 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Central Bancorporation, Inc.; Acquisition of Bank

Central Bancorporation, Inc., and its parents/subsidiaries Central Colorado Company; C.C.B., Inc.; and Central Colorado Bancorp, all of Denver, Colorado, have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire, directly and indirectly 98 percent or more of the voting shares of Central Bank of West Greeley, a proposed new bank. 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 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34078 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Chimney Rock Bancorp.; Formation of Bank Holding Company

Chimney Rock Bancorp., Bayard, 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 100 percent of the voting shares of The First National Bank of Bayard, Bayard, Nebraska. 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 26, 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 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-34077 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of September 16, 1980

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held September 16, 1980.[1]

The information reviewed at this meeting suggests that the decline in economic activity has moderated in the third quarter following a sharp contraction in the second quarter. Industrial production and nonfarm payroll employment expanded in August after several months of decline; the unemployment rate edged down from 7.8 to 7.6 percent; and total retail sales advanced considerably further. In July housing starts rose slightly, following a substantial rebound in June, and were well above the depressed levels of the preceding three months. Producer prices of finished goods rose rapidly in July and August, after increasing at a sharply reduced pace in the second quarter; the recent advance reflected mainly a surge in food prices. Over the first eight months of the year, the rise in the index of average hourly earnings was somewhat faster than the pace recorded in 1979.

The weighted average value of the dollar in exchange markets has declined somewhat over the past five weeks. The U.S. trade deficit in July was significantly lower than the monthly average in the second quarter, reflecting a sharp decline in petroleum imports.

M-1A and M-1B grew at record rates in August, while growth in M-2 moderated from an exceptionally rapid pace in June and July. For the year through August growth of M-1A was in the lower half and growth of M-1B in the upper half of their respective ranges set by the Committee for the year from the fourth quarter of 1979 to the fourth quarter of 1980, while growth in M-2 was somewhat above the upper limit of its range. Market interest rates have fluctuated widely since mid-August and on balance short-term rates have risen considerably while long-term rates have increased moderately.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation, encourage economic recovery, and contribute to a sustainable pattern of international transactions. At its meeting in July, the Committee agreed that these objectives would be furthered by growth of M-1A, M-1B, M-2, and M-3 from the fourth quarter of 1979 to the fourth quarter of 1980 within ranges to 3½ to 6 percent, 4 to 6½ percent, 6 to 9 percent, and 6½ to 9½ percent respectively. The associated range for bank credit was 6 to 9 percent. For the period from the fourth quarter of 1980 to the fourth quarter of 1981, the Committee looked toward a reduction in the ranges for growth of M-1A, M-1B, and M-2 on the order of ½ percentage point from the ranges adopted for 1980, abstracting from institutional influences affecting the behavior of the aggregates. These ranges will be reconsidered as conditions warrant.

In the short run, the Committee seeks expansion of reserve aggregates consistent with growth of M-1A, M-1B, and M-2 over the August to December period at annual rates of about 4 percent, 6½ percent, and 8½ percent respectively, provided that in the period before the next regular meeting the weekly average federal funds rate remains within a range of 8 to 14 percent.

If it appears during the period before the next meeting that the constraint on the federal funds rate is inconsistent with the objective for the expansion of reserves, the Manager for Domestic Operations is promptly to notify the Chairman, who will then decide whether the situation calls for supplementary instructions from the Committee.

By order of the Federal Open Market Committee, October 24, 1980.

Murray Altmann,

Secretary.

[FR Doc. 80-34074 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

[1] The record of Policy Actions of the Committee for the meeting of September 16, 1980, is filed as part of the original document. Copies are available on request to the board of Governors of the Federal Reserve System, Washington, D.C. 20551.

[Docket No. R-0330]

Policy Statement Concerning the Use of Brokerage Commissions to Pay for Research Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement.

SUMMARY: This policy statement reflects the judgment of the Board that each trust institution subject to the Board's supervisory jurisdictional [1] exercising investment discretion over the accounts of customers should: (1) Establish written policies and procedures providing for the identification and periodic review of so-called "soft-dollar" practices involving the payment for research services with brokerage commissions to ensure compliance with applicable provisions of law, and (2) prepare and make available to its customers a disclosure statement setting forth specific information relating to the brokerage and research services received from, or on behalf of, brokers in exchange for commission dollars. A sample disclosure statement is provided to aid trust institutions in the making of such disclosures.

COMMENT PERIOD: All comments should be received by December 22, 1980.

ADDRESS: Comments, which should refer to Docket No. R-0330, may be mailed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, Northwest, Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director ((202) 452-2782), or Walter R. McEwen, Attorney ((202) 452-2521), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Prior to the May 1, 1975 elimination of fixed commission rates charged by brokers which execute transactions on national securities exchanges, it had been common practice for many brokers to provide research analysis and other market services and to compete on the basis of these services as well as on the basis of execution capacity. Money managers, including bank trust departments, were able to obtain research and other services from brokerage firms at no cost beyond the fixed commission rate then in effect for the execution of securities transactions; in effect, paying for such services with so-called "soft-dollars." The elimination of the fixed commission rate structure, however, threatened to disrupt this practice since many money managers feared that, under fiduciary law, they would be obliged to seek the lowest execution cost for transactions and the payment of higher commissions for execution plus research could give rise to liability. This could have interrupted the availability and distribution of research services with potentially harmful consequences to investors. In order to prevent such an occurrence, section 28(e) was added to the Securities Exchange Act of 1934 to provide a safe harbor for money managers that use commission dollars, at rates in excess of the lowest rates available, to pay for brokerage and research services where the money manager has determined that the commission paid is reasonable in relation to the value of the services provided by the broker-dealer.

Since the enactment of section 28(e), considerable uncertainty has arisen concerning the extent to which specific products and services do qualify for the protections afforded by section 28(e)(1). In addition, a recent investigation by the Securities and Exchange Commission into soft dollar arrangements utilized by several money managers, including banks, disclosed practices that were not believed to fall within the safe harbor provisions and, in several cases, resulted in the reimbursement of commission dollars to the affected accounts.[2] Because failure to comply with the safe harbor provision of section 28(e) may subject the money manager to liability where certain products and services are acquired with commission dollars, the Board believes it is incumbent upon each trust institution subject to its supervisory jurisdiction to establish written policies and procedures providing for the identification and periodic review of practices involving payment for research services with commissions in order to ensure conformance with the provisions of section 28(e).[3] Moreover, the Board believes that the potential for liability can be further minimized and the public interest better served if disclosures of such practices are made known to interested customers.

To assist the Board in determining the feasibility of implementation of the policy and disclosure requirements contained herein, the Board invites comment on the revisions of this policy statement. In particular, comment is invited on that portion of the policy statement which would suggest establishment of written policies and procedures to ensure that commission dollars generated by *nondiscretionary* accounts be applied to the purchase of brokerage and research services (other than execution) only with the knowledge and consent of the customer or other holder of the direction power. This provision was inserted in recognition of the fact that the safe harbor provision of section 28(e)(1) literally is available only to persons "in the exercise of investment discretion with respect to an account." In some direction trusts the customer or other third party not only has the power to make investment decisions but also may direct the selection of the broker to be used in effecting transactions for the account. On the other hand, there may be some direction trusts where the bank has full authority to select the broker to be used in effecting transactions for the direction trust. Query: To what extent would this category of accounts be impacted by the proposed policy statement? Also, it should be noted that the policy statement as proposed contemplates that orders from discretionary and nondiscretionary accounts be separately identified.

The policy statement would make it clear that it does not apply to any trust institution which does not receive products and services for commission dollars from brokers other than brokerage services. The Board is concerned about the burden of compliance with the policy statement on smaller institutions and invites comment as to whether some other criteria might be used consistent with the Board's statutory responsibilities. For example, should an institution that paid brokerage commissions for research and execution services of not more than a *de minimis* dollar amount (say $5,000) during the past year be exempt? Or should the institution be exempt where the total amount of commissions paid for research and execution did not exceed some *de minimis* percentage of total commissions paid? If so, what should such dollar amount or percentage be? In responding to these questions, it should be kept in mind that the Board is seeking

[1] State member banks and State-chartered, nondeposit, trust company subsidiaries of bank holding companies.

[2] Securities and Exchange Act Release No. 16679, dated March 19, 1980.

[3] Where a trust institution acts as fiduciary with respect to an employee benefit plan, the failure to comply with section 28(e) could result in a violation of section 406(b)(3) of the Employee Retirement Income Security Act of 1974 which prohibits a fiduciary from receiving any consideration for his own account in connection with a transaction involving the assets of the plan.

information as to developing a cut-off point below which the payment of higher brokerage commissions in return for research services is not material to either the bank or the customer.

A regulatory impact analysis has been prepared; this analysis focuses on the burdens and benefits imposed by the proposed policy statement, as compared to alternative methods of dissemination of the same information. The conclusion of the regulatory impact analysis is that the proposed policy statement appears to be the most effective and least costly means of guaranteeing that disclosure statements be furnished only to those persons who desire the information provided in the disclosure statement.

The policy statement would be issued pursuant to the authority granted to the Board by section 28(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(2)), and pursuant to the Board's supervisory authority contained in section 9 (12 U.S.C. 321 *et seq.*) of the Federal Reserve Act, the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b)), and the Bank Holding Company Act of 1956 (12 U.S.C. 1844 and 1847).

Statement of Policy Concerning the Use of Brokerage Commissions To Pay for Research Activities

Section 28(e)(1) of the Securities Exchange Act of 1934, as amended, relieves money managers exercising investment discretion over accounts of customers of liability under fiduciary law that might accrue to them if they cause the accounts which they manage to pay a brokerage commission in excess of the amount another broker would have charged for effecting the same transaction if the higher commission is determined in good faith to be justified by the value of brokerage and research services provided by the broker. In order to rely upon this safe harbor provision, the following conditions must be observed: (1) The trust institution must exercise investment discretion over the accounts generating the commissions used to pay for the additional services provided; (2) the services acquired must be brokerage and research services and be provided by the broker to the trust institutions; and (3) the trust institution must determine in good faith that the commission being paid is reasonable in relation to the value of the services provided.

Since the enactment of section 28(e), considerable uncertainty has arisen concerning the extent to which specific products and services received in exchange for commission dollars do qualify for the protections afforded by section 28(e)(1). Because the types of products and services received in exchange for commission dollars are many and varied, the Board recognizes that it is not possible to establish definitive guidelines that would be applicable to all situations. For this reason, the burden necessarily falls upon each trust institution to satisfy itself by a good faith determination that its brokerage allocation practices qualify for the protections of section 28(e), if liability under fiduciary law is to be avoided or at least minimized. The Board, therefore, expects each trust institution subject to its supervisory jurisdiction that exercises investment discretion over the accounts of customers, to establish written policies and procedures, suitable to its circumstances, to ensure that its obligations under the law are properly observed. Such policies and procedures should, at a minimum provide for: (1) The identification and reporting to an appropriate senior management level of all services received for which commissions in excess of the lowest available commission rate, consistent with safe and speedy execution, are being paid; (2) the periodic review of such services to ascertain whether the services reasonably enhance the institution's research capability; and (3) the documentation of management's determination that the provision of such services justifies the amount of commissions paid. Operating procedures should also be established to ensure that commission dollars used or allocated for the payment of such products and services are generated only by: (1) accounts over which the institution exercises investment discretion; and (2) other accounts, with the knowledge and consent of the customer or other holder of the direction power.

The Board also recognizes that brokerage placement practices could have a material influence on the decisions of many persons in selecting a particular bank of trust institution to act in their behalf or on behalf of their designated beneficiaries in effecting securities transactions. Brokerage expenses may constitute a significant cost to a customer's account over a period of years. Although the use of commission dollars to pay for research services ultimately enhances the money managers' ability to service, in the aggregate, customers' accounts, it is possible that a particular account will be structured in such a way that research purchased with its commission dollars is of little or no use to the account. On the other hand, research services, which were obtained by commissions generated by other accounts, may be used to service a particular account. Accordingly, the Board believes that information concerning a trust institution's brokerage placement practices should be made available to its customers. However, the Board recognizes that not all customers would have an interest in this type of information and, indeed, some may even object to the unsolicited receipt of information of this nature. Accordingly, the Board concludes that the public interest would be served to the extent the customers of trust institutions are informed that a disclosure statement of this nature will be provided to them upon request.

Therefore, the Board expects each trust institution subject to its supervisory jurisdiction which exercises investment discretion over the accounts of customers and pays higher brokerage commissions in return for research services to prepare and make available to such customers a disclosure statement setting forth certain specific information relative to its brokerage allocation practices. To ensure that interested customers are aware of the existence of the disclosure statement, each such trust institution is expected to make part of, or append to, its fee schedules and periodic statements of account, a notice of the right to receive the disclosure statement, without charge and upon request.

The disclosure statement to be made available to interested customers should, at a minimum, (1) identify the general types of products and services, other than execution, for which a higher commission rate was paid than that which a competing broker may have charged for a similar transaction; (2) indicate the aggregate commission dollars allocated in payment of these services (including execution) during the previous calendar year stated both in dollars and as a percentage of total commission dollars paid during the previous calendar year; (3) indicate the extent to which any such arrangements permit the trust institution to recapture commissions paid on a transaction basis in lieu of purchasing certain goods and services; and (4) describe the use to which these services are put and indicate generally how they benefit the management of customers' accounts. The disclosure statement should be revised at any time there is a material change in the information required to be contained therein. A sample disclosure statement is attached for the guidance of trust institutions.

Sample Disclosure Statement

Brokerage and Research Services Acquired Through Allocation of Brokerage Commissions

We regularly utilize brokers in executing orders who have been selected on the basis of the amount and quality of brokerage and/or research services that they provide to us, either directly or through a third party. In return for such services, we pay a higher commission rate than that which a competing broker may charge for execution of the transaction alone. Services acquired in this manner are said to be acquired with "soft dollars" because they do not entail explicit payment of separate amounts for each component service that is provided.

Description and Use of Services

Specific services for which we have paid a higher commission rate than that which a competing broker would have charged are as follows: (Describe services received such as analytical reports, pricing tapes, market information, financial data, etc.). During 19— (the previous calendar year), we allocated aggregate commission dollars, including cost of execution, amounting to $——— on transactions totalling $——— among ——— brokers in payment for these services. This amount represents —% of total commission dollars paid during the calendar year.

None of the above service arrangements permit us to recapture for a client's account any commissions paid on a per transaction basis in lieu of the purchase of these services. In the case of each such arrangement, we have made a good faith determination that the amount of commissions paid is reasonable in relation to the value of the serices received and reserve the right to terminate the arrangement at any time that we may determine that the value of the service no longer justifies the cost.

Effect of Brokerage Commission Payments Upon Accounts

The research services obtained from brokers in exchange for commission dollars provides us with information which improves the ability of our analysts to monitor the securities markets and to keep abreast of financial developments in the various companies whose securities are held in the accounts of our clients. The research received is used by us to service all of our managed accounts. However, not all such services may be used by us in connection with a particular account even though that account may have generated some of the commissions used to pay for the services. Alternatively, certain research services may be used in connection with a particular portfolio which were obtained with brokerage commissions generated by other accounts.

Regulatory Impact of Policy Statement Requiring Disclosure of Brokerage Placement Practices

Background

The Securities Reform Act Amendments of 1975 added Section 28(e) to the Securities Exchange Act of 1934. This section expressly permits investment managers to pay brokerage commissions in excess of other available rates, if the commissions are reasonable in terms of the value of the brokerage and research services provided. Section 28(e) grants broad authority to the appropriate regulatory agency to prescribe regulations requiring the disclosure of practices relating to these brokerage commissions. Board staff, in order to implement Section 28(e)(2), has proposed a policy statement which states the expectation of the Board of how state member banks and state chartered, non-deposit trust company subsidiaries of bank holding companies should disclose the brokerage placement practices of their trust operations.

The motivation for adding Section 28(e) to the Securities Exchange Act was the transition from minimum fixed to negotiated brokerage rates by the New York Stock Exchange in 1975. Prior to negotiated rates, brokerage houses competed on the basis of services. However, with the advent of negotiated rates, competition has become more price oriented. As a result, some brokerage houses have become specialized in executions only at discount prices, while others offer a full service line at competitive prices. The additions to the Securities Exchange Act are intended to take account of these changes in the marketplace by allowing investment managers, including bank fiduciaries, to pay commissions in excess of the minimum executions rates when these commissions are reasonable in terms of the value of the brokerage and research services received by the investment manager. The purpose of the disclosure statement is to notify the fiduciary's account parties of the amount and types of services purchased from brokers.

Board staff has recommended that state member bank trust departments and state chartered, non-deposit trust company subsidiaries of bank holding companies make appropriate disclosure statements available to their account parties. Notice of the availability of such statements would be provided without charge and upon request by these notices being made part of, or appended to, fee schedules and periodic statements of account.

Regulatory Impact

1. *Criteria for Evaluating Alternative Methods of Disclosure.* The intent of disclosure is to protect trust department account parties by providing them with information pertaining to the brokerage placement practices of the investment manager. Since the primary function of this disclosure statement is to provide information to account parties, the economic criterion for evaluating alternative methods of disclosure should be to adopt that disclosure requirement which leads to the most efficient dissemination of information; that is, to select the method of disclosure which best provides information to those persons that value this information highly while not incurring costs to provide these statements to persons who already have the information or who assign a negligible value to it.

Bank trust departments are likely to willingly supply information when they perceive that the benefits accruing to them exceed the cost of producing this information. Thus, they will be inclined to supply a disclosure statement when they expect it to be helpful in retaining old customer accounts or attracting new trust accounts. Alternatively, when the incremental cost of providing the information exceeds the value of the disclosure statement, the bank will probably be unwilling to provide this statement. Similarly, the account parties benefit when the value of knowing the placement practices and costs of different bank trust departments is greater than the cost of supplying these statements. However, when the cost of supplying these statements exceeds the benefits received, despite the fact that the disclosed information might have some positive value, it would not appear to be a productive use of resources since an alternative use of these same resources could possibly benefit these customers more.[1]

2. *Alternative Methods of Disclosure.* There are four principal alternative methods of disclosing bank trust operations. These are:

(1) The trust department delivers disclosure statements to each account party.

[1] One such alternative utilization would be to allocate the cost of producing disclosure statements to the trust accounts as investment returns. When the marginal cost of supplying information exceeds its information value, then this alternative is preferred by the account parties.

(2) The trust department delivers disclosure statements to only those accounts over which it has investment discretion.

(3) The trust department provides notice of the availability of a disclosure statement to its trust account parties and such parties will receive a statement as requested.

(4) No disclosure. Board staff has recommended Alternative 3. The following analysis supports this alternative since it is the most efficient means of providing information to those persons who desire this information.

In Alternative 1 the trust department is required to deliver a disclosure statement to every account regardless of the degree of investment discretion exercised by the bank. Technically this exceeds the requirements of the statute which pertain only to the disclosure of placement practices for those accounts over which the investment manager has discretion. However, sending disclosure statements to all account parties could be justified since the brokerage placement practices of bank trust departments affect all accounts, not just the ones over which the bank exercises investment discretion and some of these other account parties may place a high value on this type of information. The drawback to Alternative 1 is that the incremental cost to the bank of sending disclosure statements probably exceeds the value of information to many of the recipients.[2] Not only would there probably be many mailings to parties that place no value on the information content of these statements, but in many situations this information may be redundant. Under this alternative, account parties could either receive multiple mailings (e.g., when one of the account parties is an investment advisor who employs the services of the bank for a number of accounts), or the same information might be obtained by other means; for example, discussions with the bank trust department. Extensive discussions between account parties and trust departments would probably occur most frequently with agency accounts,[3] where the non-bank investment advisor is in close contact with the bank's trust department, and with employee benefit trusts where the treasurer's office of a large corporation can be expected to maintain close contact with bank trust departments.[4] On balance, this alternative is unacceptable.

Alternative 2 is the same as 1 except that the non-discretionary accounts are exclused from disclosure requirements. This alternative still has the problems of multiple mailings and redundant information. Furthermore, to the extent that some non-discretionary accounts may value disclosure statement information highly, excluding them will not result in the most desirable dissemination of information.[5] This alternative is also not acceptable.

Alternative 3 differs from the previous alternatives in that it requires the bank to provide notice of the availability of a disclosure statement (rather than automatically sending the statement) and to make such statements available upon request to each trust account party over whose account the bank exercises investment discretion. The notice of availability of the disclosure statement will probably become part of the customer's annual statement of account. This alternative has the advantage that all fiduciary accounts will, at negligible cost, be informed of disclosure statements, and that only those account parties that find such statements valuable will receive them. This disclosure method is efficient in that the benefits of each statement will outweigh the costs associated with its provision.

Further, although Section 28(e) does not require that disclosure notices be provided to non-discretionary accounts, investment discretion is defined (Section 3A35 of the Securities Exchange Act) to include any trust department recommendations for purchases or sales to its customers regardless of who has responsibility for such investment decisions. Therefore, most of the bank's trust accounts will entail some degree of investment discretion. Since under this alternative the incremental cost of notification is negligible, it will probably be more expensive for the bank to analyze its accounts to determine the degree of investment discretion rather than to simply send all its accounts a disclosure notification. Thus, it is anticipated that all account parties will receive a notice of the availability of a disclosure statement.

The last principal alternative is no disclosure. From Section 28(e)(2) the Board appears to have the alternative of not requiring disclosure if it feels that this is in the public interest and there is adequate protection for investors. This alternative is less desirable than Alternative 3 since account parties that prefer and would benefit from detailed disclosure statements would find it difficult if not impossible to obtain this information. Board staff has proposed that notice of availability be made part of or appended to fee schedules and periodic statements of account. Since it would be expensive to send disclosure notices to those beneficiaries who do not receive a statement of account, and it is unlikely that these beneficiaries assign a high value to the information contained in these statements because they have no control over the trust agreement, staff's suggestion is appropriate.

The Board staff's proposal also requires that the disclosure *statement* be revised any time there is a "material change in the information contained therein". These proposals do not require the bank to provide immediate notice of a material change in placement practices, but rather that they revise the next statement delivered, after such changes occur. Although changes in placement practices could be important to account parties, it appears unlikely that immediately sending out new disclosure statements would justify the expenses incurred.

3. *The Content of the Disclosure Statement.* Section 28(e) of the Securities Acts Amendments of 1975 requires that the trust department disclosure its policies and practices with respect to commissions that will be paid for effecting securities transactions. The statute does not require that the bank provide any information on the research services that it performs itself or acquires from an affiliated investment management firm, nor must it report the fees charged for these services. To comply with the requirements of the statute, Board staff has proposed that the disclosure statement describe the types of products and services purchased for commissions in excess of the minimum executions charge, and that banks disclose the relative amount of its total commission charges used to pay for these services (including execution).

The bank's customers are interested in the relative amount of executions at minimum transactions charges and the nature of the services purchased, and at what cost, when commissions in excess of the minimum are paid. Bank

[2] Although this cost could be minimized by sending the disclosure statement with the annual account mailing, the extra weight of the disclosure statement would almost certainly raise the mailing cost of each statement of at least 13 cents.

[3] In an agency account, the bank provides services to the account party and engages in transactions at the account party's request.

[4] The corporation is likely to keep track of fiduciary performance because poor performance will force the company to incur greater expenses than would be necessary under a high-performance trust in order for the employees to receive the same benefits.

[5] Even though the account party dictates to the bank trust department what transactions are desired, the bank may execute in excess of the minimum price to compensate for other services provided such as research. Therefore a disclosure statement could be useful for agency account parties.

responses consistent with Board staff's sample disclosure statement should accomplish this.[6] Certainly some customers can get this kind of general information directly from their banks. For them these disclosure statements principal value is in terms of confirming the information provided by the bank. But in may other cases the information may not otherwise be available to customers who will find it of some use. For these customers the disclosure statement has significant information-content. Therefore, staff's recommendations regarding the nature of disclosed information seems appropriate.

The proposed disclosure statement provides complete information on the cost aspects of selecting brokers and affecting securities transactions but the bank is not required to include its own services and fees in its disclosure statement.[7] It is anticipated that the information contained in the proposed disclosure statements together with the information customers typically obtain in their relationship with trust departments will enable customers to make informed decisions regarding their choice and use of bank trust department services.[8]

Conclusions

In this regulatory impact analysis, consideration has been given to how banks can efficiently disseminate information on their trust department activities in such a manner as to maximize the economic value of the information content of the disclosure statement required by Section 28(e) of the Securities Act Amendments of 1975. The impact analysis confirms the staff's proposal of providing at least annual notice of the availability of disclosure statements on the customer's statement of account. This appears to be the most effective and least costly means of guaranteeing that disclosure statements go only to those people who place a high value on the information content of these statements.

On the question of the value of the disclosed information, it was concluded that the information that is currently available from the bank plus that required in disclosure statements will inform the trustors of the services and costs associated with different bank trust departments and will allow them to select that fiduciary which is best able to meet their needs.

This policy statement would not apply to any trust institution which does not receive products and services for commission dollars from brokers other than brokerage services.

By order of the Board of Governors, October 23, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-34075 Filed 10-31-80; 8:45 am]

BILLING CODE 6210-01-M

[6] The disclosure statement allows customers to determine the cost of transactions involving higher than minimum commission rates. With an estimate of the minimum executions charge, a customer can then compute the trust's average.

[7] It is expected that many banks will also provide this additional information on their disclosure statements.

[8] Since the Securities Exchange Act allows some trust account to subsidize others when it states in Section 28(e)(1) that ". . . services provided by such members, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion," this information may be valuable to the customer in determining whether his account is subsidizing the returns of others. For example, if the broker purchases information regularly in the area of real estate, but the trust agreement explicitly excludes real estate assets, the customer may be subsidizing the transactions charges of other accounts. In a market with complete information, one would expect a trustor to select a trust department where he believes his account will not subsidize else's.

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory reports Review Staff, GAO, on October 28, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 21, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

The ICC requests an extension-without-change clearance of Form QFF, Quarterly Report of Revenues, Expenses and Statistics of Freight Forwarders, required to be filed by some 151 Class A freight forwarders pursuant to Section 11145 of the Interstate Commerce Act. Data collected by Form QFF are used for economic regulatory purposes. Reports are mandatory and available for use by the public. The ICC estimates that reporting burden will average 9 hours per quarterly report.

John M. Lovelady,

Senior Group Director.

[FR Doc. 80-34091 Filed 10-31-80; 8:45 am]

BILLING CODE 1610-01-M

GOVERNMENT PRINTING OFFICE

Micropublishing Advisory Council to the Public Printer; Meeting

The Micropublishing Advisory Council to the Public Printer will meet on November 24, 1980, at 9:00 a.m. in the Carl Hayden Room, Government Printing Office, North Capitol and H Streets, N.W., Washington, D.C. 20401.

The purpose of this meeting is to discuss the Depository Library Microform Program.

The meeting will be open to the public, and anyone who wishes to attend should notify Ms. Barbara Smith, Government Printing Office, Washington, D.C. 20401 (Telephone: (703) 557-2145).

Dated: October 22, 1980.

Samuel L. Saylor,

Acting Public Printer.

[FR Doc. 80-34155 Filed 10-31-80; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistance Secretary for Health

National Center for Health Care Technology; Meeting

Pursuant to the Federal Advisory Act (Public Law 92-463) notice is hereby given that the seventh meeting of the National Council on Health Care Technology, which was established pursuant to the Health Research, Health Statistics, and Health Care Technology Act of 1978 (Public Law 95-623) and which advises the Secretary and the Director of the National Center for Health Care Technology on the activities of the Center, will convene on Thursday, November 13, 1980 at 9:30

a.m. and Friday, November 14, 1980 at 9:00 a.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

This meeting will be open to the public from 9:30 a.m. to 4:00 p.m. on November 13 and from 9:00 a.m. to 2:30 p.m. on November 14 to discuss the business of the Council and the Center. Principal consideration and discussion will be devoted to the reports of the Subcommittees on Criteria, Coverage, Grants and Contracts, and Dissemination.

Additionally, there will be updates on Center activities including the heart transplant evaluation project, coverage issues, End-Stage Renal Disease and the third-party payors project. The Council will also discuss the process for development of criteria and the process for development of criteria and standards for the use of health care technologies and follow-up on Cesarean Delivery assessment.

This meeting on November 14, 1980, will be closed to the public from 2:30 p.m. to adjournment in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would consitute a clearly unwarranted invasion of personal privacy.

Further information regarding the Council may be obtained by contacting Sharon Paino, Executive Secretary, National Council on Health Care Technology, Room 17A–29, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: October 24, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary Office of Health Research, Statistics and Technology.

[FR Doc. 80-34066 Filed 10-31-80; 8:45 am]

BILLING CODE 4110-85-M

Health Resources Administration

Advisory Council and Subcommittees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1980:

Name: NATIONAL GUIDELINES, GOALS, PRIORITIES, AND STANDARDS SUBCOMMITTEE OF THE NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Date and Time: Thursday, November 13, 1980; 8:30 a.m.–5:00 p.m.

Place: Terrace Room, Holiday Inn Downtown, 125 Calhoun Street, Charleston, South Carolina 29403.

Open for entire meeting.

Purpose: The objectives of the National Guidelines, Goals, Priorities, and Standards Subcommittee are to study the experience nationwide in the public and private sectors with the adoption and/or adjustment of the National Guidelines for Health Planning and their impact and recommend changes as appropriate; study the experience of the Health Systems Agencies and State Health Planning and Development Agencies nationwide in implementation of high priority goals and sub-goals and their impact; advise the Council in identifying additional high priority goals and sub-goals; investigate and coordinate information on demonstrations underway by provider, reimbursement, regulatory, labor, industry, and community groups on sub-goals, such as those on alcoholism and prevention; study, investigate and identify research needs appropriate to the formulation, adjustment and refinement of the National Guidelines, and study and develop improved indicators to assess the impact of the Guidelines or the need for revisions; and recommend to the Council on the need for further development and/or revision of the National Guidelines.

Agenda: Update on National Guidelines for Health Planning; consideration of revisions in Resource Standards on CT Scanner and Psychiatric Beds; panel discussion on Planning for the Rural Hospital; implications for guideline development. Afternoon session is on Alternative Modes of Rural Health Delivery with public testimony from 3:30 p.m. to 5:00 p.m. Any person wishing to testify, please call (301) 436–7272 or 7175.

Name: IMPLEMENTATION AND ADMINISTRATION SUBCOMMITTEE OF THE NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Date and Time: Thursday, November 13, 1980; 9:00 a.m.–5:00 p.m.

Place: 9:00 a.m.–11:00 a.m., Palmetto-Lowcountry Health Systems Agency, 107 West 6th Street, Summerville, South Carolina 29483; 1:00 p.m.–5:00 p.m., Directors Room, Holiday Inn Downton, 125 Calhoun Street, Charleston, South Carolina 29403.

Open for entire meeting.

Purpose: The objective of the Implementation and Administration Subcommittee is to study and make recommendations on the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HHS's implementation/administration on the effectiveness of Health Systems Agencies and State Health Planning and Development Agencies; (2) the effectiveness of the interrelationships between health planning agencies and HHS, Central and Regional Offices; (2) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; and (5) the review of the Council's responsibilities under section 1122 of the Social Security Act.

Agenda: Morning site visit to Palmetto-Lowcountry Health Systems Agency. Afternoon business meeting and public hearings on two main issues: Consumer Participation in Health Planning and Federal-State-Local Relationships in the Health Planning Program. For further information contact Terry Shannon, Special Assistant, Bureau of Health Planning, Health Resources Administration on (301) 436–6825 or Judy Silsbee, Executive Secretary of the Council, on (301) 436–7175.

Name NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Date: and Time: Friday, November 14, 1980; 8:30 a.m.–4:00 p.m.

Place: Charleston Room, Holiday Inn Downtown, 125 Calhoun Street, Charleston, South Carolina 29403.

Open for entire meeting.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Public Law 93–641, (2) the implementation and administration of Title XV and XVI of Public Law 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: Presentation on Health Planning from Southeastern Association of Health Systems Agency Executives; reports from Subcommittee on National Guidelines, Goals, Priorities, and Standards and Subcommittee on Implementation and Administration; status reports from Health Resources Administration officials; Health Professions Planning Issues—presentation on recommendations made by the Graduate Medical Education National Advisory Committee and discussion of

recommendations by the Council on productivity and health; discussion of future goals, organization and plans of the Council; and public comment period.

Anyone requiring information regarding the subject Council should write to or contact MRS. S. JUDY SILSBEE, Executive Secretary, National Council on Health Planning and Development, Health Resources Administration, Room 10-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland, 20782. Telephone (301) 436-7175.

Agenda items are subject to change as priorities dictate.

Dated: October 29, 1980.

Irene D. Skinner,

Advisory Committee Management Officer, Health Resources Administration.

[FR Doc. 80-34147 Filed 10-31-80; 8:45 am]

BILLING CODE 4110-83-M

National Institutes of Health

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Reseach Review Committee A, National Heart, Lung, and Blood Institute, December 5-6, 1980, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20205.

This meeting will be open to the public on December 5, 1980, from 8:30 a.m. to approximately 9:30 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 5, 1980 from approximately 9:30 a.m. until the adjournment on December 6, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meeting and rosters of the committee members. Dr. Arthur Merrick, Executive Secretary, NHLBI, Westwood Building, Room 552, Bethesda, Maryland 20205, phone (301) 496-7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Dated: October 24, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-34079 Filed 10-31-80; 8:45 am]

BILLING CODE 4110-08-M

Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, December 5-6, 1980, Building 31, Conference Room 9, at the National Institutes of Health, Bethesda, Maryland 20205.

This meeting will be open to the public on December 5, 1980, from 8:30 a.m. to approximately 9:30 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 5, 1980, from approximately 9:30 a.m. until the adjournment on December 6, 1980 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. York E. Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, Bethesda, Maryland 20205, (301) 496-7915, will furnish substantive program information.

Dated: October 24, 1980.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b) (4) and (5) of that Circular.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-34080 Filed 10-31-80; 8:45 am]

BILLING CODE 4110-08-M

National Cancer Advisory Board and Board Subcommittees; Meetings

Pursuant to Pub. L. 92.463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees on Organ Site Programs and Board Activities and Agenda, November 16-19, 1980, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The National Cancer Advisory Board and the Subcommittee on Board Activities and Agenda meetings will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Subcommittee on Organ Site Programs meeting will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of a grant application. This application and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings, substantive program information and rosters of members, upon request.

Name of Committee: *National Cancer Advisory Board*
Dates of Meeting: November 17-19, 1980
Place of Meeting: Building 31C, Conference Room 6 National Institutes of Health
Open: November 17, 8:30 a.m.-adjournment
November 18, 9:00 a.m.-adjournment
November 19, 9:00 a.m.-adjournment
Name of Committee: *Subcommittee on Organ Site Programs*
Date and Place of Meeting: November 16, 1980, 7:30 p.m.-10:00 p.m., Building 31C, Conference Room 8
Closed for the Entire Meeting

Agenda: To review grant application from the National Pancreatic Cancer Project
Name of Committee: *Subcommittee on Board Activities & Agenda*
Date and Place of Meeting: November 19, 1980, immediately following Board meeting, Building 31C, Conference Room 6
Open for the Entire Meeting.

Dated: October 24, 1980.

(Catalog of Federal Domestic Assistance Program Numbers: 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis research. 13.395, project grants in cancer treatment research)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Suzanne L. Fremeau,

Committee Management Officer, National Institute of Health.

[FR Doc. 80–34078 Filed 10–31–80; 8:45 am]

BILLING CODE 4110–08–M

Office of the Secretary

President's Committee on Mental Retardation; Meeting

The President's Committee on Mental Retardation was established by Executive Order to provide advice and assistance in the area of mental retardation to the President including evaluation of the adequacy of the national effort to combat mental retardation; coordination of activities of Federal agencies; provision of adequate liaison between foundations and other private organizations; and development of information designed for dissemination to the general public.

The Committee will meet on November 19–20, 1980, in the Century Room of the Plaza Cosmopolitan Hotel, 1780 Broadway, Denver, Colorado, from 9:00 a.m. to 5:00 p.m. At the meeting the Committee will discuss full citizenship rights, humane service systems, trends in residential facilities, public awareness and prevention of mental retardation.

These meetings are open to the public. A translator for the Deaf will be available upon advance request. The Hotel is barrier free.

Further information on the President's Committee on Mental Retardation may be obtained from Mr. Allen R. Menefee, Acting Executive Director, Room 4025, ROB No. 3, 7th & D Streets, S.W., Washington, D.C., telephone: (202) 245–7634.

Dated: October 24, 1980.

Allen R. Menefee,

Acting Executive Director, President's Committee on Mental Retardation.

[FR Doc. 80–34146 Filed 10–31–80; 8:45 am]

BILLING CODE 4110–92–M

DEPARTMENT OF THE INTERIOR

Establishment of Predatory Animal Damage Control Research advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of advisory committee establishment.

SUMMARY: This notice announces the establishment of a Predatory Animal Damage Control Research Advisory Committee. The Committee will provide advice on current predatory animal damage control research programs and a new five year plan for such research currently under development. The Committee will aid in assuring that the research programs on predatory animal damage control consider all approaches to predatory animal damage reduction techniques, and all related environmental and economics matters.

FOR FURTHER INFORMATION CONTACT:

Duncan MacDonald, Division of Wildlife Ecology Research, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (202) 343.7667.

SUPPLEMENTARY INFORMATION:

Notice of Establishment

This notice is published in accordance with the provision of 5 U.S.C. 552(a)(1), and Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92.463, 5 U.S.C. App. 1). Following consultation with the General Services administration, notice is hereby given that the Secretary of the Interior is establishing the Predatory Animal Damage Control Research Advisory Committee concomitant with implementation of a new secretarial policy on predator damage. The Committee will review current predatory animal damage research programs and a 5-year plan for such research currently under development. They will provide advice to the Secretary and, through the Assistant Secretary for Fish and Wildlife and Parks, to the Director, U.S. Fish and Wildlife Service, concerning the conduct of this research effort. Such advice is consistent with enhancing the missions of the Department of the Interior. The certification of establishment is published below.

Certification

I hereby certify that the Predatory Animal Damage Control Research Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior

Dated: September 17, 1980.

Cecil D. Andrus,

Secretary of the Interior.

[FR Doc. 80–34065 Filed 10–31–80; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "Hans Baldung Grien: Prints and Drawings" (included in the list [1] filed as a part of this determination), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the National Gallery of Art, the Yale University Art Gallery and the foreign lenders set forth in the list filed as a part of this determination. I also determine it to be in the national interest for the listed exhibit objects to be exhibited or displayed at the National Gallery of Art, beginning on or about January 25, 1981 to on or about April 5, 1981, and at the Yale University Art Gallery, beginning on or about April 23, 1981 to on or about June 14, 1981.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 28, 1980.

John E. Reinhardt,

Director.

[FR Doc. 80–34142 Filed 10–31–80; 8:45 am]

BILLING CODE 8230–01–M

[1] An itemized list of objects included in the exhibits is filed as part of the original document.

INTERSTATE COMMERCE COMMISSION

Interim Procedures for Requesting Rail Variable Cost and Revenue Determination for Joint Rates Subject to Surcharge or Cancellation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Cost and Revenue Information.

SUMMARY: The Commission is announcing by this notice that it will furnish determinations of the variable cost-of-service and revenue of a rail carrier applying a surcharge or cancelling the application of a joint rate pursuant to Section 217 of the Staggers Rail Act of 1980. Such determinations will be furnished upon written request by participating carriers, shippers, or ports.

Further, all rail carriers subject to the jurisdiction of the Commission under subchapter I of Chapter 105 of Title 49, are ordered to provide any of the information shown in the procedure below to participating carriers, shippers, or ports. This information is to be provided to the requesting carrier, shipper or port within three (3) days of written request, pursuant to the interim rule established in the Notice of Proposed Rulemaking, Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge or Cancellation*, served October 28, 1980.

Written requests to the Commission by participating carriers, shippers, or ports shall include for each movement:

(1) A legible copy of the waybill or freight bill;

(2) The actual distance the subject shipment moved while on the surcharging or cancelling carrier's portion of the joint route;

(3) The car-type;

(4) The division of revenue accruing to the surcharging or cancelling carrier;

(5) The amount of surcharge in the even that no traffic has yet moved under the surcharged or cancelled joint rate;

(6) The name of the surcharging or cancelling carrier; and

(7) The name, address, and telephone number of the requesting party.

ADDRESS: Submit written requests to Mr. William T. Bono, Chief, Section of Cost Development, Room 6331, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, Tel: (202) 275–7354.

SUPPLEMENTARY INFORMATION: Section 217 of the Staggers Rail Act of 1980 establishes a new provision, 49 U.S.C. 10705a(h), which requires the Commission to furnish certain variable cost and revenue determinations to participating carriers, shippers, and ports within five days of request. Such requests must pertain to joint movements subject to surcharge or cancellation in accordance with the provisions of Section 217 of the Staggers Rail Act. Further, the Commission need provide only the cost and revenue of the carrier applying the surcharge or cancelling the application of the joint rate. In addition, Section 10705a(m) of the Act requires the use of unadjusted Rail Form A costs (or an accepted alternative) for such determinations. For these reasons, written requests must contain the specific information shown in the summary. This information will permit the Commission to determine the variable cost-of-service and the revenue accruing to the carrier applying the surcharge or cancelling the joint rate within the legal time frame.

To provide participating carriers, shippers, and ports with access to necessary information, the Commission has instituted a rulemaking proceeding. Concurrent with the initiation of that proceeding, the Commission established interim rules, applicable to all rail carriers subject to the Commission's jurisdiction under Subchapter 1 of Chapter 105 of Title 49, which provide a method of insuring parties access to the necessary information until such time as final rules are adopted (See summary for procedural reference).

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.

Dated: October 27, 1980.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34089 Filed 10-31-80; 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–68

The following applications were filed in Region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 50640 (Sub-1–13TA), filed October 21, 1980. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, NJ 07016. Representative: Michael A. Beam, Three Commerce Drive, Cranford, NJ 07016. *Contract carrier:* irregular routes: *Such commodities as are dealt in and sold by supermarkets, drug stores, retail department stores, home-center stores, novelty stores and hardware stores, ceramic mugs, displays, and equipment, materials and supplies used in the conduct of such businesses,* points in KY, NJ, and NY, under continuing contract(s) with Gallery House, Inc., Hackensack, NJ. Supporting shipper: Gallery House, Inc., 419 Essex Street, Hackensack, NJ 07601.

MC 152255 (Sub-1–1TA), filed October 20, 1980. Applicant: SAN–TOM, INC., d.b.a. PARK AVENUE LIMOUSINE, 157 East Main Street, Somerville, NJ 08876. Representative: Kelleher, Ross & Moore, 23 Maple Street, Somerville, NJ 08876. *Passengers and their baggage, and occasional packages,* between the offices of AT&T Long Lines Division, Basking Ridge, NJ and/or Johnson & Johnson offices in Central, NJ, and John

F. Kennedy International Airport, LaGuardia Airport and other points in NY, NJ and CT. Supporting shipper(s): There are 25 statements in support of this application which may be examined at the ICC Regional Office in Boston, MA.

MC 142603 (Sub-1–12TA), filed October 20, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Rubber Products and articles, including Latex and rubber particles, also, materials, equipment and supplies used in the manufacture, sales, and distribution of such commodities,* between all points in the US under continuing contract(s) with Omni Products Company of Garland, Texas. Supporting shipper: Omni Products Company, 1839, Plaza Drive, Suite 1390, Garland, TX 75041.

MC 890 (Sub-1–1TA), filed October 20, 1980. Applicant: ADKINS TRUCKING AND FREIGHT LINES, INC., Box 190, 750 Charles Street, Gloucester City, NJ 08030. Representative: Robert B. Einhorn, Esq., 3220 P.S.F.S. Building, 12 South 12th Street, Philadelphia, PA 19107. *Foodstuffs, bakery goods, and animal, fish and poultry feed (except commodities in bulk),* from Camden City, Camden County, NJ to Wallkill, Ulster County, NY and Newburgh, Orange County, NY. Supporting shipper: Campbell Soup Co., 100 Market Street, Camden, NJ 08101.

MC 142539 (Sub-1–1TA) filed October 20, 1980. Applicant: B. W. T. TRANSPORT, INC., 757 River Drive, Passaic, NJ 07055. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Toys, pool supplies, chemicals, and cleaning compounds, and materials, equipment and supplies used in the manufacture and sale thereof, (except in bulk)* between Carlstadt, NJ on the one hand, and, on the other, points in the US (except AK, CT, DE, HI, IN, MD, MA, NJ, NY, OH, PA, RI, VA and DC) under continuing contract with Coastal Industries, Inc. Supporting shipper: Coastal Industries, Inc., 190 Jony Drive, Carlstadt, NJ 07072.

MC 140248 (Sub-1–2TA), filed October 16, 1980. Applicant: IDEAL CONTRACT CARRIERS, INC., 89 Main St., P.O. Box Z, Medway, MA 02053. Representative: Edward Kiley, 1730 M Street, Suite 501, Washington, DC 20036. *Contract carrier:* irregular routes: *Stoves and stove parts,* between the facilities of Plymouth Coal Stove Works, Inc. at Plympton, MA, on the one hand, and, on the other, points in CT, DE, ME, MD, NH, NJ, NY, OH, PA, RI, and VT, under a continuing contract or contracts with Plymouth Coal Stove Works, Inc. Supporting shipper: Plymouth Coal Stove Works, Inc., 37 County Road, Plympton, MA 02367.

MC 42343 (Sub-1–1TA), filed October 21, 1980. Applicant: CORPENZA, INC., 310 Chestnut Avenue, Vineland, NJ 08360. Representative: Mark D. Russell, Suite 348, Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *Petroleum Distillate Fuel (Diesel Fuel, Fuel Oil No. 2), Petroleum Refined Oil (Kerosene) and Petroleum Residual Fuel (Fuel Oil Nos. 4, 5 and 6), in bulk in tank vehicles,* (1) from the facilities of Texaco U.S.A. at Pennsauken, NJ, and Claymont, DE, to Bath, Bethlehem, Emmaus, Lebanon and Avondale, PA; and (2) from the facilities of Texaco U.S.A. at Pennsauken, NJ to Milford, Newark, Glasgow, Newport, Clayton and Dover, DE. Supporting shipper: Texaco U.S.A., a division of Texaco, Inc., 1111 Rusk, Houston TX 77052.

MC 3753 (Sub-1–6TA), filed October 16, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *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 Boston, MA and Manchester, NH, serving all intermediate points and the off route points located in Belknap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford and Sullivan Counties, NH, from Boston, MA to Manchester, NH over Interstate 93 and return over the same route. Tacking and Interline requested. Supporting shipper(s): There are 71 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 152209 (Sub-1–1TA), filed October 15, 1980. Applicant: TRANSPORT DE VEHICULES L.G. LTEE, 9980 Papineau Street, Montreal, Quebec, Canada. Representative: Adrien R. Paquette, 200 St. Jacques Street Ouest, Montreal, Quebec, Canada H2Y 1M1. *Used passenger vehicles in truckaway service* from the CD/US International Boundary line located in Champlain, NY to points in FL. Supporting shipper: Les Excursions Organisees Tour Monde LTEE, 901 Bleury St., Suite 400, Montreal, Quebec, CD.

MC 113774 (Sub-1–5TA), filed October 15, 1980. Applicant: LAIDLAW TRANSPORT LIMITED, P.O. Box 3020, Station B, Hamilton, Ontario, CD. Representative: David A. Sutherlund, Fulbright & Jaworski, 1150 Connecticut Ave., NW., Suite 400, Washington, D.C. 20036. *Iron and Steel commodities,* from ports of entry on the International Boundary line between the US and CD located at NY to Berwick, PA. Supporting shipper: Burlington Steel Div. of Slater Steel Industries, Ltd., Box 943, Hamilton, Ontario, CD L8N 3P9.

MC 148632 (Sub-1–5TA), filed October 15, 1980. Applicant: DIXON LEASING CO., INC., 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Gary V. Dixon, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. *Insulation products and materials,* between Camden County, NJ on the one hand, and, on the other, points in IA, IL, MO, OK, TK, and WI. Supporting shipper: Certainteed Corp., P.O. Box 860, Valley Forge, PA 19482.

MC 145108 (Sub-1–12TA), filed October 14, 1980. Applicant: BULLET EXPRESS, INC., 5600 First Avenue, Brooklyn, NY 11220. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Malt beverages, materials, equipment, and supplies used in the manufacture and sale of malt beverages, in mechanical refrigerated equipment,* from Milwaukee, WI, to points in CA, OR, and WA. Supporting shipper: Pabst Brewing Co., 917 W. Juneau, Milwaukee, WI 53201.

MC 73081 (Sub-1–1TA), filed October 15, 1980. Applicant: ANYTIME DELIVERY SYSTEMS, INC., 375 Western Highway, Tappan, NY 10983. Representative: Piken & Piken, Esqs., Queens Office Tower, 95–25 Queens Boulevard, Rego Park, NY 11374. *General commodities, with the usual exceptions, in expedited service, restricted to shipments delivered within 24 hours of pick up,* between points in CT, DE, MD, MA, NH, NJ, NY, PA, RI, VT, VA and DC. Supporting shipper(s): There are 6 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 151639 (Sub-1–3TA), filed October 17, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Plastic articles* (Except in bulk), from Manchester, NH and Woburn, Lawrence, Wilmington and Somerville, MA to points in GA, IL, MD, NJ, NY, PA,

and OH. Supporting shipper: Sweetheart Plastics, Inc., Wilmington, MA 01887.

MC 118803 (Sub-1–5TA), filed August 16, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Road, Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *General commodities (except Classes A and B explosives and household goods as defined by the Commission)* between points in the US (except AK and HI). Supporting shipper: Sun Chemical Corporation, 222 So. Marginal Road, Fort Lee, NJ 07024.

Republication

MC 152051 (Sub-1–1TA), filed October 1, 1980. Applicant: A. HUTTER & SONS, INC., 300 Cedar Court, Belle Mead, NJ 08502. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Salt, salt products, food seasoning compounds and materials and supplies used in the manufacture, packaging, marketing and distribution of salt and salt products,* between all points in NJ, DE and PA, restricted to traffic originating at or destined to the facilities of Morton Salt, Division of Morton Norwich. Supporting shipper: Morton Salt Division of Morton Norwich Prod. Inc., 110 N. Wacker Dr., Chicago, IL 60606.

Republication

MC 108247 (Sub-1–1TA), filed October 6, 1980. Applicant: WESTCHESTER MOTOR LINES, INC., 35 Edgemere Road, P.O. Box 892, New Haven, CT 06504. Representative: Ronald G. Esposito, 35 Edgemere Road, P.O. Box 892, New Haven, CT 06504. *Alcohol, gin, beverages (carbonated and non-carbonated), and materials used in beverage manufacturing, distribution and sales,* between the States of MD, PA, NJ, NY, CT, RI, MA, VT and ME. DE and NH to be traversed for operating convenience. Supporting shipper(s): Cott Corporation, 197 Chatham St., New Haven, CT 06513; Eder Bros, Inc., 11 Eder Road, West Haven, CT 06516; Allan S. Goodman Co., 180 Goodwin St., East Hartford, CT; and Connecticut Distributors, 160 Aven St., Stratford CT.

MC 152291 (Sub-1–1 TA), filed October 22, 1980. Applicant: ASSEMBLY SQUARE TRANSPORTATION, INC., 20 Sturtevant Street, Somerville, MA 02145. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* irregular routes: *Commercial and industrial rubber, fabric and plastic articles; supplies and equipment used in the manufacture of commercial and industrial rubber, fabric and plastic articles* between points in MA on the one hand, and, on the other, points in CA, GA, IL, IN, MO, OH, PA, TX and WI under continuing contract(s) with Plymouth Rubber Company, Inc.

MC 133841 (Sub-1–8 TA), filed October 22, 1980. Applicant: DAN BARCLAY, INC., P.O. Box 426, 362 Main Street, Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Titanium and Titanium Products and Fabrications; and (2) Materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk in tank vehicles),* between Fairfield, NJ, on the one hand, and, on the other, Brunswick, GA; Kansas City, MO; San Francisco, CA; Wilmington, DE; Wilmington, NC; Freeport, TX; and the piers in the Baltimore, MD harbor. Supporting Shipper: Titanium Industries, Fairfield, NJ 07006.

MC 150559 (Sub-1–2 TA), filed October 23, 1980. Applicant: EMERSON EXPRESS CO., INC., 545 Lyell Avenue, Rochester, NY 14606. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Antifreeze, Charcoal, Charcoal Briquets, Charcoal Lighter Fluid, Empty Paper Bags, Fireplace Logs, Ground Clay in bags, Lubricants, Motor Oil, in straight or mixed shipments,* between all points east of the Mississippi River plus AR, LA, MO and OK. Supporting shipper(s): Emerson Fuel Co., Inc., 545 Lyell Ave., Rochester, NY 14606; Eastern Charcoal Co., Inc., 545 Lyell Ave., Rochester, NY 14606.

MC 152276 (Sub-1–1 TA), filed October 21, 1980. Applicant: JLMS, INC., 115 Moonachie Avenue, Moonachie, NJ 07074. Representative: Lawrence S. Burstein, Esq., Zelby, Burstein, Hartman & Burstein, One World Trade Center, Suite 2373, New York, NY 10048. *Contract carrier:* irregular routes: *Printing paper on rolls* between points in MA, NJ, NY, PA, MD and CT, under a continuing contract with Beekman Paper Co., Inc. Supporting Shipper: Beekman Paper Co., Inc., 137 Varick Street, New York, NY 10013.

MC 150254 (Sub-1–3TA), filed October 21, 1980. Applicant: ALLIED INTERNATIONAL TRUCKING CO., INC., 210 Beacham Street, Everett, MA 02149. Representative: Raymond P. Keigher, Esq., 401 E. Jefferson Street, Suite 102, Rockville, MD 20850. *Chemicals, petroleum and containers, (except commodities in bulk),* from Worcester County, MA, to Atlanta, GA, Chicago, IL, Indianapolis, IN, Louisville, KY, Detroit and Grand Rapids, MI, Green Bay, WI, Nitro, WV, points in Baltimore County, MD, and those in OH, PA, NJ, and NY. Supporting shipper: SAY Industries, 163 Pioneer Drive, Leominster, MA 01453.

MC 145108 (Sub-1–13TA), filed October 20, 1980. Applicant: BULLET EXPRESS, INC., 5600 First Avenue, Brooklyn, NY 11220. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *(1) Paper, and paper products; and (2) Plastic and plastic articles; and (3) Materials, equipment, and supplies used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk in tank vehicles),* between points in the U.S. Supporting shipper: Stone Container Corporation, 360 North Michigan Ave., Chicago, IL 60601.

MC 140768 (Sub-1–12TA), filed October 23, 1980. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *General commodities (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between the facilities of Amway Corp. at or near Dayton, NJ, on the one hand, and, on the other, points in ME, MA, NH, NY, PA, RI and VT. Supporting shipper: Amway Corporation, Monmouth Junction Road, Dayton, NJ 08810.

MC 143236 (Sub-1–10TA), filed October 20, 1980. Applicant: WHITE TIGER TRANSPORATION CO., INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Brock Adams, 1919 Pennsylvania Avenue, N.W., Washington, DC 20006. *Stack control and emission control inhibitors, chemicals, boiler cleaning compounds, water treating compounds, fuel additives, (except in bulk), and equipment, materials and supplies used in the manufacture and distribution thereof,* between Morris County, NJ and Harrison County, TX, on the one hand, and, on the other, points in the U.S. Supporting shipper: Apollo Technologies, Inc., One Apollo Drive, Whippany, NJ 07981.

MC152225 (Sub-1–1TA), filed October 16, 1980. Applicant: RICK PERRONE TRANS., INC., 39 Depot St., Broad Brook, CT 06016. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *(1) Electronic cable &*

accessories used in connection with electronic cable & plastic pellets; (2) supplies, materials & equipment used in connection with the manufacture of electronic cable & wire plastic insulation (1) from South Hadley,, MA to Nogales, AZ; (2) Fron Nogales, AZ to points in the US (except AK & HI). Supporting shipper: E.I.S. Holyoke Wire & Cable Co., 775 New Ludlow Rd., South Hadley, MA 01075.

MC71593 (Sub-1–13TA), filed October 17, 1980. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second Street, Scotch Planis, NJ 07076. Representative: David W. Swenson, 1608 E. Second Street, Scotch Plains, NJ 07076. *Such commodities as are dealt in by manufacturers or converters of paper and paper products,* between the facilities of Westvaco at or near New Orleans, LA, and points and places in the states of WA, OR, CA, AZ, NV, NM, CO, MN, IA, MO, IL, IN, WI, OH, KY, TN. Supporting shipper: Westvaco, P.O. Box 60220, New Orleans, LA 70160.

MC148370 (Sub-1–5TA), filed October 21, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, RI 02908. Representative: A. Joseph Mega, 11 Newark Street, Providence, RI 02908. *Contract carrier:* irregular routes: *Hydronic Heating and Well Water Systems and related accessories including supplies and raw materials* between points in the US. Supporting shipper: Amtrol, Inc., 1400 Division Road, West Warwick, RI 02893.

MC135873 (Sub-1–3TA), filed October 16, 1980. Applicant: KSS TRANSPORTATION CORP., Route 1 and Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Contract carrier:* irregular routes: *General commodities (with the usual exceptions)* between points in the U.S., under a continuing contract with Beatrice Foods Co. and its wholly-owned subsidiaries. Supporting shipper: Beatrice Foods Co., 312 East Main Street, P.O. Box 260, Watertown, WI 53094.

MC 148764 (Sub-1–5TA), filed October 21, 1980. Applicant: MAR PAT TRANSPORTATION CORP., 2445 Allen Avenue, Niagara Falls, NY 14305. Representative: William Hirsch, 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. *Non-radioactive hazardous waste,* between points east of the States of ND, SD, NE, KS, OK, and TX. Supporting shipper: Cecos International, Inc., Niagara Falls, Blvd. & Walmore Road, NY 14304.

MC 37398 (Sub-1–1TA), filed October 21, 1980. Applicant: JOHN J. BOYCE TRANSPORTATION, INC., 116 So. Elberon Ave., Atlantic City, NJ 08401. Representative: Jay H. Weinstein or Morris D. Weinstein, 116 So. Elberon Ave., Atlantic City, NJ 08401. *Food and food products, packinghouse products and by-products, and commodities used in the sale and display thereof, when transported in refrigerated trucks,* between points in NJ, Chester, PA, and the commercial zones of New York City, NY, on the one hand, and, on the other hand, points in FL. Supporting shipper(s): There are six (6) supporting shippers' statements attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 152108 (Sub-1–5TA), filed October 21, 1980. Applicant: RELCO SYSTEMS, INC., 7310 Chestnut Ridge Road, Lockport, NY 14094. Representative: George V. C. Muscato, Esq., 188 East Avenue, Lockport, NY 14094. *Hazardous chemical waste, in bulk, in tank vehicles and dump trailer,* from points in NJ, PA, OH, NY, VT, and MA to points in Niagara Falls, NY, and Williamsburg, OH. Supporting shipper: Cecos International, Inc., Walmore Rd. and Niagara Falls Blvd., Niagara Falls, NY.

MC 150969 (Sub-1–1TA), filed October 22, 1980. Applicant: GRAND STREET WAREHOUSE, INC., 57 Grand Street, Moonachie, NJ 07074. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 097934. *Food Oils,* from Carlstadt and Moonachie, NJ, to points in CT, FL, GA, MA, NY, PA, and RI. Supporting shipper(s): Food Oils Corp., 145 Grand St., Carlstadt, NJ 07072.

MC 144029 (Sub-1–2 TA), filed October 22, 1980. Applicant: CUMBERLAND TRANSPORTATION CORP., 5950 Fisher Road, P.O. Box 487, East Syracuse, NY 13057. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *General commodities (except Classes A and B explosives and household goods as defined by the Commission)* between Onondaga County, NY on the one hand, and, on the other, points in the US. Supporting shipper: The Mead Corp., Courthouse Plaza, N.E., Dayton, OH 45463.

MC 151959 (Sub-1–2 TA), filed October 16, 1980. Applicant: TRANS-COPPER EXPRESS, CO., 512–514 State Fair Boulevard, Syracuse, NY 13204. Representative: Donald G. Hichman, R.D. #1, Box 7, Union Springs, NY 13160. *(a) Copper Wire, Copper Cable, Aluminum Wire and (b) materials and supplies used in the manufacture, distribution and assembly of items listed in (a)* between Rome and Syracuse, NY (and their commercial zones), on one hand, and, on the other, points in AL, DC, FL, GA, IA, IL, IN, KS, KY, MA, MD, MI, MN, MO, NC, NJ, NY, OH, PA, SC, TX, VA, WI and WV. Supporting shipper: Cyprus Wire & Cable Co., 421 Ridge St., Rome, NY 13440.

MC 99046 (Sub-1–1 TA), filed October 20, 1980. Applicant: TOTAL TRANSPORTATION, INC., 304 A Oakwoods, Bellingham, MA 02019. Representative: Peter G. Baker, 304 A Oakwoods, Bellingham, MA 02019. *General commodities* between MA and RI. Supporting shipper: Real Warehousing, 1494 Main St., Millis, MA 02054.

MC 59640 (Sub-1–12 TA), filed October 20, 1980. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, NJ 07016. Representative: Michael A. Beam, Three Commerce Drive, Cranford, NJ 07016. *Contract carrier:* irregular routes: *Such commodities as are dealt in and sold by supermarkets, home-center stores and retail department stores, and materials, supplies and equipment used in the conduct of such businesses, (except commodities in bulk),* between points in AZ, AR, ID, LA, MN, MO, MT, NV, NM, ND, OK, OR, SD, UT, WA, WV, WY, on the one hand, and, on the other, points in CT, DE, MA, MD, NJ, NY and PA, under continuing contract(s) with Supermarkets General Corporation. Supporting shipper: Supermarkets General Corporation, 301 Blair Road, Woodbridge, NJ 07095.

MC 141245 (Sub-1–3TA), filed October 17, 1980. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: Brian L. Troiano, 918 16th Street, N.W., Washington, DC 20006. *Flour* from Buffalo, NY to points in VT. *Canned Goods* from points in NY to points in MA, NH, VT, and CT. *Wine* from Canandaigua, NY to points in VT. *Calcium Chloride in 100# bags and in , bulk* at or near Solvay, NY to points in VT and NH. Supporting shipper(s): Champlain Valley Fruit, P.O. Box 428, Burlington, VT 05401; Burlington Grocery, 747 Pine St., Burlington, VT 05401; Snyder Sales & Service, 1616 Soldiers Field Road Extension, Boston, MA 02135; James J. Lowe, 68 Fairfield Street, St. Albans, VT 05478.

MC 141245 (Sub-1–2TA), filed October 17, 1980. Applicant: BARRETT TRUCKING CO., INC., 16 Austin Drive, Burlington, VT 05401. Representative: Brian L. Troiano, 918 16th Street, N.W., Washington, DC 20006. (1) *Malt*

beverages, from the facilities of Joseph Schlitz Brewing Co. at or near Winston-Salem, NC, Carling National Brewers at or near Baltimore, MD, F & M Schaeffer Brewing Co. at or near Allentown, PA, and Meadowlands Warehouse Co., Inc. at or near Secaucus, NJ to points in NH and VT; and (2) *empty malt beverage containers,* in the reverse direction. Supporting shipper(s): Champlain Valley Fruit Co., Inc., 77 No. Union St., Burlington, VT 05401; Calmont Beverage Co., Inc., 21 So. Main St., Barre, VT 05641; Twin State Fruit Corp., Drawer P.O. 547—Railroad Row, White River Jct., VT 05001.

MC 143127 (Sub-1–26TA), filed October 21, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Drugs and medicines,* from Evansville and Mt. Vernon, IN to points in AL, AR, CO, DE, FL, GA, IL, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, VA WV, WI, and DC. Supporting shipper: Mead Johnson and Company, 917 Bond St., Evansville, IN 47721.

MC 150463 (Sub-1–1TA), filed October 20, 1980. Applicant: ROETHEL COACH LINES, INC., 515 Ford Street, Ogdensburg, NY 13669. Representative: Thomas G. Roethel, President, 515 Ford Street, Ogdensburg, NY 13669. *Passengers & Baggage in Charter & Special Operations,* between Ogdensburg, NY on the one hand, and, on the other, points in PA, DC, VA, WV, NC, SC, NJ, FL, GA, TN, KY, OH, NY, AL, and MD. Supporting shipper: Roethel's Ogdensburg Business Institute, 515 Ford St., Ogdensburg, NY 13669.

MC 112963 (Sub-1–7TA), filed October 16, 1980. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard E. Murphy, 764 Boston Road, Pinehurst, MA 01866. *Plastic materials, dry, in bulk, in tank vehicles* from Passic, NJ to Amsterdam, NY. Supporting shipper: Pantasote, Inc., 26 Jefferson St., Passaic, NJ 07055.

MC 152262 (Sub-1–1TA), filed October 16, 1980. Applicant: LAW-TON TRUCKING, INC., 7 Cedar Crest Drive, Dix Hills, NY 11746. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier:* irregular route: *Soap and soap products, and supplies used in the manufacture and distribution of soap and soap products,* between points in Suffolk County, NY on the one hand, and, on the other, points in SC, NC, GA, FL, NJ, PA, MA, and MI, under a continuing contract with Sunshine Chemical Corp. Supporting shipper: Sunshine Chemical Corp., 60 Austin Blvd., Commack, NY.

MC 129301 (Sub-1–1TA), filed October 21, 1980. Applicant: ENGLISH AND SONS CORPORATION, 412 Kingshighway, Thorofare, NJ 08086. Representative: James H. Sweeney, 468 Kentucky Ave., Williamstown, NJ 08094. *Contract carrier:* irregular route: *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses and in connection therewith equipment, materials and supplies used in the conduct of such business,* from points in CT, MA, NC, OH, RI and VA to Jessup, Elkridge, Columbia, Landover and Silver Spring, MD, under continuing contract(s) with Giant Food, Inc. Supporting shipper: Giant Food, Inc., P.O. Box 1804, Washington, DC 20013.

MC 151078 (Sub-1–2TA), filed October 22, 1980. Applicant: COASTAL FAST FREIGHT, INC., 346 Claremont Avenue, Jersey City, NJ 07305. Representative: Charles A. Webb, 1828 L Street, N.W., Suite 1111, Washington, D.C. 20036. *Contract carrier:* irregular route: *Automobile air conditioners and parts and accessories therefor,* from Carson, CA on the one hand, and, on the other, Dayton, OH, Mansfield, MA, Glen Burnie, MD, and West Caldwell and Moorestown, NJ, under a continuing contract with Nippondenso of Los Angeles, Inc. Representative: Nippondenso of Los Angeles, Inc., 857 East 230 Street, Carson, CA 90745.

Republication

MC 65491 (Sub-1–1TA), filed September 2, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. *Pulp, paper or allied products and materials, equipment and supplies used in the manufacture of paper (except in bulk, and such size requiring special equipment),* between Lock Haven, PA on the one hand, and, on the other, MD, ME, MI, NH, NJ, NY, OH, VA and VT. The purpose is to add the State of *VA* before VT previously omitted in **Federal Register**, page 61034, of September 15, 1980. Supporting shipper: Hammermill Paper Company, P.O. Box 268, Lock Haven, PA 17745.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 147993 (Sub-II–4TA), filed October 14, 1980. Applicant: C. H. MASLAND & SONS, 50 Spring Rd., Box 40, Carlisle, PA 17013. Representative: J. Roger Gratz (same as applicant). *Contract; irregular: paper tubes, synthetic crude rubber, reclaimed rubber & rubber lubricant used in the manufacturing of rubber roofing material, pneumatic tires, innertubes & radiator hose* from Adrain, MI, Columbus, OH, Greenville, IL & St. Louis, MO, to Carlisle Rubber Plants in or near Carlisle, PA, for 270 days under continuing contract(s) with Carlisle Tire & Rubber Co. Supporting shipper: Carlisle Tire & Rubber Co., Manager Material Distribution, P.O. Box 99, 621 N. College St., Carlisle, PA 17013.

MC 78228 (Sub-II–5TA), filed October 14, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. *Pig iron, in bulk in dump vehicles,* from Portsmouth, NH to Randolph, VT for 270 days. Supporting shipper: Philipp Bros., Division of Engelhard Minerals & Chemicals Corp., 1221 Avenue of the Americas, New York, NY 10002.

MC 111611 (Sub-II–5TA), filed October 14, 1980. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Ave., Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine St., Suite 2550, San Francisco, CA 94111. *Glassware bulbs, or bulb parts* from Dale Summit, PA, to National City, CA, for 270 days. Supporting shipper: Corning Glass, P.O. Box 544, Corning, NY 14830.

MC 150339 (Sub-2–15TA), filed October 14, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Boulevard, Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular: Strip steel, coils on skids, and sheet steel* from Youngstown, OH, to points in the US under a continuing contract(s) with Hynes Industries, Inc., 3760 Oakwood Ave., Youngstown, OH 44509 for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Hynes Industries, Inc., 3760 Oakwood Ave., Youngstown, OH 44509.

MC 107403 (Sub-II–34TA), filed October 10, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Landsdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Dry sugar, in bulk, in tank vehicles,* from Philadelphia, PA to points in NJ for 270 days. Supporting shipper(s): The National Sugar Refining Co., 1037 N. Delaware Ave., Philadelphia, PA 19125.

MC 152195 (Sub-II–2TA), filed October 14, 1980. Applicant: LEO PETRILLO, 3465 Bowman St., Philadelphia, PA 19129. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. *Roofing Paper and Supplies,* between Quakertown, PA and Yardville, NJ for

270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Georgia-Pacific Corp., Box 11308, Rte 130, Yardville, NJ 08620.

MC 107012 (Sub-II–94TA), filed October 14, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). *Appliances* from Edison, NJ to points in AL, CT, DE, DC, FL, GA, ME, MD, MA, NH, NY, NC, PA, RI, SC, VT, VA, and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Edison Products Co. NJ, Route 27 at Vineyard Road, P.O. Box 337, Edison, NJ 08817.

Note.—Common control may be involved.

MC 10712 (Sub-II–92TA), filed October 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). *Carpet cushion and automotive felt* from the facilities of Dixie Manufacturing Co., Inc. at or near Norfolk, VA to points in IA, KS, and MN for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dixie Manufacturing Co., Inc., 110 Colley Ave., Norfolk, VA 23501.

Note.—Common control may be involved.

MC 146015 (Sub-II–12TA), filed October 8, 1980. Applicant: MUMMA FREIGHT LINES, INC., 6495 Carlisle Pike, Mechanicsburg, PA 17055. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. *Contract; Irregular: Dehydrated instant noodle soup,* from Lancaster, PA to points in MA, NY, NJ, PA, VA, NC, GA, FL, MD, IL and OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Nisson Foods (USA) Co., Inc., 2125 Center Ave., Fort Lee, NJ 07024.

MC 150445 (Sub-II–2TA), filed October 8, 1980. Applicant: ALPHONZO V. MANGIONE, 510 S. Main St., Pittston, PA 18630. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Coal,* from Luzerne and Schuylkill Counties, PA fo NH, VT, NY, DE & OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Lehigh Valley Coal Sales Co., P.O. Box 450, W. Pittston, PA 18640; Centralia Coal Sales Co., 101 S. Main St., Ashley, PA 18706.

MC 112304 (Sub-II–19TA), filed October 14, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). *Calcined anthracite coal* (except in bulk), from the facilities of Airco Carbide, at or near Calvert City, KY, to Chicago, IL, for 270 days. Supporting shipper(s): Airco Carbide, Division of Airco, Inc., P.O. Box 10037, Louisville, KY 40210.

MC 150512 (Sub-II–2TA), filed October 14, 1980. Applicant: B & M TRANSIT, INC., Rt. 603, Phymouth, OH 44865. Representative: L. S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Contract, irregular: *meats, meat products, meat by-products, and articles 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 the U.S., for 270 days. Supporting shipper: Lincoln Packing Company, Inc., 137 Newmarket Sq., Boston, MA 02118.

MC 119894 (Sub-II–3TA), filed October 14, 1980. Applicant: BOWARD TRUCK LINE, INC., 100 Roesler Rd., Suite 200, Glen Burnie, MD 21061. Representative: M. Bruce Morgan, 100 Roesler Rd, Suite 200, Glen Burnie, MD 21061. *Paper, Paper Products, Paperboard Products, Waste Paper, and those commodities used in the manufacture or distribution of Paper, Paperboard Products or Paper Products.* Between the Plantsite of Sonoco Products Company at or near Hartsville, SC and points in the States of NC, VA, TN and GA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sonoco Products Co., P.O. Box 160, Hartsville, SC 29550.

MC 102616 (Sub-II–21TA), filed October 14, 1980. Applicant: COASTAL TANK LINES, INC., 250 N. Cleveland-Massillion Rd., Akron, OH 44313. Representative: W. M. Kiefaber (same as applicant). *Sodium Citrate, dry, in bulk,* from Zeeland, MI to Chicago, IL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Miles Laboratories, Inc., 1127 Myrtle Street, P.O. Box 40, Elkhart, IN 46515.

MC 150019 (Sub-II–3 TA), filed October 14, 1980. Applicant: EDWARD E. GARBER, d.b.a. CUSTOM TRANPORT, 6600 Sweet Air Lane, Sykesville, MD 21784. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Wash. D.C. 20005. *General commodities (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Baltimore, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI). Restriction: Restricted to traffic originating at or destined the facilities of Streamline Shippers Association. An underlying ETA seeks 120 days authority. Supporting shipper: Streamline Shippers Association, Baltimore, MD 21225.

MC 147454 (Sub-II–1 TA), filed October 14, 1980. Applicant: JAMES CONDOSTA, 807 Exeter Ave., W. Pittston, PA 18643. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Anthracite Coal,* from Luzerne & Schuylkill Counties, PA to points in NY, CT, MA, NH, RI, VT, ME, OH, IN, IL, GA, MI, DE & NJ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Lehigh Valley Coal Sales Co., P.O. Box 450, Pittston, PA 18643.

MC 112304 (Sub-II–20 TA), filed October 16, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). *Heating equipment, stoves, fireplaces, furnaces and incinerators,* from Athens, Huntsville and Sheffield, AL and Americus, GA, to all points in the US (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Martin Industries, Inc., P.O. Box 128, Florence, AL 35630.

MC 140243 (Sub-II–4 TA), filed October 16, 1980. Applicant: APPLE HOUSE, INC., 3726 Birney Ave., Scranton, PA 18505. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. *Foodstuffs* (except commodities in bulk and those requiring special equipment) from Milton, PA to points in the states of AL, FL, GA, NC, and SC for 270 days an underlying ETA seeks 120 days. Supporting shipper(s): American Home Foods Div., American Home Products Corp., 685 Third Ave., New York, NY 10017.

MC 128067 (Sub-II–1TA), filed October 16, 1980. Applicant: W. F. BURNS TRUCKING, INC., Box 127A, R.D. #2, Ruffsdale, PA 15679. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract, Irregular: Chemicals,* from Solvay, NY to points in MD, VA and WV, under continuing contract(s) with United Chemicals, Inc. for 270 days. Supporting shipper: United Chemicals, Inc., P.O. Box 18049, Pittsburgh, PA 15236.

MC 14252 (Sub-II–7TA), filed October 16, 1980. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Rd., Columbus, OH 43227. Representative: William C. Buckham (same as applicant). Common, regular: *General commodities (except household goods as defined by the Commission, and classes A & B explosives),* serving all points in Nicholas County, WV as off route points in connection with carriers presently authorized regular route

operations. Applicant intends to tack and interline, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Bright of America, 300 Greenbrier Rd., Summersville, WV.

MC 128746 (Sub-II–4TA), filed October 16, 1980. Applicant: D'AGATA NATIONAL TRUCKING CO., 3240 S. 61st St., Phila., PA 19153. Representative: Edward J. Kiley, 1730 M St., NW., Washington, D.C. 20036. *Non-alcoholic carbonated beverages, in containers, and materials, supplies and equipment used in the manufacture, sale and distribution of non-alcoholic carbonated beverages,* between the facilities of Shasta Beverages, Inc., at or near New Bedford, MA, on the one hand, and, on the other, points in NY, NJ, CT, Baltimore and Patuxent, MD, Berrington, RI, Greensburg, PA, Charlotte, NC, Salem and Manchester, NH; between the facilities of Shasta Beverages, Inc., at or near Union, NJ, on the one hand, and, on the other, New Bedford, MA; between the facilities of Shasta Beverages, Inc., at or near Baltimore, MD, on the one hand, and, on the other, New Bedford, MA; between the facilities of Shasta Beverages, Inc., at or near Baltimore, MD, on the one hand, and, on the other, Union, NJ. For 270 days. Supporting shipper: Shasta Beverages, Inc., Industrial Park, New Bedford, MA.

MC 114301 (Sub-II–2TA), filed October 16, 1980. Applicant: DELAWARE EXPRESS CO., P.O. Box 97, Elkton, MD 21921. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St. NW., Washington, DC 20005. *Plastic Resin,* from the railhead of Flexi-Flo, Inc., at or near Allston, MA to Brooklyn and Schenectady, NY; Pawtucket, RI; Jewett City and Stratford, CT; Manchester, NH; Edison, Newark, Kearney and Pedricktown, NJ, and Action, Hatfield, Lowell, Leominster, South Braintree and Taunton, MA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The B. F. Goodrich Co., 6100 Oak Tree Blvd., Cleveland, OH 44131.

MC 150567 (Sub-II–4TA), filed September 29, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. *Coffee, cans or bags,* from the facilities of Hills Bros. Coffee, Inc., San Francisco, CA to Portland, OR and Seattle, WA and points intermediate, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: R. J. DeMers, P.O. Box 3149, San Francisco, CA 94119.

MC 114569 (Sub-II–32TA), filed September 29, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as above). Transporting: *Coffee.* From the facilities of Chock Full O'Nuts at or near Brooklyn and Jamacia, NY and St. Louis, MO to points in CA; Phoenix, AZ; Portland, OR; and Chicago, IL, for 270 days. Supporting shipper(s): Chock Full O'Nuts, 425 Lexington Avenue, New York, 10017.

MC 146423 (Sub-II–5TA), filed September 30, 1980. Applicant: STEPHEN HROBUCHAK, d.b.a. TRANS-CONTINENTAL REFRIGERATED LINES, P.O. Box 1456, Scranton, PA 18501. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. *Foodstuffs* (except in bulk and when requiring special equipment) from Milton, PA to Los Angeles, CA, Oakland, CA, San Francisco, CA, Vacaville, CA, Portland, OR and Seattle, WA for 270 days. An underlying ETA seeks 120 days. Supporting shipper(s): American Home Foods Division, American Home Products Corporation, 685 Third Ave., New York, NY 10017.

MC 8922 (Sub-II–1TA), filed September 29, 1980. Applicant: THE WAHL MOVING & TRANSFER CO., 16100 S. Waterloo Rd., Cleveland, OH 44110. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. *Crushers, granulators, breakers, rotor assemblies, machinery, frames, and metal fabrications* between Cuyahoga Falls, OH, on the one hand, and, on the other, points in the United States, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pennsylvania Crusher Corp., Cuyahoga Falls, OH 44221.

MC 110683 (Sub-II–7TA), filed October 1, 1980. Applicant: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St. NW., Washinton, DC 20036. *Common; regular: General commodities (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment)* serving the facilities of Tyler Warehouse in Tyler, TX, as an off-route point in connection with carrier's authorized regular routes for 270 days. Applicant intends to tack the authority sought herein with existing authority held under MC110683. Applicant intends to interline at all present interchange points. An underlying ETA seeks 120 days authority. Supporting shipper(s): Philip Morris, P.O. Box 26603, Richmond, VA 23261.

MC 152071 (Sub-II–1TA), filed October 2, 1980. Applicant: BERNARD E. ROCHE d.b.a., EDDIE ROCHE'S MOBILE HOMES MOVING AND SERVICE, 438 Barcelona Lane, Virginia Beach, VA 23452. Representative: Blair P. Wakefield, Suite 1001 First and Merchants National Bank Bldg., Norfolk, VA 23510. *Mobile homes; prefabricated buildings, complete, knocked down, or in sections; and modular* dwelling units, between all pts. in NC, VA, MD and DC, for 270 days. Supporting shipper: Jim's Mobile Home Moving & Service, Inc., 3117 Douglas Rd., Chesapeake, VA 23320.

MC 125023 (Sub-II–4TA), filed October 2, 1980. Applicant: SIGMA–4 EXPRESS, INC., 3825 Beech Ave., P.O. Box 9117, Erie, PA 16504. Representative: Richard G. McCurdy (same as applicant). *Paper and paper products, and materials, equipment and supplies used in the manufacture of paper and paper products (except commodities in bulk and those which because of size or weight require the use of special equipment),* between the facilities of Hammermill Paper Company, at or near Erie, PA; Lock Haven, PA; and Oswego, NY; on the one hand, and on the other, points in the U.S. in and East of MN, IA, MO, AR, and LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hammermill Paper Co., P.O. Box 1440, 1540 E. Lake Rd., Erie, PA 16533.

MC 138805 (Sub-II–1TA), filed October 2, 1980. Applicant: S&L SERVICES, INC., RD #1, Milton, PA 17847. Representative: Terrence D. Jones, 2033 K Street NW., Washington, DC 20006. (1) *Foodstuffs* (except in bulk) from the facilities of American Home Foods Division of American Home Products Corporation at or near Milton, PA to points in AL, FL, GA, KY, NC, SC, TN, and TX, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs from points in AL, FL, GA, KY, NC, SC, TN, and TX, to the facilities of American Home Foods at or near Milton, PA, for 270 days. Supporting shipper: American Home Foods, 685 Third Avenue, New York, NY 10017. An underlying ETA seeks 120 days authority.

MC 146807 (Sub-II–9TA), filed October 1, 1980. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes-Barre, PA 18702. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507. *Coal, in bags and in boxes,* from Wilkes-Barre, PA to points Washington, Oregon, California, Arizona, Colorado, Texas, Louisiana,

Florida, Georgia, North Carolina, Virginia, Maryland, the District of Columbia, New York, Maine, New Hampshire, Vermont, Massachusetts, Ohio, Michigan, Minnesota, Wisconsin, Iowa, Oklahoma, Kansas, Arkansas, and Missouri for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper(s): Hubbard Coal Co., 110 Miller St., Wilkes-Barre, PA 18705.

MC 136012 (Sub-II–2TA), filed October 6, 1980. Applicant: UNITED STATES TRANSPORTATION, INC., 4963 Provident Dr., Cincinnati, OH 45246. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. *Liquid Chemicals, in bulk, in tank vehicles,* from Chicago, IL and Rothschild, WI, and their respective commerical zones, to Cincinnati, OH and South Shore, KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Didier Taylor Refractories Corp., Rt. 23, P.O. Box 457, South Shore, KY 41175. Ashland Chemical Co., Div. of Ashland Oil, Inc., P.O. Box 2219, Columbus, OH 43216. M. J. Daly Co., 38 Elm St., Ludlow, KY 41016.

MC 146656 (Sub-II–6TA), filed October 10, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Contract, irregular *polyurethane foam* from Baltimore and Jessup, MD to points in the U.S., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): William T. Burnett & Co., Inc., 150 Bush St., Baltimore, MD 21230.

MC 115703 (Sub-II–8TA), filed October 10, 1980. Applicant: KREITZ MOTOR EXPRESS, INC., P.O. B. 375, 225 Park Road North, Wyomissing, PA 19610. Representative: Robert D. Gunderman, Suite 710, Statler Bldg., Buffalo, NY 14202. *Machinery, machine parts, and articles because of size or weight require the use of special handling or equipment,* between points in CT, DE, DC, MD, MA, NJ, NY, NC, OH, PA, RI, VA and WV, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OH and TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 13 supporting shippers' statements attached to this application which may be examined at the Philadelphia Regional office.

MC 152241 (Sub-II–1TA), filed October 17, 1980. Applicant: LANCASTER EXPRESS, INC., 2314 Norman Rd., P.O.B. 4771, Lancaster, PA 17604. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17001. *General commodities, (except household goods as defined by the Commission and Classes A and B explosives),* between points in Allegheny, Cumberland, Berks, Lancaster, Lebanon and York Counties, PA; and McConnelsville and Gansevoort, NY; Cleveland, OH; Port Elizabeth and Dorchester, NJ; and Lugoff, SC, on the one hand, and, on the other, points in the U.S. for 270 days. Supporting shipper(s): There are 6 supporting shippers' statements attached to this application which may be examined at the Phila. Regional office.

MC 152057 (Sub-II–1TA), filed October 15, 1980. Applicant: LANDSMAN CAR CARRIER SERVICE, INC., 5601 Reisterstown Rd., Baltimore, MD 21215. Representative: Harold E. Mesirow, 1333 New Hampshire Ave., NW, Suite 850, Washington, DC 20036. *Motor vehicles, new and used, in secondary movements, in truckaway service* between points in AK, DC, FL, GA, IL, IN, IA, KS, LA, MD, MA, MI, MO, NJ, NM, NY, NC, OH, OK, PA, SC, TN, TX, VA, ME, KY, WV, MS, AL, CT, NH, VT, RI, DE, for 270 days. Movements of new motor vehicles are restricted to relocation of delivered dealer inventory on behalf of shippers who are automobile dealers. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 8 supporting shippers' statements attached to this application which may be examined at the Phila. Regional office.

MC 145773 (Sub-II–4TA), filed October 16, 1980. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Rd., Sidney, OH 45365. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Contract, irregular: (1) *Electric motors and parts thereof in containers, pallets and crates,* from the facilities of A. O. Smith Corp. at Tipp City, OH; Mt. Sterling, KY and Mebane, NC to points in the U.S. (except AK and HI), and (2) *equipment, materials, supplies, (scrap and rejects) and parts* used in the manufacture and distribution of the above commodities in the reverse direction (except commodities in bulk), for 270 days. Supporting shipper: A. O. Smith Corp., 3533 N. 27th St., Milwaukee, WI 53216.

MC 138000 (Sub-II–21TA), filed October 16, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, P.O. Box 1417. Hagerstown, MD 21740. (1) *Paper, paper products, pulpboard, printed matter, ores, plastic, plastic products, chemicals and building supplies (except in bulk), and* (2) *materials, equipment and supplies used in the manufacture, sale and distribution of (1) above,* between all points in the United States in and east of WI, IL, MO, AR and LA. Restricted to the transportation of shipments originating at or destined to the facilities of or utilized by Union Camp Corporation and its subsidiaries, for 270 days. Supporting shipper: Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470.

MC 151327 (Sub-II–2TA), filed October 16, 1980. Applicant: KABAT EXPRESS, INC., 1944 Scranton Rd., Cleveland, OH 44113. Representative: Arthur E. Gogol, 7723 Greenwich Rd., Lodi, OH 44254. Contract, irregular, *Lift Trucks, platform or warehouse; Parts and Attachments, as well as Machine Parts, (except in bulk, in tank vehicles); and materials, equipment and supplies used in the manufacture and distribution of above commodities* on return, between the facilities of Baker Material Handling Corporation, Cuyahoga County, OH, on the one hand, and, on the other, points in the US (except AK and HI), for 270 days. An underlying ETA seeking 120 days authority has been granted. Supporting shipper: Baker Material Handling Corporation, 5000 Tiedeman RD, Cleveland, OH 44144.

MC 124821 (Sub-II–24TA), filed October 16, 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. *Television picture tubes and parts used in the manufacture thereof,* between the facilities of RCA Corporation at or near Dunmore, PA, on the one hand, and, on the other, Lebanon, Greenville and Nashville, TN, and Forest City, AR, including points in the commercial zones, for 270 days. Supporting shipper: RCA Corporation, Building 204.2, Route 38, Cherry Hill, NJ 08358.

MC 60430 (Sub-II–1TA), filed October 14, 1980. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. B. 480, Wilkes-Barre, PA 18773. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW, Washington, DC 20005. *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between points within the Philadelphia commercial zone as defined by the Commission. Applicant intends to tack the rights sought here with its recent grant of authority under MC–60430 (Sub 30) to serve all points in PA on and East

of U.S. Hwy. 15. An underlying ETA seeks 120 days authority. Supporting shipper(s): No supporting shipper's statement attached to this application. Applicant furnished a verified statement.

MC 60430 (Sub-II–2TA), filed October 14, 1980. Applicant: FRIEDMAN'S EXPRESS, INC., P.O.B. 480, Wilkes-Barre, PA 18773. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW, Washington, DC 20005. Common, regular—*General commodities*, except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Newark and Phillipsburg, NJ over U.S. Hwy 22 to junction NJ Hwy 31, then over NJ Hwy 31 to U.S. Hwy 202, then over U.S. Hwy 202 to junction U.S. Hwy 611, then over U.S. Hwy 611 to Phillipsburg and return over the same route; between Doylestown, PA and Riegelsville, NJ serving all intermediate points, and the off-route points of Stockton and Milford, NJ, and those within 5 miles to Doylestown, PA: From Doylestown over U.S. Hwy 202 to New Hope, PA, then over PA Hwy 32 to Riegelsville, PA, and then across the Delaware River to Riegelsville, NJ, and return over the same route. Between Philadelphia, PA and Riegelsville, PA serving all intermediate points between Doylestown and Riegelsville, PA, including Doylestown, and the off-route points within 5 miles of Doylestown, and those in PA within 3 miles of U.S. Hwy 611 between Doylestown and Riegelsville, PA: From Philadelphia over U.S. Highway 611 to Riegelsville, and return over the same route. Applicant intends to tack the foregoing regular route authority with its existing regular route authority both at Phillipsburg and at Newark. An underlying ETA seeks 120 days authority. Supporting shipper(s): No supporting shipper's statement attached to this application. Applicant furnished a verified statement.

MC 48948 (Sub-II–TA), filed October 15, 1980. Applicant: THE HOCKING CARTAGE COMPANY, 28424 Chieftain Dr., Logan, OH 43138. Representative: James Duvall, P.O.B. 97, 220 W. Bridge St., Dublin, OH 43017. *Glass cullett and glass tubing* between Logan, OH, and Bridgeville, PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): General Electric Company, 4504 Nela Park, Cleveland, OH 44112.

MC 125335 (Sub-2–19TA), filed October 17, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: GAILYN L. LARSEN, P.O. Box 82816, Lincoln, NE 68501. *Foodstuffs (except in bulk) and materials, supplies, and equipment used in the production, sale and distribution thereof*, between points in the U.S. (except AK and HI), restricted to shipments originating at or destined to the facilities of The Pillsbury Company and its subsidiaries. An underlying ETA seeks 120 days authority. Supporting shipper: The Pillsbury Company, 608 Second Avenue South, Minneapolis, MN 55402.

MC 125335 (Sub-II–TA), filed October 14, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O.B. 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O.B. 82816, Lincoln, NE 68501. *Foodstuffs*, between Atlanta, GA, and its commercial zone, and points in the U.S. in and east of CO, NE, NM, ND and SD. An underlying ETA seeks 120 days authority. Supporting shipper: Pet Incorporated, Frozen Foods Division, 400 S. Fourth St., St. Louis, MO 63102.

MC 48386 (Sub-II–TA), filed October 14, 1980. Applicant: GRAVER TRUCKING, INC., R.D. 7, Box 7655, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Coal*, from Schuylkill County, PA to New York, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Burnside Coal & Oil Co., Inc., 1905 White Plains Rd., Bronx, NY 10462. Gassman Coal & Oil Co., Brown Pl., & E. 132nd St., Bronx, NY 10454.

MC 140294 (Sub-II–7 TA), filed October 14, 1980. Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. *Transporting such commodities as are used by or dealt in by grocery, foodstuff, and drug manufacturers, and wholesale and retail drug stores, grocery stores, and food business houses, except commodities in bulk*, between the facilities of Dauphin Distribution Services Company in Silver Spring Township and the borough of Camp Hill and the township of Hampden, Cumberland County, PA, on the one hand, and on the other, points in MD, VA, WV and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dauphin Distribution Services Company, P.O. Box 427, Camp Hill, PA 17011.

MC 143394 (Sub-II–15 TA), filed October 14, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Road, P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop (same as applicant). *Contract: Irregular: General Commodities (except those of unusual value, Class A&B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)*, between points in the U.S. under continuing contract(s) with Northeastern Pennsylvania Shippers Cooperative Association, Inc., Dunmore, PA 18512, for 270 days. An underlying ETA seeks 90 days authority. Supporting shipper: Northeastern Pennsylvania Shippers Cooperative Association, Inc., 1212 O'Neill Highway, Dunmore, PA 18512.

MC 21866 (Sub-II–34 TA), filed September 22, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *General Commodities*, except Classes A and B explosives and household goods as defined by the Commission, between East Greenville and Souderton, PA, on the one hand, and, on the other, points in AL, AR, CO, KY, IL, IN, IA, KS, LA, MI, MN, MS, MO, OH, TN, VA, WV and WI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Knoll International, Water Street, E. Greenville, PA 18041.

MC 146807 (Sub-II–8 TA), filed September 24, 1980. Applicant: S-n-W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507. *Plastic film and sheeting and plastic bags*, from Pottsville, PA to points in California, Texas, Missouri, North Carolina, South Carolina, Georgia, Iowa, Indiana, Illinois, and Ohio; materials and supplies on return for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Exon Chem. G.V.S.A., P.O. Box 395, Pottsville, PA 17901.

MC 151992 (Sub-11–1TA), filed September 25, 1980. Applicant: STOTTLEMIRE TRUCKING COMPANY, INC., 1650 Williams Rd., Columbus, OH 43207. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Contract; irregular: Such commodities as are dealt in or used by grocery and food business houses*, (except commodities in bulk), between Columbus, OH, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): The Kroger Co., 1014 Vine St., Cincinnati, Ohio 45201.

MC 126826 (Sub-II–1TA), filed September 24, 1980. Applicant: KENNETH SCHMIDT, Box 23,

Saxonburg, PA 16056. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. *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,* moving on bills of lading of freight forwarders as defined in 49 U.S. Code, Section 10102, between Pittsburgh, PA on the one hand, and, on the other, New Castle, PA, for 270 days. Supporting shipper: California Western Freight Assn., d.b.a. Western Freight Assn., 10 Try St., Pittsburgh, PA 15219.

MC 114569 (Sub-II–31TA), filed September 25, 1980. Applicant: SHAFFER TRUCKING INC., P.O. Box 418, New Kingstown, Pa. 17072. Representative: N. L. Cummins (same address as applicant). *Such commodities as are dealt in by manufacturers of furniture* from the facilities of Mantua Manufacturing Company, (1) between Chicago, IL and Cleveland, OH and (2) from points in IL, OH and PA, to points in CT, FL, IN, MA, MN, and MO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Mantua Manufacturing Company, 7055 Krick Road, Bedford, OH 44146. Supporting shipper(s): Mantua Manufacturing Co., 7055 Krick Rd., Bedford, OH 44146.

MC 119968 (Sub-II–2TA), filed September 24, 1980. Applicant: A. J. WEIGAND, INC., 1046 N. Tuscarawas Ave., Dover, OH 44622. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Liquid chemicals, in bulk, in tank vehicles,* between Moundsville, WV, on the one hand, and, on the other, points in OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: LCP Transportation, Inc., Subsidiary of Linden Chemicals & Plastics, Inc., Raritan Center, Plaza II, Edison, NY 08817.

MC 116763 (Sub-II–39TA), filed September 24, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *General commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight require the use of special equipment, automobiles, trucks and buses as described in the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, and explosives), between points in the U.S. in and east of MN, IA, MO, OK and TX for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of Tru-Matic, Inc. Supporting shipper(s): Tru-Matic, Inc., Paradise Road, R.D. 2, Box 214, E. Stroudsburg, PA 18301.

MC 148522 (Sub-II–6TA), filed October 20, 1980. Applicant: PAUL E. ACE TRUCKING, INC., 930 Clay Ave., Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Corrugated Fiberboard Products* from Williamsport, PA to MA, CT, NY, MD, NJ & PA: Materials, supplies & equipment used in the manufacture and distribution of the above commodities, on return, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Stone Container Corp., Reach Rd. Indus. Park, Williamsport, PA 17701.

MC 145252 (Sub-II–4TA), filed October 20, 1980. Applicant: HENRY ANDERSEN, INC., P.O. Box 75, King George, VA 22485. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Wash., D.C. 20005. *Display cases and service counters,* from King George, VA, to points in the U.S. located in and east of MN, IA, MO, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Royal Wood Kitchens, King George, VA 22485.

MC 123255 (Sub-II–5TA), filed October 20, 1980. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Rd., Newark, OH 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Rd., Newark, OH 43055. *Filters, Air* from Ashville, OH to Atlanta, GA; Birmingham, AL; Charlotte, NC; Chattanoga, TN; Columbia, SC; Dallas, TX; Hartford, CT; Jackson, MS; Jacksonville, FL; Knoxville, TN; Memphis, TN; Minneapolis, MN; Montgomery, AL; Nashville, TN; Newark, NJ; New York, NY; Norfolk, VA; Providence, RI; Raleigh, NC; St. Louis, MO; St. Petersburg, FL; Tampa, FL; Texarkana, AR; and Washington, DC. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Columbus Industries, Inc., St. Rte. 762, Ashville, OH 43103.

MC 133384 (Sub-II–1TA), filed October 20, 1980. Applicant: BARBERTON RECON CENTER, INC., 5075 Wooster Rd., Barberton, OH 44203. Representative: E. H. van Deusen, 220 W. Bridge St., Dublin, OH 43017. *Used automobiles and trucks,* in secondary movements, in truckaway service, from the facilities of the Ford Motor Company, at or near Dearborn, MI, to Lakeland, FL, Concord, MA, and Fairfield, NJ, for 270 days. Supporting shipper: Ford Motor Company, P.O. Box 43335, Detroit, MI 48243.

MC 115413 (Sub-II–8TA), filed October 20, 1980. Applicant: BLISSFIELD TRUCK LINE, INC., P.O. Box 245, Archbold, OH 43502. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. *General commodities, (except those of unusual value, Class A and B explosives, and commodities in bulk)* between Chicago, IL and its commerical zone, on the one hand, and, on the other, points and places in Lenawee County, MI and points and places in Ohio North and West of a line beginning at the Ohio-Indiana State Line and Extending along U.S. Highway 30 to Bucyrus, OH and thence along OH Highway 4 to Sandusky, OH, including points and places on the indicated portions of the highways specified. Restricted to the transportation of traffic originating at or destined to the facilities of or used by East-West Shippers Ass'n. Supporting shipper: East-West Shipper Ass'n., 3500 S. Kedzie St., Chicago, IL 60632.

MC 77016 (Sub-II–2TA), filed October 20, 1980. Applicant: BUDIG TRUCKING CO., 1100 Gest St., Cincinnati, OH 45203. Representative: George M. Catlett; McClure Bldg., Suite 708, Frankfort, KY 40601. *Common:* regular: *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 Boonville, MO, and Kansas City, KS. From Boonville, MO over US 40 to Kansas City, KS and return over the same route, serving all intermediate points and serving all points in Wyandotte and Johnson Counties, KS and all points in MO as off route points in connection with applicants otherwise authorized regular routes; (2) Between Cincinnati, OH, and Lexington, KY from Cincinnati, OH, over I–75 to Lexington, KY, and return over the same route, serving those intermediate points South of the Grant Scott County, KY line. Service at Lexington, KY, is restricted against the handling of traffic originating at, destined to, or interchanged at points in Mason County, KY; (3) Between St. Louis, MO and Cincinnati, OH. From St. Louis, MO, over I–70 to Junction of I–74, thence over I–74 to Cincinnati, OH, and return over the same route, serving all intermediate points, and serving those points in IL on and North of I–64 and on and South of U S 36, those points in IN on and South of IN Rt. 28, and Ft. Wayne, IN, and all points in OH as off route points in connection with applicants otherwise authorized regular routes. (4) Between St. Louis, MO, and Nashville, TN. From St. Louis, MO, over I–64 to Junction of I–57, thence over I–57 to Junction of I–24, thence over I–24 to Nashville, TN, and return over the same route, serving no intermediate points. (5)

Between Louisville, KY, and Morehead, KY. From Louisville KY, over I–64 to Morehead, KY, and return over the same route, serving those intermediate points East of the Woodford-Fayette County, KY, line. Service at Louisville, KY, is restricted against the handling of traffic originating at, destined to, or interchanged at points in Mason County, KY; (6) Between Louisville, KY, and Nashville, TN. From Louisville, KY, over I–65 to Nashville, TN, and return over the same route, serving Bowling Green, KY as an intermediate point. Service at Nashville, TN, is restricted against the handling of traffic originating at, destined to, or interchanged at points in Fayette and Scott Counties, KY; (7) Between Olive Hill, KY, and Charleston, WV. From Olive Hill, KY, over U S 60 to Charleston, WV and return over the same route, serving all intermediate points. Authority is sought to serve the Commerical Zones of all Pts and all intermediate Pts. Applicant intends to tack the authority sought herein at Boonville and St. Louis, MO, Louisville, Morehead, Lexington, and Olive Hill, KY; and at Cincinnati and Aberdeen, OH. And to interline, for 270 days. Supporting shippers: There are 376 statements of support. they can be examined at the ICC Reg. Ofc. Phila., PA.

MC 152239 (Sub-II–2TA), filed October 17, 1980. Applicant: C–B BROKERS, INC., P.O. Box 10, Hanover, VA 23069. Representative: J. D. Brown (same as applicant). Contract, irregular: *Household appliances,* between the plant sites and distribution centers of Warwick Manufacturing Corp. to pts. in the US for 270 days. Supporting shipper: Warwick Manufacturing Corp., 1112 Cavalier Blvd., Chesapeake, VA 23323.

MC 145018 (Sub-II–2TA), filed October 17, 1980. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. *Foodstuffs, and materials and supplies used in the manufacture and distribution of foodstuffs,* from Fremont, OH, to the facilities of Welch Foods, Inc., at or near North East, PA and Westfield, NY for 270 days. Supporting shipper(s): Welch Foods, Inc., 2 South Portage St., Westfield, NY 14787.

MC 107012 (Sub-II–95TA), filed October 16, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Paper and paper products, materials, equipment and supplies used in the manufacture or distribution of paper and paper products and plastic and plastic articles and furniture, except commodities in bulk,* between points in the US (except AK and HI and except from the facilities of Scott Paper Co. located in the states of DE, ME, MA, NJ, NY, and PA, to points in the US in and East of ND, SD, NE, KS, OK, and TX), restricted to traffic originating at or destined to the facilities of Scott Paper Co. for 270 days. Supporting shipper: Scott Paper Co., Scott Plaza II, Philadelphia, PA 19113.

Note.—Common control may be involved.

MC 107012 (Sub-II–97TA), filed October 17, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Such commodities as are dealt in or used by fabric stores* (1) from the facilities of Minnesota Fabrics at Charlotte, NC, and Westfield, IN to points in MI, PA, OH, WI, IL, IN, MN and NE; and (2) from points in MA, ME, CT, NJ, NY, RI, PA, TX, CA, OR, MS and Amana, IA and Minneapolis and St. Paul, MN to the facilities of Minnesota Fabrics at Charlotte, NC and Westfield, IN for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Minnesota Fabrics, 13500 Westinghouse Blvd., Charlotte, NC.

Note.—Common control may be involved.

MC 107012 (Sub-II–96TA), filed October 17, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *General commodities (except commodities in bulk, Class A and B explosives, and commodities which, because of size or weight require the use of specialized equipment)* between the facilities of Charlotte Freight Association at or near Charlotte, NC and Atlanta, GA, on the one hand, and, on the other, points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Charlotte Freight Association, P.O. Box 8825, Charlotte, NC 28208.

Note.—Common control may be involved.

MC 145018 (Sub-II–1TA), filed October 17, 1980. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Rubber and plastic articles and tennis balls,* between Mercer County, NJ, on the one hand, and, on the other hand, points in the U.S. (except AK & HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Goodall Rubber Co., P.O. Box 8237, Trenton, NJ 08650.

MC 150339 (Sub-2–16TA), filed October 15, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular: General commodities, except household goods as defined by the Commission and classes A & B explosives,* (1) between facilities of the BF Goodrich Company at or near Birmingham, Pinson Valley, Tuscaloosa, and Winfield, AL; E. Camden, AR; City of Industry, Long Beach, Los Angeles, Modesto, and Santa Fe Springs, CA; Denver, CO; Miami, FL; Thomaston, GA; Chicago, Elmhurst, Franklin Park, Henry, Quincy and St. Charles, IL; Bloomington, Salem and Woodburn, IN; Dubuque, IA; Kansas City, KA; Barboursville, Calvert City, Louisville and Salyersville, KY; Convent and Plaquemine, LA; Baltimore, MD; Glouster and Worcester, MA; Dearborn, MI; New Ulm, MN; Kansas City and Neosha, MO; Reno and Sparks, NV; Pedricktown, NJ; Charlotte, Hickory, Newton and Salisbury, NC; Akron and Cleveland, OH, Commercial Zones; Columbus, Green Camp, Marietta, Medina, Toledo, and Troy, OH; Miami, OK; Portland, OR; Bensalem, Exeter and Oaks, PA; Elgin, Greenville, and Spartanburg, SC; Oneida, TN; Beaumont, Dallas, Houston, Memphis, Orange, Pt. Arthur, Pt. Neches, San Benito and Sherman, TX; Fenwick, Grantsville, Richmond, Spencer and Union, WV; and (2) between points named in (1) above on the one hand, and, on the other, points in the U.S. (except AK and HI), under a continuing contract(s) with The BF Goodrich Co., 500 South Main St., Akron, OH 44318. An underlying ETA seeks 120 days authority. Supporting shipper(s): The BF Goodrich Co., 500 South Main St., Akron, OH 44318.

MC 143730 (Sub-II–1TA), filed October 15, 1980. Applicant: PENINSULA TRUCKING CO., INC., 705 Morehouse Dr., New Castle, DE 19720. Representative: Richard M. Ochroch, 316 So. 16th St., Phila., PA 19102. *Contract; irregular: Such merchandise as is dealt in by wholesale, retail, and chain drug and pharmaceutical business houses, and, in connection therewith, equipment, materials, and supplies used in the conduct of such business* between pts. in AL, AZ, AR, CA, CO, GA, ID, IL, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, VT, WA, WV, WI, and WY for 270 days under continuing contract(s) with R. Baylin Co. t/a Action Drug Co., New Castle, DE. Restricted to the facilities of R. Baylin Co. t/a Action Drug Co., New Castle, DE. Supporting

shipper(s): R. Baylin Co. t/a Action Drug Co., P.O. Box 388, New Castle, DE 19720.

MC 6078 (Sub-II–1TA), filed September 18, 1980. Originally published in **Federal Register** October 1, 1980.[1] Applicant: D. F. BAST, INC., 1425 N. Maxwell St., Allentown, PA 18001. Representative: James F. Maher, 1200 Four Penn Center Plaza, Phila., PA 19103. *Iron and steel articles, and materials, equipment and supplies used in the manufacture of iron and steel articles,* between MI, MD, DE, PA, NJ, and NY for 270 days. Supporting shipper(s): North Star Steel Co., 2901 Metro Dr., Minneapolis, MN 55420.

MC 113158 (Sub-II–5TA), filed September 24, 1980. Applicant: TODD TRANSPORT COMPANY, INC., Secretary, MD 21664. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. *Malt Beverages,* from Rochester, NY to East New Market, Easton and Salisbury, MD; and, from Forsyth County, NC to Easton, MD, for 270 days. Supporting shipper is Choptank Distributing Company, Inc., East New Market, MD 21631. An underlying ETA seeks 120 days authority.

MC 125023 (Sub-II–3TA), filed September 23, 1980. Applicant: SIGMA–4 EXPRESS, INC., 3825 Beech Ave., P.O. Box 9117, Erie, PA 16504. Representative: Richard G. McCurdy (same as applicant). *Malt beverages in containers, containers, materials, equipment and supplies used in the manufacture, sale and distribution of malt beverages and containers,* between all Jos. Schlitz Brewing Company facilities to all destinations in the United States except AK and HI, for 270 days. Supporting shipper: Jos. Schlitz Brewing Co., 235 W. Galena St., Milwaukee, WI 53212.

MC 116763 (Sub-II–38TA), filed September 22, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *General commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight require the use of special equipment, automobiles, trucks and buses as described in the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, and explosives), between points in the United States (except AK and HI), for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of T. G. & Y. Stores or its customers or suppliers. Supporting shipper(s): T. G. & Y. Stores Co., P.O. Box 25967, Oklahoma City, OK 73125.

MC 9914 (Sub-II–5TA), filed September 23, 1980. Applicant: WARREN TRUCKING CO., INC., P.O. Box 5224, Martinsville, VA 24112. Representative: D. R. Beeler, Rt. 3, Carter's Creek Pike, Franklin, TN 37064. *(1) New furniture; (2) Materials, equipment and supplies used in the manufacture and distribution of new furniture and furniture parts* (1) from Smyth and Henry Counties, VA to points in SC, GA, AL, and FL; (2) from points in SC, GA, AL, and FL to Smyth and Henry Counties, VA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Hooker Furniture Company, Inc., E. Church St., Martinsville, VA 24112; American Furniture Company, Inc., Martinsville, VA 24112.

MC 70502 (Sub-II–1TA) filed September 24, 1980. Applicant: WARNER STORAGE, INC., 3208 Broadview, Cleveland, OH 44109. Representative: Richard D. Mathias, 1100 Connecticut Ave., NW., Washington, D.C. 20036. *Household goods as defined by the Commission,* (1) bewtween points. in OH, PA, MD, IN, NY, VA, IL, VT, DC, MO, NH, WV, IA, ME, NC, MN, MA, SC, WI, CT, GA, MI, NJ, RI, IN, DE, and KY, for 270 days. Supporting shippers: Hauserman, Inc., 5711 Grant Ave., Cleveland, OH. Warner & Swasey Co., 5701 Carnegie Ave., Cleveland, OH 44103. TRW, Inc., 23555 Euclid Ave., Cleveland, OH. Reliance Electric, 355 Richmond Rd., Cleveland, OH. Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH. Technicare Corp., 29100 Aurora Rd., Cleveland, OH. Harley Hotels, 2100 Terminal Tower, Cleveland, OH.

MC 147021 (Sub-II–3) filed September 18, 1980. Applicant: C. SUMMERS, INC., 112 Spruce St., Elizabethville, PA 17023. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. *Foodstuffs,* between the facilities of Kunzler & Company, Inc., Lancaster, PA, on the one hand, and, on the other, points in CT, DC, DE, MD, MA, NJ, NY, OH, VA and WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kunzler & Company, Inc., 640–622 Manor St., Lancaster, PA 17604.

MC 136511 (Sub-II–4TA) filed September 26, 1980. Applicant: VIRGINIA APPALACHIAN LUMBER CO., 9640 Timberlake Road, Lynchburg, VA 24502. Representative: J. Johnson Eller, Jr., 513 Main Street, Altavista, VA 24517. *Foodstuffs* (except in bulk), from the facilities of Schrafft Candy Company at or near West Reading, PA to points in the United States (except AK & HA) restricted to traffic originating at the named facilities for 270 days. Supporting shipper: Schrafft Candy Company, West Reading, PA 19611.

MC 108631 (Sub-II–4TA), filed September 26, 1980. Applicant: BOB YOUNG TRUCKING, INC., Schoenersville Road at Industrial Drive, Bethlehem, PA 18017. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Cement plant equipment* and *materials, supplies* and *equipment* used in the manufacture, sale and distribution of those commodities between the facilities of The Fuller Company in Allentown and Catasauqua, (Lehigh County), PA, on the one hand, and, on the other, Leamington, UT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Fuller Co., 2040 Avenue C, Bethlehem, PA 18001.

MC 135653 (Sub-II–4TA), filed September 26, 1980. Applicant: SPECIAL SERVICE TRANSPORTATION, INC., 1100 W. Smith Rd., Medina, OH 44256. Representative: Michael Spurlock, Beery & Spurlock Co., L.P.A., 275 E. State St., Columbus, OH 43215. *Foodstuffs and equipment, materials, and supplies used in the manufacture and processing thereof,* between the facilities of C. F. Mueller Co. at Jersey City, NJ, on the one hand, and, on the other, points in OH, MI, PA, and NY (except New York City and its commercial zone), for 270 days. Supporting shipper: C. F. Mueller Co., 180 Baldwin Ave., Jersey City, NJ 07306.

MC 1222 (Sub-II–1TA), filed September 26, 1980. Applicant: THE REINHARDT TRANSFER, 1410 Tenth St., Portsmouth, OH 45662. Representative: Robert H. Kinker, P.O. Box 464, Frankfurt, KY 40602. Transporting *chemicals, plastic film sheeting, expanded plastic foam, and metal products with or without plastic coating,* from Will County, IL; Mason County, MI; and Hancock, Licking and Lawrence Counties, OH to points in AL, GA, IA, IL, IN, KY, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, and WI, for 270 days. Supporting shipper: Dow Chemical U.S.A., P.O. Box 36000, Strongsville, OH 44136.

MC 117565 (Sub-II–9TA), filed October 20, 1980. Applicant: MOTOR SERVICE CO., INC., P.O. Box 448, Coshocton, OH 43812. Representative: John R. Hafner (same as applicant). *(1) Metal Articles and (2) Accessories and Supplies used in the installation, manufacture, maintenance and distribution of (1)*

[1] The purpose of this republication is to change the destination state to NY (previous publication had NJ listed twice.)

above, between Cuyahoga County, OH and points in AR, IA, LA, MN, MO, And Points East thereof and points in CA, KS, and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Metalblast, Inc., 871 E. 67th St., Cleveland, OH 44103.

MC 107012 (Sub-II–98TA), filed October 20, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Such commodities as are dealt in or used by retail drug stores* from the facilities of Superx Drugs, Inc., at or near Melbourne, FL to Herrin, IL; Peoria, IL; W. Frankfort, IL; Harlan, KY; Paducah, KY; Chilicothe, OH; Nashville, TN; and Johnson City, TN for 270 days. Supporting shipper(s): Gerald T. Eschenbach, Superx Drugs, Inc., 175 Tri-County Parkway, Cincinnati, OH 45246.

Note.—Common control may be involved.

MC 152218 (Sub-II–1TA), filed October 16, 1980. Applicant: OHIO PIGGYBACK TRANSPORTATION, INC., 2660–A Fisher Rd., Columbus, OH 43204. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract: irregular: (a)(1) Vinyl wall coverings and (2) materials, equipment and supplies used in the manufacture, distribution and installation of vinyl wall coverings (except commodities in bulk)* between Columbus, OH, and Indianapolis, IN, on the one hand, and, on the other, pts. in IL, IN, MI, OH, KY, PA and WV for the account of Columbus Coated Fabrics, Inc., Division of Borden Chemical, Borden, Inc. *(b)(1) warm air heating and cooling units and (2) equipment, materials and supplies used in the manufacture, distribution and installation of warm air heating and cooling units* between Columbus, OH, on the one hand, and, on the other, pts in IL, IN, MI, KY, PA and WV for the account of Lennox Industries, Inc. and *(c)(1) plastic housewares and (2) materials, equipment and supplies used in the manufacture and distribution of plastic housewares (except commodities in bulk)* between Columbus, OH, on the one hand, and, on the other, pts in IL, IN, MI, KY, PA and WV for the account of Lustro-Ware, Division of Borden Chemical, Borden, Inc. for 270 days. Supporting shippers: Columbus Coated Fabrics, Inc., Div. of Borden Chemical, Borden, Inc., N. Grant & 7th Ave., Columbus, OH 43201; Lennox Industries, Inc., 1711 Olentangy Rv. Rd., Columbus, OH 43216; Lustro-Ware, Div. of Borden Chemical, Borden, Inc., 1625 W. Mound St., Columbus, OH 43223.

MC 147949 (Sub-II–2TA), filed October 20, 1980. Applicant: ROEDER CARTAGE CO., INC., 175 Mumaugh Rd., Lima, OH 45804. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Contract; irregular: Pulvarized rubber and equipment, materials and supplies used in the processing and shipping of pulvarized rubber,* between Wapakoneta, OH., on the one hand, and, on the other, points in the U.S. except AK and HI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Midwest Elastomers, Inc., Wapakoneta, OH. 45895.

MC 146964 (Sub-II–8TA), filed October 16, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Michael Valencik (same as applicant). *Paper and paper products, and materials, equipment and supplies used in the manufacture of paper and paper products (Except commodities in bulk and those which because of size or weight require the use of special equipment)* between the facilities of Hammermill Paper Co. (Strathmore Paper Co. Division and Old Colony Envelope Co. Division), at or near Westfield, MA, on the one hand, and, on the other, points in FL and GA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Hammermill Paper Co., P.O. Box 1440, 1540 East Lake Rd., Erie, PA 16533.

MC 144739 (Sub-II–1TA), filed October 22, 1980. Applicant: BOB'S TRUCKING SERVICE, INC., P.O. Box 528, Middletown, OH 45042. Representative: Paul F. Berry, 275 E. State St., Columbus, OH 43215. *Lumber and lumber products,* from Hatchechubbee, AL to points in KY, IN, and OH for 270 days. Supporting shipper: Walker-Williams Lumber Co., Inc., P.O. Box 170, Hatchechubbee, AL 36858.

MC 94265 (Sub-II–24TA), filed October 22, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Foodstuffs* (except in commodities in bulk, in tank vehicles) from Fulton, DeKalb and Gwinnett Counties, GA to pts. in SC., for 270 days. Supporting shipper: Commercial Cold Storage, 4300 Pleasantdale Rd., Atlanta, GA 30340.

MC 135707 (Sub-II–1TA), filed October 22, 1980. Applicant: DIETZ TRUCKING, INC., Rich Hill Road, Cheswick, Pa. 15024. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract, irregular: Fabricated sheet metal products,* from Pittsburgh, PA to Atlantic City, NJ, under a continuing contract or contracts with McKamish Chesapeake, Inc. of Pittsburgh, PA for 270 days. An underlying ETA seeks 120 days. Supporting shipper: McKamish Chesapeake, Inc., 55th and A.V.R.R., Pittsburgh, PA 15201.

MC 146568 (Sub-II–2TA), filed October 22, 1980. Applicant: PHOENIX BIRD, INC., Suite 118, 1 Neshaminy Plaza, Street Road & Bristol Rk., Cornwells Heights, PA 19020. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. *Contract; Irregular: General Commodities (except household goods as defined by the Commission and Classes A and B explosives)* between NJ on the one hand, and, on the other, AZ, CA, CO, NM, NV, OK, and TX for 270 days under continuing contract(s) with Cosmair, Inc., Clark, NJ. Supporting shipper: Cosmair, Inc., 222 Terminal Ave., Clark, NJ 07066.

MC 146637 (Sub-II–1TA), filed October 14, 1980. Applicant: YANKEE REFRIGERATED XXPRESS, INC., 5500 Tacony St., Phila., PA 19137. Representative: Eugene D. Anderson, 910 Seventeenth St. NW., Suite 428, Washington, DC 20006. *Plastic articles, equipment and supplies used in the manufacture and distribution of plastic articles* from the facilities of Mobil Chemical Co., Plastics Division, located in Bakersfield, CA; to Canandagua, NY; Covington, GA; Jacksonville, IL; Frankfurt, IL; Lowell, MA; Macedon, NY; Stratford, CT; Washington, NJ; Temple, TX; Shawnee, OK; Woodland, CA; and 48 states, for 270 days. Supporting shipper(s): Mobil Chemical Co., Plastics Div., Macedon, NY 14502.

MC 110683. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St. NW., Washington, D.C. 20036. *Common; regular: General commodities (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment)* serving the facilities of Tennlite Inc. at or near Greenbrier, TN, as an off-route point in connection with carrier's regular routes for 270 days. Applicant intends to tack the authority sought herein with existing authority held under MC110683. Applicant intends to interline at all present interchange points. An underlying ETA seeks 120 days authority. Supporting shipper(s): Tennlite, Inc., P.O. Box 340, Greenbrier, TN 37073.

MC 116763 (Sub-II–44TA), filed October 20, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380.

Representative: Gary J. Jira (same as applicant). *Steel Wire* Between points in the United States in and east of MN, IA, MO, OK and TX. Restricted to traffic originating at or destined to the facilities of Merit Steel Co., A Division of Nachman Corporation, and/or its customers and suppliers, for 270 days. Supporting shipper(s): Nachman Corporation, 6544 Warren Drive, Norcross, GA 30071.

MC 128905 (Sub-II–5TA), filed October 20, 1980. Applicant: ZERKLE TRUCKING COMPANY, 2400 Eighth Ave., P.O. Box 5628, Huntington, WV 25703. Representative: N. W. Bowen, Jr. (same as applicant). *Contract Carrier, Irregular Route, General Commodities,* except commodities in bulk, household goods as defined by the Commission, Classes A and B explosives, and those requiring special equipment, between points and places in the US, (except AK & HI). Restricted to traffic moving under continuing contract(s) with Heck's, Inc. for 270 days. Supporting shipper: Heck's Incorporated, Hub Industrial Park, McJunkin Road, Nitro, WV 25143.

MC 150567 (Sub-II–5TA), filed October 20, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. *Contract Irregular: Those articles dealt in retail trade by department stores, drug stores, and supermarkets,* between points in the U.S. under continuing contract with A & D Transco, Seattle, WA, for 270 days. Supporting shipper: A & D Transco, 1762 6th Ave. South, Seattle, WA.

MC 72495 (Sub-II–2TA), filed October 14, 1980. Applicant: DON SWART TRUCKING, INC., Box 49, Route 2, Wellsburg, WV 26070. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Rough iron castings* from Belmont County, OH to points in KY, NY, PA and WV for 270 days. Supporting shipper: James H. Beans Foundry Company, First & Locust St., Martins Ferry, OH 43935.

MC 129086 (Sub-II–4TA), filed October 20, 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. *Charcoal and materials and supplies used in the production of charcoal,* from Reybold, DE to Parsons, WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Kingsford Company, 1700 Commonwealth Building, P.O. Box 1033, Louisville, KY 40202.

MC 1017 (Sub-II–1TA), filed October 16, 1980. Applicant: SWAN TRUCKING CORPORATION, INC., 3433 Holyoke Road, Philadelphia, PA 19114. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. *Contract Carrier, Irregular Routes, New and Used Tires, loose,* between New Brunswick, NJ and Philadelphia, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Under a continuing contract with The Pep Boys, Philadelphia, PA.

MC 116763 (Sub-II–43TA), filed October 20, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *General commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight require the use of special equipment, automobiles, trucks and buses as described in the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, and explosives), Between points in the United States (except AK and HI), Restricted to traffic originating at or destined to the facilities of Avery International Corp., its customers or suppliers, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Avery International Corp., Fasson Division, 316 Highway 74 South, Peachtree City, GA 30269.

MC 146678 (Sub-2–4TA), filed October 22, 1980. Applicant: SOUTHLAND TRANSPORTATION, INC., P.O. Box 7760, Washington, DC 20044. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *Electric motors,* from Nashville, TN, to Marlboro County, SC for 270 days. Note: Applicant intends to interline at Nashville, TN. An underlying ETA seeks 120 days authority. Supporting shipper: Humboldt Express, Inc., P.O. Box 110906, Nashville, TN 37210.

MC 110683 (Sub-II–9TA), filed October 23, 1980. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St. NW., Washington, D.C. 20036. Common regular: *General commodities (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment)* serving Amsterdam, NY, and points in its Commercial Zone as off-route points in connection with carrier's regular routes for 270 days. Applicant intends to tack the authority sought herein with existing authority held under MC110683. Applicant intends to interline at all present interchange points. An underlying ETA seeks 120 days authority. Supporting shipper(s): Leisure Time Pools, 4831 N.W. 39th Expressway, Oklahoma City, OK 73122.

MC 150567 (Sub-II–6TA), filed October 22, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William A. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. *Paper and paper articles,* between the Louisiana Parishes of Washington and West Feliciana and points in the United States (excluding AK and HI), under continuing contract with Crown Zellerbach Corporation, Bogalusa, LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Crown Zellerbach Corporation, PO Box 1060, Bogalusa, LA 70427.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 94201 (Sub-3–5 TA), filed September 17, 1980. Republication—originally published in **Federal Register** of 10–08–80, page 66900, volume 45, No. 197. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Sam Cerniglia (same as above). *Common carrier,* regular routes, *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 junceion 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 Interstate 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. Supporting Shipper: There are 46 statements of support which may be examined at the I.C.C. Regional Office, Atlanta, GA.

Note.—Applicant intends to tack with existing authority and to interline with other carriers.

MC074761 (Sub-3–1TA), filed October 20, 1980. Applicant: TRAILWAYS TAMIAMI, INC., P.O. Box 56669, 200 Spring Street, N.W., Atlanta, GA 30303. Representative: Gregory A. Presnell and Robert B. Nadeau, Jr., 17th Floor, CNA Bldg., P.O. Box 231, Orlando, FL 32802. *Common carrier,* regular routes, *passengers and their baggage, and express and newspapers in he same vehicle with passengers* (a) Between Jacksonville, FL and Tallahassee, FL: from Jacksonville over Interstate Hwy 10 to junction U.S. Hwy 90 (approximately 8 miles east of Tallahassee), then over U.S. Hwy 90 to Tallahassee, and return over the same route, serving the intermediate points of Lake City and Live Oak via the following access roads: U.S. Hwy 441 and 41, Interstate Hwy 75 and U.S. Hwy 129: (b) Between Jacksonville, FL and Gainesville, FL: from Jacksonville over U.S. Hwy 301 to Waldo, then over FL Hwy 24 to Gainesville, and return over the same route, serving all intermediate points; (c) Between Tampa, FL and Clearwater, FL: from Tampa over FL Hwy 60 to Clearwater, and return over the same route, serving no intermediate points; (d) Between Daytona Beach, FL and Fort Lauderdale, FL: from Daytona Beach over U.S. Hwy 92 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Florida's Turnpike, then over Florida's Turnpike to junction FL Hwy 74 (Palm Beach Gardens Interchange 44), then over FL Hwy 74 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Fort Lauderdale, and return over the same route, serving all intermediate points; (e) Between Titusville, FL and junction FL Hwy 50 to junction Interstate 95: from Titusville over FL Hwy 50 to junction Interstate Hwy 95, and return over the same route, serving all intermediate points; (f) Between Cocoa, FL and junction FL Hwy 520 and Interstate Hwy 95: from Cocoa over FL Hwy 520 to junction Interstate Hwy 95, and return over the same route, serving all intermediate points; (g) Between Melbourne, FL and junction U.S. Hwy 192 and Interstate Hwy 95: from Melbourne over U.S. Hwy 192 to junction Interstate Hwy 95, and return over the same route, serving all intermediate points; (h) Between Fort Pierce, FL and junction FL Hwy 68 and Interstate Hwy 95: from Fort Pierce over FL Hwy 68 to junction Interstate Hwy 95, and return over the same route, serving all intermediate points; also between Fort Pierce and junction FL Hwy 70, Florida's Turnpike, and Interstate Hwy 95: from Fort Pierce over FL Hwy 70 to junction Florida's Turnpike and Interstate Hwy 95, and return over the same route, serving all intermediate points; (i) Between Fort Pierce, FL and Orlando FL: from Fort Pierce over FL Hwy 70 to junction Florida's Turnpike, then over Florida's Turnpike to junction U.S. Hwy 441, then over U.S. Hwy 441 to Orlando, and return over the same route, serving junctions FL Hwy 70, Florida's Turnpike and Interstate Hwy 95, Florida's Turnpike and FL Hwy 60, Florida's Turnpike and combined U.S. Hwys 192 and 441 for purposes of joinder only; also between Yeehaw Junction, FL and junction FL Hwy 60 and Florida's Turnpike: from Yeehaw Junction over FL Hwy 60 to junction Florida's Turnpike, and return over the same route, serving the termini for purposes of joinder only; (j) Between Titusville, FL and Melbourne, FL: from Titusville over U.S. Hwy 1 to Melbourne, and return over the same route, serving all intermediate points. Note: Common Control may be involved. Supporting shippers: There are 38 statements of support which may be examined at the ICC Regional Office, Atlanta, Georgia. Applicant intends to tack with existing authority and interline at Jacksonville and West Palm Beach, FL.

MC 151619 (Sub-3–1TA), filed October 15, 1980. Applicant: WESTERN CAROLINA EXPRESS, INC., P.O. Box 3523, 300 16th St. Place SE, Hickory, NC 28601. Representative: John H. Sigmon III (same address as applicant). *New Furniture,* between points and places in NC. Applicant intends to interline with other carriers or consolidators at, Hickory, Lenoir, Hudson, Greensboro, High Point, Charlotte, Asheville, Conover and Connelly Springs, NC. There are fourteen supporting shippers and their statements may be examined at the Regional Office.

MC 152265 (Sub-3–1TA), filed October 16, 1980. Applicant: STEVE BROWN PRODUCE CO., INC., Route 1, Box 112, Taylorsville, NC 28618. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *Plastic products,* from Caldwell County, NC, to all points in the United States in and east of the States of TX, NM, CO, WY and MT. Supporting shipper: International Paper Company, International Boulevard, Hudson, NC 28638.

MC 136898 (Sub-3–2TA), filed October 16, 1980. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35640. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *Contract carrier;* irregular routes; *Lumber,* between Hartselle, AL, on the one hand, and, on the other, points in the United States (except AK and HI) under continuing contract(s) executed and in force with Baker Industries, Inc. Supporting shipper: Baker Industries, Inc., P.O. Box 668, Hartselle, AL 35640.

MC 146293 (Sub-3–26TA), filed October 16, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *New furniture, in cartons,* from facilities of Silver Manufacturing, Inc., Knoxville, TN to El Paso, TX and points in AZ and CA. Supporting shipper: Silver Manufacturing, Inc., P.O. Box 2748, Knoxville, TN 37901.

MC 112520 (Sub-3–10TA), filed October 16, 1980. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Pulp Mill Liquids, in bulk, in tank vehicles,* from Ashdown, AR to Springhill, LA. Supporting shipper: Arizona Chemical Company, 859 Berdan Avenue, Wayne, NJ 07470.

MC 147665 (Sub-3–2TA), filed October 16, 1980. Applicant: BASSETT FURNITURE INDUSTRIES OF NORTH CAROLINA, INC., d.b.a. BASSETT TRUCKING COMPANY, Post Office Box 47, Newton, North Carolina 28658. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, North Carolina 28204. *Packaging products and materials, supplies and equipment used in the manufacture of packaging products,* between points in PA, MS, IL, NC, IN, FL, MD, KY and GA, on the one hand, and points in PA, NC, GA, SC, TN, IN, AR, FL, MD, KY and VA, on the other, under contract with Jiffy Packaging Corporation, 1015 Second Street, NE, Hickory, NC 28601. Supporting shipper: Jiffy Packaging Corporation, 1015 Second Street, NE, Hickory, NC 28601.

MC 143956 (Sub-3–14TA), filed October 15, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative:

Steven W. Gardner, 3574 Piedmont Road, Atlanta, Georgia 30305. *Bagged soybean meal in containers* from Valdosta, GA to Jacksonville, FL. Supporting shipper: Gold Kist, Inc., 244 Perimeter Pkwy., Atlanta, GA 30346.

MC 145205 (Sub-3–1TA), filed October 15, 1980. Applicant: RECO TRANSPORTATION, INC., P.O. Box 9926, Asheville, NC 28805. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Contract carrier;* Irregular: *Comforters, sleeping bags, and quilted garments,* from points in Jackson and Swain Counties, NC to points AZ, CA, NV, NM, OK, and TX. Supporting shipper: Heritage Quilts, Inc., P.O. Box 913, Bryson City, NC 28713.

MC 107478 (Sub-3–9TA), filed October 15, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., Post Office Box 2006, High Point, NC 27261. Representative: C. T. Harris, 506 Mayo Street, Post Office Box 999, Wilson, NC 27893. (1) *Fabricated metal products (except ordnance) and (2) materials, equipment and supplies used in the manufacture, distribution and sale thereof* (1) between points in Beaufort, Pitt, and Sampson Counties, NC and Guernsey County, OH and (2) between points in (1) above, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Hamilton Beach Division Scovill, Inc., Post Office Box 1158, Washington, NC 27889.

MC 106074 (Sub-3–14TA), filed October 18, 1980. Applicant: B and P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221, S, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *(1) Liquid Resin Solution (except in bulk),* from Mayes County, OK to pts. in AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MO, MS, NV, NM, NC, SC, TN, TX, VA, and WV; and, *(2) Material used in the manufacture of Liquid Resin Solutions,* from pts. in AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MO, MS, NV, NM, NC, SC, TN, TX, VA, and WV to Mayes County OK. Supporting shipper: Interplastic Corporation, Commerical Resins Division, 845 Adams Bldg., Bartlesville, OK 74004.

MC 2934 (Sub-3–21TA), filed October 16, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *New office furniture, fixtures and parts for manufacturing thereof,* from Muscative, IA and Cedartown GA, to points and places in the states of: AL, AR, CT, DE, DC, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: The Hon Company, P.O. Box 820, Muscative, IA 52761.

MC 85970 (Sub-3–14TA), filed October 16, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Larry Kilzer (same as above). *Cloth, rags, pads, plastic articles, foil-lined pulpboard items, cleaning compounds, glassware, and janitor supplies* between Memphis, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Southern Wiping Cloth Co., 1655 Harbor Avenue, Memphis, TN 38101.

MC 124964 (Sub-3–2TA), filed October 15, 1980. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 265, Tavares, FL 32778. Representative: Lester R. Gutman, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Contract; irregular; Cleaning and scouring compounds and materials, equipment, and supplies used in the manufacture, sale and distribution thereof (except in bulk),* between Mauldin, SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KS, LA, MD, MI, MO, NJ, NY, OH, PA, TN, TX, and WI. Supporting shipper: Texize, Division of Morton Norwich, P.O. Box 368, Greenville, SC 29602.

MC 151352 (Sub-3–4TA), filed October 15, 1980. Applicant: E.L.M. TRUCKING, INC., P.O. Box 4048, Opelika, AL 36801. Representative: Terry P. Wilson, 428 South Lawrence Street, Montgomery, AL 36104. *Charcoal and gas grills and accessories,* from the facilities utilized by W. C. Bradley Enterprises, Inc. in Columbus, GA, to the facilities utilized by W. C. Bradley Enterprises, Inc. in Los Angeles, CA, and Dallas, TX. Supporting shipper: W. C. Bradley Enterprises, Inc., P.O. Box 1240, Columbus, Ga 31993.

MC 102806 (Sub-3–1TA), filed October 15, 1980. Applicant: PETROLEUM TRANSPORTATION, INCORPORATED, 701 East Davis St., Gastonia, NC 28052. Representative: Danny K. Summitt (same address as applicant). *Petroleum and Petroleum Products, in bulk, in tank vehicles,* from Thrift, NC and SC. Supporting shipper: Metro Transport Co., Inc., 3727 Weona Ave., Charlotte, NC 28209.

MC 115093 (Sub-3–5TA), filed October 15, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave. (P.O. Box 23406), Tampa, FL 33607 33623. Representative: Joseph W. Watson (same as above). *Foodstuffs (except in bulk), and materials, equipment, and supplies used in the manufacture and distribution of foodstuffs,* between Shelby County, TN, on the one hand, and, on the other, points in and East of OH, KY, TN and AL. Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 115311 (Sub-3–11TA), filed October 10, 1980. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. *Non-exempt food or kindred products* between points in Mecklenburg County, NC on the one hand, and, on the other, points in the United States. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 138157 (Sub-3–32TA), filed October 19, 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. *Business forms, printed matter, office supplies, paper and paper products, and materials, equipment, and supplies used in the manufacture, production, and distribution of the above-named commodities* between Carson, Fullerton, San Diego, Santa Ana, San Jose, Santee, and Los Angeles, CA; Benton, LA; Brookfield, WI; Chicago, IL; Dallas, Houston, and San Antonio, TX; Eden, NC; Randolph Township, NJ; Salt Lake City, UT; Tulsa, OK; and Sewanee, GA. Restricted against the transportation of commodities in bulk and further restricted to traffic originating at or destined to the facilities of Vanier Graphics Corporation. Supporting shipper: Vanier Graphics Corporation, 1851 Deere Avenue, Box 2155, Santa Ana, CA 92705.

MC 85970 (Sub-3–15TA), filed October 16, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Larry Kilzer (same as applicant). *Rock salt in packages* from Fairport Harbor, OH to all points in TN. Supporting shipper: Morton Salt Division of Morton Norwich Products, Inc., 110 North Wacker Drive, Chicago, IL 60606.

MC 149218 (Sub-3–13TA), filed October 18, 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) *Paper and paper products, and (2) materials and supplies used in the manufacture and distribution of paper and paper products.* (1) From LaGrange, GA to points in AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OH, SC, TN, VA, WV, and (2) from points in the destination states named in (1) above to LaGrange, GA.

Supporting shipper: SPC Company, a corporation, 1707 Shorewood Drive, LaGrange, GA 30240.

MC 121339 (Sub-3–1TA), filed October 20, 1980. Applicant: McCOMBS FREIGHT LINE, INC., 1201 North 20th Avenue, Birmingham, AL 35204. Representative: Tommy D. McCombs (same address as above). *Common carrier:* Regular: *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 Birmingham, AL and Thorsby, AL over U.S. Hwy 31 and/or Federal Hwy. I–65 serving all intermediate points and return over the same route. Applicant intends to interline all freight handled on this authority at Birmingham, AL. We must have Interstate authority to handle the freight brought in by other carriers from out of state because they do not deliver or pick up in this area. Instead, they interline it with us for final delivery. There are 7 statements in support of this application which may be examined at the Interstate Commerce Commission Regional Office at Atlanta, GA.

MC 11220 (Sub-3–11TA), filed October 20, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *Common carrier,* regular route, *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Chicago, IL, and Milwaukee, WI, over U.S. Hwy 41, serving all intermediate points, and serving as off-route points, points in Cook, Lake and McHenry Counties, IL, and Kenosha, Racine, Milwaukee, Washington, and Ozaukee Counties, WI. Applicant intends to tack with its existing authority, to serve commercial zones of all points, and to interline with carriers at Milwaukee, WI, Chicago, IL; Memphis and Chattanooga, TN; Atlanta, GA; Birmingham and Mobile, AL; Jackson, MS; Dallas and Houston, TX; Fort Smith and Little Rock, AR; New Orleans, LA; and St. Louis, MO, there are 76 supporting appendix which may be reviewed at the Atlanta, GA Regional Office.

MC 11220 (Sub-3–10TA), filed September 23, 1980. Republication—originally published in **Federal Register** of 10–08–80, page 66897, volume 45, No. 197. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *Common carrier,* regular routes; *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving 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.

Note.—Applicant intends to interline with other carriers at Memphis, Atlanta, Birmingham and Dallas.

MC 2934 (Sub-3–20TA), filed October 16, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Modular office systems for institutional, educational and office use,* from Atlanta, GA; Grand Rapids, MI; Grandville, MI; Holland, MI; Zeeland, MI; and Dallas, TX, to points and places in the states of: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV and WI. Supporting shipper: Herman Miller, Inc., 8500 Byron Road, Zeeland, MI 49464.

MC 2934 (Sub-3–19TA), filed October 14, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). *Institutional and hotel furniture,* from Sheboygan, WI, to: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA and WV. Supporting shipper: Ebenreiter Woodworking Co., 1221 Erie Avenue, Sheboygan, WI 53081.

MC 146226 (Sub-3–1TA), filed October 17, 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. *Fiberglass, fiberglass materials, and fiberglass products,* from Shelby and Lexington, NC to points in AL, AR, MS, and TN under contract with PPG Industries, Inc. Supporting shipper: PPG Industries, Inc., One Gateway Center, Pittsburg, PA 15222.

MC 152266 (Sub-3–1TA), filed October 16, 1980. Applicant: ABC EXPRESS, INC., 300 Sunrise Circle, Mt. Juliet, TN 37122. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *General commodities except Class A and B explosives and household goods as defined by the Commission,* between points in Wilson County, TN, on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting shipper: Lebanon Distributing Co., Rt 2, Box 1, Lebanon, TN 37087; Precision Rubber Products Corp., Hartman Dr., Lebanon, TN 37087; Fortune Plastics of Tenn., Inc., Hartman Dr., Lebanon, TN 37087 and Toshiba America, Inc., Toshiba Dr., Lebanon, TN 37087.

Note.—Applicant intends to interline with carriers at Lebanon, TN.

MC 139958 (Sub-3–10TA), filed October 16, 1980. Applicant: R. T. TRUCK SERVICE, INC., 2334 Millers Lane, Louisville, KY 40216. Representative: Rudy Yessin, 113 W. Main Street, Frankfort, KY 40601. *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 all points and places in the states of TX, OK, LA, AR, MS, AL, FL, GA, SC, NC, TN, KY, VA, WV, WI, IL, MO, IA, MN, DC, MD, DE, NJ, CT, RI, MA, NY, PA, OH, IN, and MI. Supporting shipper: There are eleven shippers. Their statements may be examined at the Atlanta Regional Office.

MC 128720 (Sub-3–12 TA), filed October 14, 1980. Applicant: MERCHANTS FREIGHT LINE, INC., 1185 Omohundro Dr., Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *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 Louisville, KY, and Nashville, TN, and points in their commercial zones, on the one hand, and, on the other, points in Warren, Barren, Edmonson, and Hart Counties, KY, (except Bowling Green and Glasgow, KY) and between Louisville, KY and its commercial zone, and Simpson County, KY. *Note:* Applicant intends to tack with MC–128720 at Nashville, TN and to interline at Louisville, KY, Nashville, Chattanooga, Knoxville, Memphis, and Cookeville, TN. Supporting shippers: There are 20 shippers. Their statements may be examined at the Atlanta Regional Office.

MC 119777 (Sub-3–20 TA), filed October 20, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway

85 East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *Construction and renovation equipment, materials and supplies (except in bulk),* between points in the United States (except AK and HI), restricted to shipments originating at or destined to facilities of Foster Wheeler Energy Corporation or its suppliers or customers. Supporting shipper: Foster Wheeler Energy Corporation, P.O. Box 22395, Houston, Texas 77027.

MC 151405 (Sub-3–1 TA), filed October 17, 1980. Applicant: CRUM AG HAULERS, INC., 2130 SE 5th Street, Tallahassee, FL 32670. Representative: Felix A. Johnston, Jr., 1030 E. Lafayette Street, Suite 112, Tallahassee, FL 32301. *Contract;* irregular; *citrus pulp and pellets,* between points in the state of FL, restricted to shipments having a prior or subsequent movement by water. Supporting shipper: Cargill, Inc., Box 9300, Transportation 17, Minneapolis, MN 55440.

MC 144503 (Sub-3–6 TA), filed October 17, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. *Bakery goods, NOI, other than frozen,* from the plantsite of Benson's Old Home Kitchens, Bogart, GA to points in the United States, except AK and HI, (2) *Material, equipment and supplies used in the manufacture of bakery goods,* from points in the United States, except AK and HI, to the plantsite of Benson's Old Home Kitchens, Bogart, GA. Supporting shipper: Benson's Old Home Kitchens, Elder St., Bogart, GA 30622.

MC 150747 (Sub-3–2TA), filed October 14, 1980. Applicant: L AND O TRUCKING COMPANY, INC., 2179 Freemont, Memphis, TN 38114. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. (1) *Reinforced concrete pipe and related accessories,* from the facilities of Allied Products Company at West Memphis, AR, to points in TN on and west of the TN River; (2) *Iron and steel and iron and steel articles and aluminum* from Memphis, TN, and its commercial zone to points in AR, MS, and points in TN on and west of the TN River. There are six supporting shippers.

MC 115654 (Sub-3–28TA), filed October 19, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, Tennessee 37202. Representative: Jackie L. Hastings (same address as applicant). *Foodstuffs, chemicals, equipment, materials and supplies that might be used in a retail, wholesale or institutional organization,* from Jackson, MS to Atlanta, GA and it's commercial zone and Nashville, TN and it's commercial zone. Supporting shipper: Morco Food Distributors of MS, P.O. Box 10627, 4240 Industrial Dr., Jackson, MS 39209.

MC 138635 (Sub-3–12TA), filed October 15, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same as above). *Foodstuffs, meats, meat products, meat by products, 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; or such commodities as are dealt in by grocery and food business houses* between points in the U.S. Supporting shipper: Butcher Boy Foods, Inc., 12155 Magnolia, Riverside, CA 92517.

MC 143059 (Sub-3–20TA), filed October 16, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Kenneth W. Kilgore (same as applicant). *General commodities (except households goods as defined by the Commission and Classes A and B explosives),* between Somerset County, NJ; New Haven County, CT; and Cook County, IL, on the one hand, and, on the other, points in the United States (except AK and HI). The supporting shipper is Asarco, Inc.

MC 150643 (Sub-3–1TA), filed September 4, 1980. Republication—originally published in **Federal Register** of 09–22–80, page 62920, volume 45, No. 185. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. *Iron and steel and iron and steel articles,* between Moundridge (McPherson County), KS, on the one hand, and, on the other, all points in the U.S. Supporting shipper: The Bradbury Company, Inc., P.O. Box 667, Moundridge, KS 67107.

MC 126195 (Sub-3–1TA), filed September 15, 1980. Republication—originally published in **Federal Register** of 10–01–80, page 65062, volume 45, No. 192. Applicant: COLEY MOVING & STORAGE, INC., Industry Dr., P.O. Box 941, Burlington, NC 27215. Representative: Carl B. Coley (same as above). *Contract carrier,* irregular routes; *Toliet prep-compounds, waxes, polishes, brushes, and preminums of general merchandise such as irons, blankets, similar gifts,* from Burlington, NC to points in NC and counties of Chesterfield, Marlboro, Marion, Dillon and Horry, SC, under a continuing contract with Stanley Home Products Company, Westfield, MA. Supporting shipper: Stanley Home Products, Inc., Richmond, VA 23228.

MC 115654 (Sub-3–27TA), filed October 6, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same address as applicant). *Steamship containers,* from the facilities of Lykes Bros. Steamship Co., Inc. at New Orleans, LA and its commercial zone, to points in AL, GA, IN, IL, KY, MI, MO, MS, OH, TN, and Kansas City, KS. Supporting shipper: Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130.

MC 151036 (Sub-3–2TA), filed October 18, 1980. Applicant: DECATUR TRANSIT, INC., 161 First Avenue, NE., Decatur, AL 35601. Representative: Eric G. Hancock (same as above). *Asphalt and paving materials, in bulk, in tank vehicles* from Tuscaloosa and Cordova, AL to points in the counties of Bedford, Cannon, Giles, Grundy, Hamilton, Lawrence, Lewis, Lincoln, Marshall, Maury, Rutherford, and Warren, TN. Supporting shipper: Tillet Bros. Contractors, P.O. Box 1095, Murfreesboro, TN 37130.

MC 121470 (Sub-3–3TA), filed October 20, 1980. Applicant: TANKSLEY TRANSFER CO., 801 Cowan Street, Nashville, TN 37207. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. *Pressure treated lumber and lumber mill products,* from the facilities of Walker Williams Lumber Company, Inc. at or near Hatchechubbee, AL, to points in TN and KY. Supporting shipper: Walker Williams Lumber Company, Inc., P.O. Box 170, Hatchechubbee, AL 368548.

MC 109708 (Sub-3–12TA), filed October 20, 1980. Applicant: INDIAN RIVER TRANSPORT COMPANY, INC., P.O. Box AG, Dundee, Fla. 33838. Representative: John J. Harned (same as above). *Corn Syrups and Liquid Sweeteners, in Bulk Tank Vehicles,* From Indianapolis, IN, to Jacksonville, Fl. Supporting shipper: Seven-Up of Indiana 5430 W. 81st. Street, Indianapolis, IN 46268.

MC 143276 (Sub-3–4TA), filed October 16, 1980. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, Georgia 30080. Representative: Jack Weaver, President (same address as applicant). *Pulpboard Waterproof in rolls: foil core insulation on pallets* between Bibb County, Floyd County and, Whitfield County, GA, on the one hand, and on the other, points in AL, AR, FL, IN, KS, LA, MI, MS, NB, NC,

OK, TN and TX. Supporting shipper: Shepherd Products Company, Inc., P.O. Box 10067, Macon, GA 31201.

MC 146293 (Sub-3–27TA), filed October 15, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Such commodities as are dealt in by manufacturers and distributors of electronic equipment,* from Seattle, WA and points in its commercial zone to points in the US on and east of US Hwy 85 and CA. Supporting shipper: Gold Star Electronics International, Inc., 330 Madison Ave., New York, NY 10017.

MC 69492 (Sub-3–3TA), filed October 15, 1980. Applicant: HENRY EDWARDS TRUCKING CO., INC., P.O. Box 97, Clinton, KY 42031. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Malt beverages and brewery supplies* between Ft. Worth, TX (and its commercial zone) and Phillips County, AR. Supporting shipper: Centenio Distributing Co., Inc., 211 Missouri Street, Helena, AR 72342.

MC 141849 (Sub-3–1TA), filed October 15, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract carrier:* irregular: *General commodities (except commodities in bulk, commodities which, because of size or weight, require the use of special equipment, Class A and B explosives and used household goods),* between points in the US (except AK & HI), under a continuing contract or contracts with United Freight, Inc., a licensed property broker pursuant to MC–103667F. Supporting shipper: United Freight, Inc., 1260 Southern Rd., Morrow, GA 30260.

MC 152268 (Sub-3–1TA), filed October 17, 1980. Applicant: KEN WILKINSON, d.b.a. WILKINSON FREIGHT LINES, 15 S. Main St., Belmont, NC 28012. Representative: Ken Wilkinson (same as above). *Textile products,* between all points on and west of I–77 in NC on the one hand, and, on the other, Florence, Jefferson and Clover, SC. Supporting shippers: There are five appendix of support which may be reviewed at the Atlanta, GA Regional Office.

MC 121654 (Sub-3–16TA), filed October 20, 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. *Non-Frozen Foodstuffs* from facilities of Campbell Soup Company at or near Maxton, NC to points in SC, VA, GA, AL, FL, and TN. Supporting shipper: Campbell Soup Company, Route 2, Box 98, Maxton, NC 28364.

MC 2934 (Sub-3–18TA), filed October 20, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Furniture,* from Jackson, MS to: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: DeSoto, Inc., 1700 South Mt. Prospect Road, Des Plaines, IL 60018.

MC 146927 (Sub-3–4TA), filed October 20, 1980. Applicant: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS 39401. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or used by a distributor of paper and paper products,* between Mobile County, AL, on the one hand, and, on the other, points in NC, SC, GA, FL, TN, MO, KY, AR, TX and CA. Supporting shipper: Scott Paper Company, Scott Plaza 2, Philadelphia, PA 19113.

MC 144977 (Sub-3–1TA), filed October 19, 1980. Applicant: BOBBY MCDANIEL, d.b.a. SERVICE TRUCKING COMPANY, 2050 Beaver Road, Rossville, GA 30741. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. *Chemicals, fabrics and products, materials and supplies manufactured and/or utilized by Olin Chemicals (except in bulk)* between Charleston and Chattanooga, TN on the one hand, and, on the other, the states of FL and GA. Supporting shipper: Olin Corporation, 120 Long Ridge Road, Stamford, CT 06904.

MC 152193 (Sub-3–1TA), filed October 20, 1980. Applicant: REYNOLDS TRUCK LINES, INC., 215 Cherry Street, Madison, Tennessee 37115. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, Tennessee 37219. *Grating, decking, stairtreads, materials, supplies and equipment used in manufacturing and distribution of grating, decking, and stairtreads* between Nashville, TN and its commercial zone, on the one hand, and, points in and east of MN, IA, KA, OK and TX, on the other, under a continuing contract(s) with IKG Industries, Inc. Supporting shipper: IKG Industries, Nashville, TN 37202.

MC 148490 (Sub-3–7TA), filed October 20, 1980. Applicant: C. & N. EVANS TRUCKING COMPANY, INC., RFD 2, Box 39E, Stoneville, NC 27048. Representative: F. Kent Burns, Attorney at Law, P.O. Box 1406, Raleigh, NC 27602. *Containers, container ends, materials and supplies used in the manufacture and distribution and sales of above products and such other items as dealt in by National Can Corporation* between points in AL, FL, GA, MD, MS, NC, SC, TN, VA, and W. VA. Supporting shipper: National Can Corporation, Route 287 & South Randolphville Rd., Piscataway, NJ 08854.

MC 148825 (Sub-3–1TA), filed October 20, 1980. Applicant: CHRISTY TRUCKING COMPANY, INC., Rt 3, Box 241–A, Mocksville, N.C. 27028. Representative: Steven M. Beaver (same address as applicant). *Synthetic Fiber Yarn, NOI* from Yadkinville and Burlington, N.C. to Los Angeles, Compton, Vernon and Gardena, CA. Supporting shipper: Unifi, Inc., P.O. Box 698, Yadkinville, N.C. 27055.

MC 72442 (Sub-3–1TA), filed October 20, 1980. Applicant: AKERS MOTOR LINES, INCORPORATED, P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *General commodities, except those of unusual value, Class A and B explosives, commodities in bulk, commodities requiring special equipment, and household goods as defined by the Commission:* 1) Between points in GA, SC and NC; 2) Between GA, SC and NC on the one hand, and, on the other, Washington, DC, MD, VA, PA, NJ, CT, MA, DE, NY and RI; 3) Between New York, NY, and its commercial zone, Bergen and Essex counties, NJ, on the one hand, and, on the other, Albany, Schenectady, Montgomery, Rensselaer, Columbia, Dutchess, Putnam, Westchester and Rockland Counties, NY. Supporting shipper(s): There are no supporting shippers to this application as it is a conversion from regular route to irregular route authority in accordance with ICC Decision in MC–C–10094 and MC–C–10167, served September 17, 1980, with alternative mandate to initiate appropriate proceedings to convert regular route certificates to irregular route certificates. Applicant intends to interline with other carriers.

MC 139975 (Sub-3–2TA), filed October 20, 1980. Applicant: FLAMINGO TRANSPORTATION, INC., 11405 N.W. 36th Ave., Miami, FL 33167. Representative: S.S. Eisen, 370 Lexington Ave., New York, NY 10017. *General commodities (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and mobile homes), which are moving*

on bills of lading of freight forwarders as defined in 49 USC 10102(a) of the Interstate Commerce Act, Restricted to the transportation of traffic moving to or from the facilities of Florida-Texas Freight, Inc., located in the States of CT, MD, MA, NJ, NY, PA and RI, on the one hand, and, on the other, FL. Supporting shipper: Florida-Texas Freight, Inc., 11405 N.W. 36th Ave., Miami, FL 33167.

MC 143059 (Sub-3–21TA), filed October 20, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Bldg., Fort Worth, TX 76102. *Forest Products, Lumber and Lumber Products,* between points in and east of ND, SD, NE, KS, OK and TX. Supporting shippers: There are 13 statements of support which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 11220 (Sub-3–12TA), filed October 15, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *Common carrier,* regular route, *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving the facilities of Wal-Mart Stores, Inc., at or near Palestine, TX, as an off-route point in connection with carrier's authorized regular route operations from and to Dallas, TX. Applicant intends to tack with its existing authority and to interline with other carriers at authorized interline points as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper: Wal-Mart Stores, Inc., Bentonville, AR.

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 149170 (Sub-4–20TA), filed October 10, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Polyfilm, polyethylene film and bags, and plastic granules, and related items (except commodities in bulk),* between Minneapolis, MN, and Denver, CO, on the one hand, and, on the other, points in the U.S. Supporting shipper: Poly-Tech Company, 1401 W. 94th Street, Minneapolis, MN 55440.

MC 142830 (Sub-4–3TA), filed October 10, 1980. Applicant: TRANSHIELD TRUCKING, INC., 1000 North Harvester Road, West Chicago, IL 60185. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. Contract; irregular. (1) *Steel and fiber cable, wire, rope, cordage and accessories,* and (2) *materials, equipment and supplies,* used in the manufacture, sale and distribution of commodities in (1) above (except commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bridon American Corporation of Wilkes-Barre, PA, for 270 days. Supporting shipper: Bridon American Corporation, Hanover Industrial Estate, South Main Road, Wilkes-Barre, PA 18702.

MC 108382 (Sub-4–3TA), filed October 10, 1980. Applicant: SHORT FREIGHT LINES, INC., 459 South River Road, Bay City, MI 48706. Representative: Richard L. Poirier (same address as applicant). *Automobile parts,* between Lewiston, MI and Cook County, IL. Supporting shipper: Lewiston Lustre, Inc., 516 N. Airport Road, Lewiston, MI 49766.

MC 114632 (Sub-4–17TA) filed October 10, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). *Paint, lacquer, enamel, epoxies, resins, pigments, adhesives, rubber cement, and thinning and removing compounds; and materials, equipment, and supplies used in the manufacture of such commodities,* between Shelby County, TN and Orange County, CA on the one hand, and, on the other, points in the United States. Supporting shipper: Pratt & Lambert Company, Inc., Box 22, Buffalo, NY 14240.

MC 128837 (Sub-4–20TA) filed, October 9, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. (a) *Flex-el pads,* from Memphis, TN to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI; (b) *Syfi pads,* from Nashville, TN to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI; (c) *Duon,* from Seneca and Utica, SC to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI. Supporting shipper: Simmons U.S.A., P.O. Box 105032, Atlanta, GA 30348.

MC 311 (Sub-4TA) filed, October 9, 1980. Applicant: BURREN TRANSFER COMPANY, Second & Berkley Streets, Elgin, IL 60120. Representative: Eugene L. Cohn, One North LaSalle St., Chicago, IL 60602. *Foodstuffs, Meats, Meat Products and Meat By-Products and articles distributed by meat packinghouses* between points in Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Lake, Carrol, Ogle, De Kalb, Kane, Du Page, Cook, Whiteside, Lee, Kendall, Will, Rock Island, Henry, Bureau, La Salle, Grundy, Putnam, Stark, Marshall, Livingston, Kankakee, and Iroquois Counties, IL; Lake and Porter Counties, IN; and Rock, Kenosha, Walworth and Racine Counties, WI. An underlying ETA seeks 120 days authority. Supporting shippers: Swift Independent Packing Company, Division of Swift & Company, 115 West Jackson Blvd., Chicago, IL 60604.

MC 142779 (Sub-4TA) filed, October 9, 1980. Applicant: WEIER AIR FREIGHT, INC., 4928 S. Second St., Milwaukee, WI 53207. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WIO 53703. *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A & B explosives, commodities in bulk, and those requiring special equipment) between points in Brown, Calumet, Dodge, Fond du Lac, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha, and Winnebago Counties, WI, on the one hand, and, on the other, Milwaukee, WI and Chicago, IL and its commercial zone. An underlying ETA seeks 120 days authority. Restriction: Restricted to the transportation of traffic having a prior or subsequent movement by water. Supporting shippers: Schenkers International Forwarders, Inc., 4950 South 2nd St., Milwaukee, WI 53207; Arthur J. Fritz and Company, 2301 Mount Prospect Road, Des Plaines, IL 60018; Micro Design, Division of Bell & Howell, 857 W. State St., Hartford, WI 53027; and Mariner International Company, Division of Brunswick, 1939 Pioneer Road, Fond du Lac, WI 54935.

MC 147488 (Sub-4–4TA), filed October 9, 1980. Applicant: BURT CLIFFORD TRANSPORT, INC., Box 400, Ruthven, Ontario, Canada NOP 2GO. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Glassware, glass table products, molds, empty cartons* and *pallets,* between ports of entry on the U.S.-Canada International Boundary Line in MI and NY, on the one hand, and, on the other, points in PA, WV, NY, MD, NJ, MI and OH, restricted to

shipments moving to or from facilities of Libbey-St. Clair, Inc., 1250 James Street, Wallaceburg, Ont., Canada N8A 4L8.

MC 76266 (Sub-4–12TA), filed October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Furnaces, house heating, hot air* from the facilities of Applies Air Systems, Inc. at St. Paul, MN to all points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Applied Air Systems, Inc., 2475 Doswell Avenue, St. Paul, MN 55108.

MC 150786 (Sub-4–2TA), filed October 9, 1980. Applicant: BOBBY BARNES AND CHARLES FITZPATRICK, d.b.a. B & F TRUCKING CO. (a partnership), 3240 Sangamon St., Steger, IL 60415. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. I. *Pasta products, spaghetti, noodles and macaroni,* between IL, KS, and NJ; II *Manufactured fertilizers,* in 50 pound packages, between CA, GA, IN, IL, LA, MI, MO, NJ, OH, TX, AR, MS, WI, and NC. Restricted to transportation under continuing contracts with D'Amico Foods Co. and Wm. C. Lyons Associated, Ltd. Supporting shippers: D'Amico Foods Company, 3601 Chicago Road, Steger, IL 60475; Wm. C. Lyons Associated, Ltd., 21141 Governors Hwy., Matteson, IL 60443.

MC 95876 (Sub-4–5), filed October 7, 1980. Applicant: ANDERSON TRUCKING SERVICE, 203 Cooper Avenue N., St. Cloud, MN 56301. Representative: William L. Libby (address same as applicant). (1) *Aluminum ingots and billets* from Ferndale, WA to Rockwall, TX (2) *Aluminum scrap* (a) from Alexandria, MN, Oklahoma City, OK, Bryan, TX and Sanford, FL. to Rockwall, TX and Magnolia, AR, and (b) from Sanford, FL to Frederick, MD and (3) *Aluminum and aluminum products* from Rockwall, TX to Lancaster, PA. Supporting shipper: Howmet Aluminum Corp., 475 Steamboat Road, Greenwich, CT 06830.

MC 115876 (Sub-4–1TA), filed October 8, 1980. Applicant: ERWIN HURNER, 413 Valley Avenue, Moorhead, MN 56560. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. *Contract* Irregular: *Potato flakes,* from the facilities of The Pillsbury Company at or near Grand Forks, ND, to Golden Valley, MN. Restricted to traffic moving under continuing contract(s) with The Pillsbury Company. An underlying ETA seeks 120 days authority. Supporting shipper: The Pillsbury Company, Consumer Products Division, 1100 North 4th Street, LeSueur, MN 565058.

MC 152005 (Sub-4–2TA), filed October 8, 1980. Applicant: TRANSCONTINENTAL FREIGHT SYSTEMS, INC., 2550 South Archer Avenue, Chicago, IL 60608. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. *Contract* Irregular: *General commodities* (except articles of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk and those requiring special equipment), between points in the United States (except AK and HI), under a continuing contract with International Nu-Way Shippers, Inc., of Chicago, IL. Supporting shipper: International Nu-Way Shippers, Inc., 3333 South Iron Street, Chicago, IL 60608.

MC 108185 (Sub-4–8TA), filed October 9, 1980. Applicant: JACK COLE-DIXIE HIGHWAY COMPANY, 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Lumber; Building materials; Posts and poles, wooden,* from the plant site of Newburg Road Lumber Co., Inc. at or near Haleyville, AL to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH, PA, TN and WI. Supporting shipper: Newburg Road Lumber Co., Inc., P.O. Box 548, Haleyville, AL 35565.

MC 139151 (Sub-4–3TA), filed October 10, 1980. Applicant: CANUS TRUCKING, LTD., 150 Sutherland Ave., Winnipeg, Manitoba, Canada R2W5K4. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St. NW., Washington, D.C. 20005. *Paper* (except newsprint), from Hamilton, OH, Chillocothe, OH, Aurora, IL and Plainwell, MI to Noyes, MN on the U.S./Canada border. Supporting shipper: Inter City Papers Limited, Ville LaSalle, Quebec H8R 3W1.

MC 139482 (Sub-4–18TA), filed October 1, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Tires, tubes, automotive accessories and related products (except commodities in bulk),* from Buffalo, NY; Camden, AR; Carlisle, PA; Cincinnati, OH; Conshohoken, PA; Des Moines, IA; Eau Claire, WI; Elk Grove Village, IL; Findlay, OH; Indiana, PA; Indianapolis, IN; Jackson, MS; Kansas City, MO; Lenexa, KS; Little Rock, AR; Morton, IL; and Natchez, MS to Minneapolis and St. Paul, MN. An underlying ETA seeks 120 days authority. Supporting shipper: Trans-Continental Tire Sales, Inc., 7968 Main St. N.E., Fridley, MN 55432.

MC 118612 (Sub-4–4TA), filed October 4, 1980. Applicant: COLUMBIA TRUCKING, INC., 700 131st Place, Hammond, IN 46320. Representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, IL 60601. *Hot asphalt, in bulk, in tank vehicles* from McCook, IL to Detroit, MI. Supporting shipper: Trumbull Asphalt Division of Owens-Corning, Fiberglas Corporation, 59 & Archer Road, Summit, IL 60501.

MC 134022 (Sub-4–1TA), filed October 8, 1980. Applicant: RICHARD A. ZIMA, d.b.a. ZIPCO, P.O. Box 715, West Bend, WI 53095. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Such commodities as are dealt in by retail gift and curio shops,* from the facilities of Swiss Colony, Inc. and Swiss Colony Stores, Inc., at Madison and Monroe, WI to points in the U.S. (except AK and HI). Supporting shipper: Swiss Colony Stores, Inc., Swiss Colony, Inc., 1112 7th Ave., Monroe, WI 53566.

MC 152132 (Sub-4–1TA), filed October 9, 1980. Applicant: FRANK PEYERL, P.O. Box 607, Cando, ND 58324. Representative: David C. Britton, 1425 Cottonwood St., Grand Forks, ND 58201. *Foodstuffs (including in bulk), and machinery and supplies used in the manufacture thereof,* between Towner County, ND on the one hand, and, on the other, points in the U.S. Supporting shipper: Noodles by Leonardo, Cando, N.D. 58324.

MC 145792F (Sub-4–3TA), filed October 10, 1980. Applicant: RED MOVERS AND VAN LINES, INC., 7000 S. Chicago Ave., Chicago, IL 60637. Representative: Walter L. Weart, 548 Anita St., Des Plaines, IL 60016. *Furniture or fixtures or parts thereof and material, equipment and supplies used* in the manufacture and distribution thereof between Cook County, IL and points in the U.S. (Except AK and HI). Supporting shipper: Douglas Furniture Corp., 5020 West 73rd St., Chicago, IL 60638.

MC 151507 (Sub-4–3TA), filed October 9, 1980. Applicant: J. LAKES TRUCKING, INC., 2957 S.E. St., Indianapolis, IN 46206. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Paper and paper products and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities in (1) above (except commodities in bulk)* between pts. in Butler County, OH, on the one hand, and, on the other, pts. in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities

of The Beckett Paper Co. Supporting shipper: The Beckett Paper Co., 4th & Buckeye Sts., Hamilton, OH 45012.

MC 146761 (Sub-4–1TA), filed October 8, 1980. Applicant: P. J. TRUCKING, INC., P.O. Box 376, Summit, IL 60501. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Non-exempt food or kindred products.* (1) Between points in CA in interstate commerce restricted to shipments in containers or trailers having a prior or subsequent movement by rail. (2) Between Chicago, IL and points in IA, IL, IN, KY, MI, MO, OH, PA and WI restricted to shipments in containers or trailers having a prior or subsequent movement by rail. An underlying ETA seeks 120 day authority. Supporting shippers: Weibel Champagne Vineyards, 1250 Sanford Avenue, Mission, San Jose, CA 94538, Delicato Vineyards, 12001 S. Hwy 99, Manteca, CA 95336 and Gloreitta Foods, P.O. Box 5040, San Jose, CA 95150.

MC 151988 (Sub-4–1TA), filed October 16, 1980. Applicant: THOMAS C. GORTER MOTOR EXPRESS, INC., 2031 Waldorf, North West, Grand Rapids, MI 49504. Representative: Edith L. Gorter (address same as above). *Furniture* set up and knocked down and parts thereof; *Seats* and *seating equipment* set up and knocked down and parts thereof; *seats* for *automobiles* and *passenger buses* set up and knocked down and parts thereof; *materials* used in the manufacturing of above commodities; between Kent County, MI and points in OH, IN, IL, IA, WI, and MN. There are six supporting shippers.

MC 124078 (Sub-4–39TA), filed October 16, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Fly ash, in bulk,* from Wapello County, IA to IL, MN, MO and WI. Supporting shipper: Midwest Fly Ash, Box 3557, Sioux City, IA 51102.

MC 56270 (Sub-4–3TA), filed October 20, 1980. Applicant: LEICHT TRANSFER & STORAGE CO., 1401 State Street, P.O. Box 2385, Green Bay, WI 54306. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. *Flour,* between points in Otter Tail County, MN on the one hand, and, on the other, points in the Chicago, IL commercial zone. An underlying ETA seeks 120-day authority. Supporting shipper: Con Agra, Inc., 200 Kiewat Plaza, Omaha, NE 68131.

MC 123048 (Sub-4–4TA), filed October 20, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. *Water heaters, house heating boilers, glass lined tanks, solar panels, and materials and equipment and supplies used in their manufacture,* from the facilities of A. O. Smith Corporation, at Kankakee, IL, on the one hand, and, on the other, points in AL, FL, GA, IN, KY, LA, NC, OH, SC, and TN. Supporting shipper: A. O. Smith Corporation, P.O. Box 28, Kankakee, IL 60901.

MC 152246 (Sub-4–1TA), filed October 17, 1980. Applicant: SCHULD TRANSPORTATION, INC., 774 Flanner Rd., Box 57, Mosinee, WI 54455. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. (1) *Steel, aluminum and stainless bulk storage tanks, silos, bins and accessories,* (2) *equipment, materials, and supplies* used in the manufacture, sale and distribution of commodities named in number one between Mosinee, WI, Iowa Falls, IA, Van Wert, OH, and Milton, PA on the one hand, and, on the other, points in the U.S. Supporting shipper: Schuld Manufacturing Co., Inc., Box 130, Mosinee, WI 54455.

MC 114632 (Sub-4–19TA), filed October 16, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). *Meats, meat products, meat byproducts and articles distributed by meat packinghouses,* as described in Sections A & C of Appendix I to the *Report in Descriptions in Motor Carrier Certificates,* 61 MCC 209 & 766 from Fargo and West Fargo, ND to points in the U.S. (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: Held Beef Industries, Inc., Stockyards Road, West Fargo, ND 58078.

MC 152240 (Sub-4–1TA), filed October 17, 1980. Applicant: WI–IL EXPRESS COMPANY, 2400 Lakeview, Rm. 511, Chicago, IL 60610. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. *General commodities (except in bulk, classes A and B explosives household goods)* between points in IL and WI restricted to articles weighing less than 1000 pounds. There are 21 supporting shippers.

MC 82492 (Sub-4–9TA), filed October 17, 1980. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853. Kalamazoo, MI 49003. Representative: Neil E. Hannan (same address as applicant). *Such commodities as are dealt in or used by retail drug, variety, and department stores (except commodities in bulk),* between points in IL, IN, IA, KS, KY, MI, MN, MO, NE, points in NY on and west of Interstate Hwy. 81, ND, OH, points in PA on and west of Interstate Hwy. 81, PA Hwys. 9 and 100 and U.S. Hwy. 202, SD, TN, and WI. Restricted to the transportation of traffic originating at or destined to the facilities of Ardan, Inc. Supporting shipper: Ardan, Inc. 2320 Euclid Ave., Des Moines, IA 50310.

MC 111812 (Sub-4–15TA), filed October 17, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *Chemicals or allied products (except commodities in bulk),* from the facilities of the Bostik Division located at or near Marshall, MI to points in NJ. An underlying ETA seeks 120 days authority. Supporting shipper: Bostik Division, Middleton, MA 01949.

MC 128270 (Sub-4–4TA), filed October 17, 1980. Applicant: REDIEHS INTERSTATE, INC., 1477 Ripley Street, East Gary, IN 46405. Representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, IL 60601. *Common*—Regular, *Iron and steel articles* Between the facilities of Manufacturers Steel & Supply company located at or near St. Louis, MO and points in IN, IL and MI. Supporting shipper: Mfg. Steel Co., Inc., 400 Edwin Street, St. Louis, MO 63103.

MC 144452 (Sub-4–3TA), filed October 17, 1980. Applicant: ARLEN LINDQUIST d.b.a. ARLEN E. LINDQUIST TRUCKING, 9172 Davenport St., N.E., Minneapolis, MN 55434. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Petroleum and petroleum products,* from Oklahoma City and Tulsa, OK to the facilities of Crover Distributing, Inc. located at Detroit Lakes, MN. An underlying ETA seeks 120 days authority. Supporting shipper: Grover Distributing, Inc., P.O. Box 842, Detroit Lakes, MN 56501.

MC 140820 (Sub-4–2TA), filed October 17, 1980. Applicant: A & R TRANSPORT, INC., 2996 N. Illinois 71, Ottawa, IL 61350. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. *Chemicals, in bulk,* from the facilities of American Cyanamid Company, Joliet, IL to Louisville, KY. Supporting shipper: American Cyanamid Company ICD Traffic, Wayne, NJ 07470.

MC 108453 (Sub-4–4TA), filed October 13, 1980. Applicant: G & A TRUCK LINE, INC., 404 West Peck Ave., White Pigeon, MI 49099. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *Paper, paper products and scrap paper, and materials and supplies used in the manufacture and distribution thereof*

(except in bulk) between points in AL, AR, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV and WI, under a continuing contract with Continental Forest Industries. Supporting shipper: Continental Forest Industries, Consumer Products Division, P.O. Box 348, Three Rivers, MI 49093.

MC 6031 (Sub-4–4TA), filed October 16, 1980. Applicant: BARRY TRANSFER & STORAGE CO., INC., 120 East National Ave., Milwaukee, WI 53204. Representative: William P. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *Contract,* irregular; *scrap metals* between points in IL, IA, MN, the Upper Peninsula of MI, and in IN, within the Chicago, IL Commercial Zone, on the one hand, and on the other points in WI, under a continuing contract with Miller Compressing Co. Supporting shipper: Miller Compressing Co., 510 South Muskego, Milwaukee, WI, 53204.

MC 142891 (Sub-4–4TA), filed October 17, 1980. Applicant: A&H, INC., P.O. Box 346, Footville, WI 53537. Representative: Thomas J. Beener, Beener, McQuilkin & Socha, 67 Wall St., New York, N.Y. 10005. *Foodstuffs (except in bulk) and such merchandise as is dealt in by retail gift curio shops and catalogue distribution centers,* between Green County, WI on the one hand and on the other points in FL, OR, WA, CA, NY, NJ, PA, OH, MA, CT, DC, MD, TX, IA, IL, IN, MN, MO, KS, NE, UT and NV. Supporting shipper: Swiss Colony, Inc., 1112 7th Avenue, Monroe, WI 53566.

MC 150301 (Sub-4–7TA), filed October 20, 1980. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *General commodities* between all points in the U.S. (except AK and HI) restricted against the transportation of commodities in bulk and under a contract with Quality Stores, Inc. Supporting shipper: Quality Stores, Inc., 1460 Whitehall Rd., N. Muskegon, MI 49445.

MC 125777 (Sub-4–6TA), filed October 16, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46403. Representative: Duane C. O'Donnell, 4600 East 15th Ave., Gary, IN 46403. *Silicon Carbide & Silicon Carbide Briquettes* between Jefferson City, AL and points in and East of KS, NE, ND, OK, SD, TX. Supporting shipper: MIller & Co., 55 E. Monroe St., Chicago, IL. 60603.

MC 125777 (Sub-4–7TA), filed October 16, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Representative: Duane C. O'Donnell, 4600 East 15th Avenue, Gary, IN 46403. *Silicon Carbide & Silicon Carbide Briquettes* between Saginaw County, MI and points in and East of KS, NE, ND, OK, SD, TX. An underlying ETA seeks 120 day authority. Supporting shipper: Miller & Company, 55 East Monroe Street, Chicago, IL 60603.

MC 147943 (Sub-4–2TA), filed October 17, 1980. Applicant: E. W. K. CARTAGE, INC., 4855 South Leamington, Chicago, IL 60638. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *General Commodities* (Except Class A & B explosives, household goods, as defined by the Commission, articles requiring special handling or articles of unusual value), between Chicago, IL and its Commercial Zone on the one hand, and, on the other, points in OH. Restricted to the transportation of traffic having a prior or subsequent movement by rail or water. An underlying ETA seeks 120 days authority. Supporting shipper: Clipper Exxpress, Inc., 3401 West Pershing Rd., Chicago, IL 60632.

MC 129290 (Sub-4–1TA), filed October 22, 1980. Applicant: CHIPPEWA TRANSPORT CO., 1500 Pine Street, Essexville, MI 48732. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Cement,* in bags, from the plantsite of Aetna Cement Corporation, Essexville, MI, to the international boundary line between the U.S. and Canada. Supporting shipper: Aetna Cement Corporation, 155 Pine Street, Essexville, MI 48432.

MC 76266 (Sub-4–13TA), filed October 22, 1980. Applicant: ADMIRAL MERCHANTS MOTOR FREIGHT, INC., 215 South 11th Street, Minneapolis, MN 55403. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Such commodities as are used in the manufacture and erection of steel storage tanks (except commodities in bulk),* from the facilities of G.A.T.X. Tank Erection Corporation in East Chicago, IN to points in the (except AK and HI). Supporting shipper: G.A.T.X. Tank Erection Corporation, P.O. Box 440, East Chicago, IN 56312.

MC 152283 (Sub-4–1TA), filed October 22, 1980. Applicant: P.H. TRUCKING, INC., 6003 Guion Road, Indianapolis, IN 46268. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract;* Irregular, *Such merchandise as is dealt in by womens retail specialty stores, materials, equipment and supplies used in the manufacture and distribution thereof,* between Indianapolis, IN on the one hand, and on the other, points in the U.S. (except AK. and HI.) Restriction: Restricted to service to be performed under continuing contracts with Paul Harris Stores, Inc. Supporting shipper: Paul Harris Stores, Inc., 6003 Guion Road, Indianapolis, IN 46268.

MC 152243 (Sub-4–1TA), filed October 22, 1980. Applicant: DISTRIBUTORS, LTD., E. Forest Avenue, P.O. Box 159, Antigo, Wisconsin 54409. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, Wisconsin 53719. *Contract;* irregular; *meat, meat products, meat by-products, and articles distributed by meat packinghouses,* from Schuyler NE, to Menominee, MI. Restriction: restricted to transportation performed under a continuing contract(s) with Carpenter-Cook, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Carpenter-Cook, Inc., 1230 48th Avenue Menominee, Michigan 49858.

MC 67111 (Sub-4–1TA), filed October 22, 1980. Applicant: KAIN'S MOTOR SERVICE CORP., West End of Bates Street, Logansport, IN 46947. Representative: Frank M. Cook, 616 Circle Tower Building, Indianapolis, IN 46204. *Common;* Regular; *General Commodities (Except Classes A and B Explosives, Household Goods as Defined by the Commission, and Commodities in Bulk)* between Chicago, IL, and Milwaukee, WI, over U.S. 41 serving the intermediate point of Kenosha, WI. Supporting shipper: There are 9 supporting shippers.

Note.—(1) Applicant proposes to serve all points in the Commercial Zones of Chicago, IL, and Kenosha and Milwaukee, WI. (2) Applicant proposes to tack this authority at Chicago, IL, with its existing regular route authority. (3) Applicant proposes to interline with other carriers at Milwaukee, WI.

MC 133189 (Sub-4–6TA), filed October 20, 1980. Applicant: VANT TRANSFER, INC., 1257 Osborne Road, Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. *(1) Pallets, pallet parts and sawdust,* from Escanaba, MI to points in IL, IA, IN, WI, OH, and MN; and *(2) Wood stakes,* from Escanaba, MI to points in the U.S.; and *(3) materials, equipment and supplies used in the manufacture and distribution of the commodities described in (1) and (2) above* in the reverse direction. An underlying ETA seeks 120 days authority. Supporting shipper: Lakestate Industries, P.O. Box 279, Escanaba, MI 49829.

MC 15364 (Sub-4–1TA), filed October 21, 1980. Applicant: WISCONSIN–MICHIGAN COACHES, INC., 725 Smith Street, Green Bay, WI 54302.

Representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. *Regular, passengers and their baggage, newspapers and express shipments in the same vehicle with passengers* between Green Bay, WI and Milwaukee, WI over Highway 141 and I.43 (now under construction) serving no intermediate points. Supporting shippers: There are 27 supporting shippers.

MC 123294 (Sub-4–13TA), filed October 20, 1980. Applicant: WARSAW TRUCKING CO., INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Waste and scrap paper* from Delair, NJ; Marion, KY; Philadelphia, PA; Pittsburgh, PA; Bloomington, IL; and Whitehall, IL, to points in IL, MI, OH, and WI. Supporting shipper: *Paper & Pulp Fibers, Inc., 1400 E. Touhy, Des Plaines, IL 60018. An underlying ETA seeks 120 days authority.

MC 126904 (Sub-4–6TA), filed October 21, 1980. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: James W. Patterson, 1200 Western Savings Bank Building, Philadelphia, PA 19107. (1) *Malt beverages,* from Frankenmuth, MI to points in AL, LA and MS; and (2) *empty containers used in the transportation of malt beverages,* from points in AL, LA and MS to Frankenmuth, MI. An underlying ETA seeks 120 days authority. Supporting shipper: G. Heileman Brewing Company, 925 South Third Street, La Crosse, WI 54601.

MC 107295 (Sub-4–23TA), filed October 21, 1980. Applicant: PRE–FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Composition board* from Booneville, MO to Meridian, MS and Phoenix, AZ. Supporting shipper: Cant Strip Corporation of America, Highway 45N, Meridian, MI 39301.

MC 114194 (Sub-4–9TA), filed October 21, 1980. Applicant: KREIDER TRUCK SERVICE, INC., 1600 Collinsville Avenue, P.O. Box 147, Madison, IL 62060. Representative: Joseph R. Behnker (same address as applicant). *Dry Sugar, from Mathews, LA, to Robinson, IL.* An underlying ETA seeks 120 days authority. Supporting shipper: L. S. Heath & Sons, Inc., Robinson, IL 62454.

MC 105045 (Sub-4–21TA), filed October 21, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47731. Representative: George H. Veech, Vice President (same as above). *Aluminum Sheet and Plate and Steel Sheet and Coils and Copper Cable* between Gwinette Co., GA, Orange Co., FL, Los Angeles, CA, Maricopa Co., AZ, Tulsa Co., OK, King Co., WA, Caddo Co., LA, Harris Co., TX and Bernalillo Co., NM, on the one hand, and, on the other AL, AR, MS, IN, OH, IL, TX, OK, TN, KY, IA, MD, FL, NC, SC, PA and NJ. An underlying ETA seeks 120 days authority. Supporting shipper: Du Commun Steel, Doraville, GA.

MC 105045 (Sub-4–20TA), filed October 21, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47731. Representative: George H. Veech, Vice President (same as above). *Iron and Steel* between Hillsborough County, FL and Fulton Co., GA, Jefferson and Shelby Co., TN, Lorman Co., MS, St. Louis Co., MO, Davidson Co., TN, Knox Co., TN, Mobile Co., AL, Montgomery Co., AL, Dallas Co., TX, Harris Co., TX, Grason Co., TX, Richland Co., SC, Mecklenburg Co., NC, Wake Co., NC and Charleston Co., SC. An underlying ETA seeks 120 days authority. Supporting shipper: Dick Moss Steel, Tampa, FL.

MC 145664 (Sub-4–11TA), filed October 21, 1980. Applicant: STALBERGER, INC., 223 S. 50th Ave., W., Duluth, MN 55807. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Building materials and equipment, supplies and materials* used in the manufacture, sale and distribution thereof between points in Itasca County, MN on the one hand, and, on the other, points and places in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Blandin Wood Products Company, 115 SW 1st St., Grand Rapids, MN 55744.

MC 150944 (Sub-4–2TA), filed October 21, 1980. Applicant: BIG FOOT, INC., 410 Library Lane, Streamwood, IL 60103. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. (a) *general commodities,* between Chicago, IL, on the one hand, and, on the other, points in the U.S.,* restricted to shipments having a prior or subsequent movement by rail or water; (b) *containers,* between Chicago, IL, on the one hand, and, on the other, points in IN, OH, MI, KY, TN, MO, WS, IA, MN, PA, and NY, restricted to shipments originating at the facilities of Inland Steel Containers, and (c) *general commodities,* between Chicago, IL, on the one hand, and, on the other, points in the U.S.,* restricted to shipments originating at or destined to Locke Warehouse. Supporting shippers: Streamline Shippers, Baltimore, MD, Inland Steel Containers, Chicago, IL, Gem Products Co., Villa Park, IL, A. J. Oster Company, Addison, IL, Locke Warehouse Co., Streamwood, IL, and J. Moyles & Assoc., Chicago, IL.

MC 151775 (Sub-4–1TA), filed October 21, 1980. Applicant: MAGNUM, LTD., P.O. Box 775, Hillsboro, ND 58045. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract* irregular: *Sugarbeet pulp pellets,* from the facilities of American Crystal Sugar at or near Moorhead, East Grand Forks, and Crookston, MN, and Drayton and Hillsboro, ND, to Duluth and Minneapolis-St. Paul, MN and points in their commercial zone, and Tacoma, WA. Restricted to traffic moving in foreign commerce. An underlying ETA seeks 120 days authority. Supporting shipper: American Crystal Sugar Company, 101 North 3rd Street, Moorhead, MN 56560.

MC 108185 (Sub-4–9TA), filed October 21, 1980. Applicant: JACK COLE–DIXIE HIGHWAY COMPANY, 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Conveyors or Parts thereof;* between the plantsites of Continental Conveyor & Equipment Co., Inc., at Salyersville, KY and Winfield, AL on the one hand and points in AZ, CO, IL, IN, KS, KY, LA, MI, MN, NV, NM, ND, SD, OH, OK, PA, TN, TX, UT, WI and WY on the other. Supporting shipper: Continental Conveyor & Equipment Co., Inc., P.O. Box 400, Winfield, Alabama 35594.

MC 145807 (Sub-4–1TA), filed October 20, 1980. Applicant: THOMAS A. HART AND KENNETH GRAMS, d.b.a. DERBY TRANSPORT, 609 First Avenue North, Box 695, Weyburn, Saskatchewan, Canada S4H 1P1. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. (1) *Fertilizer* (except liquid), from ports of entry on the International Boundary Line between the U.S. and Canada located at or near Portal and Northgate, ND and Noyes, MN to points in IA; and (2) *Soybean meal,* from points in IA to the ports of entry named in (1) above. Restricted to the transportation of traffic moving in foreign commerce. Supporting shippers: Pillsbury Company, 7900 Xerxes Ave. S., Bloomington, MN 55431; Kalium Chemicals, P.O. Box 20623, Kansas City, MO 64195; Farmers Cooperative Elevator Co., Thompson, IA 50478.

MC 133566 (Sub-4–11TA) filed October 21, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands,

* Except AK and HI.

Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Printing, computer, audio and visual equipment and supplies,* from the facilities of BASF Systems at Beford and Lowell, MA to points in the U.S. in and east of ND, SD, NE, CO, OK and TX. Supporting shippers: BASF Systems, Crosby Drive, Bedford, MS.

MC 133566 (Sub-4–10TA) filed October 20, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *(1) Foodstuffs and (2) equipment, materials and supplies used in the production and distribution of foodstuffs, (except commodities in bulk),* between Marion County, IN, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, OK and TX. Supporting shipper: Royal Food Products, A Division of Mutual Milk Company, Inc., 2243 Bethel Avenue, Indianapolis, IN 46203.

MC 144645 (Sub-4–3TA) filed October 15, 1980. Applicant: ROBERT HANSEN TRUCKING, INC., Rt. 2, Box 125, Delavan, WI 53115. Representative: Daniel R. Dineen, 710 N. Plankinton Avenue, Milwaukee, WI 53203. *Contract; Irregular: (1) meats, meat products, and meat by-products 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 Certification, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)* between points in Kenosha County, WI, on the one hand, and, on the other, points in the United States (except AK and HI); and (2) *materials, equipment and supplies used in the processing or distribution of the commodities listed in part* (1) above, between points in the U.S. (except AK and HI) on the one hand, and, on the other, points in Kenosha County, WI, under continuing contracts with Birchwood Meat and Provision Co., Inc., and Kenosha Beef International, Inc. An underlying ETA seeks 120 days authority. Supporting shipper(s): Birchwood Meat and Provision Co., Inc., Kenosha Beef International, Inc., 3111 152nd Ave., Kenosha, WI 53142.

MC 145664 (Sub-4–10TA) filed October 17, 1980. Applicant: STALBERGER, INC., 223 S. 50th Avenue, West, Duluth, MN 55807. Representative: Norman A. Cooper, 145 West Wisconsin Avenue, Neenah, WI 54956. *Fabricated steel products and equipment, materials and supplies* between the facilities of Dyckerhoff and Widmann, Inc. at Lemont, IL and points and places in IA, KS, LA, MN, MO, MS, ND, SD, and TX. An underlying ETA seeks 120 days authority. Supporting shippers: Dyckerhoff & Widmann, Inc., 301 Marmon Drive, Lemont, IL 60439.

MC 123294 (Sub-4–12TA), filed October 16, 1980. Applicant: WARSAW TRUCKING CO., INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H.E. Miller, Jr. (same address as applicant). *Kitchen matches, book matches, clothespins, toothpicks, cotton swabs, ice cream sticks, and related woodenware* from Dayton, OH, to Chicago, IL; St. Louis, MO; Kansas City, KS; and Kansas City, MO. Supporting shipper:* Diamond International Corporation, P.O. Box 236, Middletown, OH 45042.

MC 142245 (Sub-4–2TA), filed October 20, 1980. Applicant: NATIONWIDE TRUCK BROKERS, INC., 5475 Clay Ave. SW., Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *Apple juice, apple cider and vinegar (except in bulk)* between Belding, MI; Coloma, MI; Grand Rapids, MI; Evansville, IN; and Sodus, NY; and points in the U.S. (except AK and HI), under a continuing contract with Indian Summer, Inc. Supporting shipper: Indian Summer, Inc., 700 Kiddville Rd., Belding, MI 48809.

MC 152256 (Sub-4–1F), filed October 20, 1980. Applicant: GRAMMER INDUSTRIES, INC., Post Office Box 51, Grammer, IN 47236. Representative: Warren C. Moberly, 777 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, IN 46204. *Dry fertilizer and fertilizer ingredients,* from Floyd County (New Albany), IN, to points in IL on and south of U.S. Highway 36, and points in KY. Supporting shipper: W. R. Grace & Company, 2818 Grantline Rd., New Albany, IN 47150. An underlying ETA seeks 120 days authority.

MC 123048 (Sub-4–5TA), filed October 7, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. *Wood burning stoves, furnaces, and attachments, and accessories,* from the facilities of Dunham Lehr, at Racine, WI, and Richmond, IN to Albany, NY, Atlanta, GA, Denver, CO, Portland, OR, Glastonbury, CT, Frederick, MD and Richmond, IN. An underlying ETA seeks 120 days authority. Supporting shipper: Dunham Lehr, Inc., 300 Industrial Parkway, Richmond, IN 47374.

MC 152261 (Sub-4–1TA), filed October 21, 1980. Applicant: M. W. ETTINGER, INC., 2711 Fairview Ave. N. Roseville, MN 55113. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. *Candies, confectionery products and bakery goods,* from Plymouth, MN, to points in the U.S. except AK and HI. Supporting shipper: Rose Confections, Inc., Plymouth, MN. An underlying ETA seeks 120 day authority.

MC 152259 (Sub-4–1TA), filed October 20, 1980. Applicant: CLIFFORD D . & LOIS R. SANBERG, d.b.a. SCHULTZ & SON TRUCKING, Minnesota Division, Rural Route 4, Long Prairie, MN 56347. Representative: Clifford D. Sandberg, Rural Route 4, long Prairie, MN 56347. *Fresh and frozen boneless beef; fresh carcass beef,* between Long Prairie, MN, and points in the States of IL, WI, and IA. Supporting shipper: Long Prairie Packing Company, Long Prairie, MN 56347.

MC 133566 (Sub-4–9TA), filed October 20, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Meat, meat products, meat byproducts, and articles distributed by meat packing houses,* from the facilities of Madison Packing Inc., at Waterloo, WI to points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. Supporting shipper: Madison Packing, Inc., 333 Portland Road, Waterloo, WI 53594.

MC 51146 (Sub-4–56TA), filed October 20, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid (same address as applicant). *Scrap brass* from points in the U.S. to East Alton, IL. Supporting shipper: Olin Corporation, East Alton, IL 62024.

MC 124078 (Sub-4–40TA), filed October 16, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Chemicals, in bulk, in tank vehicles,* from Charleston, SC, to all points in NC. Supporting shipper: Burris Chemical, Inc., P.O. Box 70788, Charleston, SC 29405.

MC 116791 (Sub-4–1TA), filed October 20, 1980. Applicant: FARMERS ELEVATOR OF KENSINGTON, MN, INC., Box 184, Kensington, MN 56343. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Salt,* (1) between Scott and St. Louis Counties, MN, on the one hand, and, on the other, points in IA, ND, SD, and WI;

*An underlying ETA seeks 120 days authority.

and (2) between Douglas County, WI, on the one hand, and, on the other, points in MN. An underlying ETA seeks 120 days authority. Supporting shippers: Cargill, Incorporated, Salt Division, P.O. Box 9300, Minneapolis, MN 55440; Cutler-Magner Company, Salt Division, P.O. Box 6807, Duluth, MN 55806.

MC 152257 (Sub-4–1TA), filed October 20, 1980. Applicant: LORDCO TRUCKING, INC., 555 N. Tripp St., Chicago, IL 60610. Representative: Paul J. Maton, 10 S. La Salle St., Rm. 1620, Chicago, IL 60603. *Contract;* irregular; *Malt beverages and materials, equipment and supplies used in the manufacture, distribution, and sale of malt beverages,* between LaCrosse, WI and Cook, Lake and Will Counties, IL. An underlying ETA seeks 120 days authority. Supporting shippers: G. Heileman Brewing Company, Inc., 100 Harborview Plaza, La Crosse, WI 54601; C & K Distributors, Inc., 555 N. Tripp Street, Chicago, IL 60610.

MC 129863 (Sub-4–1TA), filed October 20, 1980. Applicant: FREDERICK L. BULTMAN, INC., 11144 West Silver Spring Drive, Milwaukee, WI 53225. Representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. *Contract,* irregular: *Lubricating oils,* in packages, from Rockford, IL, to points in WI, under contract(s) with Ashland Chemical Company, Division of Ashland Oil, Inc. Supporting shipper: Ashland Chemical Company, Division of Ashland Oil, Inc., 5200 Paul G. Blazer Memorial Parkway, Dublin, OH 43017.

MC 133689 (Sub-4–30TA), filed October 20, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street NE., Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. (1) *Foodstuffs,* (2) *Materials, equipment and supplies used in the production of gelatin products,* from the facilities of Geo. A. Hormel & Co. in Davenport, IA (Scott County) to points in CT, DE, DC, GA, IL, IA, ME, MD, MA, NE, NH, NJ, NY, NC, ND, PA, RI, SC, SD, TN, VT, VA, WV, and WI; (2) from points named in (1) above to the facilities of Geo. A. Hormel & Co. at or near Davenport, IA (Scott County). Supporting shipper: Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912.

MC 127840 (Sub-4–7), filed September 23, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. *Transporting chemicals, in bulk, in tank vehicles,* from Magnolia, AR to Patterson, NJ. Supportiong shipper: Mason Chemical Company, 5253 West Belmont Ave., Chicago, IL 60641.

MC 126904 (Sub-4–7TA), filed October 24, 1980. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: Larry R. McDowell, 1200 Western Savings Bank Bldg., Phila., PA 19107. *Wine,* from Westfield and Hammondsport, NY, and points in their Commercial Zones, to Belleville, IL, and points in its Commercial Zone. An underlying ETA seeks 120 days authority. Supporting shipper(s): Jul Fischer Distributor, Inc., #1 Whiskey Road, Belleville, IL 62221.

MC 133689 (Sub-4–36), filed October 23, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE., Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Glass containers, caps, and enclosures for glass containers,* between the facilities of Brockway Glass Company, Inc. at or near Rosemount, MN on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX. An underlying ETA seeks 120 days of authority. Supporting shipper: Brockway Glass Company, 13500 S. Robert, Rosemount, MN 55068.

MC 133689 (Sub-4–3S), filed October 23, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuff,* from Springfield, IL and points in its Commercial Zone as defined by the Commission to Chattanooga, TN and points in its Commerce Zone as defined by the Commission. An underlying ETA seeks 120 days authority. Supporting shipper: Pillsbury, 608 2nd Ave. So., Minneapolis, MN 55402.

MC 133689 (Sub-4–34TA), filed October 23, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs and materials, supplies and equipment used in the manufacture and distribution of foodstuffs* (except commodities in bulk), between Archbold, OH, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Beatrice Frozen Specialities, P.O. Box 180, Archbold, OH 43502.

MC 133689 (Sub-4–33), filed October 23, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs and materials, supplies and equipment used in the manufacture and distribution of foodstuffs* (except in bulk) between the facilities of Sanna Division Beatrice Foods Co. located at or near Menomonie, Vesper, Eau Claire, Cameron and Wisconsin Rapids, WI 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 shipper: Sanna Division Beatrice Foods Co., P.O. Box 8046, 6501 Grand Teton Plaza, Madison, WI 53708.

MC 121745 (Sub-4–2), filed October 23, 1980. Applicant: C. D. SPAIN AND J. T. SPAIN d.b.a. SPAIN'S TRANSFER, P.O. Box 68, Minot, ND 58701. Representative: Charles E. Johnson, P.O. Box 2578, Bismarck, ND 58502. *Common; Regular; General Commodities* (except those of unusual value), class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Minot, ND, to Voltaire, ND, over U.S. Highway 52, thence to Velva, ND, over U.S. Highway 52, thence to Granville, ND, over ND Highway 14 and U.S. Highway 2, thence to Minot, ND, over U.S. Highway 2, and vice versa, serving all intermediate points. Underlying ETA seeks 120 days authority. Supporting shippers: N C Auto Parts, 15 N. Main, Velva, ND 58790; Velva Lumber Co., Inc., 12 1st Avenue West, Velva, ND 58790; Valley Chevrolet Imp. d.b.a. Velva Implement, 122 N. Main, Velva, ND 58790; Haybuster Sales and Service, Granville, ND 58741; and Verendrye Electric Cooperative, Inc., P.O. Box 70, Velva, ND 58790.

MC 139420 (Sub-R4–1TA), filed October 23, 1980. Applicant: GLACIER TRANSPORT, INC., P.O. Box 428, Grand Forks, ND 58201. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Non-exempt food or kindred products, and machinery and supplies used in the manufacture and distribution thereof,* between the facilities of Noodles By Leonardo located in Towner County, ND on the one hand, and on the other, points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Noodles By Leonardo, P.O. Box 272, Cando, ND, 58324.

MC 117730 (Sub-47), filed October 21, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route #47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 323 North LaSalle Street, Chicago, IL 60142. *Refrigerated ready to serve desserts,* from the facilities of Winky Food Products, Inc., at Cicero, IL to Delphos and Cleveland, OH, Otsego, Warren and Auburn Heights, MI,

Indianapolis, IN, and Philadelphia, PA. Supporting shipper: Winky Food Products, Inc., 4900 W. 25th Place, Cicero, IL 60650.

MC 152284 (Sub–4–1), filed October 23, 1980. Applicant: INDIANA HEAVY & SPECIALIZED CARRIER, INC., Route 1, Wilson Avenue, Madison, IN 47250. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. *Contract* Irregular: *Leather, leather fiberboard, and leather products and materials used or useful in the manufacture of leather products,* between the facilities of Robus Products Corporation, Madison, IN, on the one hand, and, on the other, points in IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, OH, PA, TN and WI, under contract with Robus Products Corporation, Madison, IN. Supporting shipper: Robus Products Corporation, Route 6, Box 6, Madison, IN 47250. An underlying ETA seeks a 120 days.

MC 151968 (Sub-4–4), filed October 16, 1980. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue South, P.O. Box 877, MInneapolis, MN 55440. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. *Contract;* Irregular. (1) *Lawn, garden, and recreational equipment,* and *materials, equipment and supplies* used in the manufacture, installation and sale thereof, (2) *Generators, generator sets, internal combustion engines* and *materials, equipment and supplies,* utilized in the manufacture, installation, and sale thereof, and (3) *Windows* and *materials, equipment and supplies* used in the manufacture, installation and sale therof, between points in the U.S. under continuing contracts with The Toro Company, Minneapolis, MN; Onan Corp., Fridley, MN. Supporting shipper(s): Toro Company, Minneapolis, MN; Derac, Inc., Minneapolis, MN 55441; and Onan Corp., Fridley, MN 55432.

MC 152285 (Sub-4–1), filed October 22, 1980. Applicant: PACKERLAND TRANSPORT INC., 2580 University Ave., P.O. Box 1184, Green Bay, WI 54305. Representative: Richard A. Westley, Attorney, 4506 Regent St., Suite 100, Madison, WI 53705. *Contact,* Irregular: *Fresh and frozen meats and packinghouse products and by-products, and materials, equipment and supplies used in the manufacture and distribution of the aforementioned commodities* between Green Bay, WI on the one hand and, on the other hand, all points in the U.S., under continuing contract(s) with Packerland Packing Company, Inc., Green Bay, WI. Corresponding ETA seeks 120 days of authority. Supporting shipper: Packerland Packing Company, Inc., 2580 University Avenue, Green Bay, WI 54305.

MC 116519 (Sub-4–5TA), filed October 22, 1980. Applicant: FREDERICK TRANSPORT LTD., R. R. 6, Chatham, Ontario, Canada. Representative: Jeremy Kahn, 1511 K Street, NW, Suite 733 Investment Bldg., Washington, DC 20005. *Such commodities* as are dealt in or used by agricultural equipment dealers (except commodities in bulk), from Albany, GA, Kewanee and Bloomington, IL, Hopkins, Green Isle, and Glencoe, MN, Stratton, NE, Fulton, MO, Dewey, OK, Athens, TN, Lockeney, TX, Brillon, Broadhead and New Holstein, WI, to ports of entry on the U.S.-Canada boundary line located in MI and NY, restricted (1) to traffic moving in foreign commerce, and (2) to traffic destined to the facilities and/or dealers of Allied Farm Equipment (Canada), Limited, in the Provinces of Ontario, Quebec, Prince Edward Island, Nova Scotia, New Brunswick, and Newfoundland, Canada. Supporting Shipper: Allied Farm Equipment (Canada) Ltd., P.O. Box 910, St. Mary's, Ontario, Canada N0M 2V0.

MC 150049 (Sub-4–5), filed October 22, 1980. Applicant: JAMES RESSLER, 300 East Turnpike Ave., Bismark, ND 58501. Representative: Charles E. Johnson, P.O. Box 2578, Bismarck, ND 58502. *Contract;* Irregular: *Lumber, Lumber Products, Wood Products and Forest Products,* from WA, OR, ID, and MT, to points in MN and WI. An underlying ETA seeks 120 days authority. Under a contract(s) with Lyman Lumber Co. and Sage Cedar Distribution Center. Supporting shipper(s): Lyman Lumber Company, Box 40, Excelsior, MN 55331 and Sage Cedar Distribution Center, Inc., Box 40, Excelsior, MN 55331.

MC 103993 (Sub-4–22TA), filed October 22, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: JAMES B. BUDA (Same Address As Applicant). *Lumber and wood products and building materials,* between Winnebago County, WI; Baltimore, MD, and points in WA, ID, and CA, on the one hand, and, on the other, points in IL, MI, and OH. Supporting Shipper: Forrest City, Cleveland, OH 44130.

MC 118612 (Sub 4–5 TA), filed October 20, 1980. Applicant: COLUMBIA TRUCKING, INC., 700—131st Place, Hammond, IN 46320. Representative: Richard A. Kerwin, 180 North La Salle St., Chicago, IL 60601. *Petroleum or coal products (STCC 29)* from La Porte County, IN to IL. Supporting shipper: Fluids Engineering Corp. 2500 New York Avenue, Whiting, IN 46394.

MC 135410 (Sub 4–14TA), filed October 21, 1980. Applicant: COURTNEY J. MUNSON, d.b.a., MUNSON TRUCKING, P.O. Box 266, North 6th St. Rd., Monmouth, IL. 61462. Representative: Daniel O Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *(1) Electro plating and metal finishing materials, equipment and supplies and (2) cleaning compounds and phosphates* (except commodities in bulk), from the facilities of Oxy Metal Industries Corporation at Morenci and Warren, MI to points in the U.S. in and east of ND, SD, NE, CO, OK and TX. (Representative destination: Cleveland and Cincinnati, OH, Mt. View, NJ, St. Louis, MO, Elmhurst, IL, Atlanta, GA and Dallas, TX.) Supporting shipper: Oxy Metal Industries Corporation, 21441 Hoover Road, Warren, MI 48089.

MC 149170 (Sub 4–21TA), filed October 21, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *General Commodities* (Except Household Goods as Defined by the Commission, Commodities in Bulk, and Classes A & B Explosives) Between points in AL, CA, IN, IA, IL, KY, LA, MN, ND, MT, OH, PA, TX, WA, OR, ID and WI. Supporting shipper: Super Valu Stores, Inc., 101 Jefferson Ave., South, Hopkins, MN 55343.

Note.—This application may involve common control.

MC 90870 (Sub-4–5TA), filed October 21, 1980. Applicant: RIECHMANN ENTERPRISES, INC., Route—1284, Granite City, IL 62040. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50307. *CONSTRUCTION MATERIALS AND SUPPLIES* between St. Charles County, MO and points in IA, IL, IN and MO. Supporting shipper: Husband Contracting, 403 Roberta, St. Charles, MO 63301.

MC 133689 (Sub-4–31TA), filed October 22, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *(1) Animal and poultry feed, feed ingredients and animal health products, and (2) materials, supplies and equipment used in the manufacture and distribution of commodities in (1) above* (except commodities in bulk), between the facilities of International Multifoods at or near Portland, Indiana, on the one hand, and points in and east of ND, SD, NE, CO and NM. An underlying ETA seeks 120 days authority. Supporting

shipper: International Multifoods, 1200 Multifoods Building, 8th & Marquette Avenue, Minneapolis, MN 55402.

MC 133689 (Sub-4–32TA), filed October 22, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Sugar,* between Renville, Moorhead, E, Grand Forks, Chaska, Crookston, Minneapolis-St. Paul, MN and Drayton, ND 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 shipper: American Crystal Sugar, 101 N. 3rd St., Moorhead, MN 56560.

MC 124078 (Sub-4–41TA), filed October 20, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Fly ash and bottom ash,* from Person County, NC to points in VA. Supporting shipper: Austin H. Morgan, Jr., Vice President, Mid-Atlantic Region, Monier Resources, Inc., 2708 Church Street, Greensboro, NC 27405.

MC 142268 (Sub-4–4TA), filed October 23, 1980. Applicant: GORSKI BULK TRANSPORT, INC., R.R. No. 4, Harrow, Ontario, Canada N0R1G0. Representative: William H. Shawn, 1730 M Street, NW., Suite 501, Washington, DC 20036. *Alcoholic beverages, wines and cordials,* except in bulk, from points in the U.S. (except AK and HI), to the facilities of Lone Star Company, Quality Beverage Co., Inc., and Julius Schepps Wholesale Liquors, in the State of Texas. Supporting shippers: Lone Star Company, Dallas, TX, Quality Beverage Co., Inc., Houston, TX, and Julius Schepps Wholesale Liquors, Dallas, TX.

MC 110988 (Sub-4–52TA), filed October 23, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Commodities* as are dealt in, or used by, manufacturers and distributors of emulsifiers between Milton, WI and points in the U.S. (except WI). Supporting shipper: Tomah Products, Milton, WI 53563.

MC 142888 (Sub-4–2), filed October 23, 1980. Applicant: COX TRANSFER, INC., P.O. Box 168, Eureka, IL 61530. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Paper bags,* from Hazelwood, MO to Peoria, IL. An underlying ETA seeks 120 days authority. Supporting shipper: T. J. O'Brien, Inc., 1610 West Altorfer Drive, Peoria, IL 61615.

MC 95876 (Sub-4–6TA), filed October 22, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (Same as applicant). *Carbon electrodes* from Columbia, TN to Beaumont, TX. Supporting shipper: Georgetown Texas Steel Corporation, P.O. Box 1349, Beaumont, TX 77704.

MC 152158 (Sub-4–TA), filed, October 22, 1980. Applicant: WALLACE E. SHEFLAND, d.b.a. WALLY SHEFLAND TRUCKING, 730 Florence Street, Baldwin, WI 54002. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Contract:* Irregular: *Agricultural machinery, implements, and parts; and materials, equipment and supplies used in the manufacture thereof,* between points in the U.S. under continuing contracts with Hedlund Manufacturing Company, Inc., Boyceville, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Hedlund Manufacturing Co., Inc., Boyceville, WI.

MC 152306 (Sub-4–1), filed October 23, 1980. Applicant: COTTER & COMPANY, 2740 Clybourn Ave., Chicago, IL 60614. Representative: Homer L. Clark, 7600 Jonesboro Rd., Jonesboro, GA 30236. *Single strength juice from citrus and fruit and citrus byproducts.* From various points in FL to various points in GA, AL, TN, and SC. Supporting shipper: General Produce, Bldg "F", Georgia State Farmers Market, Forest Park, GA. 30050.

MC 127840 (Sub-4–7), filed September 23, 1980. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. *Transporting chemicals, in bulk, in tank vehicles,* from Magnolia, AR to Paterson, NJ. Supporting shipper: Mason Chemical Company, 5253 West Belmont Ave., Chicago, IL 60641.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

*MC 200 (Sub-5–60TA), filed October 20, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Clothing, wearing apparel, and related articles and accessories,* between Hudson County, NJ, on the one hand, and, on the other, Grand Rapids, MI. Restricted to shipments originating at or destined to facilities used by K Mart, its suppliers, affiliates, or vendors. Supporting shipper: K Mart Apparel Corporation, 7373 West Side Ave., North Bergen, NJ 07047.

MC 200 (Sub-5–61TA), filed October 20, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Bracing, bulkheads, or fiberboard, or paper and bracing, blocks, or panels, fiberboard, paper or corrugated,* between the facilities of Down River Forest Products, at or near Waco, TX, on the one hand, and, on the other, points in AR, CO, KS, LA, MO, NM, and OK. Restricted to shipments originating at or destined to facilities used by Down River Forest Products, its affiliates, suppliers, or vendors. Supporting shipper: Down River Forest Products, 7201 Imperial, Waco, TX 76710.

MC 200 (Sub-5–62TA), filed October 20, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Bergen County, NJ, on the one hand, and, on the other, Milwaukee County, WI. Restricted to shipments originating at or destined to facilities used by J.C. Penney Co., its affiliates, suppliers, and vendors. Supporting shipper: J.C. Penny Co., 1301 Ave. of Americas, New York, NY 10019.

MC 29910 (Sub-5–55), filed October 20, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. Common, regular. *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 Lawrence, KS as an intermediate point in connection with applicant's regular route operations between Kansas City and Salina, KS. Supporting shipper: There are five supporting shippers.

Note.—Applicant intends to tack and interline.

MC 31879 (Sub-5–1TA), filed October 20, 1980. Applicant: EXHIBITORS FILM DELIVERY & SERVICE, INC., 101 West 10th Avenue, North Kansas City, MO 64116. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Popular Avenue, Memphis, TN 38137. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the*

Commission, commodities in bulk, and those requiring special equipment), between points in IA and Rock Island County, IL and between points in IA and Rock Island County, IL, on the one hand, and, on the other, points in MO, KS, NE, points in Boone and Carroll Counties, AR; Lee County, IA: Weld, Adams, Denver, Jefferson, Douglas, El Paso, Fremont, Pueblo, Huerfano, Las Animas, Logan, Sedgwick, Phillips, Morgan, Washington, Yuma, Arapahoe, Elbert, Lincoln, Kit Carson, Cheyenne, Crowley, Kiowa, Otero, Benton, Prowers and Baca Counties, CO; Laramie and Goshen Counties, WY; points in IL within the St. Louis, MO-East St. Louis, IL commercial zone as defined by the Commission, and those in Cooke, Kane, DuPage, Rock Island and Will Counties, IL, those points in that part of IL bounded on the west by the Mississippi River, and on the east, north and south by a line beginning at Chester, IL and extending along IL Hwy. 150 to Junction IL Hwy. 154, then along IL Hwy. 154 to Junction U.S. Hwy. 51, then along U.S. Hwy. 51 to junction IL Hwy. 15, then west along IL Hwy. 15 to junction IL Hwy. 127, then north along IL Hwy. 127 to junction U.S. Hwy. 50, then east along U.S. Hwy. 50 to junction U.S. Hwy. 51, then north along U.S. Hwy. 51 to Decatur, IL, then west along U.S. Hwy. 36 to Springfield, IL, then along combined IL Hwys. 36 and 54 to junction U.S. Hwy. 36, and then along U.S. Hwy 36 to the Mississippi River, including points on the indicated portions of the highways specified, and those points in that part of NM in and on a line beginning at the northwest corner of Colfax County NM, at the CO-NM state line and extending along the western boundary of Colfax County to the western boundary of Mora County, then along the western boundary of Mora County to the boundary of Santa Fe County, NM, then in a northerly and westerly direction along the Santa Fe County boundary to the boundary of Los Alamos County, NM, then in a northerly and westerly direction along the Los Alamos County boundary until that boundary meets the Santa Fe County boundary at the southern tip of Los Alamos County, then along the Santa Fe County boundary to junction combined U.S. Hwy 85 and Interstate Hwy. 25, then along combined U.S. Hwy 85 and Interstate Hwy 25 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the NM-TX state line, and then along the NM State line in a northerly and westerly direction to the point of beginning. Restriction: The service authorized above is subject to the following conditions. The authority granted above is restricted against the transportation of parcels, packages or articles weighing in the aggregate more than 200 pounds from any one consignor, at any one location, to any one consignee, at any one location, on any one day. The authority granted above is restricted against the transportation of any single parcel, package or article weighing more than 100 pounds. Supporting shipper: There are 111. Applicant intends to interline.

Note.—Applicant currently conducts operations between all points in the destination territory described in paragraph B above. The only new authority sought involved points in Iowa and Rock Island County, IL.

MC 35320 (Sub-5–36), filed October 20, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving Grand Rapids, MI, and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular-route operations. Supporting shippers: 5.

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers.

MC 35320 (Sub-5–37TA), filed October 20, 1980. Applicant: T.I.M.E.-DC, Inc., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving Indianapolis, IN, and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular-route operations. Supporting shippers: Ayr-Way Stores, Inc., 8250 Zionsville Rd., Indianapolis, IN. Hoechst-Roussell Pharmaceutical, 7951 Zionsville Rd., Indianapolis, IN. Silver Burdett Company, 4200 N. Industrial Blvd., Indianapolis, IN. Spaulding Distribution Center, 5427 W. 84th Street, Indianapolis, IN.

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers.

MC 48221 (Sub-5–3TA), filed October 20, 1980. Applicant: W.N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Beverages,* (1) from Cincinnati, OH and Janesville, WI to Omaha and Lincoln, NE and (2) from Milwaukee, WI to Lincoln, NE. Supporting shippers: Nebraska Distributing Company, 211 Walnut Street, P.O. Box 3306, Omaha, NE 68103; Citi-Sales, Inc., 400 West Industrial Lake Drive, P.O. Box 83311, Lincoln, NE 68501; and B and J Enterprises, Inc., d/b/a State Distributing, P.O. Box 80117, Lincoln, NE 68501.

MC 53965 (Sub-5–5), filed October 20, 1980. Applicant: GRAVES TRUCK LINE, INC., P.O. Box 838, Salina, KS 67401. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Descriptions on Motor Carrier Certificates, 61 MCC 209 and 766, except in bulk,* from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in and west of MI, OH, KY, MO, AR, and LA. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 60066 (Sub-5–5), filed October 20, 1980. Applicant: BEE LINE MOTOR FREIGHT, Inc., 1804 Paul Street, Omaha, NE 68102. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *General commodities (except commodities in bulk, house trailers, mobile homes and prefabricated buildings by truckaway method)* (1) between points within the area beginning at the junction of NE Hwy 15 and 41, then east on NE Hwy 41 to its junction with NE Hwy 50, then north on NE Hwy 50 to its junction with NE Hwy 92, then west of NE Hwy 92 to its junction with NE Hwy 15, then south on NE Hwy 15 to the place of beginning: and (2) between points within the area described in (1) above, on the one hand, and, on the other, all points in NE. Tacking with applicant's regular route authority is intended. Supporting shippers: 7.

MC 100666 (Sub-5–9), filed October 20, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Paul L. Caplinger (same address). *Magazines, books, catalogs, periodicals and newspaper inserts* between facilities of Wisconsin Cuneo Press, Inc. in Milwaukee County, WI, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Wisconsin Cuneo Press, Inc., 5400 W. Good Hope Road, Milwaukee, WI 53223.

MC 107496 (Sub-5–35TA), filed October 20, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Dry sugar, in bulk,* from Reserve, LA, to points in AL, AR, FL, GA, IL, IA, KY,

MS, MO, NC, OH, OK, SC, TN, TX, VA, WI, WV, IN, KS, MI, and NE. Supporting shipper: Godchaux-Henderson Sugar Co., Inc., P.O. Drawer AM, Reserve, LA 70084.

MC 107496 (Sub-5–36TA), filed October 20, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moies, IA 50309. Representative: E. Check, Attorney, 666 Grand Avenue, Des Moines, IA 50309. *Caustic soda,* from Two Rivers, WI, to points and places in the state of IL. Supporting shipper: U.S. Oil Company, P.O. Box 25, Combined Locks, WI 54113.

MC 107496 (Sub-5–37TA), filed October 20, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, Attorney, 666 Grand Avenue, Des Moines, IA 50309. *Dry sugar, in bulk,* from Mathews, LA to Robinson, IL. Supporting shipper: L. S. Heath & Sons, P.O. Box 679, Robinson, IL.

MC 108207 (Sub-5–38TA), filed October 20, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). *Animal feed supplements (except in bulk),* in mechanically refrigerated equipment, from Story County, IA, to points in TX and OK. Supporting shipper: Norman Nossaman Agricultural Consultants, 13411 Rolling Hills Lane, Dallas, TX 75240.

MC 109397 (Sub-5–22TA), filed October 20, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). *(1) Building materials, and (2) equipment, materials and supplies used in the manufacture, sale, distribution and handling of (1) above,* between Harrison County, MS, on the one hand, and, on the other, points in the U.S. Supporting shipper: Confederate Building Supply, Inc., P.O. Box 3201, Gulfport, MS 39503.

MC 109397 (Sub-5–23), filed October 20, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). *(1) Primary metal products; including galvanized; except coating or other allied processing; (2) fabricated metal products; except ordnance, machinery or transportation equipment: (3) machinery and supplies;* between Shelby County, TN, on the one hand, and, on the other, points in the U.S. Supporting shippers: 6.

MC 111231 (Sub-5–14), filed October 20, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: James H. Berry (same as applicant). *Prefabricated horse stalls, equipment, material and supplies used in the manufacture of same,* between Adams County, NE on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Alumco Manufacturing Inc., Hastings Industrial Park East, Building #2, Hastings, NE 68901.

MC-112713 (Sub-5–20TA), filed October 20, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: John M. Records, P.O. Box 7270, Overland Park, KS 66207. *Building materials and plant food,* between points in the states of AL, AZ, AR, CA, CO, FL, GA, IL, KS, KY, LA, MD, MA, MI, MN, MO, MS, NE, NJ, NY, NC, OH, OK, OR, PA, SC, TN, TX, WA and WI, on the one hand, and, on the other, points in the U.S. Supporting shipper: W. R. Grace & Co., Construction Products Division 62 Whittemore Avenue, Cambridge, MA 02140.

MC 113651 (Sub-5–26TA), filed October 20, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Road, Suite 4, Omaha, NE 68154. Representative: James F. Crosby, James F. Crosby & Associates, 7363 Pacific Street, Oak Park Office Building, Suite 210B, Omaha, NE 68114. *Iron and steel articles, as described in Appendix V to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209,* between points in Columbia County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Berwick Forge & Fabricating Division, Whittaker Corporation, P.O. Box 188, West Ninth Street, Berwick, PA 18603.

MC 124774 (Sub-5–4TA), filed October 20, 1980. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Such commodities as are dealt in by chain grocery stores,* from Chicago, IL and Kansas City, MO and their respective Commercial Zones to Douglas County, NE. Supporting shipper: Hinky Dinky Supermarkets, 4206 South 108th Street, Omaha, NE 68137.

MC 126822 (Sub-5–30TA), filed October 20, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Foodstuffs* between points in the U.S. restricted to the transportation of shipments from, to, or between the facilities of Camerican International, Inc. Supporting shipper: Camerican International, Inc., 260 Madison Avenue, New York, NY 10016.

MC 128883 (Sub-5–6TA), filed October 20, 1980. Applicant: NORTH IOWA EXPRESS, INC., 1921 N.E. 58th Avenue, Des Moines, IA 50318. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, household goods, commodities in bulk and commodities requiring special equipment* between Minneapolis-St. Paul, MN, and its commercial zone on the one hand, and, on the other, points in IA. Applicant intends to interline and join the subject authority with its present operations. Supporting shippers: 6.

MC 134922 (Sub-5–4TA), filed October 20, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Diane Price, Traffic Manager (same as above). *Foodstuffs (except commodities in bulk, in tank vehicles),* from Shelby County, 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 135797 (Sub-5–77TA), filed October 20, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Automobile parts,* between points in FL, LA, GA, OK, AL, and TN on the one hand, and, on the other, points in MI. Supporting shipper: Fred Jones Manufacturing Company, 900 West Main, Oklahoma, OK 73106.

MC 135797 (Sub-5–78TA), filed October 20, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (address same as applicant). *Alumina, calcined or hydrated,* between points in AR on the one hand, and on the other, points in OK. Supporting shipper: Organon Teknika, 5300 South Portland, Oklahoma City, OK 73144.

MC 135997 (Sub-5–2TA), filed October 20, 1980. Applicant: TEXAS TANK LEASING, INC., Route 5, Box 99, Conroe, TX77301. Representative: William D. Lynch, P.O. Box 912, Austin, TX 78767. *Air Pollution Devices* from the facilities of Conservatek, Inc. in Montgomery County, TX to all points in the U.S. Supporting shipper: Conservatek, Inc., P.O. Box 1678, Conroe, TX 77301.

MC 138469 (Sub-5–24TA), filed October 20, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL

60068. *Glass and glass products,* between Sherman, TX, and Rossford, OH. Supporting shipper: Libby-Owens-Ford Company, 811 Madison Avenue, Toledo, OH 43695.

MC 138627 (Sub-5–5TA), filed October 20, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Roofing materials and supplies,* from Phillipsburg, KS, to points in the U.S. Supporting shipper: Tamko Asphalt Products, Inc., 220 West Fourth, Joplin, MO 64801.

MC 140033 (Sub-5–9TA), filed October 20, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Foodstuffs (except in bulk, in tank vehicles),* from Chatsworth, CA to points in the states of CO, GA, KY, MO, NM, OH, OK and TX. Supporting shipper: Serv A Portion, Inc., 9140 Lurine Avenue, Chatsworth, CA 91311.

MC 141108 (Sub-5–5TA), filed October 20, 1980. Applicant: D & C EXPRESS, INC., P.O. Box 746, Wilton, IA 52778. Representative: Kenneth F. Dudley, Ltd., P.O. Box 279, Ottumwa, IA 52501, telephone: 515–682–8154. *Materials, equipment, and supplies used in the manufacture, sale and distribution of office equipment,* From points in IL, IN, MO, OH, PA, and WV to Muscatine, IA Supporting shipper: Hon Company, 200 Oak Street, Muscatine, IA 52761.

MC 144678 (Sub-5–5), filed October 20 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, KS 66210. Representative: Harold H. Clokey, American Freight System, Inc., 9393 West 110th Street, Overland Park, KS 66210. *Common:* Regular. *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 Chattooga, Floyd, Polk, Gordon, and Bartow Counties, GA as off route points in connection with carrier's otherwise authorized, regular route service. Supporting shippers: 7. Applicant intends to tack with existing authority. Applicant intends to interline.

MC 147196 (Sub-5—15TA), filed October 20, 1980. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. *Contract:* Irregular. *Cleaning Compounds, Detergents, Waxes and Toilet Articles,* between Floyd County, IN, on the one hand, and, on the other, the 48 states under a continuing contract or contracts with Colgate Palmolive Company, Jeffersonville, IN. Supporting shipper: Colgate Palmolive Company, P.O. Box 9, Jeffersonville, IN 47130.

MC 147348 (Sub-5–3), filed October 20, 1980. Applicant: SOUTHWEST FREIGHT DISTRIBUTORS, INC., 1320 Henderson, North Little Rock, AR 72114. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *(1) Household appliances, (2) Television sets and recorders (tape or wire) and (3) Parts and accessories for household appliances, television sets and recorders,* from the facilities of General Electric Company, in Little Rock, AR to all points in TX. Supporting shipper: General Electric Company, Little Rock, AR.

MC 148591 (Sub-5–1TA), filed October 20, 1980. Applicant: KILE TRANSFER CORP., 4600 78th Street, Des Moines, IA 50324. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, household goods, commodities in bulk and commodities requiring special equipment,* between Des Moines, IA, on the one hand, and, on the other, Osceola, Corning, and Creston, IA, from Des Moines, IA, over U.S. Highway 65 to U.S. Highway 34 then to Corning, IA, and return over the same route. Applicant intends to interline traffic and join the requested authority with its present regular route operations. Supporting shippers: 12.

MC 148833 (Sub-5–4TA), filed October 20, 1980. Applicant: REBEL EXPRESS, INC., Box 98, Dawson, IA 50066. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Meat products* from the facilities of Carl Buddig, Inc. at South Holland, IL, to points in WA, OR, CA, ID, NV, MT, WY, UT, CO, AZ, NM and TX. Supporting shipper: Carl Buddig, Inc., 50 West Taft, South Holland, IL.

MC 148972 (Sub-5–2TA), filed October 20, 1980. Applicant: EDWARD J. WHALEN, d.b.a. WHALEN TRUCK SERVICE, R.R. 2, Auxvasse, MO 65231. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Coal,* between points in MO, IL, and IA. Supporting shipper: Wyoming Fuel Company, P.O. Box 15265, Lakewood, CO 80215.

MC 151768 F (Sub-5–5TA), filed October 20, 1980. Applicant: ARM TRANSPORTATION CORP., P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. Swanson, Att'y., Quaintance & Swanson, P.O. Box 1103, Sioux Falls, SD 57101. *Inedible meat by-products* (except in bulk, in tank vehicles) between the facilities of Consolidated Pet Foods, Inc., on the one hand, and, on the other, points in the U.S. Supporting shipper: Consolidated Pet Foods, Inc., P.O. Box 30488, Amarillo, TX 79120.

MC 51983 (Sub-5–2TA), filed October 20, 1980. Applicant: DAVID REYNOLDS d.b.a. REYNOLDS FEED & SEED, 200 E. Front Street, Runge, TX 78151. Representative: Same as applicant. *Contract;* irregular; *fertilizer grade ortho phosphoric acid (in bulk as a liquid in tank type vehicles),* from points in Saint Charles Parish, LA, to points in Hinds County, MS. Supporting shipper: Southeastern Chemical, Inc., No. 7 Lakeland Circle, Suite 600, Jackson, MS 39216.

MC 152260 (Sub-5–1TA), filed October 20, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. *Contract,* irregular. *Printed matter,* and *materials, equipment and supplies used by printing companies,* between points in the U.S., except AK and HI, under continuing contract(s) with World Color Press, Inc. of Effingham, IL. Supporting shipper: World Color Press, Inc., P.O. Box 1248, Effingham, IL 62401.

MC 152263 (Sub-5–1TA), filed October 20, 1980. Applicant: L & W TRANSPORTATION, INC., Route 3, Box 195, Sedalia, MO 65301. Representative: Charles J. Fain, FAIN & FAIN, Attorneys, 333 Madison Street, Jefferson City, MO 65101. *Contract;* irregular. *Fabricated metal products; except ordinance, machinery and transportation equipment* from the facilities of Progressive Fabricators, Inc., St. Louis, MO, to Winchester, KY; West Point, MS; New Rhoads, LA; Mesa, AZ; and Littleton, CO. Supporting witness: Robert Spehn, Vice President, Progressive Fabricators, Inc., 6880 North Broadway, St. Louis, MO 63147.

MC 152269 (Sub-5–2TA), filed October 20, 1980. Applicant: HOWARD W. LESTER, INC., 308 N. Jefferson, Indianola, IA 50125. Representative: Douglass Blakely (same address as above). *Commodities, the transportation of which, because of their size or weight, require special handling or the use of special equipment, and materials, equipment or supplies used in the construction industry,* between points in IA and IL, on the one hand, and, on the other, points in MT, WY, CO, NM, ND, SD, NE, KS, OK, TX, MN, IA, MO, AR,

LA, WI, IL, MI, IN, KY and OH. Supporting Shippers: 12.

MC 152270 (Sub-5–1TA), filed October 20, 1980. Applicant: CARSON CARRIERS OF DALLAS, INC., 3422 Gilbert Road, Grand Prairie, TX 75050. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. *Construction equipment and machinery, forklifts and machine tools,* between points in Dallas County, TX, on the one hand, and, on the other, points in MI and KY, and points in and south of AZ, CA, AR, NM, NC, OK, and TN. Supporting Shippers: Shaw Equipment Company, Box 225687, Dallas, TX 75265; Powrlift Corporation, 1400 S. Walton Walker, Irving, TX 75060.

MC 29910 (Sub-5–56), filed October 21, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. *Building materials,* between Austin, TX, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting Shipper: Howard Systems Corp; P.O. Box 6308; Austin, TX 78762.

MC 35320 (Sub-5–38), filed October 22, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). *Common,* regular. *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving Wichita Falls, TX and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular-route operations. Supporting Shippers: Seven.

Note.—Applicant intends to tack and interline.

MC 102567 (Sub-5–13TA), filed October 22, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: Mr. Joe C. Day, Vice President—Traffic, 13403 Northwest Fwy.—Suite 130, Houston, TX 77040. *Caprolactam, in bulk, in tank vehicles,* from Augusta, GA to Laredo, TX. Supporting shipper: Trafpak, U.S.A., Inc., 2000 West Loop South, Suite 1800, Houston, TX 77027.

MC 121658 (Sub-5–8TA), filed October 22, 1980. Applicant: STEVE D. THOMPSON TRUCKING, INC., 1205 Percy Street, Winnsboro, LA 71295. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. Common; regular *general commodities* (except household goods, Classes A and B explosives) between Monroe, LA and Houston, TX. From Monroe over U.S. Hwy 165 to junction U.S. Hwy 90 and I. 10, then over U.S. Hwy 90 and I. 10 to Houston and return over the same route, serving all intermediate points and points within the commercial zones of Houston and Beaumont, TX. Supporting shippers: 58.

Note.—Such authority to be tacked with Applicant's existing authority.

MC 124236 (Sub-5–11TA), filed October 22, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher (same as above). *Cement* between LA and TX. Supporting shipper: Ideal Basic Industries, Inc., Cement Division, 950 17th Street, Denver, CO 80202.

MC 124236 (Sub-5–12TA), filed October 22, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher (same as above). *Lime, in bulk,* From the plant site of Pelican State Lime at Amelia, LA, to TX, AR, and MS. Supporting shipper: Pelican State Lime Division, SI Lime Company, P.O. Box 1637, Morgan City, LA 70381.

MC 134467 (Sub-5–13 TA), filed October 22, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Jack B. Wolfe, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *(1)(a) Foodstuffs (except in bulk) and (b) such merchandise as is dealt in by retail, gift, and curio shops and catalog distribution centers (except in bulk),* from the facilities of The Swiss Colony at Monroe and Madison, WI, to points in the United States (except AK and HI), and *(2)(a) Foodstuffs (except in bulk); (b) such merchandise as is dealt in by retail, gift, and curio shops and catalog distribution centers (except in bulk), and (c) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above (except in bulk),* from points in the United States (except AK and HI), to the facilities of The Swiss Colony at Madison and Monroe, WI. Supporting shipper: The Swiss Colony, 1112 7th Ave., Monroe, WI 53566.

MC 134922 (Sub-5–5 TA), filed October 22, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Diane Price, Traffic Manager, Route 6, Box 15, North Little Rock, AR 72118. *Foodstuffs, NOI,* from the facilities of Southern Food Corporation located in Los Angeles, CA to points in CA, ID, OR, UT and WA. Supporting shipper: Southern Foods, 5353 Downey, Vernon, CA 90058.

MC 135078 (Sub-5–9 TA), filed October 22, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Non-Exempt Food or Kindred Products (STCC Code No. 20)* between points in the U.S. Supporting shipper: Prairie Creek Commodities Corp., 103 Allen Drive, P.O. Box 143, Allen, TX 75002.

MC 135797 (Sub-5–79 TA), filed October 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (address same as applicant). *General commodities (with the usual exceptions),* between Oklahoma County, OK and points in the United States (except AK and HI). Supporting shipper: Robertson Home Products, 3232 West Reno, Oklahoma City, OK 73108.

MC 135797 (Sub-5–80TA), filed October 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Chemicals and products used in the manufacture of caulking compounds,* Between points in TX on the one hand, and on the other, points in OK. Supporting shipper: Macklanburg-Duncan Company, 4041 No. Santa Fe, Oklahoma City, OK 73118.

MC 138469 (Sub-5–25TA), filed October 21, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Printed matter,* from Amarillo and Dallas TX, and Lincoln, NE, to the facilities of Criss-Cross Numerical Directory, Inc. at Oklahoma City, OK. Supporting shipper: Criss-Cross Numerical Directory, Inc., 4700 N.W. 25th, Oklahoma City, OK 73127.

MC 143594 (Sub-5–6TA), filed October 22, 1980. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Chemicals,* in bulk, from Nashville, TN to points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Stauffer Chemical Company, Westport, CT 06880.

MC 144170 (Sub-5–1TA), filed October 22, 1980. Applicant: NATIONWIDE TRUCK LINES, INC., P.O. Box 609, Ennis, TX 75119. Representative: William J. Lippman, Steele Park, Suite 330, 50 South Steele Street, Denver, CO 80209. *Bakery products (not frozen)* from Marietta, OK and Louisville, KY to all points in CA, WA, OR, NV, NM, TX, OK, AR, LA, AZ, CT, GA, ID, KS, KY, ME, MD, MN, MS, MO, MT, NE, NY, NC, OH, PA, RI, SC, UT, VT, WV, WI, WY,

VA, AL, DE, IL, IN, MA, MI, NH, NJ, and TN. Supporting shipper: Little Brownie Bakers, P.O. Box 249, Marietta, OK 73448.

MC 144416 (Sub-5–1), filed October 22, 1980. Applicant: C. F. McGRAW, P.O. Box 498, Garden City, KS 67846. Respresentative: HERBERT ALAN DUBIN, Baskin and Sears, 818 Connecticut Ave., NW., Washington, DC 20006. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* from the facilities of Iowa Beef Processors, Inc. at or near Holcomb, KS to points in and west of MT, WY, CO, OK, AR, and LA. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 144682 (Sub-5–10TA), filed October 21, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Foodstuffs (except commodities in bulk),* from the facilities of the American Home Food Corp. located at or near Vacaville, CA to points in the states of MT, NM, OR, UT and WA. Supporting shipper: American Home Foods Corp., 685 Third Ave., NY, NY, 10017.

MC 146078 (Sub-5–17TA), filed October 22, 1980. Applicant: CAL-ARK, INC, 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Cleaning, washing, and scouring compounds for household uses,* from the facilities of the Purex Corporation in Dallas, TX; Jefferson, LA; and St. Louis, MO, to all points and places in AR, OK, LA, TX, MS, and TN. Supporting shipper: Purex Corporation, 9300 Rayo Avenue, Southgate, CA 90280.

MC 146448 (Sub-5–12TA), filed October 22, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Polydoroff and Miller, P.C., Suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Tile and commodities used in the distribution and installation of tile (except commodities in bulk)* from Chicago, IL to points in AL, AR, FL, GA, KY, LA, OK, MS, MT, NC, SC, TN and TX, restricted to shipments originating at facilities of Kentile Floors, Inc. Supporting shipper: Kentile Floors, Inc., 58 Second Avenue, Brooklyn, NY 11215.

MC 146517 (Sub-5–1TA), filed October 22, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N. W. 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. *Contract, irregular; general commodities (except household goods as defined by the Commission, Commodities in bulk, Commodities of unusual value, Classes A and B explosives, and Commodities requiring special equipment)* Between all points in the United States (except AK and HI) under continuing contract with Dow Chemical, U.S.A., Texas Division, Freeport, TX.

MC 150215 (Sub-5–2TA), filed October 22, 1980. Applicant: LARRY H. BURLESON, d.b.a., BURLESON DISTRIBUTORS, 2020 N. 9th Street, St. Louis, MO 63102. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. No. 314–727–0777. Contract Irregular *Plastic Products and Materials and Supplies used in the manufacture thereof,* between points in places in the U.S., except AK and HI. Supporting shipper(s): I.T.L. Industries, P.O. Box 877, Newark, OH 43055.

MC 152069 (Sub-5–1TA), filed October 22, 1980. Applicant: C & M TRUCKING COMPANY, 2862 Brenner Drive, Dallas, TX 75220. Representative: William Sheridan, 1025 Metker, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular, *drugs, medicines, cosmetics, plastic boxes, weed killing compounds, herbicides and animal or poultry feed supplements, materials, equipment and supplies used in the manufacture, distribution and production of the commodities named above (except commodities in bulk),* Between the facilities of Eli Lilly and Company, Farmers Branch-Dallas, TX and points in AR, CO, KS, LA, MO, NM and OK. Supporting shipper: Eli Lilly and Company, 4404 Beltwood Parkway, Farmers Branch, TX 75234.

MC 152292 (Sub-5–1TA), filed October 22, 1980. Applicant: SUNBELT EXPRESS, INC., 3129 Robin Hill Lane, Dallas, TX 75042. Representative: Jack Kennedy, P.O. Drawer 5049, Irving, TX 75062. *Alcoholic liquor or wine* from CA to TX. Supporting shipper: Glazer Wholesale Drugs Company, Inc., 508 Park Avenue, Dallas, TX 75201.

MC 61440 (Sub-5–9TA) (Republication), filed September 15, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. *General commodities (except household goods as defined by the Commission and Classes A & B explosives.* Between points in St. Louis County, MO, on the one hand, and, on the other, points in GA, IA, LA, MS and TN, restricted to traffic moving for the account of Japco Manufacturing Company. Support shipper: Japco Manufacturing Company, 11534 Adie Road, Maryland Hgts., MO 63043.

MC 200 (Sub-5–63TA), filed October 23, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Insulated copper wire on reels, spools, and cartons,* between Los Angeles County, CA and San Bernardino County, CA, on the one hand, and, on the other, Denver County, CO and Providence County, RI. Restricted to shipments originating at or destined to the above named points. Supporting shipper: Collyer Insulated Wire, 100 Higginson Ave., Lincoln, RI 02865.

MC 29910 (Sub-5–57TA), filed October 23, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. Common, Regular. *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 Ponca City, OK as an off-route point in connection with carriers regular route operations at Tulsa, OK. Applicant intends to tack and interline. Supporting shipper: There are eight supporting shippers.

MC 29910 (Sub-5–59TA), filed October 24, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. *Foodstuffs and supplies and equipment used in the manufacture, processing, or distribution thereof,* between Cowley and Sedgewick Counties, KS, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Kansas Food Packers, Inc., 608 Burton Avenue, Wichita, KS 67213.

MC 29910 (Sub-5–60TA), filed October 24, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. *Meats, meat products and articles distributed by meat packing houses,* between Barton, Sedgewick and Shawnee Counties, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: Thies Packing Co., Inc.; South Main Street, Great Bend, KS.

MC 29910 (Sub-5–58TA), filed October 24, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). *Common, Regular. 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 Fort Collins, CO as an off-route point in connection with applicant's regular route operations at Denver, CO. Applicant intends to tack and interline. Supporting shippers: Teledyne Water Pik, 1730 E. Prospect Street, Fort Collines, CO 80525.

MC 30844 (Sub-5–25TA), filed October 24, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, Tulsa, OK 74121. Representative: Larry L. Strickler, P.O. Box 5000, Waterloo, IA 50704. *Paints and paint products, and such materials and supplies as are used or dealt in by manufacturers and distributors of paints and paint products,* between Newark, NJ; Gallatin, TN and Elk Grove Village, IL and all points and places in the contiguous 48 states, restricted to shipments originating at or destined to the facilities of John L. Armitage Co. Supporting shipper: John L. Armitage Co., 140 Thomas St., Newark, NJ 07114.

MC 30844 (Sub-5–26TA), filed October 24, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, Tulsa, OK 74121. Representative: Larry L. Strickler, P.O. Box 5000, Waterloo, IA 50704. *Nonexempt food or kindred products* between points in Mecklenburg County, NC on the one hand, and, on the other, points in and east MT, WY, UT and AZ, restricted to shipments originating at or destined to facilities of H. J. Heinz Co. Supporting shipper: Heinz USA, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230.

MC 30844 (Sub-5–27TA), filed October 24, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, 4616 E. 67th Street, Tulsa, OK 74121. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Sprinklers and Lawn Care Products; and (2) Materials and supplies used in the manufacture of sprinklers and lawn care products,* between Moonachie, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper(s): Melnor Industries, 1 Carol Place, Moonachie, NJ 07074.

MC 68100 (Sub-5–1TA), filed October 23, 1980. Applicant: D. P. BONHAM TRANSFER, INC., P.O. Drawer G, Bartlesville, OK 74003. Representative: Nate Bonham, Jr. (same as applicant). *Tile and Materials and Supplies used in the manufacture thereof,* between the facilities of National Tile Industries, Inc. at or near Shawnee, OK, on the one hand, and points in AR, CO, KS, LA, MO, NM and TX, on the other. Supporting shipper: National Tile Industries, Inc., 706 West Independence, Shawnee, OK.

MC 100449 (Sub-5–5TA), filed October 23, 1980. Applicant: MALLINGER TRUCK LINE, INC., R. R. 4, Ft. Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C to Appendix 1 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 and west of MI, OH, KY, MO, AR, and LA. Restricted to the traffic originating at the named origin points and destined to the named destination states. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68701.

MC 113908 (Sub-5–24TA), filed October 24, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Fertilizer, de-icer, cat letter and kindred products, (non-exempt farm products; pulp, paper, or allied products; chemicals or allied products; petroleum or coal products; hazardous materials; general commodities) (except household goods as defined by the Commission and classes A & B explosives),* between Viroqua, (Vernon County), WI, on the one hand, and, on the other, points in AL. Supporting shipper: Howard B. Johnson Enterprises, Inc., P.O. Box 67, Viroqua, WI 54665.

MC 113908 (Sub-5–25TA), filed October 24, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Fertilizer, de-icer, cat litter and kindred products, (non-exempt farm products; pulp, paper or allied products; chemicals or allied products; petroleum or coal-products; hazardous materials; general commodities) (except household goods as defined by the Commission and classes A and B explosives),* Between Viroqua, (Vernon County), WI, on the one hand, and, on the other, points in MD. Supporting shipper: Howard B. Johnson Enterprises, Inc., P.O. Box 67, Viroqua, WI 54665.

MC 114273 (Sub-5–33TA), filed October 24, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, corporate counsel (same as above). *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment)* between points in MN and WI, on the one hand, and, on the other, Cedar Rapids, IA (and is commercial zone) and points in MO. Restricted to traffic originating at or dsetined to the facilities of Quaker Oats Company. Supporting shipper(s): Quaker Oats Co., 345 Merchandise Mart Plaza, Chicago, IL 60654.

MC 114273 (Sub-5–34TA), filed October 24, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, corporate counsel (same as above). *Meat, meat, by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions on Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Iowa Beef Processors, Inc. at or near Holcomb, KS to points in the states of CT, DE, DC, IA, IL, IN, KS, KY, MA, ME, MD, MI, MN, MO, NE, ND, NH, NJ, NY, OH, PA, RI, SD, VA, VT, WI, and WV. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 115331 (Sub-5–13TA), filed October 23, 1980. Applicant: TRUCK TRANSPORT, INC., 11040 Manchester Road, St. Louis, MO 63122. Representative: J. R. Ferris, (same as applicant). *Ferrous sulphate, in bulk,* from Clinton, IA to the Minnesota Mining and Manufacturing Company facilities at or near Cordova, IL. Supporting shipper(s): Minnesota Mining and Manufacturing Company (3M), 3M Center, St. Paul, MN 55144.

MC 115331 (Sub-5–14TA), filed October 23, 1980. Applicant: TRUCK TRANSPORT, INC., 11040 Manchester Road, St. Louis, MO 63122. Representative: J. R. Ferris, (same as applicant). *Lime,* from the plant site of Pelican State Lime at or near Amelia, LA to points in MS, TX, AL & AR. Supporting shipper(s): Pelican State Lime, Div. of S.I. Lime Co., P.O. Box 1637, Morgan City, LA 70380.

MC 116949 (Sub-5–1TA), filed October 24, 1980. Applicant: BURNS TRUCKING, INC., Rural Route 1, Box 304, So. Sioux City, NE 69886. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Contract Irregular;

General Commodities (Except Classes A&B Explosives and household goods as defined by the Commission, and Commodities in bulk) Between points in the U.S. Supporting shipper: Hensen Manufacturing Corp., Route 1, Box 67–A, Hartford, SD 57033.

MC 118535 (Sub-5–4TA), filed October 23, 1980. Applicant: Tiona Truck Line, Inc., 102 West Ohio, Butler, MO 64730. Representative: Jim Tiona, Jr., (same as applicant). *Non-Ferrous Metals, Non Ferrous Scrap, Scrap Plastic and Scrap Rubber, Junk batteries, Burned-Out Battery Plates, Drosses and or Residues.* Between Carroll County IL on the one hand and on the other points in AR, AZ, CO, IA, IN, KS, KY, LA, MI, MN, MO, MS, ND, NE, NM, OH, OK, SD, TN, TX, WI, WY. Supporting shipper: Gould Inc., Metals Division, Mendota Heights, MN 55118.

MC 119493 (Sub-5–47TA), filed October 24, 1980. Applicant: Monkem Company, Inc., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, traffic manager, Monkem Co., Inc., P.O. Box 1196, Joplin, MO 64801. *Fertilizer compounds* from Chicago Heights IL and its commercial zone to Abilene and Lawrence, KS. Supporting shipper: Ted Evans, Manager of Transportation, USS Agri-Chemicals Division, United States Steel Corporation, 233 Peachtree Street, N.E., Atlanta, GA 30303.

MC 124109 (Sub-5–1 TA), filed October 24, 1980. Applicant: B.F.C. TRANSPORTATION, INC., P.O. Box 985, Cedar Rapids, IA 52406. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Contract* irregular, *Liquid sucrose, in bulk,* from Des Plaines, IL, to Cedar Rapids, IA, under contract with The Quaker Oats Company. Supporting shipper: The Quaker Oats Company, Merchandise Mart Plaza, Chicago, IL 60654.

MC 124813 (Sub-5–21 TA), filed October 24, 1980. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Lumber and building materials,* from points in MN and WI to points in Wright County, IA. Supporting shipper: American Wood Products, Inc., P.O. Box 248, Belmond, IA 50421.

MC 126118 (Sub-5–34 TA), filed October 24, 1980. Applicant's name: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *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) which are at the time moving on bills of lading of freight forwarders,* between points in the U.S. (except AK and HI). Supporting shipper: Acme Fast Freight, J. Harn, Vice President, 2110 Alhambra Ave., Los Angeles, CA 90031.

MC 133959 (Sub-5–6 TA), filed October 23, 1980. Applicant: ALBAUGH TRUCK LINE, INC., 123 Main Street, Elkhart, IA 50073. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Contract irregular general commodities, except Class A and B explosives, commodities in bulk and commodities requiring special equipment* between points in IA, NE, IL, KS, MO, TX, MN, LA, and WI on bills of lading of ITOFCA, Inc. and under continuing contract with ITOFCA, Inc. Supporting shipper: ITOFCA, Inc., Two Walker Avenue, Clarindon Hills, IL 60514. Applicant intends to interline traffic with rail carriers.

MC 135070 (Sub-5–29TA), filed October 24, 1980. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 81816, Lincoln, NE 68501. *Such commodities as are dealt in or used by wholesale and retail grocery stores and food business houses,* from all points in the US in and east of CO, MT, MN, and WY to Allegheny and Butler Counties, PA. Supporting shipper: Giant Eagle Markets, Inc., 101 Kappa Drive, Pittsburgh, PA 15238.

MC 138134 (Sub-5–1TA), filed October 23, 1980. Applicant: DONALD HOLLAND TRUCKING, INC., 1300 Main Street, Keokuk, IA 52632. Representative: Kenneth F. Dudley, P.O. BOX 279, Ottumwa, IA 52501, Telephone: 515–682–8154. Contract irregular *General Commodities (except Class A & B Explosives).* Between points in the U.S. (except AK and HI) under continuing contract or contracts with Sheller Globe Corporation. Supporting shipper: Sheller Globe Corporation, 3200 Main Street, Keokuk, IA 52632.

MC 140635 (Sub-5–6TA), filed October 23, 1980. Applicant: ADAMS LINES, INC., 2619 N Street, P.O. Box 7343, Omaha, NE 68107. Representative: John L. Hornung, President, 2619 N Street, P.O. Box 7343, Omaha, NE 68107. *Foodstuffs and food specialities (except in bulk),* from the facilities utilized by American Roland Food Corp., in New York, NY, to points in and west of OH, KY, TN, GA and FL. Supporting shipper: American Roland Food Corp., New York, NY and/or Bruno Scheidt, Inc.

MC 144622 (Sub-5–55TA), filed October 24, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Foodstuffs (except in bulk),* from the facilities of Lamb-Weston, Inc. located in OR, WA, ID, and UT to points in the U.S. on and east of U.S. Highway 85. Supporting shipper: Lamb-Weston, Inc., P.O. Box 23517, 6600 S.W. Hampton St., Portland, OR 97223.

MC 144622 (Sub-5–56TA), filed October 24, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Such commodities as are dealt in by discount or variety stores* between points in AL, AR, IL, KS, KY, LA, MS, MO, OK, TN, and TX originating at or destined to the facilities of Wal-Mart Stores, Inc. Supporting shipper: Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712.

MC 144678 (Sub-5–6TA), filed October 23, 1980. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, KS 66210. Representative: Harold H. Clokey, American Freight System, Inc., 9393 West 110th Street, Overland Park, KS 66210. Common; Regular. *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 Berrien, Colquitt, Thomas, Brooks, Cook, Lanier, Clinch, Grady, and Lowndes Counties, GA, as off route points in connection with carrier's otherwise authorized, regular route service. There are 18 supporting shippers. Applicant intends to tack with existing authority. Applicant intends to interline.

MC 145032 (Sub-5–1TA), filed October 23, 1980. Applicant: NATIONAL TRANSPORTATION SERVICES, INC., P.O. Box 3291, Lubbock, TX 79410. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street N.W., Washington, DC 20001. (1) *Trailers, trailer chassis, and containers* (except those designed to be drawn by passenger automobiles), in truckaway service, and (2) *Parts* for the commodities named in (1) above, between the facilities of Lufkin Industries, Inc., Lufkin Trailer Division, Lufkin, TX, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Lufkin Industries, Inc., Lufkin Trailer Div., P.O. Box 8458, Lufkin, TX 75901.

MC 145441 (Sub-5–29TA), filed October 24, 1980. Applicant: A.C.B. TRUCKLING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative:

Ralph E. Bradbury, Traffic Manager, P.O. Box 5130, North Little Rock, AR 72119. *Alcoholic beverages, (except in bulk),* between points in NJ on the one hand, and on the other, points in the United States. Supporting shipper: Fedway Associates, Inc., P.O. Box 519, Kearney, NJ 07032.

MC 145441 (Sub-5–30TA), filed October 24, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Building materials, (except commodities in bulk),* from Ellis County, TX to points in the U.S. (except AK & HI). Supporting shipper: Elk Corporation, P.O. Box 500, Ennis, TX 75119.

MC 145441 (Sub-5–31TA), filed October 24, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *General commodities, (except in bulk),* between the facilities owned or utilized by Velsicol Chemical Corporation on the one hand, and points in the United States, on the other hand. Supporting shipper: Velsicol Chemical Corp., 341 E. Ohio, Chicago, IL 60611.

MC 150592 (Sub-5–4TA), filed October 24, 1980. Applicant: SUNFLOWER CARRIERS, INC., P.O. Box 561, York, NE 68467. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Food and food products and items used in the manufacture and distribution thereof,* from points in Allegheny County, PA to points in Platte County, NE. Supporting shipper: Tasty-Toppings, Inc., Gordon M. Hull, President, P.O. Box 728, Columbus, NE 68601.

MC 150783 (Sub-5–13TA), filed October 23, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., P.O. Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth (same as applicant). *(1) Foodstuffs (2) such commodities as are dealt in or used by manufacturers and distributors of foodstuffs* between the facilities of Good-O-Days Foods, Little Rock, AR on the one hand and points in the U.S. on the other. Supporting shipper: Good-O-Days Foods, Box 9918, Little Rock, AR 72219.

MC 150783 (Sub-5–14TA), filed October 23, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, Post Office Box 757, Rogers, AR 72756. *Malt beverages and related advertising materials, empty used beverage containers and materials and supplies used by breweries.* Between Golden, CO; Omaha, NE; and Perry, GA on the one hand and points in AR on the other. Supporting shippers: Malczycke Beverage Co., Box 568, Fayetteville, AR 72701 and Midwest Beverage Co., 901 Wheeler Ave., Ft. Smith, AR 72901.

MC 150806 (Sub-5–4TA), filed October 24, 1980. Applicant: WECO, INC., 500 Scott Street, P.O. Box 5128, Kansas City, KS 66119. Representative: Erle W. Francis, Esq., 719 Capitol Federal Building, Topeka, KS 66603. Contract: Irregular. *Newspaper Supplements, Magazines, Printed Matter* and *Catalogs,* to and from points in the U.S. except AK and HI. Under continuing contract with Henry Wurst, Inc., 1331 Saline, Kansas City, MO 64116. Supporting shipper: Henry Wurst, Inc., Kansas City, MO 64116.

MC 151660 (Sub-5–2TA), filed October 23, 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1701 E. Irving Boulevard, P.O. Box 678, Irving, TX 75060. Representative: Larry P. Cardin, President (same as above). Contract: Irregular. *Paper and paper articles.* Between the Louisiana parishes of Washington, and West Feliciana, on the one hand, and, on the other, the 48 states under a continuing contract with Crown Zellerbach Corporation, Bogalusa, LA. Supporting shipper: Crown Zellerbach Corporation, P.O. Box 1060, Bogalusa, LA 70247.

Docket No. MC 152117 (Sub-5–1TA), filed October 24, 1980. Applicant: LITTLE GINNY TRANSPORT SYSTEMS, INC., 824 27th Avenue, S.W., Cedar Rapids, IA 52404. Representative: Virginia A. Wilson, same. (1) *Disassembled gymnasium apparatus,* from Cedar Rapids, IA to points in CA & TX. (2) *Plastics, synthetic, other than liquid,* from Clinton, IA to points in the States of AZ, CA, CO, ID, OR, WA & TX. (3) *Non-exempt food or kindred products,* from Cedar Rapids, IA to points in the U.S. (except HI & AK). (4) *Castings,* from at or near Waupaca, WI to Cedar Rapids, IA. Shippers: Universal Corp., 930 27th Ave., S.W., Cedar Rapids, IA 52406. National Oats Co., Inc., 1515 H Ave., N.E., Cedar Rapids, IA 52402. Chemplex Company, 3100 Golf Road, Rolling Meadows, IL 60008.

MC 152319 (Sub-5–1TA), filed October 24, 1980. Applicant: CAYMAN WEST CORPORATION, d.b.a. CAPROCK PIGGYBACK SERVICE, P.O. Box 4303, Odessa, TX 79761. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. *General Commodities (except Classes A and B explosives, household goods as defined by the Commission and commodities in bulk),* from points in Ector County, TX, to points in NM and TX. RESTRICTED to traffic having a prior or subsequent movement by rail. Supporting shippers: Five.

MC 152323 (Sub-5–1TA), filed October 24, 1980. Applicant: STANLEY A. SHERMAN, d.b.a. SHERMAN FOODS, 419 Water Street, Sioux City, IA, 51101. Representative: D. Douglas Titus, Titus and Storm, Suite 510 Benson Building, Sioux City, IA 51101. Contract, irregular *Meat, meat products, meat byproducts, 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 IL, IA, KS, MN, MO, NE, ND, SD, TX, and WI. Supporting shipper: D & L Processors, Inc., 2600 N. Hwy. 75, Sioux City, IA 51105.

MC 152324 (Sub-5–1TA), filed October 24, 1980. Applicant: CARTWRIGHT MOVING & STORAGE CO., INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: Alex M. Lewandowski, 1221 Balitimore Avenue, Suite 600, Kansas City, MO 64105. Contract; Irregular. *General commodities,* between Jackson County, MO, on the one hand, and, on the other, points in KS in and east of Jewell, Mitchell, Lincoln, Elsworth, Rice, Reno, Kingman and Harper Counties. Supporting shipper: The Jones Store Company, 12th and Main, Kansas City, MO 64105.

MC 146696 (Sub-5–1TA), filed September 15, 1980. Applicant: AGRI-BUILDING SYSTEMS, INC., P.O. Box 130, 2nd & Euclid, Waukomis, OK 73773. Representatives: B. Gene Anderson or Robert J. Jantzen, P.O. Box 130, 2nd & Euclid, Waukomis, OK 73773. *Iron and Steel articles,* between points in TX, OK, IN, IL, MO, IA, NE, KS, CA, FL, and LA. Supporting shipper: C. M. I. Corporation, Edward L. Turner, Traffic Manager, Box 1985, Oklahoma City, OK 73101. Applicant intends to tack with authority already held.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 152049 (Sub-6–1TA), filed October 17, 1980. Applicant: AIRO SERVICES, INC., 2103 E. 112th St., Tacoma, WA 98445. Representative: Jim Pitzer, 15 S. Grady Way—Suite 321, Renton, WA 98055. *Hazardous waste materials* from points in WA, OR, ID, MT and UT to points in OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chem Security Systems, Inc., P.O. Box 1866, Bellevue, WA 98009.

MC 152249 (Sub-6–1TA), filed October 17, 1980. Applicant: JOEL HECKMANN, d.b.a. A & A TRANSPORTATION & SUPPLY, P.O. Box 2586, Martinez, CA 94553. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. *Foodstuffs (except frozen foods and commodities in bulk)* between all points in CA on one hand and points in Counties of Alameda, Los Angeles, Sacremento, San Francisco and San Joaquin, CA on other hand, for 270 days. Supporting shippers: Allied Canners and Packers, 100 California St., San Francisco, CA 94111. Martin Mueller & Co. Export Inc., 450 Mission St., San Francisco, CA 94105.

MC 116544 (Sub-6–20TA), filed October 15, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Such commodities as are dealt in by grocery and food business houses and material, equipment and supplies used in the manufacture, sale and distribution of such commodities (except commodities shipped in bulk),* between St. Louis County, MO, St. Louis, MO, commercial zone, and all points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Lever Brothers Company, 1400 North Pennsylvania Avenue, St. Louis, MO.

MC 063562 (Sub-6–10 TA), filed October 6, 1980. Applicant: BN TRANSPORT INC., 6775 East Evans Avenue, Denver, CO 80222. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50307. *Meat and packinghouse products* between Denver, CO on the one hand, and, on the other, points in ID, UT, AZ, NV, OR, WA, and CA, for 270 days. Supporting shipper: Cudahy Foods Company, 4801 Brighton Blvd., Denver, CO 80216.

MC 42487 (Sub-6–39 TA), filed October 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities (except those of unusual value, Classes A and B explosives, livestock, green hides, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading),* serving the facilities of Ghent Manufacturing, Inc. at Lebanon, OH, as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority presently held in Docket MC 42487 Subs 500, 578 and 744. These authorities, in turn, will be joined with other authority presently held by Applicant at such points as Atlanta, GA; Boston, MA; Buffalo, NY; Chicago, IL; Cincinnati, OH; Des Moines, IA; Indianapolis, IN; Louisville, KY and St. Louis, MO to permit service to and from points throughout the U.S. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the U.S. as provided in tariffs on file with the I.C.C. Supporting shipper: Ghent Manufacturing, Inc., South St. at Cherry, Lebanon, OH 45036.

MC 42487 (Sub-6–40 TA), filed October 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular route: *General commodities, (except those of unusual value, Classes A and B explosives, livestock, green hides, assembled automobiles, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading),* serving the facilities of A. B. Chance Company, subsidiary of Emerson Electric Co., at or near Washington, MO, as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority held in Docket No. 42487 Subs 500, 578, 646 and 708. These authorities, in turn, will be tacked or joined with other authorities of Applicant at such points as Chicago, IL, Cincinnati, OH, Minneapolis, MN, Kansas City, MO, Denver, CO and Dallas, TX, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States, as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper: Emerson Electric Co., 8100 West Florissant Ave., St. Louis, MO 63136.

MC 42487 (Sub-6–41TA), filed October 15, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except household goods as defined by the Commission and Classes A and B explosives),* Between Netcong, NJ and Newton, NJ, serving all intermediate points: From Netcong over U.S. Hwy 206 to Newton, and return over the same route for 270 days. The proposed authority will be tacked or joined at Netcong, NJ, with authority acquired by Applicant from Nestor Bros., Inc., as authorized by the Commission in Docket No. MC–F–12748. The Commission has not yet issued a Certificate in the name of Applicant, covering this authority. Applicant proposes to interline traffic with its present connecting carriers at authorized points throughout the United States, as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): There are 5 shippers. Their statements may be examined at the Regional office listed.

Note.—Applicant intends to tack with its existing authority and any authority it may acquire in the future.

MC 152252 (Sub-6–1TA), filed October 17, 1980. Applicant: CONSOLIDATED PRODUCTIONS, INC., 333 N. Foothill Blvd., Beverly Hills, CA 90210. Representative: Ira S. Rubin, Loeb and Loeb, One Wilshire Bldg., Suite 1600, Los Angeles, CA 90017. *Equipment, materials, supplies, sound and lighting* for theatrical, stage, trade and industrial shows and productions between all points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: "Ain't Misbehavin'" International Co., 250 W. 52nd St., NYC 10019; Michael White Productions, Ltd., 1501 Bdwy, Suite 1501, NYC 10036; "Evita" Company c/o Hal Prince, 1270 Ave of Americas, NYC 10020; "They're Playing Our Song" Company, c/o Emanuel Azenburg, 165 W. 65th St., NYC 10019.

MC 52858 (Sub-6–3TA), filed October 16, 1980. Applicant: CONVOY COMPANY, 3900 N.W. Yeon Ave., Portland, OR 97210. Representative: Raymond A. Greene, Jr., 100 Pine St., #2550, San Francisco, CA 94111. *Motor vehicles* in truckaway service between St. Paul, MN and points within the St. Paul, MN Commercial Zone and points in IA and points in Keweenaw, Houghton, Ontonagon, Gogebic, Iron, Baraga, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, Chippewa counties, MI for 270 days. Supporting shippers: Mazda Motors of America (Central), Inc., 3040 E. Ana St., Compton, CA

90221; Nissan Motor Corp. in USA, 18501 S. Figueroa St., Carson, CA 90248.

MC 150054 (Sub-6–4TA), filed October 15, 1980. Applicant: J. W. CROWLEY, d.b.a., J. W. CROWLEY & SONS, P.O. Box 533, Dove Creek, CO 81324. Representative: Steven K. Kuhlmann, 2600 Energy Center, 717 17th St., Denver, CO 80202. *Salt and salt products,* from points in Grand County, UT to points in AZ, CA, CO, ID, NV, NM, TX, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Utah Salt Co., Inc. 1935 Main, Suite 307, Salt Lake City, UT 84115.

MC 136605 (Sub-6–18TA), filed October 17, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Plywood and Particleboard with decorative covering,* from the facility of National Plywood, Inc., located at or near Long Beach, CA to Yakima, WA; Dundee, Wilsonville, McMinnville, OR; Boise, ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: National Plywood, Inc., P.O. BOX 9340, Long Beach, CA 90810.

MC 150044 (Sub-6–2TA), filed October 17, 1980. Applicant: R. ERDMANN TRUCKING, INC., Highway 101 W., P.O. BOX 564, Port Angeles, WA 98362. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Lumber and wood products,* from Port Angeles, WA, to points in WA and OR on and west of U.S. Hwy. 97, for 270 days. Supporting shipper: Shannon Pacific Forest Products, Lumber Trader, P.O. Box 16142, Portland, OR 97233.

MC 141205 (Sub-6–4TA), filed October 16, 1980. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry St., Denver, CO 80222. Representative: F. Robert Reeder, James M. Elegante, P.O. Box 11898, Salt Lake City, UT 84147. *Contract carrier,* irregular routes: *crude oil, scrubber oil and condensate* between points in Stillwater County, MT, and the facilities of Husky Oil Company in Park County, WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Husky Oil Company, 600 South Cherry St., Denver, CO 80222.

MC 141205 (Sub-6–5TA), filed October 16, 1980. Applicant: HUSKY OIL TRANSPORTATION COMPANY, 600 South Cherry St., Denver, CO 80222. Representative: F. Robert Reeder, James M. Elegante, P.O. Box 11898, Salt Lake City, UT 84147. *Contract carrier,* irregular routes: *crude oil, scrubber oil and condensate* from points in Renville County, ND, to the pipeline injection station on Portal Pipeline near Stanley, ND, the pipeline injection station on Wesco Pipeline near Sidney, MT, and the pipeline injection station on Kenco Pipeline near Reserve, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Husky Oil Company, 600 South Cherry St., Denver, CO 80222.

MC 125952 (Sub-6–5TA), filed October 16, 1980. Applicant: INTERSTATE DISTRIBUTOR CO., 8311 Durango St., S.W., Tacoma, WA 98499. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract;* irregular routes: *Potato chips,* from Los Angeles, CA, and its commercial zone to Portland, OR, and its commercial zone; from Portland, OR, and its commercial zone to Spokane, WA, and its commercial zone for the account of Sunshine Biscuits, Inc., for 270 days. Supporting shipper: Sunshine Biscuits, Inc., P.O. Box 7, Sayreville, NJ 08872.

MC 152109 (Sub-6–1TA), filed October 16, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036. Representative: Michael F. Morrone, 1150 17th St., N.W., Suite 1000, Washington, D.C. 20036. *Contract carrier,* Irregular routes: *asphalt roofing products* from Phillipsburg, KS to Denver, CO and points in Arapahoe County, CO for the account of Tamko Asphalt Products, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Tamko Asphalt Products, Inc., 5300 E. 43rd Ave., Denver, CO 80216.

MC 152109 (Sub-6–2TA), filed October 17, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036. Representative: Michael F. Morrone, 1150 17th Street, N.W., Suite 1000, Washington, D.C. 30036. *Contract carriage,* Irregular routes: (A) *gypsum wallboard* from Albuquerque, NM to Flagstaff, Fredonia, Holbrook, Page, Phoenix, Prescot, Tucson, Winslow and Yuma, AZ; Los Angeles and San Diego, CA; Colorado Springs, Denver, Fort Collins, Grand Junction and Loveland, CO; Las Vegas, NE; and Cedar City, Hurricane Kanab and Saint George, UT; (B) *wallboard paper* from Pryor, OK; Denver and Commerce City, CO to Albuquerque, NM, and (C) *starch* from Plainview, TX to Albuquerque, NM for the account of American Gypsum Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: American Gypsum Company, P.O. Box 6345, Albuquerque, NM 87197.

MC 152109 (Sub-6–3TA), filed October 16, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036. Representative: Michale F. Morrone, 1150 17th St., N.W., Suite 1000, Washington, D.C. 20036. *Contract carrier,* Irregular routes: *Crushed, flattened automobile bodies* from Rapid City, SD, points in WY, and points in NE and KS on and west of US Highway 281 to points in Arapahoe County, CO, for the account of Milford Pepper d/b/a Century Enterprises for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Milford Pepper d.b.a., Century Enterprises, 234 Columbine, Denver, CO 80206.

MC 124735 (Sub-6.3TA), filed October 16, 1980. Applicant: R. C. KERCHEVAL, JR., 2214 Fourth St., Seattle, WA 98134. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *General commodities, except Class A and B explosives, household goods as defined by the Commission, commodities in bulk, articles of unusual value, and commodities, which because of their size or weight, require the use of special equipment,* between Seattle, WA, commercial zone, on the one hand, and points in the U.S., on the other hand, restricted to traffic moving to or from the facilities of Bostrum-Warren, Inc., for 270 days. Supporting shipper: Bostrum-Warren, Inc., 920 2nd Ave., Seattle, WA 98104.

MC 152247 (Sub-6–1TA), filed October 14, 1980. Applicant: KOHLER TRUCKING, INC., 3026 E. Vernon Ave., Los Angeles, CA 90058. Representative: Eldon R. Clawson, 333 W. Foothill, Blvd., Glendora, CA 91740. *Contract carrier,* irregular: *fresh, prepared, and processed meat,* to Los Angeles, CA, from Sioux Center, IA, Downs, KS, York, NE, and Brush, CO, under a continuing contract with Packers Bar M Meat Co. of Los Angeles, CA. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Packers Bar M Meat Co., 4215 Exchange Ave., Los Angeles, CA 90058.

MC 144829 (Sub-6–2TA), filed October 17, 1980. Applicant: HB MUCHMORE d.b.a., MUCHMORE TRUCKING, 4659 Crater Lake Highway, Medford, OR 97501. Representative: Jerry R. Woods, Suite 1600—One Main Pl., 101 S.W. Main St., Portland, OR 97204. *Prefabricated wooden buildings, knocked down,* from the facilities of Cathedralite Domes at White City, OR to points in AZ, CA, NV and WA, for 270 days. Supporting shipper: Cathedralite Domes, 7050 6th St., White City, OR 97503.

MC 142847 (Sub-6–3TA), filed October 16, 1980. Applicant: LESLIE OAKLEY

AND BARRY D. OAKLEY d.b.a., OAKLEY BROTHERS TRUCKING, P.O. Box 338, Fairfield, MT 59436. Representative: Dennis E. Lind, Suite A, Century Plaza, Missoula, MT 59801. *Wrought steel pipe, coated and wrapped wrought steel pipe* from the facilities of Beall Pipe and Tank Corporation at or near Portland, Oregon to Colorado for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Beall Pipe and Tank Corporation, P.O. Box 03310, Portland, OR 97203.

MC 138732, (Sub-6–7TA), filed October 16, 1980. Applicant: OSTERKAMP TRUCKING, INC., P.O. Box 5546, Orange, CA 92667. Representative: Michael R. Eggleton, 5 Crow Canyon Ct., Suite 200, San Ramon, CA 94583. *Lumber, Lumber Products, and Wood Products,* from points in OR to points in UT, for 270 days. Supporting shipper: Weyerhaeuser Company, Tacoma, WA 98447.

MC 150584, (Sub-6–3TA), filed October 17, 1980. Applicant: PAPER MERCHANTS TRANSPORT & SUPPLY, INC., 175 Second St., Oakland, CA 94607. Representative: Myron F. Tower, 2257 Bancroft Ave., San Leandro, CA 94577. *Contract carrier,* Irregular Routes: *Paper bags in bales; paper, wrapping NOI, in rolls or cartons,* from the facilities of the Cupples Paper Bag Company, Northwest Division, at Portland, OR to points in the following CA counties: Orange, Sacremento, San Joaquin, Shasta, Stanislaus, Tehama and Tulare Counties, CA for the account of Cupples Paper Bag Company, Northwest Division, for 270 days. Supporting shipper: Cupples Paper Bag Company, Northwest Division, 525 University Ave., Palo Alto, CA 94301.

MC 146724, (Sub-6–1TA), filed October 16, 1980. Applicant: DEAN RAPPLEYE, INC., P.O.B. 204, West Jordan, UT 84084. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. *Flour,* from the facilities of Peavey Company, Ogden, UT and points in its commercial zone, to points in CA and ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Peavey Company, 220 W. 30th, Ogden, UT 84401.

MC 150502 (Sub-6–4TA), filed October 14, 1980. Applicant: REBANDA TRANSPORTATION, INC., 2323 Madrone Ave., Healdsburg, CA 95448. Representative: Ronald C. Chauvel, 100 Pine St. No. 2550, San Francisco, CA 94111. *Irregular Carrier,* Carrier Routes: *Musician's equipment, materials and supplies, and show materials* used in connection with concerts presented by shipper between all points on and east of the Mississippi River under continuing contracts with Pat Armstrong and Associates for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Pat Armstrong & Associates, P.O. Box 7877, College Park Station, Orlando, FL 32804.

MC 124692 (Sub-6–23TA), filed October 15, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Building materials,* from Koochiching County, MN to points in NV, AZ and CA, for 270 days. Supporting shipper: Boise Cascade Corporation, P.O. Box 2885, Portland, OR 97208.

MC 95920 (Sub-6–4TA), filed October 16, 1980. Applicant: SANTRY TRUCKING CO., 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *Such commodities as are dealt in and used by petroleum distributors and dealers (except commodities in bulk)* from Portland, OR, and its commercial zone to points in WA on and west of U.S. Hwy. 97, for the account of Mobil Oil Corporation, for 270 days. Supporting shipper: Mobil Oil Corporation, 612 S. Flower St., Los Angeles, CA 90017.

MC 152237 (Sub-6–2TA), filed October 15, 1980. Applicant: STEINBECKER BROTHERS, Box 852, Greeley, CO 80632. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. *Contract Carrier,* irregular routes: *Meats and meat products,* from points in CO and NE to points in ID, WA, MT, OR, CA, AZ and NV under a continuing contract(s) with Iowa Meat Distributors, Inc. of Beaverton, OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Iowa Meat Distributors, Inc., P.O. Box 1489, Beaverton, OR 97075.

MC 136897 (Sub-6–2TA), filed October 17, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 W. Elwood Rd., Phoenix, AZ 85014. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008. *Contract Carrier:* Irregular routes: *General commodities,* (except Classes A and B explosives), from Los Angeles, CA to points in AZ, for the account of LAWI–CSA Consolidators, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: LAWI–CSA Consolidators, Inc., 5610 S. Soto St., Huntington Park, CA 90255.

MC 136897 (Sub-6–22TA), filed October 17, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 W. Elwood Rd., Phoenix, AZ. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008. *Contract Carrier:* Irregular Routes: *Iron and Steel articles:* between Dallas, TX and points in AL, CA, CO, CT, FL, GA, IN, KS, KY, MA, MD, MI, MO, MS, NJ, NY, OH, OK, OR, PA, RI, SC, TN, and WA, for the account of Associated Spring Barnes Group, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Associated Spring Barnes Group, Inc., 3443 Morse Drive, Dallas, TX 74211.

MC 147528 (Sub-6–6TA), filed October 16, 1980. Applicant: T.A.S. TRUCKING, INC., 2652 Springwood Dr., Meridian, ID 83642. Representative: Dan L. Poole, Elam, Burke, Evans, Boyd and Koontz, P.O. Box 1559, Boise, ID 83701. *Contract Carrier:* Irregular Routes: *treated poles, prefabricated log home kits, and materials and supplies used in the erection, manufacture and distribution thereof,* from Boise, ID to points in WY, CO NE, SD, MT, OR, WA, CA, ND, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Robert C. Darrow, dba Pressure Treated Timber Co., 3200 Gowen Rd., Boise, Idaho 83705.

MC 152130 (Sub-6–2TA), filed October 17, 1980. Applicant: TABOR TRUCK LINES, INC., 325 North 5th St., Sacramento, CA 95814. Representative: Michael T. Applegate (same as applicant). *Contract Carrier,* irregular routes: *General commodities* between Washoe County, NV and Los Angeles County, CA for the account of Wells Manufacturing, for 270 days. Supporting shipper: Wells Manufacturing, Two Erik Circle, Verdi, NV 89439.

MC 110325 (Sub-6–45TA), filed October 14, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. *Common Carrier,* regular routes: *General commodities,* (except household goods as defined by the Commission and classes A and B explosives), (1) between Dallas, TX and Shreveport, LA, (a) over U.S. Hwy 80; (b) over Interstate Hwy 20; (2) between Longview, TX and Waco, TX, from Longview over U.S. Hwy 259 to junction TX Hwy 31, then over TX Hwy 31 to Waco, and return over the same route; (3) between Longview, TX and Hearne, TX, from Longview over U.S. Hwy 259 to junction U.S. Hwy 79, then over U.S. Hwy 79 to Hearne, and return over the same route; (4) between Longview, TX and Houston, TX, from Longview over U.S. Hwy 259 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Houston, and

return over the same route; (5) between Nacogdoches, TX and Memphis, TN, from Nacogdoches over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis, and return over the same route; (6) serving all intermediate points in routes (1) through (5), above, including points in their commercial zones, and the off-route points in Rockwall, Kaufman, Hunt, Van Zandt, Hopkins, Wood, Raine, Henderson, Smith, Upshur, Gregg, Rusk, Cass, Marion, Harrison and Panola Counties, TX, for 270 days. Applicant proposes to tack to its existing authority and interline at authorized points throughout its system. There are 89 supporting shippers. Their statements may be viewed at the regional office listed.

MC 110325 (Sub-6–46), filed October 15, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave, Kansas City, MO 64105. Common Carrier; *Regular routes; general commodities*, (except household goods as defined by the Commission and Classes A and B explosives), (1) between Houston, TX and Lake Charles, LA (a) over Interstate Hwy 10; (b) over U.S. Hwy 90; (2) between Beaumont, TX and Marshall, TX, from Beaumont over U.S. Hwy 96 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Marshall, and return over the same route; (3) between Lake Charles, LA and Memphis, TN, from Lake Charles over U.S. Hwy 171 to junction U.S. Hwy 71, then over U.S. Hwy 71 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis, and return over the same route; (4) between Shreaveport, LA and Birmingham, AL, over Interstate Hwy 20; (5) between Houston, TX and Texarkana, AR, over U.S. Hwy 59; (6) between Marshall, TX and Shreveport LA over Interstate Hwy 20; (7) serving all intermediate points in (1) through (6) above, including their respective commercial zones, and the off-route points in Jefferson, Orange, Hardin, Polk, Tyler and Jasper Counties, TX, for 270 days. Applicant proposes to tack to its existing authority and interline at authorized service points throughout its system. There are 50 supporting shippers. There statements may be viewed at the regional office listed.

MC 110325 (Sub-6–47TA), filed October 15, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore, Ave, Kansas City, MO 64105. Common Carrier; *Regular routes; general commodities*, (except household goods as defined by the Commission and Classes A and B explosives), (1) between Denver, CO and Houston, TX, from Denver over Interstate Hwy 25 to junction U.S. Hwy 87, then over U.S. Hwy 87 to junction U.S. Hwy 287, then over U.S. Hwy 287 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction U.S. Hwy 75, then over U.S. Hwy 75 to Houston, and return over the same route; (2) between Dallas, TX and Port Arthur, TX, from Dallas over U.S. Hwy 175 to junction U.S. Hwy 69, then over U.S. Hwy 69 to Port Arthur, and return over the same route; (3) between Houston, Tx and Memphis, TN, from Houston over U.S. Hwy 59 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 80, the over U.S. Hwy 80 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis, and return over the same route; (4) between Houston, TX and Beaumont, TX, (a) over Interstate Hwy 10, (b) over U.S. Hwy 90; (5) between Corsicana, TX and Texarkana, AR, from Corsicana over TX Hwy 31 to junction U.S. Hwy 271, then over U.S. Hwy 271 to junction TX Hwy 155, then over TX Hwy 155 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction Interstate Hwy 30, then over Interstate Hwy 30 to Texarkana, and return over the same routs; (6) between Gilmer, TX and junction U.S. Hwy 259 and Interstate Hwy 30, from Gilmer over U.S. Hwy 271 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction U.S. Hwy 259, and return over the same route; (7) serving all intermediate points in (1) through (6), above, including points in their respective commercial zones, and the off-route points in Kaufman, Van Zandt, Henderson, Smith, Anderson, Cherokee, Houston, Nacogdohes, Anelina, Polk, Tyler, Japer, Hardin, Orange and Jefferson Counties, TX, for 270 days. Applicant proposes to tack to its existing authority and interline at authorized service points throughout its system. There are 71 supporting shippers. Their statements may be viewed at the regional office listed.

MC 110325 (Sub-6–48TA), filed October 15, 1980. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA. Representative: Wentwoth E. Griffin, Midland Bldg., 1221 Baltimore Ave, Kansas City, MO 64105. Common carrier; *Regular routes, general commodities*, (except household goods as defined by the Commission and Classes A and B explosives), (1) between Brownsville, TX and Atlanta, GA, from Brownsville over U.S. Hwy 77 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 85, then over Interstate Hwy 85 to Atlanta, and return over the same route; (2) between Brownsville, TX and Laredo, TX over U.S. Hwy 83; (3) between Laredo, TX and Memphis, TN, from Laredo over Interstate Hwy 35 to junction TX Hwy 31, then over TX Hwy 31 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis, and return over the same route; (4) between Victoria, TX and Waco, TX, over U.S. Hwy 77; (5) between McAllen, TX and Denver, CO, from McAllen over U.S. Hwy 281 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Denver, and return over the same route; (6) between Victoria, TX and Raton, NM, over U.S. Hwy 87; (7) between San Antonio, TX and Birmingham, AL, from San Antonio over Interstate Hwy 10 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Birmingham, and return over the same route; (8) between junction U.S. Hwys 81 and 79 and junction U.S. Hwy 79 and Interstate Hwy 20, over U.S. Hwy 79; (9) between junction U.S. Hwy 96 and Interstate Hwy 10 and junction U.S. Hwys 96 and 59 over U.S. Hwy 96; (10) serving all intermediate points in routes (1) through (9) above, including points in their respective commercial zones, for 270 days. Applicant proposes to tack to its existing authority and interline at authorized service points throughout its system. There are 92 supporting shippers. Their statements may be viewed at the regional office listed.

MC 148791 (Sub-6–4TA), filed, October 14, 1980. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representive: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier, Irregular routes;* (1) *Appliances*, and (2) *parts, materials, supplies and equipment used in the distribution of repair of appliances*, from the facilities of Whirpool Corporation at Clearfield, UT to all points in AZ, CA, and NV, for the account of Whirlpool Corporation, for 270 days per Ex Parte MC 67 (Sub–9). Supporting shipper: Whirlpool

Corporation, 2000 U.S. 33, North Benton Harbor, MI 49022.

MC 144330 (Sub-6–2TA), filed October 16, 1980. Applicant: UTAH CARRIERS, INC., P.O. Box 1218 Freeport Center, Clearfield, UT 84016. Representative: D. Michael Jorgensen, 143 S. State St., Salina, UT 84654. *Gypsum and gypsum wallboard, joint compound and materials and supplies used in the application thereof,* from points in Sevier County, UT to points in CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Georgia Pacific Corporation, 900 S.W. Fifth Ave., Portland, OR 97204

MC 140313 (Sub-6–3TA), filed October 14, 1980. Applicant: VIKING INTERNATIONAL, INC., 1434 S.W. 137th, Seattle, WA 98166. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *General commodities, except Class A & B explosives, household goods as defined by the Commission, commodities in bulk, articles of unusual value and commodities which because of their size and weight require the use of special equipment,* between points in WA, on the one hand, and points in OR, CA, NV, MT, ID, UT, OH, KY, MI, IL, MN, TX, NJ, NY, PA and MO, on the other hand, restricted to traffic moving to or from the facilities of Farwest Shippers' Association, Inc., for 270 days. Supporting shippers: Farwest Shippers' Association, Inc., 12855 48th Ave. So., Seattle, WA 98168.

MC 140313 (Sub-6–4TA), filed October 16, 1980. Applicant: VIKING INTERNATIONAL, INC., 1434 S.W. 137th, Seattle, WA 98166. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *General commodities, except Class A & B explosives, household goods as defined by the Commission, commodities in bulk, articles of unusual value and commodities which because of their size and weight require the use of special equipment,* between points in the Seattle, WA, commercial zone, on the one hand, and points in the U.S., on the other hand, restricted to traffic moving to or from the facilities of A & D Transco, for 270 days. Supporting shipper: A & D Transco, 1762 6th So., Seattle, WA 98134.

MC 26396 (Sub-6–50TA), filed October 16, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Diatomaceous earth* from points in Nevada, to points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Eagle-Picher Industries, Inc., P.O. Box 12130, Reno, NV 89510.

MC 141804 (Sub-6–83TA), filed October 16, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). (1) *Camping equipment and supplies; sporting goods and supplies; outdoor recreational furniture, goods and supplies* (2) equipment, materials and supplies used in the manufacture and distribution of (1) above, between the facilities of Imperial American Company at Tyler, TX on the one hand, and, on the other, points in the U.S. (except AK & HI), for 270 days. Supporting shipper: Imperial American Company, P.O. Box 878, Tyler, TX 75710.

MC 152250 (Sub-6–1TA), filed October 17, 1980. Applicant: WHITE TRANSPORT, INC., P.O. Box 2063, Sheridan, WY 82801. Representative: Thomas O. White (same as applicant). (1) *Construction, mine and mill, machinery, equipment and supplies,* between points in WY, MT, SD, NE, CO, UT, ID for 270 days. Supporting shipper(s): Decker Coal Company, P.O. Box 12, Decker, MT 59025. Big Horn Coal Co., P.O. Box 724, Sheridan, WY 82801. Spring Creek Coal Co., P.O. Box 67, Decker, MT 59025. Peter Kiewit & Son's Co., P.O. Box 1009, Sheridan, WY 82801.

MC 152280 (Sub-6–1TA), filed October 20, 1980. Applicant: ALASKA RAPID TRANSPORT, INC., 5400 Fairbanks St., #1, Anchorage, AK 99502. Representative: Julian C. Rice, 330 Wendell St., Fairbanks, AK 99701. *General commodities,* except household goods as defined by the Commission, articles of unusual value, commodities requiring the use of special equipment, and Class "A" and "B" explosives between points within a 45-mile radius of Anchorage, AK, having a prior or subsequent movement by water, for 270 days. Supporting shippers: Sea-Land Service, Inc., 100 W. Harrison St., Suite 505, Seattle, WA 98119 and Northern Lights Express, P.O. Box 3365, Seattle, WA 98114.

MC 116544 (Sub-6–21TA), filed October 21, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Gypsum or gypsum products* from the ports of entry on the International Canadian boundary located in Washington to all points in the states of AZ, CA, CO, ID, MT, NM, OR, TX, and UT for 270 days. Supporting shipper: Epsilon Building Materials Ltd., 385 Lynn Avenue, North Vancouver, British Columbia, Canada V7J 2C4.

MC 151998 (Sub-6–1TA), filed October 20, 1980. Applicant: AMERICAN WAY TRANSPORT INC., 717 E. Artesia Blvd., Carson, CA 90746. Representative: W. G. Reese III, 623 E. Artesia Blvd., Carson, CA 90746. *Such merchandise as sold in department stores. Excepting commodities in bulk, restricted to freight association traffic in TL lots.* Between Los Angeles Cy, CA on the one hand, and, on the other, points and places in Dade Cy. FL., Mecklenburg Cy. NC., Fulton Cy. GA., NYC NY., and TX. for 270 days. Supporting shipper: Charlotte Freight Association, P.O. Box 8825, Charlotte, N.C. 28208.

MC 99694 (Sub-6–1TA), filed October 21, 1980. Applicant: BOLAND TRUCKING COMPANY, INC., 435 23rd St., San Francisco, CA 94107. Representative: Roland C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Bamboo baskets, plastic flowers, plastic corsages, plastic toys noi, Christmas decorations, acrylic yarn bunny, toys noi, and acrylic yarn,* from piers in Oakland, CA to Woodland, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Russell Stover Candies, Inc., 1004 Baltimore, Kansas City, MO 64105.

MC 116645 (Sub-6–1TA), filed October 21, 1980. Applicant: BULK TRANSPORTERS, INC., P.O. Box 127, Gilcrest, CO 80623. Representative: Leslie R. Kehl, Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. *Molasses in bulk,* between points in Goshen County, WY on the one hand, and, on the other, points in Weld County, CO for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188.

MC 152287 (Sub-6–1TA), filed October 21, 1980. Applicant: CITY OF SOUTH LAKE TAHOE, 1700 D St., South Lake Tahoe, CA 95705. Representative: Norma L. Smith (same as applicant). *Passengers,* in special operations, between South Lake Tahoe, CA, and Heavenly Valley North, Douglas County, NV, for 180 days. Supporting shipper(s): "There are 18 shippers. Their statements may be examined at the Regional office listed."

MC 42487 (Sub-6–42 TA), filed October 20, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except those of unusual*

value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving the facilities of Beach Island Knitting Co., at or near Quitman, GA, ITT Automotive Electronics Products Division, Torrington Co., and W. B. Rodden Berry Co., at or near Cairo, GA and Niagara Wires at or near Quincy, FL, for 270 days. Applicant intends to tack to its existing authority to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers. Supporting shipper(s): Beach Island Knitting Co., Young Street Industrial Park, Quitman, GA 31643. ITT Automotive Electronics Products Division, 2051—2nd Ave., N.E., Cairo, GA 31728. Torrington Co., 2525 Torrington Drive, Cairo, GA 31728. W. B. Rodden Berry Co., 17 First Avenue, N.E., Cairo, GA 31728. Niagara Wires, P.O. Box 979, Quincy, FL 32351.

MC 152251 (Sub-6–1 TA), filed October 21, 1980. Applicant: DKM, INC., P.O. Box 1083, Gunnison, CO 81230. Representative: William F. Schenkein, 718 17th St., Suite 1600, Denver, CO 80202. *General commodities,* between points in Chaffee, Gunnison, Hinsdale, Lake, Mesa, Montrose and Saguache Counties, CO, on the one hand, and points in CO on the other hand; with all shipments having prior or subsequent transportation in interstate commerce. Restricted against commodities in bulk, household goods and commodities requiring special equipment, for 270 days. An underlying ETA seeks 120 days authority. Applicant proposes to interline. Supporting shippers: Climax Molybdenum Co., (Mount Emmons Project) P.O. Box 579, Crested Butte, CO 81224; Homestake Mining Co., 320 North Main Street, Gunnison, CO 81230; Lake City Grocery & Market, Wades Addition, Lake City, CO 81235.

MC 136605 (Sub-6–19 TA), filed October 22, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Oil and gas well drilling pipe, pumping units, and iron sponge filtration material,* between Chicago, IL, Houston, TX, Durant, OK, Los Angeles, CA, Portland, OR, Seattle, WA, LaJunta, CO, and their commercial zones on one hand, and points in the states of ND, SD, NE, CO, WY, and MT on the other hand, for 270 days. Supporting shipper: Tool Pushers Supply Company, P.O. Box 2360, 106 Rivercross Road, Casper, WY 82602.

MC 145102, filed October 16, 1980. Applicant: Freymiller Trucking, Inc., 1400 S. Union Avenue, Bakersfield, CA 93307. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Dairy products* from New Ulm, MN; Cresco and Decorah, IA; Wishek, ND and Veblen and Timber Lake, SD, to AZ, CA and NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: N.C.D. Corporation, 3200 West Temple Street, Los Angeles, CA 90026.

MC 263 (Sub-6–3TA), filed October 21, 1980. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Pocatello, ID 83201. Representative: Wayne S. Green (same as applicant). *Common carrier,* Regular routes: *General commodities,* except those of unusual value, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment, between Denver and Pueblo, CO, serving all intermediate points and the off-route point of Canon City, CO and points in the commercial zones of Colorado Springs, Pueblo and Canon City, CO, from Denver over Interstate Hwy 25 to Pueblo, and return over the same route, for 270 days. Supporting shippers: There are approximately 116 shippers. Their statements may be examined at the Regional Office listed. Authorization is sought to interline and tack the above-named authority with MC 263 and subs.

MC 26377 (Sub-6–1TA), filed October 20, 1980. Applicant: LEONARDO TRUCK LINES, INC., 511 So. 1st St., Selah, WA 98942. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *Recycleable materials,* between points in OR and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Owens-Illinois, Inc., Glass Container Div., 5850 N.E. 92nd Dr., Portland, OR.

MC 14045 (Sub-6–3TA), filed October 14, 1980. Applicant: HAYWOOD L. WASHUM, d.b.a. LOS ANGELES-YUMA FREIGHT LINES, P.O. Box 4849, Kofa Station, Yuma, AZ 85364. Representative: Harold G. Hernly, Jr., 110 S. Columbus St., Alexandria, VA 22314. *Common Carrier;* Regular Routes: *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those which, because of size or weight, require the use of special equipment) between Yuma, AZ, and Phoenix, AZ, from Yuma over Interstate Hwy 8 to Gila Bend, AZ, thence over U.S. Hwy 80 to Phoenix, and return over the same route, serving all intermediate points between Wellton and Phoenix, AZ, and points within 25 miles of Hyder and Roll, AZ, as off-route points for 270 days. There are 29 shippers. Their statements may be examined at our regional office listed. Authorization is requested to interline with connecting carriers at Yuma and Phoenix, AZ, to serve commercial zones of all service points and to tack the above sought authority with MC–11045.

MC 152271 (Sub-6–1TA), filed October 20, 1980. Applicant: VINCENT AND ROGER MARCHESE d.b.a. VINCENT MARCHESE & SON, DRIVE AWAY SERVICE, 6333 David Ave., Loomis, CA 95650. Representative: Vincent J. Marchese (same as above). *Contract,* irregular routes, *automobiles,* in drive-away service between points in the states of AZ, CA, CO, ID, NV, NM, MT, OR, UT, WA, WY, for 270 days, under continuing contracts with the General Motors Acceptance Corp., Sacramento, CA. Supporting shipper(s): General Motors Acceptance Corp., 650 Howe Ave., Sacramento, CA 95825.

MC 152101 (Sub-6–1TA), filed October 16, 1980. Applicant: MID MONTANA, INC., 1010 N. Rouse, Bozeman, MT 59715. Representative: Jerome Anderson, 100 Transwestern Bldg., Billings, MT 59101. *Contract Carrier,* Irregular Routes: *General commodities (except household goods as defined by the Commission and Classes A and B explosives)* between points in the U.S., including points on the International Boundary line between the U.S. and Canada under continuing contracts with Parker Montana Co. and Parker Dakota Co., for 270 days. Supporting shipper: Parker Montana Co. and Parker Dakota Co., P.O. Box 31555, Billings, MT 59107.

MC 125916 (Sub-6–6TA), filed October 20, 1980. Applicant: NORWOOD TRANSPORTATION, INC., 2232 South 7200 West, Magna, UT 84044. Representative: Macoy A. McMurray, 800 Beneficial Life Tower, 36 South State Street, Salt Lake City, UT 84111. *Salt and salt products* in packages or in bulk, from Potash, UT to CO, NE, and NM for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Utah Salt Company 1935 South Main Street, Suite 307, Salt Lake City, UT 84115.

MC 151312 (Sub-6–3TA), filed October 14, 1980. Applicant: NORTHWEST FREIGHTLINES, INC., East 604 Montgomery, Spokane, WA 99207. Representative: Donald A. Ericson, 708 Old National Bank Building, Spokane, WA 99201. *Contract carrier:* Irregular routes: *Used brick,* from points in MT, to points in WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Jensen Brick Company, P.O. Box 165, Clarkston, UT 84305.

MC 138875 (Sub-6–27TA), filed October 20, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *Food and kindred products* (except commodities in bulk), from Monroe, WI to Phoenix, AZ, Los Angeles, Oakland and San Jose, CA, Commerce City, CO and Portland, OR, for 270 days. Supporting shipper: The Swiss Colony, Monroe, WI 53566.

MC 150956 (Sub-6–6TA), filed October 20, 1980. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, CA 95077. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. *Bananas,* from: Los Angeles County, CA to AZ, CO, ID, MT, NM, NV, OR, UT, WA, WY; from: Galveston County, TX to AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, ND, NE, OK, SD, TN, WI; from: Harrison County, MS to AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, ND, NE, OK, SD, TN, TX, WI, for 270 days. Supporting shipper: Castle & Cooke, Fresh Products Division, 50 California St., San Francisco, CA 94111.

MC 128246 (Sub-6–8TA), filed October 20, 1980. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, CA 95077. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. *Contract carrier:* irregular route: *Frozen Foods, Frozen Vegetables & Frozen Berries* from CA to AZ & NV for 270 days, under a continuing contract with John Inglis Frozen Food Co. An underlying ETA seeks 120 days authority. Supporting shipper: John Inglis Frozen Food Company, P.O. Box 3111, Modesto, CA 95353.

MC 141867 (Sub-6–8TA), filed October 22, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Ronald R. Brader, 2301 Milwaukee Way, Tacoma, WA 98421. *Fibrous glass products and materials, mineral wool insulation products and materials,* between the facilities of CertainTeed Corporation at or near Chowchilla, CA on the one hand, and, on the other, points in the states of UT, ID, OR and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: CertainTeed Corporation, 850 E. Swedesford Rd., Valley Forge, PA 19482.

MC 136818 (Sub-6–23TA), filed October 20, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 W. Elwood Rd., Phoenix, AZ 85041. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008. *Lumber and lumber products,* (1) from points in ID and WA to points in CA, UT, and AZ, and (2) from points in CA, ID, MT, OR, and WA, to points in AZ, CO, KS, NE, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Bendix-American Forest Products Corp., 3601 N. 34th Ave., Phoenix, AZ 85017; All-State Forest Products Corp., 3601 N. 34th Ave., Phoenix, AZ 85017; All-State Forest Products Co., P.O. Box 1582, Pendleton, OR 97801; Gittings Lumber Co., Inc., 4501 Wynkoop St., Denver, CO 80216; Hern Lumber and Saw Mills, 718 Hulton Bldg., Spokane, WA.

MC 110325 (Sub-6–49TA), filed October 16, 1980. Applicant: TRANSCON LINES, P.O.B. 9220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. *Common Carrier:* Regular routes, *general commodities,* (except household goods as defined by the Commission and Classes A and B explosives), (1) between Waco, TX and San Antonio, TX, over Interstate Hwy 35; (2) between San Antonio, TX and Houston, TX, over Interstate Hwy 10; (3) between San Antonio, TX and Denver, CO, from San Antonio over Interstate Hwy 10 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Denver, and return over the same route; (4) between Waco, TX and Memphis, TN, from Waco over TX Hwy 31 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis, and return over the same route; (5) between Hearne, TX and Marshall, TX, from Hearne, over U.S. Hwy 79 to junction U.S. Hwy 59, then over U.S. Hwy 59 to Marshall, and return over the same route; (6) between Houston, TX and Austin, TX over U.S. Hwy 290; (7) between San Antonio, TX and Raton, NM over U.S. Hwy 87; (8) serving all intermediate points in (1) through (7) above, including points in their respective commercial zones, and the off-route points in Hill, McLennan, Bell, Falls, Caldwell, Milam, Williamson, San Patricio, Nueces, Travis, Hays, Robertson, Brazos, Burleson, Comal, Guadalupe, Bexar, Hidalgo, Willacy and Cameron Counties, TX, for 270 days. Applicant proposes to tack to its existing authority and interline at authorized points throughout its system. There are 58 supporting shippers. Their statements may be examined at the Regional office listed.

MC 108121 (Sub-6–1TA), filed October 17, 1980. Applicant: TRANSPORT STORAGE & DISTRIBUTING CO., 18800 Southcenter Parkway, Tukwila, WA 98188. Representative: Michael B. Crutcher, 2000 IBM Bldg., Seattle, WA 98101. *Automobiles and trucks,* in secondary movements, in truckaway service, between Seattle, WA, and Carson City and Reno, NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Nissan Motor Corporation in USA, P.O. Box 191, Gardena, CA 90247.

MC 152286 (Sub-6–1TA), filed October 21, 1980. Applicant: TRUCANO CONSTRUCTION COMPANY, P.O. Box 870, 3560 N. Douglas, Juneau, AK 99802. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055. (1) *Prefabricated Modulars in Sections, without under carriages;* (2) *Lumber, Plywood and Building Materials* between points in Alaska South and East of the International Boundary Line between the U.S. and Canada near Haines, AK. Restricted to prior or subsequent movement by water, for 270 days. Supporting shipper: Boise Cascade Corporation, P.O.B. 7747, Boise, ID 83707.

MC 148875 (Sub-6–1TA), filed October 20, 1980. Applicant: KELLY H. WATSON ENTERPRISES, INC., d.b.a. WATSON TRUCKING CO., 8477 Aero Dr., San Diego, CA 92123. Representative: William R. Daly, P.O. Box 20521, San Diego, CA 92120. *Contract carrier,* irregular routes: *Games or Toys, NOI, viz. coin operated amusement games,* between Los Angeles and Long Beach Harbors and San Diego County CA, for account of Gremlin Industries, Inc. for 270 days. An underlying ETA seeks 120 day Authority. Supporting shipper: Gremlin Industries, Inc., 8401 Aero Dr. San Diego, CA 92123.

MC 141804 (Sub-6–86TA), filed October 22, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). *Plastic articles,* from the facilities of Union Carbide Corporation at or near Cartersville, GA; East Hartford, CT; Rogers, AR and Southhampton, PA to points and places in the U.S. (except AK and HI), for 270 days. Supporting shipper: Union Carbide Corporation, 270 Park Ave., New York, NY 10017.

MC 151596 (Sub-6–2TA), filed October 20, 1980. Applicant: BOB WHITAKER & SON, INC., P.O. Box 65, Roswell, NM 88201. Representative: Bob Whitaker (same address as applicant). (1) *Meats, meat products, meat by-products and articles distributed by meat-packing*

houses, and (2) *Materials, equipment and supplies used in processing, distribution and sale of the commodities named in (1) above*, between points in Curry County, NM on the one hand and points in the United States (except AK and HI) on the other hand, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Clovis Packing Co., Inc., P.O. Box 1926, Clovis, NM 88101.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34090 Filed 11-3-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action To Remedy Imminent and Substantial Endangerment to Health and the Environment Caused by the Disposal of Hazardous Waste by W. R. Grace & Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 21, 1980, a proposed consent decree in *United States of America* v. *W. R. Grace & Co.*, Civil Action No. 80-748-C, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree commits W. R. Grace & Co. to cleaning up hazardous waste contamination on its property in Acton, Massachusetts, after the completion of studies to develop a clean-up program. The proposed decree also requires W. R. Grace & Co. to develop and implement a program to remove hazardous waste contamination from the aquifer located beneath its property. The clean-up programs and time schedules required by the proposed decree must be approved by the plaintiff. W. R. Grace & Co. is subject to a $2,500 per day penalty for failing to meet deadlines required by the decree. A letter agreement between the parties makes immediately effective the terms of the proposed decree keyed to entry of the decree, while compliance with 28 CFR § 50.7 takes place.

The proposed consent decree may be examined at the office of the United States Attorney, Room 1107, John W. McCormack Post Office and Courthouse, Devonshire Street, Boston, Massachusetts 02109; at the Region I office of the United States Environmental Protection Agency, Enforcement Division, 21st Floor, John F. Kennedy Federal Building, Boston Massachusetts 02203; and at the Hazardous Waste Section, Land and Natural Resources Division, United States Department of Justice, Room 1644, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Hazardous Waste Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *W. R. Grace & Co.*, D. Massachusetts, Civil Action No. 80-748-C, D.J. Ref. 90-7-1-44.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-34063 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

Membership of the Department of Justice's Performance Review Boards

AGENCY: Department of Justice.

ACTION: Amendment to Notice of the Department of Justice's Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 USC 4314(c)(4), on Wednesday, August 20, 1980, the Department of Justice announced the membership of its Performance Review Boards. Subsequent to that notice, several changes to the original Board membership were required.

FOR FURTHER INFORMATION CONTACT:

Mr. Warren Oser, Director, Personnel and Training Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530. Telephone: 633-3221.

Harry H. Flickinger,

Executive Secretary, Senior Executive Resources Board.

Offices, Boards and Divisions Performance Review Boards:

Board 1

Dr. Paul Saenz, Associate Deputy Commissioner, Immigration and Naturalization Service.

Replaced

Martin B. Danziger, Deputy Commissioner, Immigration and Naturalization Service.

Board 3 (were added to Board 3)

Jo Ann Harris, Chief, Fraud Section, Criminal Division;

and

Mary Lynn Walker, Chief, Special Litigation Section, Civil Rights Divison.

Board 4 (was added to Board 4)

Arden B. Schell, Deputy Assistant Attorney General, Office of Legislative Affairs.

Office of Justice Assistance, Research and Statistics Performance Review Board:

Jane Restani, Director, Civil Litigation Branch, Civil Division.

Replaced

Robert F. Diegelman, Assistant Administrator, Planning and Management, Office of Justice Assistance, Research and Statistics, as a member of the Board and also as the Chairman of the Board.

[FR Doc. 80-34064 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Final Judgment in United States v. Detroit Lumbermen's Association, et al., and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment and a Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the Eastern District of Michigan, Southern Division, in *United States* v. *Detroit Lumbermen's Association, et al.*, Civil No. 872522. The Complaint in this case alleges that six retail lumber dealers and a trade association violated the Sherman Act by conspiring to fix, raise, stabilize and maintain prices of lumber and related products in Southeastern Michigan.

The proposed Judgment enjoins the defendants from engaging in the alleged conspiracy and prohibits them from communicating certain pricing information to any other retail lumber dealer. The CIS describes the terms of the Judgment and the background of the action and concludes that the proposed Judgment provides appropriate relief against the violation alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199.

Joseph H. Widmar,

Director of Operations.

United States District Court for the Eastern District of Michigan Southern Division

United States of America, Plaintiff, v. *Detroit Lumbermen's Association; ERB Lumber Co.; C. F. Gibbs Lumber Company; Grbesbeck Lumber & Supply, Inc.; Haggerty Lumber & Supply Co.; National Lumber*

Company; and Wallich Lumber Company, Defendants.

Civil No. 872522. Judge Patricia J. Boyle.

Filed: October 16, 1980.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: October 16, 1980.

For the Plaintiff: Sanford M. Litvack, *Assistant Attorney General;* Joseph H. Widmar; Charles F. B. McAleer; John A. Weedon; David F. Hils, *Attorneys, Department of Justice.* James K. Robinson, *United States Attorney.* Deborah Lewis Hiller; Richard E. Reed; *Attorneys, Department of Justice, Antitrust Division,* 995 Celebrezze Federal Building, Cleveland, Ohio 44199, Telephone: 216–522–4078.

For the Defendants:

Philip H. Dawson, *Counsel for Detroit Lumbermen's Association.* Robert G. Cutler, *Counsel for Erb Lumber Co.* W. Robert Chandler, *Counsel for Haggerty Lumber & Supply Co.* David F. Dumouchel, *Counsel for C. F. Gibbs Lumber Company.* Frank J. Bujold, George B. Bailey, Jr., *Counsel for Groesbeck Lumber & Supply, Inc.* Herbert N. Weingarten, *Counsel for National Lumber Company.* Gregory L. Curtner, *Counsel for Wallich Lumber Company.*

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on September 29, 1978, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment, the term:

(A) "Person" means any individual, sole proprietorship, corporation, partnership, firm, association, or other business or legal entity;

(B) "Lumber and related products" means wood and other building materials, including but not limited to dimensional lumber, timber, boards, plywood, sheathing, underlayment, and hardwood flooring;

(C) "Retail lumber dealer" means a person who sells lumber and related products to the ultimate consumer, including but not limited to builders;

(D) "Southeastern Michigan" means the counties of Wayne, Macomb, Oakland, Lapeer, Genesee, Washtenaw, Monroe, and Livingston in the State of Michigan.

III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, participating in, maintaining, reviving, renewing, furthering, enforcing, or claiming any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any defendant or other retail lumber dealer to fix, establish, raise, stabilize or maintain prices or other terms or conditions for the sale of lumber and related products.

V

Each defendant is enjoined and restrained from, either directly or indirectly:

(A) Recommending, suggesting the use of, publishing, circulating, or otherwise transmitting to, or formulating, adopting, reviving, or renewing with, any defendant or any other retail lumber dealer any price, price list, formula, guide, schedule, manual, report or method for pricing of lumber and related products;

(B) Communicating to, requesting from or exchanging with any defendant or any other retail lumber dealer in Southeastern Michigan any statistics or other information concerning past, current, or future prices, costs, terms or conditions of sale, discounts, or actual or proposed pricing policies, or any consideration or contemplation of changes therein, for the sale of lumber and related products in Southeastern Michigan by any retail lumber dealer.

VI

Each defendant retail lumber dealer is enjoined and retrained from belonging to, or participating in, the activities of the defendant Detroit Lumbermen's Association and any trade association whose activities are inconsistent with any of the terms of this Final Judgment.

VII

The defendant Detroit Lumbermen's Association is enjoined and restrained from sponsoring or participating in any meeting, conference, or siminar at which past, current, or future prices, costs, terms or conditions of sale, discounts, or actual or proposed pricing policies for the sale of lumber and related products are discussed or communicated.

VIII

Nothing contained in this Final Judgment shall prohibit:

(A) A defendant retail lumber dealer's negotiations, arrangements, or communications with another retail lumber dealer or with any agent, broker, distributor, or representative of another retail lumber dealer solely in connection with a *bona fide* transaction involving:

(1) The actual or proposed purchase or sale of lumber and related products between retail lumber dealers;

(2) The actual or proposed participation in a joint venture for the purchase or sale of lumber and related products by two or more retail lumber dealers; or

(3) The actual or proposed acquisition of, or merger or consolidation with, any retail lumber dealer.

(B) A defendant retail lumber dealer's participation in any pension, insurance, or worker's compensation plan or program administered by the Detroit Lumbermen's Association so long as such plan or program, or participation therein, is not inconsistent with any of the terms of this Final Judgment.

IX

(A) Each defendant retail lumber dealer shall advise each of the officers who has management responsibility for the sale of lumber and related products, and each of its employees and agents who is engaged in the sale of, or who has responsibility for or authority over the establishment of prices for, lumber and related products, of its and his obligations under this Final Judgment.

(B) Defendant Detroit Lumbermen's Association shall advise each of its officers, directors, agents, employees and members, of its and his obligations under this Final Judgment.

(C) Each defendant is ordered and directed, with respect to the appropriate subsection, (A) or (B), hereof, to:

(1) Furnish a copy of this Final Judgment to each of the persons described in subsections (A) and (B) hereof within thirty (30) days after the date of the entry of this Final Judgment;

(2) Furnish a copy of this Final Judgment to each successor to each person described in subsections (A) and (B) hereof within thirty (30) days after each successor becomes associated with the defendant;

(3) Obtain from each of those persons described in subsections (A), (B), and (C)(2) hereof and furnished a copy of this Final Judgment a signed receipt therefor, which

receipt shall be retained in the defendants' files;

(4) Attach to each copy of this Final Judgment furnished to each of those persons described in subsections (A), (B), and (C)(2) hereof a statement, in substantially the form set forth in Appendix A attached hereto, advising each such person of his obligations and of such defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and upon such defendant for violation of this Final Judgment;

(5) Hold within sixty (60) days after the date of entry of this Final Judgment, a meeting of the persons described in subsections (A), (B), and (C)(2) hereof, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year for a period of five (5) years from the date of entry of this Final Judgment;

(6) Establish and implement a plan for monitoring compliance by the persons described in subsections (A), (B), and (C)(2) hereof with the terms of the Final Judgment; and

(7) File with this Court, and serve upon the plaintiff within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (C) (1), (4), (5), and (6) hereof.

(D) For a period of five (5) years from the entry of this Final Judgment, each defendant shall file with the Court and with plaintiff on the anniversary date of this Final Judgment an affidavit, by a responsible official designated by the defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment. This affidavit shall be accompanied by copies of all written directives issued by the defendant during the prior year with respect to compliance with the antitrust laws and with this Final Judgment.

X

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in its retail lumber dealership, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment at least thirty (30) days prior to the transfer of ownership.

XI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal officer, be permitted:

(1) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to a defendant's principal offices, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XII

This Final Judgment shall terminate ten (10) years from the date of its entry.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV

Entry of this Final Judgment is in the public interest.

United States District Judge

Dated:

Appendix A

Notice

Re: United States v. Detroit Lumbermen's Association; Erb Lumber Co.; C. F. Gibbs Lumber Company; Groesbeck Lumber & Supply, Inc.; Haggerty Lumber & Supply Co.; National Lumber Company; and Wallich Lumber Company, Civil No. 872522 (E.D. Mich. 1978)

Attached hereto is a copy of a Final Judgment entered ————, 1980 in the captioned case. We are required to provide this to you. You should read it carefully. The provisons of the Final Judgment contained in Sections IV, V, and/or VI and VII apply to you. If you violate these provisions, you may subject the Company to a fine and you may also subject yourself to a fine and imprisonment.

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On September 29, 1978, the United States filed a civil antitrust complaint alleging that six retail lumber dealers and one trade association conspired to fix prices in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, beginning at least as early as 1970 and continuing thereafter until April 1977, the defendants engaged in a combination and conspiracy to fix, raise, stabilize, and maintain the prices of lumber and related products to builders in Southeastern Michigan. The Complaint alleges that in forming and effectuating the combination and conspiracy, the defendants: (a) participated on the Marketing Committee of the Detroit Lumbermen's Association and through that Committee formulated and agreed upon a list of prices for lumber and related products to be published in a Market Report for the following month; (b) discussed and agreed upon, at regular monthly meetings of the Marketing Committee, costs and mark-ups to be reflected in the prices included in the Market Report for the following month; and (c) disseminated the Market Report to members of the Detroit Lumbermen's Association, as well as other retail lumber dealers and builders in Southeastern Michigan, for their use in arriving at pricing decisions.

The Complaint seeks a judgment by the Court that the defendants engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also asks that the Court enjoin the defendants from such activities in the future, and it seeks to have the Detroit Lumbermen's Association dissolved.

The defendants named in the Complaint are: Detroit Lumbermen's Association; Erb Lumber Co.; C.F. Gibbs Lumber Company; Groesbeck Lumber Company; Haggerty Lumber & Supply Co.; National Lumber Company; and Wallich Lumber Company. Since the filing of the Complaint, Groesbeck Lumber Company, a partnership, has incorporated its retail lumber business and now operates that business as Groesbeck Lumber & Supply, Inc.

All of the defendants to this action have previously pleaded *nolo contendere* to criminal felony charges concerning the same

combination and conspiracy alleged in this action. Fines ranging from $20,000 to $75,000 were levied against the defendants. This civil case had been held in abeyance until the criminal charges were resolved.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

During the period covered by the Complaint, each of the defendants, except the Detroit Lumbermen's Association, sold lumber and related products in Southeastern Michigan, and the Detroit Lumbermen's Association was a trade association of lumber dealers in that area. The defendant retail lumber dealers purchased lumber and related products from mills, brokers, and wholesalers, and sold them to builders in Southeastern Michigan and outside the State of Michigan. For the period 1970 to April 1977, the defendant retail lumber dealers, which were among the leading retail lumber dealers in Detroit and Southeastern Michigan, had total sales in excess of $200 million for lumber and related products listed on the Market Report.

The Complaint alleges that the defendants engaged in an illegal combination and conspiracy beginning at least as early as 1970 and continuing threafter until April 1977 that consisted of a continuing agreement, understanding, and concert of action among themselves and co-conspirators to fix, raise, stabilize and maintain prices of lumber and related products to builders in Southeastern Michigan.

The Complaint alleges that the combination and conspiracy had the following effects, among others:

(a) prices of lumber and related products to builders were fixed, raised, stabilized and maintained in Southeastern Michigan at artificial and non-competitive levels; and

(b) customers, including builders, in Southeastern Michigan were deprived of the benefits of full, free, and open competition in the purchase of lumber and related products.

III

Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV enjoins and restrains the defendants from entering into, adhering to, participating in, maintaining, reviving, renewing, furthering, enforcing, or claiming any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any defendant or other retail lumber dealer to fix, establish, raise, stabilize or maintain prices or other terms or conditions for the sale of lumber and related products.

Section V of the proposed Final Judgment enjoins the defendants from communicating with each other or with any other retail lumber dealer about the prices or terms of sale of lumber and related products. Specifically, the defendants are enjoined and restrained from:

(A) Recommending, suggesting the use of, publishing, circulating, or otherwise transmitting to, or formulating, adopting, reviving, or renewing with, any defendant or other retail lumber dealer any price, price list, formula, guide, schedule, manual, report or method for pricing of lumber and related products;

(B) Communicating to, requesting from or exchanging with any defendant or any other retail lumber dealer in Southeastern Michigan any statistics or other information concerning past, current, or future prices, costs, terms or conditions of sale, discounts, or actual or proposed pricing policies, or any consideration or contemplation of changes therein, for the sale of lumber and related products in Southeastern Michigan by any retail lumber dealer.

Since the defendant retail lumber dealers often sell lumber to one another, as well as to builders and consumers, Section VIII of the proposed Final Judgment permits communications in connection with a *bona fide* purchase or sale between the defendants. Section VIII also permits communications in connection with lawful joint ventures or an acquisition, merger or consolidation with another retail lumber dealer.

Section VI of the proposed Final Judgment enjoins the defendant retail lumber dealers from belonging to, or participating in, the activities of the Detroit Lumbermen's Association. Section VIII(B) is a limited exception that permits a defendant retail lumber dealer to participate only in a pension, insurance, or worker's compensation plan administered by the Detroit Lumbermen's Association so long as such plan or program is not inconsistent with any of the terms of the Final Judgment.

The Detroit Lumbermen's Association is enjoined by Section VII from sponsoring or participating in any meeting, conference, or seminar at which past, current, or future prices, costs, terms, or conditions of sale, discounts, or actual or proposed pricing policies for the sale of lumber and related products are discussed or communicated.

Section IX of the proposed Final Judgment orders the defendant retail lumber dealers to furnish a copy of the Final Judgment to each of their officers, employees, and agents who has responsibility for the pricing or sale of lumber and related products. Section IX also orders the defendant Detroit Lumbermen's Association to furnish a copy of the Final Judgment to each of its officers, directors, agents, employees and members. Successors of those persons are also to be furnished a copy of the Final Judgment. Each copy of the Final Judgment so provided will have attached a statement informing the recipient that a violation of the Final Judgment could result in a fine for the company and a fine and imprisonment for the individual. Section IX also requires each defendant to hold a meeting every year for five years at which the persons mentioned above are instructed on their obligations and the obligations of their company or Association under the Final Judgment. The defendants are required to implement a plan for monitoring compliance of those persons with the Final Judgment.

Section III of the proposed Final Judgment makes the Judgment applicable to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of the Final Judgment.

Section X requires that, if a defendant sells the assets of its retail lumber dealership, the purchaser must agree to be bound by the Final Judgment and must so inform the Court and the United States.

Section XII makes the Final Judgment effective for ten years from the date of its entry.

Section XIV of the proposed Final Judgment states that entry of this Judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

Standard provisions similar to those found in other antitrust Final Judgments entered by consent are contained in Section I (jurisdiction of the Court), Section XI (investigation and reporting requirements), and Section XIII (retention of jurisdiction by the Court).

It is anticipated that the relief provided by the proposed Final Judgment will have a salutory effect on competition in the retail lumber market in Southeastern Michigan. Not only have the defendants been enjoined from future collusive behavior, but they also are required to provide copies of the Final Judgment to their officers, employees, and agents who have responsibility for the sale or pricing of lumber and related products. In addition, those people must meet annually to be instructed about their responsibilities under the Judgment. It is anticipated that these provisions will reduce the possibility of future violations.

IV

Remedies Available to Potential Private Plaintiffs

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as *prima facie* evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to John A. Weedon, Chief, Great Lakes Field

Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216–522–4070). These comments and the Department's responses to them will be filed with the Court and published in the **Federal Register.**

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is necessary. Further, Section XIII of the proposed Judgment provides that the Court retains jurisdiction over this action for the life of the Final Judgment and that the parties may apply to the Court for such order as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment after its entry.

VI

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

In the Complaint, the United States had sought to have the Detroit Lumbermen's Association dissolved. The proposed Final Judgment, however, does not order the Association to be dissolved. The United States has agreed, instead, to certain injunctions that the United States believes will be a sufficient remedy. Section VI of the proposed Final Judgment prohibits the defendant retail lumber dealers from belonging to, or participating in, the activities of the Detroit Lumbermen's Association. In addition, Section VII of the proposed Final Judgment prohibits the Detroit Lumbermen's Association from sponsoring or participating in any meeting, conference, or siminar at which past, current, or future prices, costs, terms, or conditions of sale, discounts, or actual or proposed pricing policies for the sale of lumber and related products are discussed or communicated. These two provisions will substantially reduce the possibility that the Association could be an instrument for renewing the violation alleged in the Complaint.

Even though the proposed Final Judgment prohibits the defendant retail lumber dealers from participating in the activities of the Detroit Lumbermen's Association in general (Section VI), the Judgment itself does not prohibit these defendants from participating in pension, insurance, and worker's compensation plans administered by the Detroit Lumbermen's Association so long as these plans are not inconsistent with any of the terms of the Final Judgment (Section VIII(B)). Only one defendant is currently a member of these plans, however, and the present rules of the Detroit Lumbermen's Association would not allow the other defendants to join these plans without joining the Association, which is prohibited by the Judgment (Section VI). These plans had no bearing on the violation alleged in the Complaint and allowing participation in these plans in no way weakens the injunctions in the proposed Final Judgment.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Respectfully submitted,

John A. Weedon,
David F. Hils,
Attorneys, Department of Justice.

Deborah Lewis Hiller,
Richard E. Reed,
Attorneys, Department of Justice, Antitrust Division, 995 Celebrezze Federal Building, Cleveland, Ohio 44199. Telephone: 216–522–4078.

[FR Doc. 80-34061 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

United States v. Warren Five Cents Savings Bank

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Massachusetts in *United States* v. *Warren Five Cents Savings Bank*, Civil Action No. 79–1257–Mc. The complaint in this case alleged that the defendant entered into contracts prohibiting the use of space for retail banking facilities of other financial institutions at and adjacent to a large suburban shopping center, thereby restraining interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The proposed Consent Judgment enjoins the defendant from entering into, adhering to, enforcing, maintaining, or claiming any rights under any provision of any contract, agreement, arrangement or understanding with any person which limits or restricts the number, location or use of offices or facilities of any financial institution at the Northshore Shopping Center in Peabody, Massachusetts. The proposed Judgment further enjoins the defendant from entering into any contract, agreement, arrangement or understanding with any person which limits or restricts the number, location or use of offices or facilities by any other financial institution.

Public comment is invited within the statutory 60-day comment period. Such comments, and reponses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Room 504–B, Safeway Building, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202/724–6693).

Joseph H. Widmar,
Director of Operations.

U.S. District Court for the District of Massachusetts

United States of America, Plaintiff, v. *Warren Five Cents Savings Bank*, Defendant.

Civil No. 79–1257 Mc.

Filed: October 20, 1980.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or any other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to the plaintiff or defendant in this or any other proceeding.

For the plaintiff: Sanford M. Litvack, *Assistant Attorney General;* Mark Leddy; Stanley M. Gorinson; Robert E. Hauberg, Jr.; Thomas A. Schulz; Rebecca P. Dick; *Attorneys, Department of Justice.*

For the defendant: John A. McNiff, *Pearl, McNiff, Crean & Cook;* 30 Main Street, Peabody, Massachusetts 01960.

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 29, 1979, and the plaintiff and the defendant by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. Sec. 1), as amended.

II

For purposes of this Final Judgment:

(A) "Defendant" shall mean Warren Five Cents Savings Bank.

(B) "Financial institution" shall mean any institution which accepts deposits or grants loans.

(C) "Person" shall mean any individual, corporation, partnership, association, firm, or any other business or legal entity.

(D) "Northshore Shopping Center" shall mean a tract or parcel of land located in Peabody, Massachusetts, at the intersection of Routes 114 and 128, on which is constructed one or more buildings primarily designed to provide space for the operation of multiple retail and service establishments.

III

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, trustees, agents, and employees and to its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Defendant is enjoined and restrained from entering into, adhering to, enforcing, maintaining or claiming any rights under any provision of any contract, agreement, arrangement or understanding with any person which limits or restricts the number, location or use of offices or facilities of any financial institution at the Northshore Shopping Center.

(B) Defendant is enjoined from entering into any contract, agreement, arrangement or understanding with any person which limits or restricts the number, location or use of offices or facilities by any other financial institution.

V

(A) For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, shall be permitted, subject to any legally recognized claim of privilege, (a) access during the office hours of said defendant to inspect and copy such books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of said defendant which relate to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

(C) No information obtained by the means provided in this Paragraph V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

(D) If, at any time, information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which defendant is not a party.

VI.

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained herein, and for the enforcement of compliance therewith.

VII.

This Final Judgment shall terminate ten (10) years from the date of its entry by this Court.

VIII.

Entry of this Final Judgment is in the public interest.

Dated:

_____,

United States District Judge.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h), P.L. 93–528 (December 21, 1974)) the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This is a civil antitrust action by the United States against Warren Five Cents Savings Bank, Peabody, Massachusetts. The complaint, filed on June 29, 1979, alleged that the defendant had entered into an exclusive lease contract at the Northshore Shopping Center, a regional shopping center in Peabody, Massachusetts, and another restrictive contract concerning land adjacent to Northshore, restraining interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The case was brought to enjoin Warren from entering into, maintaining, and enforcing such contracts.

II. Practices and Events Giving Rise to the Alleged Violation

Defendant Warren is a state-chartered mutual savings bank having no capital stock. It is operated for the benefit of its depositors by a Board of Trustees. Its main business is receiving time and savings deposits on which it pays interest or dividents and making loans and investments.

On March 19, 1957, defendant entered into a lease agreement for the purpose of opening and operating a branch office at the Northshore Shopping Center. The lease agreement contained a provision called a "Tenant's Exclusive" prohibiting the lessor from leasing space in Northshore to any other financial institution for the twenty-year term of the lease and, at the option of the lessee, for two additional five-year terms.[1]

In 1969, Essex County Bank & Trust Company, a commercial bank acquired property adjacent to Northshore to construct a new building to house its executive offices and a retail banking office. On June 3, 1969, defendant filed an action in Essex County Superior Court against Essex County Bank & Trust seeking to enjoin the use of the property for any banking purpose. The parties settled this suit on December 24, 1969. That settlement provided that Warren would dismiss the Superior Court action and Essex Bank & Trust was permitted to construct and occupy its proposed new building with a banking office on the ground floor. However, the settlement agreement also provided that no other financial institution would be permitted to operate an office on land adjacent to the shopping center owned by the corporate parent of Northshore, as long as Warren maintained its office in Northshore.

In 1977, Salem Five Cents Savings Bank, a state-chartered mutual savings bank, arranged to lease space in Northshore for a branch office and attempted to have defendant waive its Tenant's Exclusive. Defendant refused to waive its restriction. On August 3, 1978, defendant obtained a preliminary injunction from the Essex County Superior Court restraining the owner of Northshore from leasing space to Salem and Salem from operating an office in the shopping center. In October 1978, the Commissioner of Banks for the Commonwealth of Massachusetts granted Salem permission to establish a branch office in Northshore. However, on July 12, 1979, the Essex County Superior Court made permanent its injunction against Salem and the shopping center.

The Complaint alleged that the lease agreement between the owner of Northshore and defendant and the 1969 settlement agreement prohibits the owner of Northshore from leasing space in that shopping center to any other financial institution and from allowing the use of certain adjacent property as a retail banking facility by any other financial institution. According to the Complaint, these contracts have had the effect of denying Salem and other financial institutions the opportunity to establish branch offices at Northshore and/or on land adjacent to it; restraining, eliminating, and suppressing competition between defendant

[1] On the same date, another financial institution, Merchants-Warren National Bank also entered into a separate but similar lease. It also contained provisions prohibiting the lessor from leasing space in Northshore to any other financial institution. In 1977, Merchants' successor waived that restriction.

and other financial institutions in the area served by Northshore; and denying to the public the benefits of additional competition among financial institutions at Northshore.

III. Explanation of the Proposed Final Judgment

The United States and defendant have agreed that a Final Judgment, in the form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The stipulation provides that there has been no admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the Judgment is conditioned upon a determination by the Court that the Judgment is in the public interest.

Section IV of the proposed Final Judgment prevents the defendant from entering into or enforcing any agreement which limits or restricts the number, location or use of financial institution offices or facilities at the Northshore Shopping Center. It also prevents the defendant from entering into any other such restrictive agreements in the future.

The proposed Final Judgment expressly provides in Section III that its terms apply to the defendant's officers, trustees, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

Under Section V of the proposed Final Judgment, the Department of Justice will have access upon reasonable notice to the records and personnel of the defendant in order to assess the defendant's compliance with the provisions of the Final Judgment. Under Section VI of the Final Judgment, jurisdiction is retained by the Court for the purpose of enabling any party to apply for such orders or directions as may be necessary to carry out the Final Judgment, for modification of any of its provisions, or for punishment of violations of it.

Section VII of the proposed Final Judgment limits its force and effect to a period of ten (10) years from the date it is entered by the Court.

IV. Remedies to the Private Plaintiff

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured in his business or property as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action.

Under the provision of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment, since it is a consent judgment that will be entered before any testimony has been taken, may not be used as *prima facie* evidence in any subsequent private lawsuit which may be brought against the defendant.

V. Procedures Available for Modifications of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Stanley M. Gorinson, Chief, Special Regulated Industries Section, Antitrust Division, Department of Justice, Safeway Building, Room 504, Washington, D.C. 20530, within the 60-day period provided by the Act. These comments and responses to them will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should be determined that some modification of the Final Judgment is necessary.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment prohibits the defendant from engaging in the illegal conduct alleged in the Complaint at Northshore Shopping Center, Peabody, Massachusetts. It also prohibits the defendant from entering into any agreement which limits or restricts the number, location or use of any offices or other facilities (*e.g.*, night depository boxes, automated teller machines, automated cash dispensers) by any other financial institution during the term of the proposed Final Judgment.

The only additional relief which would be available and which was considered by the Department of Justice would have prohibited the defendant from maintaining a restrictive lease, similar to that challenged in the Complaint, for a branch office at the King's Plaza Shopping Center. King's Plaza is a small, neighborhood shopping center whose principal tenants are a discount department store and a grocery store (which recently went out of business). It is located in the west end of Peabody, Massachusetts, and is surrounded by residential areas with no room for any significant expansion. Defendant's branch office is a small, drive-up facility located in the parking lot at King's Plaza, and accounts for 13.8 percent of defendant's time and savings deposits. There is an office of another financial institution located adjacent to King's Plaza. In addition, defendant's lease for its King's Plaza office will expire on January 31, 1983.

In view of the limited commercial significance of King's Plaza, the existence of another financial institution adjacent to King's Plaza and the limited term remaining for defendant's King's Plaza office lease, the Department of Justice has concluded that this single restrictive lease should not be an impediment to settlement of this litigation. Of course, the Department of Justice remains free to challenge defendant's King's Plaza lease under the antitrust laws should it deem such action to be in the public interest.

VII. Other Materials

There are no other materials or documents which the Department of Justice considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Dated:

Thomas A. Schulz, Rebecca P. Dick,

Attorneys, U.S. Department of Justice, Washington, D.C. 20530.

[FR Doc. 80-34062 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

Certification of the Attorney General, Atascosa County, Texas

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Atascosa County, Texas. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on September 18, 1975, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

Dated: October 29, 1980.

Benjamin R. Civiletti,

Attorney General of the United States.

[FR Doc. 80-34243 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

Certification of the Attorney General, Quitman County, Mississippi

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States of America in Quitman County, Mississippi. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: October 29, 1980.

Benjamin R. Civiletti,

Attorney General of the United States.

[FR Doc. 80-34242 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-2]

Aaron A. Moss, D.D.S.; Denial of Application

On February 6, 1980, the Administrator of the Drug Enforcement

Administration [DEA] issued to Aaron A. Moss, D.D.S. [Respondent], an Order to Show cause proposing to deny the Respondent's pending application for registration pursuant to Section 303(f) of the Controlled Substances Act, 21 U.S.C. 823(f). By letter dated February 12, 1980, the Respondent requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Washington, D.C., on May 6, 1980. Administrative Law Judge Francis L. Young presided. On August 12, 1980, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. In compliance with 21 CFR 1316.65(b), as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. No exceptions were filed and, on September 9, 1980, Judge Young transmitted the record of these proceedings to the Administrator. The record included, *inter alia*, the Administrative Law Judge's report or opinion, the hearing transcript and all exhibits which had been placed in the record. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that beginning in late-1971, and continuing into mid-1973, the Respondent was involved in a series of smuggling ventures in which he brought hashish and cocaine into the United States from Morocco and South America. The Respondent was primarily a courier. He carried illicit drugs which had been concealed in false-bottomed suitcases. He also transported money between the United States and Peru on behalf of the principals in the transactions. The Respondent received between $1,000 and $15,000 for his role in the various ventures and, on at least one occasion, invested his own money in a cocaine transaction.

The Respondent's value to the smuggling conspiracy was principally due to his age, profession and physical appearance. At the time of the hearing, he was seventy years old. He was in his early sixties and retired when he engaged in smuggling drugs. The Administrative Law Judge noted that judging from the Respondent's appearance at the hearing, he must have looked like the perfect example of a quiet, gentle, respectable, upright and law-abiding retired professional, a tourist or expatriate, traveling for pleasure about the world. These factors greatly reduced the probability that he would draw attention as a possible smuggler. To further conceal his activities, the Respondent utilized at least two, and possibily as many as four, passports. He obtained additional passports fraudulently, by telling embassy personnel that his passport had been lost or destroyed. By using one passport to travel between the United States and Spain, where he resided part-time, and by using another to travel between Europe and South America, he could enter this country without alerting Customs authorities to his trips to South America.

Dr. Moss was named in a multi-count indictment which was handed up by a Grand Jury of the U.S. District Court for the Southern District of New York. He ultimately entered a plea of guilty to the fourth count of the indictment and, on August 5, 1975, was convicted of violating 21 U.S.C. 952(a). This offense, relating to controlled substances, is a felony by virtue of the provisions of 21 U.S.C. 960. The Respondent was sentenced to a term of imprisonment of five years, to be followed by a three-year special parole term. The sentence was suspended and the Respondent was placed on probation. he was released from probation on July 28, 1978.

The Respondent is presently practicing dentistry in New York City. He has applied for registration to handle controlled substances in Schedule III. At the present time, when he finds that a patient is in need of a prescription for a controlled substance, he asks another dentist, with whom he shares office space, to write the prescription.

After concluding that there is a lawful or statutory basis for the denial of the Respondent's application for registration, the Administrative Law Judge discussed his reasons for recommending that the Administrator deny the application. Judge Young noted that the Respondent is a very appealing individual and that he appeared to be sincere when he admitted the scope and gravity of his past misdeeds. Yet, he did not admit that his smuggling activity was motivated by substantial remuneration. Instead, the Respondent attributes his involvement in the illicit drug trade to a period of mental or emotional illness. The Administrative Law Judge does not credit the Respondent's explanation with much validity. The Administrator agrees.

During the course of the hearing, the Respondent stated that his true needs for controlled substances in connection with his practice were limited. The drugs he named were analgesics and tranquilizers in Schedules II, III and IV. As Government counsel pointed out during these proceedings, in explaining the Government's unwillingness to register the Respondent even for a limited list of drugs, or drug-types, it is most difficult to adequately monitor the prescribing or dispensing activities of an individual practitioner once a registration has been granted.

Judge Young concluded that the Respondent is an individual who has flouted the law with respect to controlled substances in the past, in such a manner as to give rise to a real apprehension that he may do so again, albeit in a different manner, if given the opportunity to do so. The Administrative Law Judge has recommended that the Respondent's application be denied. The Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The application must be denied.

Having concluded that there is a lawful basis for the denial of the Respondent's application for registration, and having further concluded that under the facts and circumstances presented in this case the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that the application of Aaron A. Moss, D.D.S., for registration under the Controlled Substances Act, be, and it hereby is, denied.

Dated: October 28, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-34173 Filed 10-31-80; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-74)]

Space Science Steering Committee, Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee; Meeting

The Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee of the Space Science Steering Committee will meet at NASA Goddard Space Flight Center at Greenbelt, MD, on November 17–19, 1980. The meeting will be held in Room 200 of Building 26 from 9:00 a.m. to 5:00 p.m. on each day. The Subcommittee will discuss and evaluate the proposals submitted to NASA as a result of the Space Science Notice of February 25, 1980, calling

attention to the opportunity for investigations using the Solar Optical Telescope to be flown on Spacelab. Public discussion of the professional qualifications of the proposers and their potential scientific contributions to Space Science would invade the privacy of the proposers and the other individuals involved. Since the Subcommittee sessions will be concerned throughout with matters listed in 5 U.S.C. (c)(6), as described above, it has been determined that the sessions should be closed to the public.

For further information, please contact Dr. Eric Chipman, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8490).

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

October 24, 1980.

[FR Doc. 80-34073 Filed 10-31-80; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Evaluation of Agreement State Radiation Control Programs: Proposed General Statement of Policy

Correction

In FR Doc. 80-30822, published in the issue of Friday, October 3, 1980, on page 65726, please make the following corrections:

1. On page 65728, the beginning of the first paragraph in the first column was inadvertently omitted. For the convenience of the reader, the full text of that paragraph should read:

The revised Guide also utilizes categories of indicators. The purpose of the categories is to indicate the potential seriousness of deficiencies in the program areas addressed by the various indicators. Category I indicators reflect a State program's ability to adequately protect the public health and safety. Significant problems in meeting the guides for acceptable practice for these indicators probably means the State program has a serious need for improvement. If significant problems exist in more than one of these areas, then the need for improvements may be critical. Category II indicators address functions and activities which support a States' program. Good performance in meeting the guidelines for these indicators is considered essential if the State is to avoid significant problems in conducting an effective program to protect the public health and safety. Category III indicators address those areas of a State program which are considered highly desirable features of a soundly based, comprehensive program for controlling agreement materials, but which have little or no direct bearing on the State's ability to protect the public health and safety. These categories of indicators reflect the *potential* seriousness of deficiencies in various program areas. NRC obviously uses discretion in reviewing deficiencies within the various categories.

2. In that same column, the last paragraph is a duplicate of the paragraph above it, and should be removed.

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

October 28, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Metro-Goldwyn-Mayer Film Co.
Common Stock, No Par Value (File No. 7-5773)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 19, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-34169 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6352]

John H. Harland Co., Common Stock, $1 Par Value; Application To Withdraw From Listing and Registration

October 27, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of John H. Harland Company (the "Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on August 26, 1980, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). Simultaneously, such stock was suspended from trading on the Amex. The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE, and believes that dual listing would fragment the market for its common stock.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before November 18, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-34168 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17248; File No. SR-NYSE-80-40]

Self-Regulatory Organization; Proposed Rule Change By New York 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. 94-29, 16 (June 4, 1975), notice is hereby given that on October 17, 1980 the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Rule 46 would increase the number of Floor Governors which the Chairman of the Board of Directors may designate, with the approval of the Board from fourteen to sixteen.

The Exchange's Statement of Basis and Purpose

Exchange Rule 46 currently provides for the designation of fourteen Floor Governors. The increase to sixteen Floor Governors is necessary due to the increased activity in one area of the Exchange's trading Floor due to the facilities upgrade. The additional Floor Governors would relieve the increased burden which resulted from the facilities upgrade.

The Exchange's Statement of Basis Under the Act for Proposed Rule Change

The proposed rule change relates to Section 6(b)(1) of the Act in that it will permit the Exchange, through its Floor Governors, to more efficiently perform those duties prescribed in the rules relating to supervision and regulation of Floor matters.

Comments Received From Members, Participants or Others on Proposed Rule Change

The Exchange has not solicited comments regarding the proposed rule change and has received none.

Burden on Competition

The proposed rule change will not impose any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 24, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 24, 1980.

[FR Doc. 80-34006 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17251; File No. SR-PHLX 80-24]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia 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. 94-29, 16 (June 4, 1975), notice is hereby given that on October 6, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (PHLX) proposed by-law amendments and a Board Directive relating to the designations, procedures and functions of standing committees.

Standing committees, except for the Hearing Committee, shall be composed of not less than nine members, at least three of whom shall be members of the Board. Except as otherwise specifically provided, such a committee may act through a quorum composed of a majority of all its members then in office and no specified number of the quorum need be governors. Committee chairmen shall be empowered to appoint governors temporarily to standing committees to effect quorums.

The Admissions Committee shall have jurisdiction over admission to membership in accordance with policies established by the Board. It shall be empowered to admit applicants and reinstate suspended members. Hearing and appeal procedures are provided for applicants who are denied membership.

An Allocation, Evaluation and Securities Committee shall be established with jurisdiction over the allocation, retention and transfer of the privileges to deal in and trade equity securities and options to, by and among members on the equity and options trading floors. It shall establish standards for periodic review and evaluation of performance. It shall also perform the functions of the discontinued Stock List Committee which involve the listing and admitting to dealings of equity securities and their removal from the list or from dealings.

An Executive Committee shall be established to execute and implement corporate policy previously established by the Board and to make recommendations concerning corporate policy to the Board.

The Floor Procedure Committee shall continue to have supervision over dealings on the equity trading floor and over specialists, dealers, market-makers, floor brokers and their employees. It shall have supervision over operations and policies of the national market system insofar as they are related to the Exchange's participation in the system. The Committee shall be empowered to make temporary appointments of equity specialists, dealers and market-makers, and advise the Allocation, Evaluation and Securities Committee on their permanent appointments. It shall enforce rules relating to order, decorum, health, safety and welfare on the equity trading floor.

The Options Committee shall continue to have supervision over dealings on the options trading floor and over specialists, registered options traders, market-makers, floor brokers and their employees. It shall resolve trading disputes and supervise communications with the options trading floor, the location of equipment, and the use of space. The Committee shall be empowered to make temporary appointments of options specialists, registered options traders and market-makers, and advise the Allocation, Evaluation and Securities Committee on their permanent appointments. It shall enforce rules relating to order, decorum, health, safety and welfare on the options trading floor.

A Nominating and Elections Committee has been designated as a standing committee. It will combine the functions of the present separate Nominating and Elections Committees under by-law amendments yet to be submitted.[1]

No comments have been received and none were solicited except through circulation of the By-Law amendment notice.

No burden on competition will be imposed by the proposed amendment.

The Exchange's Basis and Purpose under the Act for the Proposed Rule Change

The amendments enhance the ability of the Exchange to carry out the purposes of the Securities Exchange Act and to enforce compliance with the Act and with its own rules (Act, Sec. 6(b)(1)); and to provide a fair procedure for denial of membership or the prohibition or limitation of any person with respect to access to services offered by the Exchange (Act, Sec. 6(b)(7)).

Within 35 days of the date of publication of this notice in the Federal Register (December 8, 1980), or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule 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 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

October 27, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-34005 Filed 10-31-80; 8:45 am]

BILLING CODE 8010-01-M

[1] By-Law sections affected by the amendments are as follows: 5-3; 10-1(a); 10-3(a); 10-3(c); 10-6 (a), (b), (c), (d), (e), (f); 12-4 (a), (b), (c), (d), (e), (f), (g), (h); 12-5; 15-1; 15-2; 17-1; 17-5; 17-6; 10-7 (a), (b), (c); 10-14; 10-10 (a), (b), (c); 10-12; 10-15; present sections 10-17, 10-8, 10-10, 10-12, and 10-15 shall be renumbered sections 10-8, 10-9, 10-11, 10-13, 10-14, respectively.

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, California, will hold a public meeting at 10:00 a.m., Wednesday, November 19, 1980, at the World Trade Center, 350 South Figueroa, Suite 600, Los Angeles, California, to discuss such matters as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Rudolph I. Estrada, District Director, U.S. Small Business Administration, 350 S. Figueroa, Suite 600, Los Angeles, California 90071—(213) 688-2977.

Dated: October 27, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-34231 Filed 10-31-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-0271]

Small Business Enterprise Associates; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (CFR 107.102(1980)) by Small Business Enterprise Associates, a limited partnership, Suite 2170, 555 California Street, San Francisco, California 94104, for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. et seq).

The proposed General Partner, individual General Partners, and Limited Partners:

General Partner

Merrill, Pickard & Company, 555 California Street, Suite 2170, San Francisco, California 94104.

Individual General Partners

Steven L. Merrill, 555 California Street, Suite 2170, San Francisco, California 94104.

W. Jeffers Pickard, 555 California Street, Suite 2170, San Francisco, California 94104.

Limited Partners

Bank of America National Trust and Savings Association, 555 California Street, Suite 2170, San Francisco, California 94104.

The limited partner, Bank of America NT&SA, is a national bank and a wholly-owned subsidiary of BankAmerica Corporation.

The general partner is a California partnership, which will consist of three to five general partners, including Steven L. Merrill as managing general partner and W. Jeffers Richard as general partner. The other general partners will be selected at a later date.

BankAmerica Capital Investments, Inc., also a wholly-owned subsidiary of BankAmerica Corporation, and the general partner of the Applicant, Merrill, Pickard & Company, will be the sole limited and sole general partner respectively of another proposed California limited partnership, Five-Percent Partners, 555 California Street, Suite 2170, San Francisco, California 94104, a non-SBIC. The purpose of Five-Percent Partners will be to provide investment funds to companies that do not qualify for investment by an SBIC limited partnership.

Applicant intends to follow a diversified investment policy with emphasis on "venture capital" investments in "small business concerns" as those terms are defined in § 107.3 of the Regulations. The limited partner will contribute initially to the Applicant certain portfolio securities having a market value of approximately $11 million (cost about $10 million). At least $500,000 will be cash. In addition, the limited partner and BankAmerica Capital Investments, Inc., will commit additional cash as needed up to a maximum amount of $15 million between the Applicant and Five-Percent Partners. While it is not possible to determine at this time the eventual distribution of the additional cash between the two proposed partnerships, it is assumed it will be divided equally.

Matters involved in SBA's consideration of the application include (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and

financial soundness, in accordance with the Act and Regulations), and (3) whether the proposed licensing would be in the furtherance of the purpose of the Act.

Notice is hereby given that any person may not later than (15 days from date of publication of this Notice) submit written comments to the Acting Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 27, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-34230 Filed 10-31-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1905; Amdt. No. 1]

Virginia; Declaration of Disaster Loan Area

The above numbered Declaration (see 45 FR 61060), is amended by adding the following counties:

County, Natural Disaster(s), and Date(s)

Augusta—Drought—5/15/80 to 9/9/80.
Bedford—Drought—5/27/80 to 9/4/80.
Brunswick—Drought—5/20/80 to 8/19/80.
Campbell—Drought—5/26/80 to 8/19/80.
Charlotte—Drought—6/1/80 to 8/22/80.
Clarke—Drought—6/1/80 to 8/31/80.
Culpeper—Drought—5/15/80 to 8/15/80.
Fairfax—Drought—7/1/80 to 8/31/80.
Fauquier—Drought—5/20/80 to 9/10/80.
Franklin—Drought—5/20/80 to 8/19/80.
Frederick—Drought—5/20/80 to 8/19/80; Hail, 6/3/80.
Greene—Drought—6/1/80 to 9/4/80.
Greensville—Drought—5/20/80 to 9/9/80.
Halifax—Drought—6/15/80 to 9/5/80.
Henry—Drought—7/1/80 to 8/31/80.
Loudoun—Drought—7/1/80 to 8/31/80.
Lunenburg—Drought—5/20/80 to 8/14/80.
Madison—Drought—5/20/80 to 8/19/80.
Mecklinburg—Drought—5/1/80 to 9/5/80.
Nottoway—Drought—5/20/80 to 9/2/80.
Page—Drought—5/20/80 to 9/8/80.
Patrick—Drought—6/1/80 to 8/31/80.
Pittsylvania—Drought—7/1/80 to 9/9/80.
Prince Edward—Drought—5/20/80 to 9/8/80.
Prince William—Drought—5/20/80 to 9/10/80.
Rockbridge—Drought—6/1/80 to 9/8/80.
Rockingham—Drought—5/20/80 to 9/8/80.
Shenandoah—Drought—5/20/80 to 7/18/80.
Warren—Drought—5/20/80 to 9/9/80.

and adjacent counties within the State of Virginia and independent cities within the declared counties and independent cities within the adjacent counties as a result of natural disaster as indicated. All other information remains the same i.e., the termination date for filing application for physical damage is close of business on March 5, 1981, and for economic injury until the close of business on June 5, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-34232 Filed 10-31-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to Section 19(a) and (2) of the Federal Advisory Committee Act (Pub. L. 92.463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held November 13, 1980, at 10:00 a.m. until 12:00 p.m. at the Department of Transportation, 400 7th Street, S.W., Room 6434, Washington, D.C. 20590. The agenda for the meeting is as follows:

—Capital Formation/MESBIC Status
—LOC Focus—FY-81
—Clearinghouse System—Status
—Open Discussion

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Advisory Committee Staff Assistant, Minority Business Resource Center, Office of the Secretary, 400 7th Street, S.W., Washington, D.C. 20590, telephone: (202) 426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on October 28, 1980.

Earl D. Proctor,

Executive Director, Minority Business Resource Center.

[FR Doc. 80-34138 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

National Tank Truck Carriers, Inc.: Application for Inconsistency Ruling; Public Notice and Invitation to Comment

AGENCY: Materials Transportation Bureau, Department of Transportation (DOT).

ACTION: Public notice and invitation to comment.

SUMMARY: The National Tank Truck Carriers, Inc. (NTTC) has applied for an administrative ruling as to whether certain provisions of House Bill No. 1870 passed by the Legislature of the State of Washington which impose certain shipping paper requirements for the transportation of hazardous materials are inconsistent with and thus preempted by the Hazardous Materials Transportation Act (HMTA) and regulations issued thereunder.

DATES: Comments received on or before January 9, 1981 will be considered before an inconsistency ruling is issued by the Associate Director for Operations and Enforcement.

ADDRESSES: The NTTC's application and any comments received may be reviewed in the Dockets Branch, Office of Public Affairs and Consumer Participation, Division of Public Information, Room 8426, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments on the above application must be submitted to the Dockets Branch at the above address. Five copies are requested. A copy of each comment must also be sent to Mr. Clifford J. Harvison, Managing Director, National Tank Truck Carriers, Inc., 1616 "P" Street, N.W., Washington, D.C. 20036, and that fact certified at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that a copy of this comment has been sent to Mr. Clifford J. Harvison at the address noted in the Federal Register publication.")

FOR FURTHER INFORMATION CONTACT: Beatriz V. Ferreira, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (phone (202) 755-4972).

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. 1801-1812) at section 112(a) (49 U.S.C. 1811(a)) expressly preempts "any requirement of a State or political subdivision thereof, which is inconsistent with any requirement", of the HMTA or

regulations issued thereunder. Section 112(b) (49 U.S.C. 1811(b)) provides that an inconsistent State or political subdivision requirement ceases to be preempted, however, if upon application the Secretary of DOT determines that the requirement in question (1) provides an equal or greater level of protection to the public than the HMTA or regulations issued under the HMTA and (2) does not unreasonably burden commerce.

Procedural regulations implementing section 112 of the HMTA are codified at 49 CFR 107.201–225. These regulations provide for the issuance of inconsistency rulings and non-preemption determinations. Briefly, an inconsistency ruling is an administrative opinion as to the relationship between a State or political subdivision requirement and a requirement of the HMTA or regulations issued under the HMTA. 49 CFR 107.209(c) sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

If the State or local requirement is found to be inconsistent with a Federal requirement, the State or locality may seek a non-preemption determination, i.e., a waiver of preemption pursuant to section 112(b) of the HMTA (49 U.S.C. 1811(b)).

2. National Tank Truck Carriers' Application for Inconsistency Ruling

On July 1, 1980, the National Tank Truck Carriers, Inc. of Washington, D.C. filed an application for an administrative ruling as to whether certain shipping paper requirements passed on March 3, 1980 by the Legislature of the State of Washington pertaining to the transportation of hazardous materials are inconsistent with the requirements of the HMTA or regulations issued under the HMTA. The NTTC is an national and international trade association of the for-hire tank truck industry.

Applicable segments of the Washington requirement, entitled House Bill No. 1870, are included as Appendix A to this document. The shipping paper provision passed by the Washington Legislature applies where hazardous materials are transported by motor vehicle within the State of Washington. The State requires that any common motor carrier receiving a hazardous material, as defined in 49 CFR 172, for transportation within the State shall issue a receipt or bill of lading, which is red in color or has a red border. The bill also empowers the Washington Utilities and Transportation Commission to promulgate regulations and provides for enforcement and civil penalties.

Briefly, the NTTC contends that the State requirement fails to offer an equal or greater level of protection to the public than the Federal requirement and unreasonably burdens (interstate) commerce because interstate carriers affected by the State requirement would have to "duplicate administrative and operational procedures" in order to comply with the State requirement. The NTTC additionally argues that such regulations may "create a false sense of security" at an accident scene and cause "dangerous confusion" among emergency personnel trained in commonly-used hazard warning systems. Further, the NTTC contends that the State requirement holds great potential for direct conflict with the shipping requirements set forth at 49 CFR 172.200 and 172.201(a)(1)(ii). Section 172.200 requires that each person who offers hazardous materials for transportation shall describe the hazardous material on the shipping paper in the manner required by Subpart C. Specifically, 49 CFR 172.201(a)(1)(ii) requires that hazardous material description entries specified by § 172.202 and any additional entries specified by § 172.203 must be entered in a color that clearly contrasts with any description of a material not subject to the requirements of Subchapter C. Section 107.201 also permits such entries to be entered *first* on the shipping paper (49 CFR 172.201(a)(1)(i)), or to be identified by the entry of an "X" placed before the proper shipping name in a column captioned "HM" (49 CFR 172.201(a)(1)(iii)).

Pursuant to 49 CFR 107.205(a), the Attorney General's office for the State of Washington has submitted comments regarding NTTC's application for inconsistency ruling. Essentially, the State of Washington advocates rejection of NTTC's application based on the argument that the red or red-bordered bills of lading apply only to intrastate common carriers and do not affect interstate carriers. Further, the State argues that even if the State requirement affects interstate carriers, it affords a greater level of protection than the Federal requirements and does not unreasonably burden commerce. (section 112(B), 49 U.S.C. 1811(b))

Finally, the State asserts that the "red or red-bordered" requirement is additional to any Federal requirement; does not interfere with Federal compliance and is in furtherance of the policy of the HMTA, i.e., to protect "against the risks of life and property which are inherent in the transportation of hazardous materials in commerce."

3. Public Comment.

Comments should be restricted to the following issue: whether Washington's requirement that a receipt, manifest, or bill or lading issued for hazardous materials be red or have a red border is inconsistent with the HMTA or regulations issued thereunder.

Since the NTTC's application is for an inconsistency ruling and not a non-preemption determination, comments on the effect on interstate commerce of Washington's requirement as the effect relates to a waiver of preemption under 49 U.S.C. 1811(b), are inappropriate at this time and will not be considered.

Persons intending to comment on the application submitted by NTTC should examine the HMTA (49 U.S.C. 1801–1812), the DOT Hazardous Materials Regulations (49 CFR Parts 171–179), and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–211) as well as the Washington requirement contained in the Appendix to this Notice.

Issued in Washington, D.C., on October 23, 1980.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation.

Appendix A.—Excerpts of House Bill No. 1870

State of Washington, 96th Legislature, 1980 Regular Session

By: Representatives Sherman, Martinis, Bender, Becker, Walk, Keller and Charnley

Read first time January 22, 1980, and referred to Committee on Transportation.

An Act Relating to common carriers; amending section 81.29.020, chapter 14, Laws of 1961 and RCW 81.29.020; amending section 81.80.230, Chapter 14, Laws of 1961 and RCW 81.80.230; amending section 81.80.230, chapter 14, Laws of 1961 and RCW 81.80.330; and providing an effective date.

Be it Enacted by the Legislature of the State of Washington: Section 1. * * * If the receipt, manifest or bill of lading is for hazardous material, as defined in 49 CFR Part 172, transported by motor vehicle upon the public highways of this state, it shall be red in color or shall have a red border. Red bills of lading, receipts or manifests or red bordered bills of lading, receipts or manifests shall only be used for the transportation of hazardous materials as defined in 49 CFR 172.

Section 2. Section 81.80.230, chapter 14, Laws of 1961 and RCW 81.80.230 are each amended to read as follows:

Any person, * * * who shall * * * fraduently seek to evade or defeat regulation as in this chapter provided for motor carriers shall be * * * subject to a civil penalty of not more than one hundred dollars for each violation. Each and every violation shall be a separate and distinct offense, and in case of a continuing violation every day's continuance shall be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under this section and subject to the penalty provided for in this section.

The penalty provided for in this section shall become due and payable when the person incurring the penalty receives a notice in writing from the commission describing the violation with reasonable particularity and advising the person that the penalty is due. The commission may, upon written application therefor, receive within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the penalty upon such terms as the commission in its discretion deems proper. The commission has authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the penalty is not paid to the commission within fifteen days after receipt of notice imposing the penalty or application for remission or mitigation has not been made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston County or of some other county in which the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in this section. All penalties recovered under this section shall be paid into the state treasury and credited to the public service revolving fund.

Section 3. Section 81.80.330, chapter 14, Laws of 1961 and RCW 81.80.330 are each amended to read as follows:

* * * It shall be the duty of the Washington state patrol and the sheriffs of the counties to make arrests and the county attorneys to prosecute violations of this chapter.

This 1980 act took effect on July 1, 1980.

[FR Doc. 80-33972 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Public Transportation Alternatives in New York; Intent to Prepare an Environmental Impact Statement

In accordance with the provisions of the National Environmental Policy Act (NEPA); (83 Stat. 852), the Council on Environmental Quality's (CEQ) implementing regulations (40 CFR Parts 1500–1508), and the Urban Mass Transportation Administration's Policy on Major Urban Mass Transportation Investments (published in the **Federal Register** on September 22, 1976), the Urban Mass Transportation Administration hereby gives notice that an analysis of public transportation alternatives between Manhattan, New York and the John F. Kennedy International Airport through the Queens, New York transportation corridor and preparation of related Draft and Final Environmental Impact Statements are to begin following a public meeting on November 18, 1980, at which the scope and conduct of the analysis will be discussed. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, alternatives to be studied, impacts to be assessed, and evaluation criteria to be used to arrive at a decision. The Scoping Meeting will be held at 7:30 P.M. in Queensboro Hall, 120—55 Queens Boulevard, Queens, New York (November 18, 1980).

The Urban Mass Transportation Administration's Policy on Major Urban Mass Transportation Investments requires an analysis of alternatives to be undertaken if an area is contemplating seeking Federal funding for a major investment. The Policy defines a major investment as any new or extended fixed guideway transit facility. To be eligible for Federal funding, the analysis must be conducted, but completion of the analysis does not ensure that Federal funding will be forthcoming. The subject analysis will be conducted by the Port Authority of New York and New Jersey, through the Tri-State Regional Planning Commission. The analysis will be under the supervision of the Urban Mass Transportation Administration with the cooperation of the Federal Highway Administration and the Federal Aviation Administration.

John F. Kennedy Airport is expected to experience substantial, continued traffic growth in the upcoming years. Ground access to the airport already promises to constrain this future growth. To meet the anticipated travel demand of 35 million air passengers by 1990, improved transportation access between the airport and Manhattan and surrounding areas is a vital necessity. Manhattan is the single largest concentration of air passengers, employees and visitors destined for the airport and the area of highest transit dependence. Thus, Manhattan is the primary area of interest in the subject analysis, but consideration is also given to public transportation needs from other parts of New York City and from suburban areas.

To accommodate the future demand, 14 alternatives for public transit access from Manhattan to the airport were examined in a preliminary analysis. The capital cost of these alternatives ranged from nominal sums to almost $500 million for the most extensive construction proposals.

As a result of preliminary community meetings, staff analysis and preliminary review by the involved local transportation agencies, four of the 14 alternatives examined in the preliminary analysis are proposed for further evaluation in the subject analysis. These alternatives, each of which is estimated to cost less than $200 million, include:

1. Null (Do Nothing)—Continuation of the current public transportation services such as the Airport Coach service operated by Carey Transportation and the Metropolitan Transportation Authority's JFK Express subway-bus from Manhattan to the airport. In this and other alternatives, other airport-related public transportation services are assumed to continue; i.e., airport limousines, local bus services, etc.

2. Airport Coach and JFK Express TSM—low cost Transportation Systems Management improvements to the current operation of both these systems.

3. Fulton Street/Boundary—more extensive station and track improvements to the JFK Express subway-bus service, including improved travelways for the connecting bus on the airport.

4. Queens Transitway—An exclusive travelway for buses, limousines and high-occupancy vehicles which would originate in central Queens, at the intersection of the Long Island Expressway and the Long Island Railroad, and then via the abandoned LIRR Rockaway Line right-of-way to Kennedy Airport, tying in with improved on-airport travelways into the Central Terminal Area.

Additionally, an examination of one or more combinations of these four alternatives could be explored. Reactions to this abbreviated list of alternatives, in terms of the desirability of further study, will be sought at the Scoping Meeting.

Potentially significant impacts of the alternatives on air quality, noise, vibration, and water quality shall be examined, including impacts during construction. Mitigating measures shall be explored for any adverse impacts

that might be identified. Other possible impacts on land use, urban development, ecologically sensitive areas, energy requirements, historic properties, etc. shall be examined in accordance with NEPA, CEQ and UMTA procedures.

The proposed evaluation criteria include transportation, environmental, social, economic and financial impact areas as required by current Federal (NEPA) and State (CEQA) environmental laws and current Federal CEQ, UMTA and FHWA guidelines. Reactions to this tentative list of evaluation criteria will also be sought at the Scoping Meeting, and criteria judged to be relevant to local decision-making that are not identified in this tentative list will also be included.

At the November 18th Scoping Meeting, staff will present the above information in more detail using maps and visual aids, as well as a plan for an active citizen involvement program, a work schedule and budget. The public and affected public agencies are invited to comment, either orally at the meeting or in writing for a period of 30 days following the meeting. Appropriate adjustments will be made following a review of these comments.

If there are any questions, please contact the UMTA Project Manager, Ms. Margarita Sainz de la Pena, Office of Planning Assistance, Urban Mass Transportation Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone—(202) 426–2360, or the UMTA Regional Office Planning Representative, Mr. Brian Sterman, Suite 14–130, 26 Federal Plaza, New York, NY 10007, telephone—(212) 264–8162, or the Local Agency Project Director, Mr. Leon Goodman, the Port Authority of New York and New Jersey, One World Trade Center, 72 West, New York, NY 10048, telephone—(212) 466–8397.

Dated: October 29, 1980.

Robert H. McManus,

Associate Administrator for Planning, Management and Demonstrations.

[FR Doc. 80-34228 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-57-M

Transportation Alternatives in New Jersey; Intent to Prepare an Environmental Impact Statement

In accordance with the provisions of the National Environmental Policy Act (83 Stat. 852) the Council on Environmental Quality's implementing regulations (40 CFR Parts 1500–1508) and the Urban Mass Transportation Administration's Policy on Major Urban Mass Transportation Investments (published in the **Federal Register** on September 22, 1976), the Urban Mass Transportation Administration hereby gives notice that an analysis of transportation alternatives in the Lindenwold-Berlin-Atco Corridor, Camden County, New Jersey, and preparation of the related Draft Environmental Impact Statement is to begin following two public meetings to be held on November 19, 1980, and December 3, 1980, at which time the scope and conduct of the analysis will be discussed. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, the alternatives to be studied, and the evaluation criteria to be used to arrive at a decision. Both scoping meetings will be held at 7:30 p.m. in the auditorium of the Overbrook Junior High School, Lindenwold, New Jersey.

The subject alternatives analysis will be conducted by the Delaware River Port Authority (DRPA) in cooperation with the New Jersey Department of Transportation, the Delaware Valley Regional Planning Commission, and the Urban Mass Transportation Administration. Consultant support will also be used in this effort.

The Lindenwold-Berlin-Atco Corridor extends southeastward from the Lindenwold station of the Philadelphia-Lindenwold PATCO rapid transit line a distance of 7 miles to the vicinity of the interchange of US Route 30 and NJ Route 73 in Waterford Township. The axis of the corridor is an existing railroad right-of-way over which Conrail operates railroad commuter service between Atlantic Ocean shore points and the PATCO Lindenwold station. The influence area for the corridor is a band 10 miles in width centered on the corridor axis and bounded at the eastern end of the corridor by a semi-circle centered at the intersection of NJ Route 73 and the railroad right-of-way. This influence area contains approximately 110 square miles and in 1970 supported a population of 94,000. About 81% of the influence area and 91% of the area's inhabitants lie in Camden County, with the remainder in Burlington County. Of the 18 civil divisions of government situated wholly or substantially within the influence area, 16 are in Camden County.

The alternatives proposed for study include the following:

1. A no-build alternative designed to maintain the level of service provided by the existing transportation system. This alternative will serve as one basis for comparisons among the alternatives.
2. Region-wide carpooling, including economic incentives designed to promote higher auto occupancy.
3. Improvement of local bus service.
4. Provision of express bus service.
5. Initiation of demand-activated transportation service.
6. Initiation of railroad commuter service on the existing railroad line.
7. Construction of a light rail transit line.
8. Construction of an extension of the existing PATCO rail rapid transit system.

The project objectives and the evaluative criteria which will be derived from them include transportation, environmental, social, economic and financial considerations as required by current Federal and State environmental laws and current Federal CEQ, UMTA, and FHWA guidelines. Additional considerations of importance to local decision-making will also be included.

At the two scoping meetings, all of the information described above will be presented in greater detail using maps and visual aids. A plan for an active citizen participation program will also be described. Interested agencies, groups and private citizens will be invited to provide comments and questions, either orally at the meeting or in writing following the meeting. Appropriate adjustments to the work scope and the list of alternatives to be analyzed will be made accordingly.

If there are any questions, please contact the UMTA project manager, James M. Ryan, Office of Planning Assistance, Urban Mass Transportation Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 426–2360, or the UMTA regional office planning representative, Mr. Alfred LeBeau, 434 Walnut Street, Philadelphia, PA 19106, telephone (215) 597–4179 or the designated contact of the sponsoring agency, Mr. Paul T. Osisek, Delaware River Port Authority, Bridge Plaza, Camden, NJ 08101, telephone (215) 925–8780. Questions may also be directed to the consultant, George Beetle Company, at the Project Office in Berlin, NJ, during normal business hours or by telephone at (609) 772–1242.

Dated: October 29, 1980.

Robert H. McManus,

Associate Administrator for Planning, Management and Demonstrations.

[FR Doc. 80-34139 Filed 10-31-80; 8:45 am]

BILLING CODE 4910-57-M

Transporation Alternatives, Columbus North Corridor, Ohio; Intent to Prepare an Environmental Impact Statement

In accordance with the provisions of the National Environmental Policy Act (83 Stat. 852) the Council on Environmental Quality's implementing

regulations (40 CFR Parts 1500–1508) and the Urban Mass Transporation Administration's Policy on Major Urban Mass Transporation Investments (published in the **Federal Register** on September 22, 1976), the Urban Mass Transporation Administrations hereby gives notice that an analysis of transporation alternatives in the Columbus North Corridor and preparation of a related Draft Environmental Impact Statement are to begin following a public meeting on November 17, 1980 at which time the scope and conduct of the analysis will be discussed. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, the alternatives to be studied and the evaluation criteria which should be used to arrive at a decision. This Scoping Meeting will be held at 1:30-p.m. at Mid-Ohio Regional Planning Commission, Large Conference Room, 514 S. High Street, Columbus, Ohio.

The subject alternatives analysis will be conducted by the Mid-Ohio Regional Planning Commission (MORPC) and an areawide Task Force in cooperation with the Urban Mass Transporation Administration. Consultant support will also be used in this effort.

The North Corridor is broadly defined as that area lying north of the Columbus Central City Area between the Olentangy River and State Route 3 and principally served by the I–71 and I–270 Freeways, High Street, Cleveland Avenue, Marconi Avenue, Indianola, and Third, and Fourth Streets. The North Corridor provides for transportation between the communities of Clintonville, Worthington, Westerville, Riverlea, Minera Park, Columbus and the Central City, as well as points north and west. Within the broadly defined North Corridor lies 23 percent of the employment in Franklin County, or approximately 90,000 employees. Also within this corridor is approximately 30 percent of the County's population or 260,000 persons.

The alternatives proposed for study include the following:

1. Construction of a guideway transit line haul light rail facility.

2. Construction of a High Occupancy Vehicle (HOV) facility, e.g., exclusive bus and/or carpool lanes.

3. Transporation System Management (TSM) strategies utilizing minor capital improvements and changes to the present transportation system including programs such as transit service improvements, signal pre-emptions, and ramp metering on highways and arterials in the North Corridor.

4. Do Nothing (Baseline) alternative designed to maintain the present transportation system along with service improvements included in the current Transit 5-Year Capital Improvement Program. This strategy would provide one basis for comparing the other alternatives.

The proposed evaluation criteria will include transportation, environmental, social, economic and financial impacts, areas as required by current Federal (NEPA) environmental laws and current Federal CEQ, UMTA and FHWA guidelines. Additional impact areas and measures important to local decisionmaking will also be included.

At the November 17 Scoping Meeting, staff will present the above information in more detail using maps and visual aids, as well as a work schedule and budget. The public and affected public agencies will be invited to comment, either orally at the meeting or in writing for a period of thirty days following the meeting. Appropriate adjustments to the work scope and alternatives will be made accordingly.

If there are any questions, please contact the UMTA Project Manager, Edward L. Thomas, Office of Planning Assistance, Urban Mass Transprotation Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 426–2360, or the UMTA Regional Office Planning Representative, Mr. Harold Crane, U.S. DOT UMTA Region V, 300 S. Wacker Drive, Suite 1740, Chicago, Illinois 60606, telephone (312) 353–2820, the local agency responsible official, Douglas Moore, Mid-Ohio Regional Planning Commission, 514 S. High, Columbus, Ohio, telephone (614) 228–2663.

Dated: October 29, 1980.

Robert H. McManus,

Associate Administrator for Planning, Management and Demonstrations.

[FR Doc. 80–34140 Filed 10–31–80; 8:45 am]

BILLING CODE 4910–57–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 214
Monday, November 3, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-298 Amdt. 2, Oct. 29, 1980]

CIVIL AERONAUTICS BOARD.

Closed session was not held on item 25.

TIME AND DATE: 9:30 a.m., October 29, 1980 (after regular meeting.)

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 25. Docket 38608, Application of Aeroservicios Ecuatorianos, C.A. (AECA), for an exemption from section 402 of the Act to permit it to engage in limited nonscheduled cargo service between Miami, Houston and Ecuador (Memo 021, BIA, OGS).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-2011-80 Filed 10-30-80; 3:31 pm]

BILLING CODE 6320-01-M

2

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, November 5, 1980 at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Litigation. Compliance. Audits.

* * * * *

DATE AND TIME: Thursday, November 6, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory opinions:
Draft AO 1980-114: Ralph T. Defranco (Calabrese for Congress Committee).
Draft AO 1980-117: Susan Danielski, Treasurer, Concerned Citizens for Kleczka.
Draft AO 1980-118: Alvin J. Helfgot, Exchange Community Action II PAC.
1980 Election and related matters.
Appropriations and budget.
Pending legislation.
Classification actions.
Routine administrative matters.

* * * * *

DATE AND TIME: Thursday, November 6, 1980 at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Litigation. Audits. Compliance.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202-123-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-2012-80 Filed 10-30-80; 3:40 pm]

BILLING CODE 6715-01-M

3

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, 209, 7103910, October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 30, 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 items have been added to the open meeting:

Merger: Maintenance of Branch Office: Cancellation of Membership and Insurance; and Transfer of Stock—Metropolis Federal Savings & Loan Association, Washington, D.C. into Interstate Federal Savings & Loan Association, Washington, D.C.
Proposed Merger—American Federal Savings & Loan Association, Washington, D.C. into Perpetual Federal Savings & Loan Association, Washington, D.C.
Proposed Acquisition and Merger of—Saddleback Savings & Loan Association, Laguna Hills, California and Coast Federal Savings & Loan Association, Los Angeles, California.

[S-2005-80 Filed 10-30-80; 11:08 am]

BILLING CODE 6720-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 29, 1980.

TIME AND DATE: 2:30 p.m., Wednesday, November 5, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Allied Chemical Company, Docket No. HOPE 78-222-P (Issues include interpretation and application of 30 CFR § 75.1404-1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632).

[S-2008-80 Filed 10-30-80; 3:28 pm]

BILLING CODE 6820-12-M

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Monday, November 3, 1980.

PLACE: Room 532, (open); room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Litton Industries, Inc., et al., Docket 9123.

Portions closed to the Public:

(2) Executive Session to discuss Oral Argument in Litton Industries, Inc., Docket 9123.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-2006-80 Filed 10-30-80; 11:08 am]

BILLING CODE 6760-01-M

6

FOREIGN CLAIMS SETTLEMENT COMMISSION.

FCSC Meeting Notice No. 10-80.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Wednesday, November 5, 1980 at 10:30 a.m.—Canceled.

Wednesday, November 12, 1980 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoner of War Compensation.

Wednesday, November 19, 1980 at 10:30 a.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoner of War Compensation.

Wednesday, November 26, 1980 at 10:30 a.m.—Canceled.

Thursday, November 13, 1980 at 10 a.m.—
G-1576—Willy Sundheimer
G-1362—Aimee Von Hoyningen-Huene
G-1332—Frederick Mueller
G-1139—Hildegard Cooper
G-0476—Edith Pinkuss

Thursday, November 13, 1980 at 2 p.m.—
G-1477—Alice Matyas
G-0819—Ottie Bowers
G-0029—Fridel Zander
G-0836—Helene Horowitz
G-0837—Dr. Sasha Englard
G-1651—Hans W. Schwerin, Gunther K. Schwerin

Tuesday, November 18, 1980 at 10 a.m.—
G-2491—Margot Prober
G-2431—Samuel Gutwein
G-2243—John K. Wertheim
G-2682—Louise Gans, Adele Gruner

Tuesday, November 18, 1980 at 2 p.m.—
G-3168—Estate of Cyril P. Durnovo
G-3048—Herman Sichel
G-3039—Amalia Steinberger, Elfriede Mayer
G-2853—Ella Gross, Frieda Orbach, Joseph Reiss

Subject matter listed above not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, N.W., Washington, D.C. Requests for information, or advance notice of intention to observe a meeting, may be directed to Executive Director, Foreign Claims Settlement Commission, 1111-20th Street, N.W., Washington, D.C. 20579. Telephone (202) 653-6155

Dated at Washington, D.C. on October 29, 1980.

Francis T. Masterson,

Executive Director.

[S-2007-80 Filed 10-30-80; 3:27 pm]

BILLING CODE 4410-01-M

7

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

MEETING: Cultural Minorities Task Force.

DATE AND TIME:

9 a.m.-4 p.m., Thursday, November 6, 1980.
9 a.m.-4 p.m., Friday, November 7, 1980.

PLACE: Gramercy Hotel, North Scott Room, 1616 Rhode Island Avenue, N.W.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Study and recommend specific actions on the White House Conference Resolutions dealing with cultural and ethnic minorities.

Gain a greater perspective on the library and information service needs of the cultural minorities.

Exchange ideas about existing programs, collections and services, including their strengths and weaknesses.

October 29, 1980.

Mary Alice Hedge Reszetar,

Associate Director, NCLIS.

[S-2009-80 Filed 10-30-80; 3:29 pm]

BILLING CODE 7527-01-M

8

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, November 6, 1980.

PLACE: Seventh floor board room, 1776 G Street N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Proposed Rule on Premiums.
3. Final Regulation on Share, Share Draft and Share Certificate Accounts and Operational Procedures for Federally Insured State Chartered Credit Union Share Draft Programs.
4. Report on actions taken under delegations of authority.
5. Applications for charter, amendment to charters, bylaw amendments, mergers as may be pending at that time.

RECESS: 10:15 a.m.

* * * * *

TIME AND DATE: 10:30 a.m., Thursday, November 6, 1980.

PLACE: Seventh floor board room, 1776 G Street N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. State examination of federal credit union records for purposes of assuring compliance with state laws. (Uniform Abandoned Property Statute and Escheat Laws.) Closed pursuant to exemptions (9)(B) and (10).
2. Requests from Six Federal Credit Unions to amend field of membership. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Proposed bylaw amendment. Closed pursuant to exemption (8).
4. Proposed conversion. Closed pursuant to exemption (9)(A)(ii).
5. Merger. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Consideration of State Credit Union Insurance Application. Closed pursuant to exemption (i)(A)(ii).
7. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
8. Administrative Action under Section 207 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
9. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed to exemptions (8) and (9)(A)(ii).
10. Consideration of the Internal Budget Authorizations and Policy governing authority for amendment or revision of budget for NCUA Offices for fiscal year 1981. Closed pursuant to exemptions (2), (6) and (9)(B).
11. Personnel Actions. Closed pursuant to exemption (6).

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant; telephone (202) 357-1100.

[S-2004-80 Filed 10-29-80; 4:30 pm]

BILLING CODE 7535-01-M

9

NUCLEAR REGULATORY COMMISSION.

DATE: Tuesday, November 4, 1980.

PLACE: Chairman's conference room, 1717 H Street N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

2 p.m.

Discussion of Management-Organization and Internal Personnel Matters (approximately 2 hours, closed exemption 2 and 6) (tentative).

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 28, 1980.

Walter Magee,

Office of the Secretary.

[S-2010-80 Filed 10-30-80; 3:30 pm]

BILLING CODE 7590-01-M

federal register

Monday
November 3, 1980

Part II

Environmental Protection Agency

General Pretreatment Regulations for Existing and New Sources; Submission of National Pollutant Discharge Elimination System State Pretreatment Programs; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[EN-FRL-1699-4a]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the general Pretreatment Regulation which would allow National Pollutant Discharge Elimination System ("NPDES") States requesting approval of pretreatment programs a grace period in which to revise statutes or regulations as necessary to comply with the Consolidated Permit Regulations published May 19, 1980.

DATES: Comments on the proposed amendment to subparagraph (1)(iv) of § 403.10(g) are due on or before January 2, 1981.

ADDRESSES: Comments should be addressed to: Nancy Hutzel, Environmental Protection Agency, Permits Division (EN-336), 401 M St., SW., Washington, D.C. 20460, (202) 755-0750. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M St., S.W., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Nancy Hutzel, 202-755-0750.

SUPPLEMENTARY INFORMATION: Under Section 402(b) of the Clean Water Act ("the Act"), States desiring to administer their own permit programs for discharges into navigable waters may submit such programs to the Administrator for approval. States approved by EPA become part of the National Pollutant Discharge Elimination System ("NPDES"). Section 402(b) of the Act also requires that NPDES states have a program to ensure compliance by publicly-owned treatment works ("POTW's") with various requirements now prescribed in the General Pretreatment Regulations (40 CFR Part 403 June 26, 1978). States with approved NPDES Programs must seek modifications of their programs, if necessary, to incorporate pretreatment authorities. States which have not yet received NPDES authority must develop the requisite pretreatment program elements before their application to assume NPDES authority can be approved.

For those States that already have NPDES authority, the recently promulgated Consolidated Permit Regulations, 40 CFR Part 122 *et seq.*, impose some additional requirements. (45 FR 33290, May 19, 1980.) The Consolidated Permit Regulations apply to pretreatment programs unless otherwise stated. These regulations provide a grace period for NPDES States to change their statutes or regulations in order to comply with the Consolidated Permit Regulations. 40 CFR 123.13(g). However, under the terms of this section, State pretreatment programs are not covered by this exception and must comply with the State program requirements contained in 40 CFR 403.10(g) of the General Pretreatment Regulations. Under the present General Pretreatment Regulations, no additional time is provided for States to promulgate regulations or enact statutes that are required by the Consolidated Permit Regulations.

This proposed amendment would modify the requirements set forth in § 403.10(g) of the General Pretreatment Regulations for approval of pretreatment programs submitted by NPDES States. It would give NPDES States one year from the effective date of the Consolidated Permit Regulations, i.e., until June 2, 1981, to make any regulatory changes required by those regulations. Where statutory changes are necessary, NPDES States would be given two years, i.e., until June 2, 1982 to make the statutory and any attendant regulatory changes. These grace periods are identical to the time authorized for NPDES Programs to comply with the Consolidated Regulations. Approval of State pretreatment programs, accordingly, will not be delayed because a State lacks a specific regulatory or statutory authority newly required by the Consolidated Permit Regulations.

Elsewhere in today's **Federal Register** EPA has promulgated a final amendment to § 403.10(g) of the General Pretreatment Regulations which permits approval of an existing NPDES State's pretreatment program which does not have complete State regulations if the State has adequate statutory authority and has submitted a complete description of how it intends to implement its pretreatment program.

Executive Order 12044

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 regulations "specialized". I have reviewed this regulation and determine that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 28, 1980.

Douglas M. Costle,

Administrator.

EPA proposes to add 40 CFR § 403.10(g)(1)(iv) as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

§ 403.10 Development and Submission of NPDES State Pretreatment Programs.

* * * * *

(g) * * *

(1) * * *

(iv) Notwithstanding paragraphs (g)(1)(i) and (ii) of this section, a proposed State Pretreatment Program submitted by a State with an approved NPDES Program may be approved if its statutes or regulations do not fully comply with the requirements of this section solely because the statutory or regulatory revisions required by 40 CFR 123.13(g) have not yet been made. In that case, the revision must occur by June 2, 1981, unless a statutory amendment or enactment is required, in which case the revision must occur by June 2, 1982.

(Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (Pub. L. 95.217) (33 U.S.C. 1251 *et seq.*), secs. 204(b), 208(b), 301(b), 301(h), 301(i), 304(e), 304(g), 307, 308, 309, 402(b), 405, 501(a))

[FR Doc. 80-34112 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-33-M

federal register

Monday
November 3, 1980

Part III

Department of Energy

Improving Government Regulations; Semiannual Agenda

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Department of Energy.

ACTION: Notice of regulations under development or review.

SUMMARY: The Department of Energy (DOE) is publishing an agenda of its regulations under development or review as of October 1, 1980.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda in general, contact: Jeffrey D. Stoermer (Office of General Counsel), Department of Energy, Room 6A–127, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6754.

Specific

For further information about any particular item on the Agenda, contact the individual listed under that item.

SUPPLEMENTARY INFORMATION: Executive Order 12044, "Improving Government Regulations," (43 FR 12661, March 24, 1978), subsequently extended by Executive Order 12221 (45 FR 44249, July 1, 1980), requires every Federal agency to publish semiannually an agenda of its significant regulations currently under development or review. One of the objectives of the Order is to encourage greater public involvement at an early stage in the regulatory process. DOE implemented Executive Order 12044 by a Department Order (DOE 2030.1) issued December 18, 1978 (43 FR 1032, January 3, 1979), which established April and October of each year as the months during which DOE would publish a semiannual agenda of regulations in the **Federal Register.**

The Departmental Order requires that the agenda include *all* regulations currently being developed or reviewed. For each regulation that is *significant* (as defined in the Departmental Order) the Departmental Order requires that the agenda state the need the legal basis for the regulation, its status, whether a regulatory analysis will be required, and the name and telephone number of a knowledgeable agency official.

Appended to this Notice is DOE's October 1980, Regulatory Agency. It is expected that this information will enable the public to be more aware of, and allow it to more effectively participate in, the DOE's regulatory activity. In an attempt to be as comprehensive as possible, the Agenda includes those DOE regulations, both significant and nonsignificant, that are under development or review as of October 1, 1980. The Agenda also includes any regulation that has been issued in final form since publication of the April 1980 Agenda, and that is no longer under development or review. Such a final regulation will not be listed on future agendas unless the regulation is being reviewed or an amendment to the regulation is being developed.

At the time of the publication of the April 1980 Agenda we assigned the highest priority to the completion of those regulatory actions that would help achieve the greatest reduction in regulatory burdens. In the preamble to the April 1980 Agenda we identified several regulations or areas of regulation where we felt the need for regulatory interference in the market place was no longer necessary or where we felt the degree of regulation could be reduced in a manner consistent with the Department's statutory responsibilities. In the past six months we have taken the following regulatory actions in regard to those high priority regulations or areas of regulation identified in the April Agenda:

(1) NEA-Fuel Use Act—Administrative Procedures and New Facilities (Docket ERA–R–78–19 D, E): final rule issued;

(2) NEA-Fuel Use Act—Existing Facilities (Docket ERA–R–78–19 C, F, and G): final rule issued;

(3) Revision of Crude Oil Supplier/Purchaser Rule: final rule issued;

(4) Reseller's and Reseller-Retailers' Price Rules for Gasoline: final rule issued;

(5) Modification or Elimination of the Equal Application Rule: final rule issued;

(6) Motor Gasoline Allocation Revisions—General: notice of proposed rulemaking issued;

(7) Amendments to Propane Pricing Regulations: notice of proposed rulemaking planned for issuance in fourth quarter of 1980.

The next semiannual agenda is scheduled to be published in April 1981.

Issued in Washington, D.C. this October 28, 1980.

Lynn R. Coleman,

Acting Deputy Secretary.

The DOE regulations under development or review as of October 1, 1980, are as follows:

I. Environment.
II. Conservation and Solar Energy.
III. Alcohol Fuels.
IV. Equal Opportunity.
V. General Counsel.
VI. Procurement and Contracts.
VII. Consumer Affairs.
VIII. Resource Applications.
IX. Economic Regulatory Administration.
A. National Energy Act Regulations.
B. Crude Oil and Refinery Operations.
C. Refined Products.
D. Deregulation.
E. Emergency Preparedness.
F. Utility Systems.

I. Environment

1. DOE NEPA Implementing Procedures

DOE has published final guidelines implementing the Council on Environmental Quality regulations for compliance with the National Environmental Policy Act (NEPA).

A regulatory analysis is not required.

Status: Proposed guidelines were published on July 18, 1979 (44 FR 42136). Final guidelines were published March 28, 1980 (45 FR 20694). Interim special procedures to provide for NEPA compliance in the competitive procurement process were published with the March 28 final guidelines. Comments regarding the interim procedures were solicited, none were received, and final procedures are now being developed.

Authority: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); Executive Order 11514, as amended.

Contact: Robert Stern (202) 252–4600

2. Proposed Guidelines for Implementation of Executive Order 12114

DOE will publish final guidelines to implement Executive Order 12114, concerning the Environmental Effects Abroad of Major Federal Actions.

A regulatory analysis is not required.

Status: Proposed guidelines were published on September 6, 1979 (44 FR 52146).

Authority: National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); Executive Order 12114.

Contact: Robert Stern (202) 252–4600

II. Conservation and Solar Energy

1. Identification of Consumer Product Types which may be Subject to Minimum Energy Efficiency Standards

DOE will publish a notice listing those types of covered products which are not specified in section 322(a) of the Energy Policy and Conservation Act but which may be subject to energy efficiency standards. Criteria for selecting these types of covered products are specified in section 325(a) of the Act and include considering the average annual per-household energy use and the aggregate household energy use of individual types of consumer products.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking will be issued before the end of November 1980.

Deadline: Not later than November 1980.

Authority: Energy Policy and Conservation Act, section 325(a)(2) (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act, section 422 (Pub. L. 95–619).

Contact: James A. Smith (202) 252–9127.

2. Amendment to Room Air Conditioner Test Procedures

DOE has amended its test procedures for room air conditioners, prescribed under the Energy Conservation Program for Consumer Products, to clarify the scope of the room air conditioner test procedures as applied to packaged terminal air conditioners.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** June 26, 1980 (45 FR 43362).

Authority: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: James A. Smith (202) 252–9127.

3. Amendment to Furnace Test Procedures

DOE has amended its test procedures for furnaces, prescribed under the Energy Conservation Program for Consumer Products, to include test procedures for pulse combustion furnaces and condensing furnaces.

A regulatory analysis was not required.

Status: A final rule was published in the **Federal Register** August 12, 1980 (45 FR 14188).

Authority: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163).

Contact: James A. Smith (202) 252–9127.

4. Amendment to Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

DOE is proposing a rule to modify existing test procedures for refrigerators, refrigerator freezers and freezers to reduce testing time and burden.

A regulatory analysis was not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** July 14, 1980 (45 FR 47396).

Authority: Energy Policy and Conservation Act, section 323(a) (Pub. L. 95–163); National Energy Conservation Policy Act, section 421(c) (Pub. L. 95–619).

Contact: James A. Smith (202) 252–9127.

5. Energy Efficiency Standards for Nine Types of Consumer Products

DOE will establish minimum energy efficiency standards for nine types of consumer products: Refrigerators and refrigerator-freezers, freezers, water heaters, room air conditoners, kitchen ranges and ovens, furnaces, central air conditioners, home heating equipment (not including furnaces), and clothes dryers.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** June 30, 1980 (45 FR 43976).

Deadline: Final rule to be issued no later than January 1981.

Authority: Energy Policy and Conservation Act, section 325 (Pub. L. 94–163), as amended by National Energy Conservation Policy Act, section 422 (Pub. L. 95–619).

Contact: James A. Smith (202) 252–9127.

6. Energy Efficiency Standards for Five Types of Consumer Products

DOE will establish minimum energy efficiency standards for five product types: humidifiers/dehumidifiers, clothers washers, television sets, dishwashers, and heat pumps.

A regulatory analysis will be completed.

*Status:*An advance notice of proposed rulemaking for four products was published in the **Federal Register** on December 13, 1979 (44 FR 72276). An advance notice of proposed rulemaking for heat pumps (the fifth product) was published in the **Federal Register** on January 23, 1980 (43 FR 5602).

Deadlines: Final rule to be issued no later than November 1981.

Authority: Energy Policy and Conservation Act, section 325 (Pub. L. 94–163), as amended by National Energy Conservation Policy Act, section 422 (Pub. L. 95–619).

Contact: James A. Smith (202) 252–9127.

7. Amendments to Clothes Dryer Test Procedures

DOE is proposing to amend its test procedures for clothes dryers to account for automatic cycle termination, and to include several technical revisions, primarily to reduce the variability of test results.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** July 10, 1980 (45 FR 46762).

Authority: Section 323, Energy Policy and Conservation Act (Pub. L. 94–163).

Contact: James A. Smith (202) 252–9127.

8. Waiver of Consumer Product Test Procedures

DOE has established provisions for the temporary waiver of test procedure requirements for certain consumer products. These products contain unique design characteristics which prevent testing according to DOE test procedures.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** on September 26, 1980 (45 FR 64108).

Authority: Section 323 of the energy Policy and Conservation Act (Pub. L. 95–163).

Contact: James A. Smith (202) 252–9127.

9. Reporting Guidelines for Municipal Waste Reprocessing Demonstration Program

Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, provides for financial assistance to establish municipal waste reprocessing demonstration facilities. Guidelines are required to obtain pertinent information about projects funded by DOE under section 20.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on May 16, 1980 (45 FR 32560).

Authority: Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577), as amended by Pub. L. 95–238.

Contact: Donald Walter (202) 252–9397.

10. Urban Wastes Demonstration Facilities Guarantee Program

DOE has issued a rule which establishes procedures and requirements for loan guarantees to support urban wastes demonstration facilities.

A regulatory analysis was not required.

Status: A final rule was published in the **Federal Register** on May 13, 1980 (45 FR 31604).

Authority: Federal Nonnuclear Energy Research and Development Act of 1974, section 19(y) (Pub. L. 93–577), as amended.

Contact: Donald Walter (202) 252–9397.

11. Municipal Waste Energy Price Support Loan Program

The regulations to be developed by DOE will establish policy and set forth procedures for submitting applications for price support loans for energy produced from municipal waste energy projects. The regulations will be issued in two phases. The initial portion of the regulations (phase 1) will establish the components for setting the amount of price support loans. The main regulation (phase 2) will cover the remaining components of the price support loan program, including procedures for filing applications, criteria for project eligibility and approval, and deadlines for filing.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on September 25, 1980 (45 FR 63822) for phase 1; proposed rules for phase 2 are expected to be published in November 1980.

Authority: Title II, Subpart B of the Energy Security Act (Pub. L. 96–294); Pub. L. 95–238.

Contact: Charlotte Rines (202) 252–9397.

12. Life Cycle Costing Procedures for Federal Buildings

DOE has promulgated procedures for estimating and comparing life cycle costs for the purchase and installation of energy conservation measures for Federal Buildings (45 FR 5620, January 23, 1980). DOE is now proposing to amend the procedures to update average energy prices for use in fiscal year 1981. DOE is also planning additional amendments to substitute marginal fuel cost projections for average energy prices by no later than the end of fiscal year 1981.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking to update average energy prices and an advance notice of proposed marginal fuel costs were published in the **Federal Register** on October 7, 1980 (45 FR 66620, 66632).

Authority: Section 545 of the National Energy Conservation Policy Act (Pub. L. 95–619), as amended by section 405 of the Energy Security Act (Pub. L. 96–294); Executive Order 11912, as amended by Executive Order 12003.

Contact: Jack Vitullo (202) 252–9467.

13. Building Energy Performance Standards

DOE intends to issue interim and then final energy performance standards for new residential and commercial buildings. DOE will establish energy goals without specifying methods, materials or processes for achieving those goals. The standards require achievement of a higher degree of energy efficiency in the construction of new residential and commercial buildings. After issuance of the final rule, Congress must decide whether to make the standards mandatory.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** November 28, 1979 (44 FR 68120). A notice of interim energy performance standards is planned for issuance in August 1981.

Authority: Energy Conservation and Production Act, Title III (Pub. L. 94–385), as amended by Pub. L. 95–91 and Pub. L. 95–619.

Contact: James Binkley (202) 252–9197.

14. Grant Programs for Schools and Hospitals and Other Public Buildings

DOE is planning to propose revisions in its current regulations (10 CFR Part 455) which provide guidelines and procedures for DOE's grant programs funding technical assistance and energy conservation measures for schools, hospitals, buildings owned by units of local government, and public care institutions.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking is planned for issuance in the fall of 1980.

Authority: Title III of the National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: Frank Stewart (202) 252–2198.

15. Industrial Waste Loan Guarantee Program

DOE intends to propose rules for a program of loan guarantees covering up to 75% of the cost of demonstration facilities for the utilization of industrial waste materials.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Section 19(y) of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577), as amended by the Department of Energy Act of 1978—Civilian Applications (Pub. L. 95–238); Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1980 (Pub. L. 96–126), Title II.

Contact: Tom Gross (202) 252–2384.

16. Renewable Energy Resources

DOE has requested the public to identify DOE regulations which interfere with the development of renewable resources. In view of the comments received, no further action will be taken.

A regulatory analysis was not required.

Status: A notice of inquiry was published in the **Federal Register** on August 29, 1979 (44 FR 50801). No further action will be taken.

Authority: Executive Order 12044.

Contact: Lois Arck (202) 252–9329.

17. Identification of Hard-To-Understand Energy Conservation Regulations

DOE has requested that the public identify energy conservation regulations which are hard to understand.

A regulatory analysis is not required.

Status: A notice of inquiry was published in the **Federal Register** November 6, 1979 (44 FR 64094). No further action is anticipated at this time.

Authority: Executive order 12044.

Contact: Herb Myers (202) 252.9338.

18. Guidelines for Overall Federal Energy Management Planning

By Executive direction, all Executive Agencies are required to develop plans, establish goals, and report on progress in energy conservation in all their operations. This rule provided the guidance necessary to develop these plans.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** July 1, 1980 (45 FR 44558).

Authority: Executive Order 12003, section 10(d).

Contact: Jack Vitullo (202) 252–9467

19. Emergency Building Temperature Restrictions

The Emergency Building Temperature Restrictions Plan places temporary restrictions on temperatures for heating, cooling, and domestic hot water in commercial, industrial, government, and other non-residential buildings.

DOE has published proposed amendments to the Plan to refine temperature measurement techniques, to provide for altenative methods of complying with the Plan, and to provide for exemptions from the restrictions for health and safety reasons.

A regulatory analysis is not required.

Status: A proposed rule was published on May 27, 1980 (45 FR 35788). The final rule is to be published in the near future.

Authority: Energy Policy and Conservation Act (Pub. L. 94.163); Emergency Energy Conservation Act, section 231 (Pub. L. 96.102).

Contact: Henry G. Bartholomew (202) 252–4966.

20. Standby Federal Emergency Conservation Plan

DOE established a Standby Federal Emergency Energy Conservation Plan which may be implemented in accordance with Title II of the Emergency Energy Conservation Act only after emergency energy conservation targets have been established by the President and the States have had reasonable opportunity to establish and implement State Conservation Plans.

A regulatory analysis is being prepared.

Status: An interim final rule and a notice of proposed rulemaking were published in the **Federal Register** on February 7, 1980 (45 FR 8462).

Authority: Section 213(a) of the Emergency Energy Conservation Act (Pub. L. 96–102).

Contact: Henry G. Bartholomew (202) 252–4966.

21. Evaluation of Industrial Electric Motors and Pumps

DOE is required to conduct a detailed classification and evaluation study of industrial electric motors and pumps, and to submit a report to Congress on electric motors and pumps after providing interested persons an opportunity to comment on the proposed report.

A regulatory analysis is not required.

Status: A notice of availability of the final report is expected to be published in the **Federal Register** before the end of 1980.

Authority: Section 441 of the National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: Tom Gross (202) 252–2384.

22. Inclusion of Electric Vehicles in Calculation of Average Fuel Economy Standards

DOE is proposing equivalent petroleum-based fuel economy values to implement section 18 of the Chrysler Loan Guarantee Act. Final promulgation of the values is required no later than six months after the proposed rule is issued. DOE will review these values on an annual basis and will propose revisions if necessary.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on May 21, 1980 (45 FR 34008). A supplementary notice of proposed rulemaking is expected to be issued in October 1980. Issuance of the final rule is expected in December 1980.

Authority: Section 18 of the Chrysler Loan Guarantee Act (Pub. L. 96–185).

Contact: Robert Kirk (202) 252–8032.

23. Reserved Section of the Residential Conservation Service Program Rule

DOE has adopted a rule which fills in several of the reserved sections of the November 7, 1979, final rule for the Residential Conservation Service Program. Included in the rule are standards for vent dampers, wind energy systems and solar devices. Also included are qualification criteria for inspectors and installers of furnace retrofit devices and wind energy systems.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** on September 24, 1980 (45 FR 63432).

Authority: National Energy Conservation Policy Act (Pub. L. 95–619), Title II, Part 1.

Contact: James Tanck (202) 252–9161.

24. Residential Conservation Service Program—Urea Formaldehyde Foam Insulation Standards

DOE has adopted a rule setting material and installation standards for urea formaldehyde foam insulation used in the Residential Conservation Service Program.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** on September 25, 1980 (45 FR 63786).

Authority: Part 1 of Title II of the National Energy Conservation Policy Act (Pub. L. 95–619).

Contact: James R. Tanck (202) 252–9161.

25. Technical Corrections to Residential Conservation Service Program Regulations

DOE is proposing changes to the final rule for the Residential Conservation Service Program. These proposed changes would include technical amendments to correct clerical, grammatical and typographical errors as well as a small number of changes that reflect proposed substantive changes.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on August 11, 1980 (45 FR 53422).

Authority: National Energy Conservation Policy Act, (Pub. L. 95–619).

Contact: James Tanck (202) 252–9161.

26. Amendments to the Residential Conservation Service Program Rule

This proposed rule would change prohibitions regarding utility supply, installation and financing of energy measures in residential buildings. It would also affect the current utility costing and accounting provisions for the RCS program and the warranty of manufacturers, suppliers, and installers participating in the RCS program.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published on October 8, 1980, 45 FR 66960.

Authority: Energy Security Act (Pub. L. 96–294).

Contact: James Tanck (202) 252–9161.

27. Residential Energy Efficiency Program—Energy Conservation Demonstrations

DOE is planning to propose guidelines for the funding of energy conservation demonstrations for the Residential Energy Efficiency Program.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has not yet been published.

Authority: Title V, Subtitle C of the Energy Security Act (Pub. L. 96–294).

Contact: James Tanck (202) 252–9161.

28. Federal Standby Residential Conservation Service Plan

This rule will propose a standby plan to be implemented in States that have not submitted their own State Residential Conservation Service Plan, and in States where the State plan has been disapproved or has been found to be inadequately implemented.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking is planned to be issued in the fall of 1980.

Authority: National Energy Conservation Policy Act, (Pub. L. 95–619).

Contact: James Tanck (202) 252–9161.

29. Extension of the Residential Conservation Service Program

The proposed rule would extend coverage of the Residential Conservation Service Program to include multi-family dwellings with more than four units and commercial buildings. (The existing program is limited to single family homes and multi-family dwellings with up to four units.) The program will provide energy audits and certain other services to these additional customers of large public utilities and home heating oil suppliers.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking is planned to be issued in the fall of 1980.

Authority: National Energy Conservation Policy Act, (Pub. L. 95–619) as amended by the Energy Security Act (Pub. L. 96–294).

Contact: James Tanck (202) 252–9161.

30. Residential Conservation Service Program—Auditor Training and Certification

DOE has proposed guidelines for providing funding to States for the training and certification of energy auditors in support of State efforts to implement the Residential Conservation Service Program and other energy audit programs.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published October 8, 1980, 45 FR 66970.

Authority: Energy Security Act (Pub. L. 96.294).

Contact: James R. Tanck (202) 252–9161.

31. Weatherization Assistance for Low Income Persons: General Revisions

DOE is planning to issue a notice of inquiry to solicit comments as to the general direction and scope of the Weatherization Assistance for Low-Income Persons Program. In addition, the notice of inquiry would solicit specific comments in the following areas: hiring labor, criteria for selecting local agencies, standards and procedures, definition of weatherization materials, the allocation formula, utilization of interim weatherization measures, rental units in multi-family buildings, procedures to permit cost averaging, Federal and State management roles, and provision of training and technical assistance.

A regulatory analysis decision has not been made.

Status: A notice of inquiry is planned for publication in the **Federal Register** before the end of 1980.

Authority: Part A of Title IV of the Energy Conservation and Production Act (Pub. L. 94–385) as amended by the National Energy Conservation Policy Act (Pub. L. 95.619) and the Energy Security Act (Pub. L. 96–294).

Contact: Carolyn Martin (202) 252–2204.

32. Weatherization Assistance for Low-Income Persons: Amendments Mandated by Energy Security Act and Technical Corrections

A final rule is planned to implement two changes in the Weatherization Assistance for Low-Income Persons Program (raising the repair limitation from $100 to $150 per dwelling unit and revising the administrative expenditure procedures to permit States to pass through up to 10% of their grants to subgrantees for administration) mandated by the Energy Security Act. The rule would also make several technical corrections, including changing the definition of "eligible State" to include Hawaii, upgrading the standard for cellulose type I insulation, and deleting a comma to correct a typographical error.

A regulatory analysis is not required.

Status: Publication of the final rule in the **Federal Register** is expected before the end of 1980.

Authority: Part A of Title IV of the Energy Conservation and Production Act (Pub. L. 94–385), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) and the Energy Security Act (Pub. L. 96–294).

Contact: Carolyn Martin (202) 252–2204.

III. Alcohol Fuels

1. Loan Guarantees for Alcohol Fuels, Biomass Energy, and Municipal Waste Energy Projects

DOE has adopted a regulation which provides guidelines to persons submitting proposals for financial assistance through DOE's loan guarantee program in regard to the development of alcohol fuels, biomass energy, and municipal waste energy projects.

A regulatory analysis was not required.

Status: A final rule was published in the **Federal Register** on October 8, 1980 (45 FR 66960).

Authority: Title II of the Energy Security Act (Pub. L. 96–294).

Contact: Bert Greenglass (202) 252–9487 (Alcohol Fuels Projects); Leslie S. Levine (202) 376–4424 (Non–Alcohol Biomass Projects); Donald K. Walter (202) 252–9397 (Municipal Waste Projects).

IV. Equal Opportunity

1. Nondiscrimination in Federally Assisted Programs

The regulation implements Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and Section 504 of the 1973 Rehabilitation Act. These laws prohibit discrimination on the basis of race, color, and national origin (Title VI), sex (Title X), and handicap (Section 504) in programs and activities which receive financial assistance from DOE.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** on June 13, 1980 (45 FR 40514).

Authority: Title VI of the 1964 Civil Rights Act; Title IX of the 1972 Education Amendments; Section 504 of the 1973 Rehabilitation Act.

Contact: Carlos A. Ruiz, (202) 252–2244.

2. Nonsdiscrimination on the Basis of Age

DOE is proposing a regulation to implement the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age in programs or activities receiving financial assistance from DOE.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 610 *et. seq.*

Contact: Carlos A. Ruiz, (202) 252–2244.

V. General Counsel

1. Regulations for Implementation of the Foreign Gifts and Decorations Act

DOE has adopted regulations to establish procedures and policies relating to the acceptance, use and disposition of gifts and decorations from foreign governments.

A regulatory analysis was not required.

Status: A final rule was published in the **Federal Register** on August 13, 1980 (45 FR 53972).

Authority: Foreign Gifts and Decorations Act, 5 U.S.C. 7342.

Contact: Katherine B. Soffer (301) 353–4016.

2. Conduct of Employees

DOE is proposing to revise its Conduct of Employees regulations, 10 CFR Part 1010 (44 FR 24696), to reflect certain provisions of the Ethics in Government Act (Pub. L. 95–521, as amended by Pub. L. 96–28). DOE is also reviewing the current regulations and may propose other revisions to simplify or clarify the regulations.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Sections 601–608, and 644 of the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7211–7218, 7254); The Ethics in Government Act (Pub. L. 95–521, as amended by Pub. L. 96–28); 18 U.S.C. 201–209.

Contact: Katherine B. Soffer (301) 353–4016.

3. Payment of Travel Expenses of Non-DOE Employees.

DOE is drafting proposed regulations to clarify the authority of DOE employees to authorize or approve payment of travel expenses from DOE funds to persons who are not DOE employees.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: 5 U.S.C. Ch. 57; 4 Comp. Gen. 281; 8 Comp. Gen. 465; 21 Comp. Gen. 29, 409, 610; 27 Comp. Gen. 183, 194.

Contact: Susan Fonner (301) 353–4016

4. Privacy Act Regulations.

DOE has promulgated regulations, effective October 16, 1980, implementing DOE compliance with 5 U.S.C. 552(a), the Privacy Act of 1974. The rule provides Department-wide regulations to replace Privacy Act regulations implemented by the Federal Energy Administration and the Energy Research and Development Administration which were previously in force.

A regulatory analysis is not required.

Status: The final rule was published in the **Federal Register** on September 16, 1980 (45 FR 61576).

Authority: Department of Energy Organization Act (Pub. L. 95–91), and authorities incorporated by reference therein; the Privacy Act of 1974, 5 U.S.C. 552(a).

Contact: Ken Cohen (202) 252–8618

5. DOE Patent Licensing Regulations.

This proposed regulation governs licensing of inventions owned or controlled by the Department of Energy. It is needed to provide guidance to the public regarding: (1) Procedures for obtaining non-exclusive and exclusive licenses, and (2) standards under which such licenses may be granted and the terms and conditions of the licenses.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on July 22, 1980 (45 FR 48911).

Authority: Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 2186; and general authorities available to the Department due to transfer of functions from other agencies under the DOE Organization Act (Pub. L. 95–.91) and other Acts.

Contact: Robert Marchick (301) 353–4970

6. Patent Compensation Board Regulations.

The regulation being developed would provide policies and procedures with respect to the Patent Compensation Board declaring a patent affected with the public interest, issuing a compulsory license on a patent, and determining a reasonable royalty fee, just compensation or the grant of an award for patents, inventions or discoveries. It is needed to provide guidance to the public as to the requirements and procedures that will be followed in proceedings before the Patents Compensation Board.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Department of Energy Organization Act of 1977, 42 U.S.C. 7151, 7254; Energy Reorganization Act of 1974, 42 U.S.C. 5814, 5815; the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2183, 2187, 2223; and the Patent Act of 1952, 35 U.S.C. 183.

Contact: Judson R. Hightower (301) 353–5093

VI. Procurement and Contracts

1. *DOE Assistance Regulations—Grants and Cooperative Agreements (Subparts A, B, and C).*

The present DOE assistance regulations, 10 CFR Part 600, Subparts A, B, and C were published March 8, 1979 (Subparts A and B), and July 8, 1980 (Subpart C). These regulations serve to provide a consistent basis for the use of grants and cooperative agreements throughout DOE. They also establish a regulatory basis for the implementation of Office of Management and Budget and other Executive Branch guidance which impacts on DOE's provision of financial assistance. The existence of generic "assistance" regulations allows for incorporation by reference of these regulations in programmatic regulations. These latter regulations may then be more concise since they need not deal at length with a variety of administrative matters.

The present effort represents a revision of Subparts A and B for updating, expansion of coverage, and conformance with Subpart C.

A regulatory analysis is not required.

Status: Publication of a notice of proposed rulemaking for revision of Subparts A and B is expected in calendar year 1981.

Authority: Section 644 of the Department of Energy Organization Act (Pub. L. 95–91); Pub. L. 95–224.

Contact: Ellen L. Feinsilber (202) 252–9738

2. *DOE Assistance Regulations, Direct Loans (Subpart D).*

Subpart D of the DOE assistance regulation will provide general policies and procedures for use in the issuance of direct loans by the Department. The regulation is needed to provide the public and DOE personnel with the general requirements and standards to be followed in soliciting, evaluating, and awarding direct loans.

A regulatory analysis if not required.

Status: No notice concerning Subpart D of this regulation has yet been published.

Authority: Section 644 of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Bernell W. Bohlman (202) 252–9578.

3. *DOE Assistance Regulations, Loan Guarantees (Subpart E).*

Subpart E of the DOE assistance regulations will provide general policies and procedures for use in the issuance of loan guarantee agreements by the Department. The regulation is needed to provide the public and DOE personnel with the general requirements and standards to be followed in soliciting, evaluating, and awarding loan guarantee agreements.

A regulatory analysis is not required.

Status: No notice concerning Subpart E of this regulation has yet been published.

Authority: Section 644 of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Bernell W. Bohlman (202) 252–9578.

4. *DOE Assistance Regulations, Price Support Agreements (Subpart F).*

Subpart F of the DOE assistance regulation will provide general policies and procedures for use in the award of price support agreements by the Department. The regulation is needed to provide the public and DOE personnel with the general requirements and standards to be followed in awarding this type of agreement.

A regulatory analysis is not required.

Status: No notice concerning Subpart F of this regulation has yet been published.

Authority: Section 644 of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Bernell W. Bohlman (202) 252–9578.

5. Energy Conservation Clauses

DOE has considered proposing the use of clauses requiring energy conservation for DOE prime contractors and DOE has decided not to proceed further with this regulation.

A regulatory analysis decision has not been made.

Status: No further action in regard to this regulation is planned.

Authority: Section 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: James J. Cavanaugh (202) 252–8188.

6. *Environmental, Safety, and Health Clauses.*

DOE is considering proposing the use of contract clauses which are designed to assure: (1) Compliance by DOE contractors with relevant environmental protection requirements; (2) the greater safety of DOE operations; and (3) a more healthy working environment.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Section 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: Ed Lovett, (202) 252–8188

7. *Disputes Clause—Sales Contracts.*

DOE is considering requiring the use of a standard disputes clause in sales contracts. This rule would establish applicability of the Contract Disputes Act of 1978 and would establish uniform

avenues of appeal for disputes in sales contracts.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on June 20, 1980 (45 FR 41649).

Authority: Section 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: James J. Cavanagh (202) 252–8188

8. *Corrective and Conforming Amendments to DOE Procurement Regulations.*

These proposed amendments involve correction of minor errors in the Procurement Regulations and other changes to keep the Regulations current and consistent with Government-wide policy. The rule would also include the use of cost plus incentive and fixed price incentive clauses for DOE contracts and would adopt a suggested award fee schedule.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Section 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: Thomas O. Ruppert, (202) 252–8188

9. *Reporting of Former DOE Employees Under Consultant Contracts.*

DOE is developing a proposed rule that would require a DOE consultant contractor to identify former DOE employees who will perform work under a contract with DOE.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Section 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: James J. Cavanagh, (202) 252–8188

10. *Contract Clause Prohibiting Payment to Contractors if Government Functions are Performed.*

Office of Management and Budget (OMB) Circulars A–76 and A–120 stipulate that Federal Government functions must be performed by Government employees. The proposed clauses will prohibit contracting out Government functions and payment to contractors for performance of these functions.

A regulatory analysis is not required.

Status: No notice concerning this regulation has yet been published.

Authority: Section 644 of the Department of energy Organization Act (Pub. L. 95–91).

Contact: James J. Cavanaugh (202) 252–8188.

VII. Consumer Affairs

1. *Intervenor Funding Regulations.*

These proposed regulations are designed to provide financial assistance to qualified persons who have or represent an interest which would not otherwise be adequately represented in certain DOE decision-making processes.

A regulatory analysis is not required.

Status: No notice has been published. An express prohibition against use of Econimic Regulatory Administration funds for intervenor funding is contained in Title II of Pub. L. 96–126. Although there is no express congressional prohibition against the use of all other appropriated funds for this purpose, DOE has determined to stay action on these regulations pending prior congressional approval.

Authority: Department of Energy Organization Act (Pub. L. 95–91), and authorities cited therein.

Contact: Polly Craighill (202) 252–5866.

VIII. Resource Applications

1. *Geothermal Bidding Systems.*

DOE is analyzing which bidding systems will best encourage geothermal development. Pending legislation to amend the Geothermal Steam Act of 1970 may affect this regulation. Therefore, DOE has decided to suspend development of this regulation until enactment of the legislation.

A decision has not yet been made as to whether a regulatory analysis is required.

Status: No notice concerning the regulation has yet been published.

Authority: Section 302(b)(2) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326.

2. *Geothermal Competitive Interest Regulation.*

DOE is planning to propose regulations redefining "known geothermal resource area" (KGRA) to establish criteria to determine what constitutes competitive interest for leasing tracts of Federal land for geothermal exploration and development. Pending legislation to amend the Geothermal Steam Act of 1970 may affect this proposed regulation. Therefore, DOE has decided to suspend development of the proposed regulation until enactment of the legislation.

A decision has not yet been made as to whether a regulatory analysis is required.

Status: No notice concerning the regulation has yet been published.

Authority: Section 302(b)(1) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326.

3. *Coal Bidding Systems Regulations.*

DOE is proposing regulations to establish bidding systems for the sale of Federal coal leases. Such bidding systems would help the Federal Government obtain fair market value for Federal leases, and would enhance competition for such leases.

A regulatory analysis is being prepared.

Status: A notice of proposed rulemaking was published in the **Federal Register** on July 10, 1980 (45 FR 46742).

Authority: Sections 302(b) and 303(c) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326

4. *Coal Diligence Regulation.*

DOE is considering the proposal of a regulation for new, adjusted, and assigned coal leases to establish requirements or the timely submission of exploration and mining plans. Such a regulation would ensure diligent development of and production from Federal coal leases.

A determination as to whether a regulatory analysis will be required has not yet been made.

Status: A notice of proposed rulemaking has not yet been issued.

Authority: Section 302(b)(3) of the DOE Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326

5. *Coal Loan Guarantee Program.*

DOE intends to simplify the Coal Loan Guarantee regulations, and to expand them to include loan guarantees for the construction of preparation plants to reduce the sulfur content of coal.

A determination as to whether a regulatory analysis will be required has not yet been made.

Status: No notice concerning the regulations has yet been issued.

Authority: Section 102 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended; seciton 802 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

Contact: Fredic Kerulis (202) 633–8200

6. *Geothermal Loan Guaranty—Community Impact Assistance.*

DOE is drafting regulations to establish procedures by which municipalities, Indian Tribes and other qualified entities having geothermal development projects in their communities can obtain Federal aid for planning to mitigate adverse impacts.

A determination as to whether a regulatory analysis will be required has not yet been made.

Status: No notice concerning the regulation has yet been published.

Authority: Department of Energy Act of 1978–Civilian Applications (Pub. L. 95–238).

Contact: Lachlan W. Seward (202) 633–8760

7. *OCS Diligence Regulation*

DOE is analyzing the need for a regulatory approach to Outer Continental Shelf (OCS) lease diligence in contemplation of a proposed rule. DOE would use such a proposed rule, if needed, to enforce diligence in OCS operations.

A decision has not yet been made as to whether a regulatory analysis is required.

Status: A notice of inquiry was published May 14, 1979 (44 FR 28037). The comments received in reply to this Notice have been summarized and are being analyzed to determine if a notice of proposed rulemaking should be issued.

Authority: Section 302(b)(3) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326.

8. *OCS Profit Share Bidding Regulation*

DOE has adopted a regulation which establishes a fixed profit share bidding system for the sale of oil and gas leases on the Outer Continental Shelf (OCS). The regulation also establishes related accounting procedures to govern calculation of the profit share and the allocation of costs and revenues. This regulation is designed to enhance competition for Federal OCS leases.

A regulatory analysis has been prepared.

Status: A final rule was published in the **Federal Register** on May 30, 1980 (45 FR 36784).

Authority: Section 302(b)(2) of the Department of Energy Organization Act (Pub. L. 95–910.

Contact: Robert H. Lawton (202) 633–9326

9. *OCS Work Commitment Bidding System*

DOE is beginning the necessary analysis to prepare a proposed regulation to establish a work commitment bidding system for the sale of oil and gas leases on the Outer Continental Shelf. This regulation would implement an alternative bidding system authorized under the Outer Continental Shelf Lands Act, as amended.

A determination as to whether a regulatory analysis is required has not yet been made.

Status: As notice of inquiry was published in the **Federal Register** on July 25, 1980 (45 FR 49586).

Authority: Section 302(b)(2) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326

10. *Power and Transmission Rate Adjustment Procedures.*

Uniform procedures are being developed by DOE's Office of Resource Applications for Federal power marketing administrations to contact their customers and encourage participation by interested parties in rate adjustment proceedings.

A regulatory analysis is not required.

Status: Proposed power and transmission rate adjustment procedures were published in the **Federal Register** on July 5, 1979 (44 Fr 39184), with an invitation for written comments. In addition, oral hearings were held in Washington, D.C., on July 27 and August 17, 1979.

A proposed revision of the procedures is being prepared. Final procedures as adopted will be published in the **Federal Register.**

Authority: Department of Energy Organization Act (Pub. L. 95–91).

Contact: Jim Braxdale (202) 633–8338

11. *Royalty Oil Regulations*

DOE has proposed regulations governing onshore and offshore royalty oil. These regulations would continue the operation and policy of the existing Department of Interior programs, but contain certain substantive changes.

A regulatory analysis is not required.

Status: A final rule relating to offshore royalty oil was published February 12, 1980 (45 FR 9526). A further notice of proposed rulemaking will be issued for onshore royalty oil.

Authority: Section 302(b)(5) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326

12. *Sequential Bidding Process Regulations*

DOE has proposed a regulation to establish a sequential bidding process for experimental use in Outer Continental Shelf oil and gas lease sales. This proposal may enhance competition by increasing the number of participants and bids submitted.

A draft regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** on September 11, 1979 (44 FR 52842). A final rule is expected to be issued shortly.

Authority: Section 302(b)(1) of the Department of Energy Organization Act (Pub. L. 95–91).

Contact: Robert H. Lawton (202) 633–9326

13. *OCS Joint Bidding Regulations*

This regulation will foster competition for Outer Continental Shelf (OCS) leases by eliminating the requirement that firms chargeable with average worldwide daily production of less than 1.6 million barrels of oil file Statements of Production in order to bid jointly at an OCS lease sale. Because the purpose of the filing requirement is to identify those firms subject to the joint bidding ban and because the ban applies only to firms with an average daily production in excess of 1.6 million barrels, the requirement that all firms file statements of production may be an undue burden on smaller firms wishing to bid jointly.

A regulatory analysis is not required.

Status: A final rule was published in the **Federal Register** on September 18, 1980 (45 FR 62029).

Authority: Section 302(b)(1) of the DOE Organization Act (Pub. L. 95–91); Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), as amended.

Contact: Robert H. Lawton (202) 633–9326

IX. Economic Regulatory Administration

A. National Energy Act (NEA) Regulations

1. NEA—Fuel Use Act—Administrative Procedures and New Facilities (Docket ERA–R–78–19 D, E).

These regulations implement certain provisions of the Fuel Use Act which prohibit the use of oil and gas by new facilities and establish the criteria for granting exemptions provided by law. These regulations also provide the definitions and administrative procedures necessary to implement the Act.

A regulatory analysis has been completed.

Status: Final rules were published in the **Federal Register** on June 6, 1980 (45 FR 38276; 38302).

Authority: Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*).

Contact: Stephen M. Stern (202) 653–3217.

2. NEA—Fuel Use Act—Existing Facilities (ERA Docket ERA–R–78–19C, F and G).

These regulations implement certain provisions of the Fuel Use Act including statutory prohibitions, provide the criteria the economic Regulatory Administration (ERA) will employ in issuing prohibition orders to existing facilities and establish the criteria and procedures applicable to granting exemptions. These regulations also implement provisions of the Act which prohibit the increased use of petroleum by existing powerplants and implement the electric utility system compliance option provided in the law.

A regulatory analysis has been completed.

Status: A final rule was published in the **Federal Register** on August 12, 1980 (45 FR 53682).

Authority: Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*)

Contact: Stephen M. Stern (202) 653–3217

3. *NEA—Fuel Use Act—Alternate Fuel Matrix.*

ERA is seeking public comment on whether to issue guidelines to assist petitioners in identifying the availability of alternate fuels, innovative technologies, mixtures and conservation measures (fuel technologies) which must be analyzed under the Powerplant and Industrial Fuel Use Act of 1978 (FUA).

A regulatory analysis is not required.

Status: A notice of inquiry was issued on September 12, 1980 (45 FR 62525, September 19, 1980).

Authority: Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*)

Contact: Stephen M. Stern (202) 653–3217

4. *NEA—Fuel Use Act—Calculation of the Cost of Using Alternate Fuels under FUA.*

ERA has proposed a rule to implement certain cost calculation provisions of the Fuel Use Act (FUA) pertaining to ERA's authority to issue orders prohibiting the use of petroleum and natural gas to certain existing facilities and to grant exemptions from the prohibitions of FUA to both new and existing facilities.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** on June 23, 1980 (45 FR 42190). The comment period will close on October 20, 1980.

Authority: Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*)

Contact: John Detweiler (202) 653–3217.

5. *NEA—Fuel Use Act—Congeneration Exemption.*

ERA has proposed a rulemaking to amend certain provisions of ERA's interim rule implementing the Fuel Use Act (FUA) provisions pertaining to permanent exemptions from FUA prohibitions for eligible congeneration facilities. The proposed rule would establish a new approach to encourage cogeneration, amend the definitions of "electric generating unit" and "cogeneration facility", and set forth eligibility requirements for the cogeneration exemption.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was issued August 1, 1980 (45 FR 53368, August 11, 1980). The comment period will close November 7, 1980.

Authority: Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*)

Contact: Marcy Cotton (202) 653–3217.

6. *NEA Fuel Use Act—Prohibition on Sale and Direct Industrial Use of Natural Gas for Decorative Outdoor Lighting.*

This rule implements the Fuel Use Act provisions which prohibit: (1) The installation of new or replacement natural gas outdoor lighting fixtures by local distribution companies and direct industrial customers; (2) the provision by local distribution companies of natural gas to residential, commercial, and industrial customers for use in outdoor lighting; and (3) the use of natural gas by direct industrial customers for outdoor lighting. The rule also delegates authority to the States to administer the regulation authorities of DOE with regard to gas lighting under section 402 of the Act.

A regulatory analysis was not required.

Status: An amended final rule was published in the **Federal Register** on May 23, 1980 (45 FR 35206).

Authority: Powerplant and Industrial Fuel Use Act (42 U.S.C. 8301 *et seq.*)

Contact: Nancy E. Tate (202) 653–3920

7. *NEA—PURPA—Grant Assistance to the Public Utility Commissions and Innovative Utility Regulatory Projects.*

ERA has adopted regulations setting out its administrative requirements for grant assistance to public utility commissions and nonregulated utilities in meeting their duties and responsibilities under Titles I and III and section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and for financial assistance to undertake innovative utility rate structure projects (*see* 44 FR 40262, July 9, 1979). Revisions to subpart C of the regulations, regarding the innovative rates program, have been adopted.

A regulatory analysis was not required.

Status: Final revisions to subpart C were issued on July 1, 1980 (45 FR 47388, July 14, 1980).

Authority: Sections 141 and 142 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95–617); Section 204(1)(B) of the Energy Conservation and Production Act (EPCA) (Pub. L. 94–385).

Contact: Ron White (202) 653–4006

8. *Exemption from Natural Gas Incremental Pricing.*

ERA issued a Notice of Inquiry asking for comment on the establishment of a program to provide exemptions from natural gas incremental pricing for firms converting from oil and gas to alternative fuels.

A regulatory analysis will be completed if it is decided to issue a notice of proposed rulemaking.

Status: A notice of inquiry was issued on June 12, 1980 (45 FR 41450, June 19, 1980).

Authority: Natural Gas Policy Act of 1978 (Pub. L. 95–621) and Department of Energy Organization Act (Pub. L. 95–91).

Contact: Stephen M. Stern (202) 653–3217

9. *NEA-Natural Gas Policy Act—Review of Natural Gas Curtailment Priorities (Docket ERA–R–89–10).*

ERA has issued a notice of proposed rulemaking (NOPR) concerning natural gas curtailment priorities. As a general matter, the NOPR establishes curtailment priorities applicable to interstate pipelines. More particularly, in certain respects the proposed rule implements Title IV of the Natural Gas Policy Act, by establishing curtailment priorities for high priority uses and for essential agricultural, feedstock and process uses.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was issued on June 24, 1980 (45 FR 45098, July 2, 1980). Hearings were held in Washington, D.C. on August 12 and 13, 1980 and in Chicago on July 22, Atlanta on July 24 and San Francisco on July 31, 1980.

Authority: Sections 301(b) and 402(a)(1)(E) of the Department of Energy Organization Act (Pub. L. 95–91); Title IV of the Natural Gas Policy Act of 1978.

Contact: Albert F. Bass (202) 653–3286.

10. *NEA-Natural Gas Policy Act—Emergency Natural Gas Regulations.*

ERA will develop standby regulations regarding emergency authorization for the purchase and the allocation of natural gas during a Presidentially declared natural gas supply emergency.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking will be issued in the fall of 1980.

Authority: Natural Gas Policy Act of 1978, Title III (Pub. L. 95–621).

Contact: Gary Barch (202) 653–3286.

11. *Regulations for Natural Gas Import and Export Proceedings.*

ERA will develop procedural regulations for considering applications to import and export natural gas. The procedures will replace the applicable Federal Energy Regulatory Commission regulations (18 CFR Part 1) adopted by ERA on an interim basis.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking will be issued in the fall of 1980.

Authority: Sections 3, 15 and 19 of the Natural Gas Act of 1938 (52 Stat. 821) as amended; Sections 301, 402, and 644 of the DOE Organization Act (Pub. L. 95–91).

Contact: Lawrence DiRicco (202) 653–3220.

12. *NEA-Natural Gas Policy Act—Administrative Procedures for Adjustments of Natural Gas Curtailment Priority Regulations (Docket ERA–R–79–24).*

This rule proposes procedures for the applications for "adjustments" to the natural gas curtailment priority regulations in Subchapter G of Chapter II of 10 CFR. These procedures are applicable to the curtailment priority regulations established for essential agricultural uses in 10 CFR Part 580, and include procedures governing requests for repeal, modification, and interpretation of those rules.

A regulatory analysis is not required.

Status: A proposed rule was issued on May 7, 1979 (44 FR 27676, May 11, 1979). The Federal Energy Regulatory Commission (FERC) took jurisdiction over the proposed rule on June 15, 1979, under Section 404 of the DOE Organization Act, and the matter is currently at FERC.

Authority: Sections 502 and 506 of the Natural Gas Policy Act of 1978 (Pub. L. 95–621); Section 644 of the Department of Energy Organization Act (Pub. L. 95–91); and the Administrative Procedures Act (Pub. L. 89–554).

Contact: Paula Daigneault (202) 653–3286.

B. Crude Oil and Refinery Operations

1. *Production Incentives for Marginal Properties.*

DOE has extended the depth brackets/production rate allowances for marginal properties.

A regulatory analysis was not required.

Status: A final rule was issued on July 7, 1980 (45 FR 47406, July 14, 1980).

Authority: Emergency Petroleum Allocaton Act of 1973 (Pub. L. 93–159, as amended).

Contact: William Carson/Douglas Harnish, (202) 653–3263.

2. *Newly Discovered Crude Oil Rule Amendment and Certification Requirements.*

DOE has proposed regulations to establish certification procedures and to clarify technical parts of the final rule on newly discovered crude oil.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued on June 16, 1980 (45 FR 4222, June 23, 1980). A hearing was held in Washington, D.C. on July 22, 1980 and written comments were received through August 20, 1980. Issuance of a final rule is expected in November 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: William Carson/Douglas Harnish, (202) 653–3263.

3. *Adjustment of Alaska North Slope Crude Oil.*

DOE recently amended the entitlements program modifying the entitlement treatment of Alaska North Slope (ANS) crude oil (45 FR 46752, July 10, 1980). The amendment imposed an entitlement obligation on price-controlled ANS crude oil in order to distribute the benefits of price controls on this crude oil equitably to all refiners.

DOE is concerned, however, that the newly imposed entitlement obligation may have an adverse effect on the wellhead prices and production of ANS crude oil. Accordingly, DOE has proposed a reduction in the entitlement obligation of approximately $2.00 per barrel.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was issued on September 8, 1980 (45 FR 60268, September 15, 1980). Comments are due by November 12, 1980.

Authority: Emergency Petroleum Allocaton Act of 1973 (Pub. L. 93–159, as amended).

Contact: Daniel J. Thomas, (202) 653–3263.

4. *Resales of Crude Oil.*

While resellers are currently required to compute their permissible average markups in different manners designed to insure that their average markups are consistent with markups in May 1973, the average markups being realized by resellers vary widely. In order to insure consistency among resellers, ERA is adopting a uniform permissible average markup for all crude oil resellers.

A regulatory analysis will be completed.

Status: A regulatory analysis and final rule was issued in the fall of 1980.

Authority: Emergency Petroleum Allocaton Act of 1973 (Pub. L. 93–159, as amended).

Contact: Ralph A. Rohweder, (202) 653–3263.

5. *Amendments Concerning Processing Agreements Involving Non-Refiners.*

DOE has analyzed the increases in the amount of crude oil being refined for the account of non-refiners (typically producers and crude oil resellers) over the past year. Based on this analysis and other information DOE has decided not to proceed with any further regulatory action, but will continue to monitor these transactions.

Status: A notice of intent was issued on January 10, 1980 (45 FR 3060, January 16, 1980). No further action is planned.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Margaret A. Carroll (202) 653–3254.

6. *Emergency Allocation Provisions of the Crude Oil Buy/Sell Program (Docket ERA–R–79–212).*

In April 1979, in connection with amendments to the emergency allocation provisions of the Buy/Sell Program adopted on an emergency basis, ERA proposed additional amendments that would (1) add the seven largest independent refiners (refining capacity in excess of 175,000 b/d) to the seller's list, for purposes of emergency allocations only, and (2) provide that, with respect to emergency allocations, the price of crude sold to a small refiner whose refining capacity is more than 50,000 b/d would the replacement or, alternatively, actual cost, of the crude sold, rather than the seller's adjusted weighted average landed cost of imports as currently provided.

In view of the fact that no further action on this proposal will be taken, a regulatory analysis will not be completed.

Status: A notice of proposed rulemaking was issued on April 27, 1979 (44 FR 26113, May 4, 1979). No further action is planned.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: John Glynn (202) 653–3274.

7. *Revision of Crude Oil Supplier/Purchaser Rule.*

On August 18, 1980, ERA adopted a final rule amending the crude oil supplier/purchaser rule, effective October 1, 1980. The amendments provide for the removal from the scope of the rule of all crude oil which is exempt from the Mandatory Petroleum Price regulations. The amendments also release suppliers from any requirement under the rule to supply price-controlled crude oil to major refiners.

A regulatory analysis has been completed.

Status: A final rule was issued on August 18, 1980 (45 FR 56732, August 25, 1980).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Margaret A. Carroll (202) 653–3254.

8. *Canadian Allocation Program (CAP) Revisions.*

On November 17, 1978, DOE issued a Notice of Proposed Rulemaking regarding revisions to the Canadian Allocation Program (CAP) (43 FR 55735, November 28, 1978). The proposed amendments were intended to reflect the declining volumes of Canadian crude oil exports, the varying success refineries have had in obtaining non-Canadian supplies, and the simplification of the administration and industry reporting requirements of the CAP. In August 1979, DOE determined that any changes in the CAP at that time might exacerbate the already fragile supply and demand balance for crude oil and petroleum products in the Northern Tier. Consequently, DOE issued a Notice deferring action until at least early 1980.

A regulatory analysis is not required.

Status: A notice of intent to defer issuance of a final rule was issued August 9, 1979 (44 FR 47951, August 16, 1979). No further action is planned.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: John Glynn (202) 653–3274.

9. *Annual Revision of Fee-Free Licenses Under the Mandatory Oil Import Program.*

Prior to May 1, 1980, annual revision of the Mandatory Oil Import Program was required to reflect the fee-free allocation levels established by Presidential Proclamation 3279 for each allocation year. Under the terms of Proclamation 3279, however, this program expired on April 30, 1980.

A regulatory analysis was not required.

Status: No further action will be taken in view of the expiration of the program.

Authority: Presidential Proclamation 3279, as amended (38 FR 9645; 38 FR 16195; 39 FR 35103).

Contact: Josette Maxwell (202) 653–3256.

10. *Entitlement Exemption for Start-up Inventories.*

It had been the practice of the Office of Petroleum Operations to grant exemptions from entitlement obligations for price-controlled crude oil used for start-up inventories. ERA, in considering regulatory amendments regarding that practice, has reviewed the need for granting such exemptions and the appropriate mechanism for implementing such exemptions. ERA has decided that these exemptions should not be granted, and that no further action is needed.

A regulatory analysis decision was not made.

Status: No further action will be taken.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Norman V. Breckner (202) 653–3202.

11. *Incentives To Refine Lower Quality Crude.*

Maximum lawful prices for covered products such as motor gasoline are determined by adding to the base period prices actual increases in crude oil and non-product costs. A refiner that substitutes a lower cost crude oil is required to adjust product prices to reflect that lower costs. ERA has been advised that the price reduction is a disincentive to investing in facilities to utilize lower cost crude oils. Refiners have stated that the economic justification for such investments is the saving in crude costs, and that refiners need to be able to capture that saving for their own use in order to make such investments.

In light of the decontrol of crude oil after September 1981, with the expiration of authority to promulgate regulations under the Emergency Petroleum Allocation Act (EPAA), ERA has decided to develop a procedure that would preclude this type of investment disincentive only if any legislation is enacted that would be effective after the expiration of the EPAA.

A regulatory analysis decision has not yet been made.

Status: A notice of inquiry on incentives for refinery investments was published in the **Federal Register** on August 30, 1979 (44 FR 50847). A notice was published in the **Federal Register** on September 26, 1980 (45 FR 63866), announcing the decision to postpone formulation of a rule until it is determined whether to develop standby regulations in reponse to post-EPAA legislation.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Norman V. Breckner (202) 653–3263.

12. *Incentives for Enhanced Crude Oil Recovery.*

ERA is proposing several clarifying and remedial amendments to the tertiary incentive rule. The proposal would allow "in-house" expenses so long as such expenses do not exceed the price that would have been paid in an arm's-length transaction. Another proposal would require producers to report "prepaid expenses" on an annual basis. A third proposal revises the required annual opinion by a certified public accountant (CPA) to conform to CPA auditing capability. The final proposal would exclude prospectively injected hydrocarbons as an allowed expense for miscible fluid flooding projects.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was issued on August 8, 1980 (45 FR 54688, August 15, 1980). A hearing was held in Washington, D.C. on September 16, 1980. Written comments were received through October 10, 1980. The final rule is expected to be issued in November 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Douglas Harnish (202) 653–3263.

13. *Domestic Crude Oil Entitlements.*

The net post-entitlement cost of price-controlled crude oil in recent months has been less than that of equivalent uncontrolled crudes in PADDs I–IV, providing a benefit to refiners with access to controlled crudes. In PADD V, Price-controlled crudes ahve a post-entitlement cost in excess of the average PADD V exempt domestic crude. The existing price controls also do not reflect the market differential for high- and low-sulfur crude oils in PADDs I-IV. amendments to the entitlements program to reduce these disparities will be proposed.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking and a regulatory analysis are being prepared.

Authority: Emerengcy Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Daniel J. Thomas (202) 653–3263.

C. Refined Products

1. *Gasohol Regulations.*

On May 16, 1980, DOE issued a notice of proposed rulemaking (NOPR) proposing allocation and pricing rules to facilitate the production and marketing of gasohol (45 FR 34846, May 22, 1980).

A draft regulatory analysis was completed.

Status: Following issuance of the NOPR, public hearings were held in Des Moines on June 23, 1980, and in Washington, D.C. on July 8–9, 1980. DOE is evaluating the hearing testimony and written comments in response to the NOPR before deciding what action will be taken.

Authority: Emergency Petroleum Allcoation Act of 1973 (Pub. L. 93–159, as amended).

Contact: James Berry (202) 653–3274.

2. *Puerto Rican Naptha Entitlements Program Revisions.*

ERA has been petitioned by the Puerto Rican Government and the petrochemical industry to revise the naphtha entitlements program. ERA has tentatively determined that regulatory revisions are necessary because the current provisions of the naphtha entitlements program do not adequately equalize the cost of naphtha feedstocks to the Puerto Rico petrochemical producers, which are dependent on high-priced imported naphtha, with those of their U.S. mainland competitors, which have access to lower-cost naphtha produced by domestic refiners. Therefore, ERA has proposed altenative amendments to the regulations (10 CFR 211.67) to change the method of calculating benefits for naphtha imported into Puerto Rico for use as petrochemical feedstocks.

A draft regulatory analysis has been completed.

Status: A notice of proposed rulemaking was issued on August 28, 1980 (45 FR 59818, September 10, 1980).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159).

Contact: John Glynn (202) 653–3274.

3. *Amendments Pertaining to Entitlements for Residual Fuel Oil.*

ERA issued an emegency amendment June 10, 1979 (44 FR 34468, June 15, 1979), extending the Residual Fuel Oil Entitlements Program then in effect through December 31, 1979. Importers of residual fuel into the East Coast market and Michigan receive 50% of an entitlements runs credit while domestically produced residual fuel oil shipped on foreign tankers incurs a loss of 50% of an entitlements runs credit. This was later extended through September 30, 1980, to implement congressional policy.

A regulatory analysis has been completed.

Status: A final rule was issued on January 25, 1980 (45 FR 6719, January 31, 1980), in which ERA asked for comments on the treatment of residual fuel oil imported in U.S. flag vessels. A notice of proposed rulemaking was issued on September 12, 1980 (45 FR 62478, September 19, 1980), that proposes to extend the program without change or interruption through September 30, 1981.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended; Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1980 (Pub. L. 96–126).

Contact: Josette Maxwell (202) 653–3256.

4. *Maximum Lawful Selling Price for Unleaded Gasoline.*

ERA has proposed amendments to the pricing regulations for unleaded gasoline to revise the base price calculation for the minimum grade and to remove current disincentives for refiners to produce new grades of unleaded gasoline. This could result in more efficient domestic gasoline production.

A draft regulatory analysis has been completed.

Status: A notice of continued rulemaking was issued November 27, 1979. A further notice of proposed rulemaking was issued August 8, 1980 (45 FR 54694).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Maurice Boehl (202) 653–3220.

5. *Resellers' and Reseller-Retailers' Price Rules for Gasoline.*

DOE has increased the cents per gallon margins for retail and delivered reseller sales of gasoline to reflect inflation and to be consistent with the price rules for independent retailers. The regulations now provide that the resellers and reseller-retailers' maximum lawful selling price for resales of gasoline is the acquisition cost plus a fixed cents per gallon markup, plus tax costs. The new regulations eliminate the carry forward of unrecouped costs and existing restrictions on the amount of increased commissions paid to consignee agents by refiners are also eliminated.

A regulatory analysis has been completed.

Status: The proposed rule was issued on November 28, 1979 (44 FR 69602, December 3, 1979). The final rule was issued on April 28, 1980 (45 FR 29546, May 2, 1980). The rulemaking was continued with respect to the proposal to adopt a "layering" provision.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Maurice Boehl (202) 653–3220 or Roger Miller (202) 653–3245.

6. *Amendments to the Equal Application Rule as Applied To Retail Sales of Gasoline.*

These amendments remove some of the current regulatory constraints which encourage refiners and reseller-retailers to sell gasoline at retail prices substantially below those of independent retailers. The old 3 cents per gallon limit on the difference refiners may charge in retail gasoline sales without being subject to the equal application rule has been increased to 8.6 cents per gallon. In addition, the amendments allow reseller-retailers to pass through up to an 8.6 cents per gallon difference between increased costs without being subject to the equal application rule. Any allowable increase in retail margins are offset by corresponding reductions in "banks" or in cost pass-throughs to other classes of purchasers.

A regulatory analysis has been completed.

Status: The final rule was published in the **Federal Register** on April 29, 1980, effective April 18, 1980 (45 FR 28302).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Maurice Boehl (202) 653–3199.

7. *Modification or Elimination of the Equal Application Rule.*

DOE has eliminated the equal application rule with respect to all sales of gasoline.

A regulatory analysis has been completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** on June 30, 1980 (45 FR 44238). The final rule was issued in October 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Maurice Boehl (202) 653–3220.

8. *Motor Gasoline Allocation Revisions—General.*

On June 6, 1980, DOE proposed amendments to correct certain deficiencies in the present motor gasoline allocation regulations and to enable DOE to deal more effectively with dislocations during tight supply situations (45 FR 40078, June 12, 1980).

A draft regulatory analysis was completed concurrently with the notice of proposed rulemaking.

Status: A final rule is expected to be issued in the fourth quarter of 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: William E. Caldwell (202) 653–3256.

9. *Motor Gasoline Allocation: Downward Certification Adjustments.*

DOE is considering regulations that would establish a downward certification procedure for wholesale purchaser-resellers when their supply obligations decrease.

After a careful review of earlier public comments, DOE decided not to adopt its principal downward certification proposal and to instead prepare a draft regulatory analysis to provide an opportunity for a more complete examination of this and other issues.

Status: A notice of availability of a draft regulatory analysis was issued August 26, 1980 (45 FR 58788, September

4, 1980). The draft analysis is set forth as an appendix to the notice.

Written comments are due by October 31, 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Eric Hager (202) 653–3274.

10. *Motor Gasoline Allocation: Assignments and Adjustments to Firms; Allocation Level for Mail Hauling.*

The allocation regulations were amended to enable mail hauling uses of the United States Postal Service and private firms engaged in the business of transporting certain goods to qualify for a first priority allocation of motor gasoline without regard to vehicle size. The definition of "firm" was also amended to permit ERA to make allocation assignments and adjustments with reference to separate facilities, rather than to an entire firm as previously required.

A regulatory analysis was not required.

Status: A final rule was issued on July 10, 1980 (45 FR 47671, July 16, 1980).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended.

Contact: Eric Hager (202) 653–3274.

11. *State Set-Aside Monthly Report.*

The ERA intends to institute a monthly reporting requirement for State energy offices participating in the State set-aside program under the Mandatory Petroleum Allocation Regulations. A new report form to be administered by the ERA will solicit data by product category on total volumes available, assigned, and released by State energy offices under the program. The new reporting requirement would enable the ERA to monitor more closely the set-aside program and enhance its capability to respond to emergency supply conditions.

A regulatory analysis is not required.

Status: Notice of proposed form and opportunity for public comment was issued on May 16, 1980 (45 FR 34957, May 23, 1980).

Authority: Emergency Petroleum Allocation Act of 973 (Pub. L. 93–159), as amended; Federal Energy Administration Act of 1974 (Pub. L. 93–275).

Contact: Eric Hager (202) 653–3274.

12. *Assignments to Base Period Supplier: Notice to Aggrieved Parties.*

The DOE has proposed to adopt new procedures for notifying potentially aggrieved parties in connection with applications for new assignments or adjustments of motor gasoline to service stations. Based on information received during the public comment period, DOE determined that the proposed changes to the aggrieved parties procedures were not needed.

A regulatory analysis was not required.

Status: A notice of proposed rulemaking was issued (44 FR 67338, November 23, 1979). Termination of this rulemaking proceeding was announced on August 18, 1980 (45 FR 56070, August 22, 1980).

Authority: Emergency Petroleum Allocation Act of 1973, (Pub. L. 93–159), as amended.

Contact: William Caldwell (202) 653–3256.

13. *Amendments to the Normal Business Practices Rule*

DOE proposes eliminating its role in regulating extensions of credit for purchases of motor gasoline at the retail level. An alternative proposal is also being considered that would amend the normal business practices rule by removing credit controls relating to consumer sales of gasoline at retail sales outlets, but retain controls on credit extended to bulk purchasers and wholesale purchaser consumers.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on August 27, 1980 (45 FR 57138).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Maurice Boehl, (202) 653–3220 or Roger Miller (202) 653–3220.

D. Deregulation

1. *Amendments to Propane Pricing regulations*

ERA is considering proposing amendments to the propane price rules that will: (1) Incorporate the GNP deflator adjustment on a semiannual basis to the fixed cents-per-gallon markups for nonproduct and marketing cost increases allowed small resellers and retailers under Subpart F and refiners that sell at retail under Subpart E; and (2) allow independent gas processors to calculate increased marketing costs in a more equitable manner.

A preliminary regulatory analysis that analyzes the economic impacts of the proposals is being prepared.

Status: A notice of proposed rulemaking is planned for issuance in the fourth quarter of 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Roger Miller (202) 653–3245.

2. *Deregulation of SNG Feedstocks*

DOE has issued a proposal to ease allocation controls on Synthetic Natural Gas (SNG) feedstocks. The proposal would exempt naphtha used as SNG feedstock and to provide allocations of propane at historical levels for existing SNG plants.

A regulatory analysis will be completed.

Status: A notice of proposed rulemaking was published in the **Federal Register** on July 21, 1980 (45 FR 48646) and public hearings were held. The public comment period closed September 19, 1980. DOE expects to issue a final rule during the fourth quarter of 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: Bob Reinstein (202) 653–3281.

E. Emergency Preparedness

1. *Standby Gasoline Rationing Plan*

The Energy Policy and Conservation Act of 1975 (Pub. L. 94–163, EPCA) as amended by the Emergency Energy Conservation Act of 1979 (Pub. L. 96–102, EECA) required the development and transmission to the Congress of a standby gasoline rationing plan. The Act provides that a rationing plan can be implemented in the event of a severe energy supply interruption or to comply with obligations of the United States under the international energy program.

A regulatory analysis is not required. Considerable economic analysis accompanied the plan, however.

Status: A notice of proposed rulemaking was published on December 10, 1979 (44 FR 70799). The plan was deemed approved by Congress on July 30, 1980. The final rule was issued on June 12, 1980 (45 FR 41330, June 18, 1980).

Authority: EPCA as amended by EECA.

Contact: Barry Van Lare, 653–4133.

2. *Amendments to the Standby and Current Crude Oil Allocation and Refinery Yield Programs to Provide for the Distribution of SPR Crude Oil*

DOE has issued regulations to implement the congressionally approved Strategic Petroleum Reserve (SPR) Distribution Plan for use during an energy supply emergency.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on August 19, 1980 (45 FR 55374).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended). Energy Policy and Conservation Act (Pub. L. 94–163).

Contact: Josette Maxwell (202) 653–3256.

3. *Amendments to the Allocation Regulations to Obtain Crude Oil for the Stategic Petroleum Reserve by*

Exchange of Naval Petroleum Reserves Crude Oil and Other Means

DOE has proposed alternative amendments to the allocation regulations to establish procedures for obtaining crude oil to fill the Strategic Petroleum Reserve by exchange of Naval Petroleum Reserves crude oil and other means.

The regulatory analysis requirement has been waived.

Status: A notice of proposed rulemaking was issued on August 8, 1980 (45 FR 54662, August 15, 1980).

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159), as amended; Energy Policy and Conservation Act (Pub. L. 94–163), as amended; Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94–258), as amended; Energy Security Act (Pub. L. 96–294).

Contact: Josette Maxwell (202) 653–3256.

4. *Defense Production Act Regulations*

The DOE has issued a notice of proposed rulemaking which would authorize it to issue priority rated orders to the Department of Defense requiring suppliers to supply petroleum products on a priority basis to the Defense Department for national defense needs.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking has been issued (44 FR 63109, November 2, 1979). Public hearings have been held and DOE expects to issue a final rule in the fourth quarter of 1980.

Authority: Defense Production Act of 1950, 50 U.S.C. App. 2071 *et. seq.*

Contact: William E. Caldwell (202) 653–3256.

5. *Priority Supply of Crude Oil and Petroleum Products Under the Defense Production Act for Non-DOE Defense-Related Activities*

A notice of proposed rulemaking (NOPR) issued October 26, 1979 (44 FR 63109, November 2, 1979), proposed procedures for issuance of priority rated orders to the Department of Defense (DOD) for national defense petroleum supply needs. A NOPR now under development will propose procedures for issuance of priority rated orders for crude oil and petroleum products for non-DOD defense-related Government activities and for defense contractors.

A regulatory analysis is not required.

Status: DOE expects to issue a notice of proposed rulemaking during the fourth quarter of 1980.

Authority: Defense Production Act of 1950, 50 U.S.C. App. 2071 *et. seq.*

Contact: William E. Caldwell (202) 653–3256.

6. *Strategic Petroleum Reserve Entitlements*

DOE has amended the Entitlements Program regulations (10 CFR 211.67) so as to achieve the same effect as if lower tier crude oil were directly allocated to the Federal Government for storage in the Strategic Petroleum Reserve (SPR). These amendments were adopted to implement the congressional directive set forth in section 805(a) of the Energy Security Act. The statutory deadline for adoption of the amendments was August 29, 1980.

A regulatory analysis is not required.

Status: The final rule was issued on August 21, 1980 (45 FR 56788, August 25, 1980). Written comments were accepted through September 10, 1980. The comments are now being analyzed and a notice responding to such comments is planned for publication in the **Federal Register.**

Authority: Energy Security Act (Pub. L. 96–294).

Contact: Josette L. Maxwell (202) 653–3256.

7. *Revision of Standby Regulations Regarding Allocation Levels for Petrochemical Feed-Stock Use*

The Group to Improve Standby Product Allocation Regulations (GISPAR) has petitioned for a change in the allocation level for petrochemical feedstock use from base period volumes subject to an allocation fraction to current requirements. GISPAR alleges inequitable treatment of the petrochemical industry if the standby regulations were activated. DOE will review the allocation levels for priority users of petroleum products and will seek to eliminate any inequitable treatment of users, to the extent possible.

A regulatory analysis will be completed.

Status: DOE expects to issue a notice of proposed rulemaking during the fourth quarter of 1980.

Authority: Emergency Petroleum Allocation Act of 1973 (Pub. L. 93–159, as amended).

Contact: William E. Caldwell (202) 653–3256.

F. Utility Systems

1. *Authorization to Transmit Electric Energy to a Foreign Country*

Section 202(e) of the Federal Power Act requires that any jurisdictional electric utility obtain an authorization from the Secretary of Energy prior to exporting electric energy to a foreign country. DOE has proposed to simplify the rule and to make it consistent with current authority.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on April 15, 1980 (45 FR 25780). The final rule is expected to be issued before the end of 1980.

Authority: Section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

Contact: Jim Brown (202) 653–3825.

2. *Presidential Permit to Construct Electric Power Lines Crossing International Boundaries*

Executive Order 10485 as amended requires that any person obtain approval of the Secretary of Energy prior to constructing an electric power line across an international boundary. DOE has proposed to modify the rules to make them consistent with current authority and legislation enacted since issuance of the original Federal Power Commission regulations.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published in the **Federal Register** on April 15, 1980 (45 FR 25780); a final rule is expected to be issued before the end of 1980.

Authority: Executive Order 10485 as amended by Executive Order 12038.

Contract: Jim Brown (202) 653–3825.

3. *Electric Power System Outage and Incident Reporting*

Electric utilities currently report certain bulk power system outages, disturbances, load reduction actions and other significant events to ERA. ERA has proposed to modify and simplify the reporting rules to meet current program needs.

A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published on March 27, 1980 (45 FR 20109) and reissued on August 5, 1980 (45 FR 51833); a final rule is expected to be issued before the end of 1980.

Authority: Section 311 of the Federal Power Act (16 U.S.C. 825j).

Contact: Jim Brown (202) 653–3825.

4. *Emergency Electrical Interconnections and Transfers of Electricity*

Section 202(c) of the Federal Power Act provides authority to order emergency electrical interconnections and transfers of electricity either upon application or on the Department of Energy's own initiative. Section 202(d) of the Federal Power Act provides that in an emergency a person transmitting or selling electricity, and not subject to the jurisdiction of DOE, may make a temporary interconnection with a jurisdictional utility or construct a temporary interstate interconnection, without becoming subject to DOE's jurisdiction. DOE will revise the regulations to clarify those situations which ERA will view as emergencies.

A decision as to whether a regulatory analysis is required has not yet been made.

Status: A notice of proposed rulemaking is expected to be issued before the end of 1980.

Authority: Section 202(c) and (d) of the Federal Power Act (16 U.S.C. 824a(c) and (d)).

Contact: Jim Brown (202) 653-3825.

[FR Doc. 80-34145 Filed 10-31-80; 8:45 am]

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federal register

Monday
November 3, 1980

Part IV

Federal Communications Commission

Table of Television Channel Allotments

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73

[BC Docket No. 80-499; FCC 80-545]

Table of Television Channel Allotments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Commission proposes rule changes to permit new VHF television allotments at less than the specified minimum mileage separation distances, provided the new stations antenna height and power are reduced to provide equivalent protection to existing stations. These proposed changes result from the Commission's desire to utilize the radio spectrum more efficiently and satisfy the demand for additional television outlets. The proposed rule changes should create opportunities for a significant number of new VHF television allotments throughout the country.

DATES: Comments must be received on or before December 15, 1980 and Reply Comments must be received on or before February 15, 1981.

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

FOR FURTHER INFORMATION CONTACT: Benjamin Perez, Federal Communications Commission, Broadcast Bureau, Washington, D.C. 20554 Phone: (202) 632-3861.

In re: Table of Television Channel Allotments, BC Docket: No. 80-499.

Adopted: September 18, 1980.

Released: October 21, 1980.

By the Commission: Chairman Ferris issuing a separate statement; Commissioners Lee, Quello and Washburn dissenting and issuing statments.

I. Introduction

1. The Commission has before it today a *Notice of Proposed Rule Making* that would modify the process for making available additional Very High Frequency (VHF) television allotments.[1] The primary impetus for these modifications is that, taken together, they will provide the potential for a substantial amount of new television service. There are a number of significant benefits to this potential, if realized. Among them are: Meeting an increased viewer demand for additional television service; providing increased program and ownership diversity of television stations; as well as enhancing competition. Thus, the basic public interest issue that must be addressed in this proceeding is whether the benefits of added service, diversity of programming and ownership, and competition that would ensue from increasing the number of VHF television outlets outweigh claims of potential harm of VHF television from greater UHF competition and to VHF television viewers from the prospect of some increase in interference. On balance, at this time, we believe that the scales tip in favor of the proposed rule changes.

2. The modifications that we are today proposing in the current process for adding VHF television allotments are incremental, building on existing technical and other policies and on legal precedent. The proposed changes themselves do not constitute a significant departure from existing practice. It is only in the context of the potential for additional new television service created by these changes that they assume significance. There are three basic areas on which the proposals in this notice focus: technical considerations, utilizing criteria already adopted by the Commission for similar purposes, that minimize the potential for an increase in interference to existing VHF television viewers; changes in the way in which the competitive impact on UHF television service is considered; and, procedural changes in the way in which additions of VHF television allotments are made to the Table of Assignments (which we propose to rename the Table of Television Channel Allotments, hereinafter "Table").

3. Basically, the proposed technical rule changes are ones that would allow additions to the Table wherever sought, provided any proposed station situated at less than the minimum standard distance specified in our Rules reduced its power radiated in the direction of any existing station by an amount commensurate with the reduction in distance. The particular method of formulation that relates power to distance is called "equivalent protection," and was first considered by the Commission in the initial stages of its regulation of broadcast television. Equivalent protection has been used numerous times since then in move-in proceedings,[2] and is discussed in greater detail at paragraphs 97-100, *infra*.

4. Although employing established technical methods, the proposed rules do represent a procedural change in the manner in which allotments are added to the Table. In particular, the net public interest benefits from the new service potential offered by a new allotment at less than full mileage separation initially would be presumed to be controlling; the burden of proof to show otherwise would fall on the opponent to the new allotment. Under current rules, the petitioner for the new allotment has the burden of showing, in a waiver context where the burden of proof is always heavy, that a short-spaced allotment is in the public interest. The current procedure for additional short-spaced VHF facilities requires the proponent to submit lengthy and expensive analyses of engineering and population surveys before an allotment can even be made. These analyses are then hotly contested. This procedure creates barriers to entry, discouraging rather than inviting those seeking to provide new service, particularly minorities and others with little representation in the current broadcast television industry. By incorporating the tradeoff between power and distance into a rule to which petitioners for new allotments must adhere, it is possible to dispense with the waiver procedure while at the same time assure interference levels that are consistent with the public interest.

5. Under the new proposal, if the required formula is met, the proposed allotment is presumed to be in the public interest. Opponents, however, can introduce at the allotment rulemaking

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[1] The Commission has referred to the process of designating a particular television channel to a particular city or area as the "assignment" of the channel. In a separate proceeding involving all interested potential licensees, the station license is "assigned" to a particular individual or group, to the exclusion of other applicants. This dual use of the term "assignment" has led to some confusion. *See e.g., Sangamon Valley Television Corp.*, 269 F. 2d 221 (1959).

At the 1979 World Administration Radio Conference (WARC), new definitions were added (in Article N 7/5) to the International Radio Regulations. These new definitions, which are consistent with the internationally accepted terminology found in Resolution No. 6 of the 1959 WARC, provided specific terminology for distribution of radio frequencies to specific areas within a country ("allotment"), and the designation of a particular station to use that frequency or channel ("assignment").

Consistent with that adoption of international terminology (which will be binding on the United States if the United States Senate ratifies Article N 7/5 of the 1979 WARC final resolutions) and consistent with the change of direction the rules we are proposing today will herald, we propose, upon final adoption of today's proposed rules, to change the terminology used in Part 73 of the rules to conform to the WARC 1979 terminology. Accordingly, § 73.606, Table of Assignments, would be amended to be called "Table of Television Channel Allotments," and all other terminology in our Rules would be changed to conform appropriately.

[2] In fact, the underlying technical considerations and planning factors are derived from the *Third Notice of Proposed Rule Making*, in Dockets Nos. 8736, 8975, 9175, 16 FR 3072 (March 21, 1951). In 1961 the Commission adopted the concept of equivalent protection and the formulation we are proposing today for use in future consideration of short spaced allotments. *Supplement to Report and Order* in Docket No. 13340, 21 R.R. 1709 (1961). *See* paragraphs 33-36, *infra*.

stage evidence that they believe shows why the addition of the new allotment is not in the public interest. In so doing, any opposing party would have a heavy burden of proof in showing that a grant would not be in the public interest. The Commission would deny only those contested rulemaking petitions where it was shown that a grant would result in a net loss of service to the public. The proposed procedure is set forth in detail. *See* Section VI, *infra.*

6. In the past, as explained Section IV, *infra,* our concern for the impact of additional VHF allotments or increased VHF facilities on existing or potential UHF service has been an important factor in determining whether to authorize additional VHF service.[3] We were concerned that additional VHF service might so damage the UHF television service that over a period of time the viewing public would end up having fewer total signals available. For this reason, we have carefully scrutinized the current viability of the UHF television service and considered its ability to continue to provide service to the American public in the future.[4] We have concluded that the potential negative impact on UHF is limited and far outweighed by the benefits to the public from additional VHF service. We propose, therefore, that existing precedent, established in *WFMY Television Corp.* (hereinafter, *WFMY*), 59 F.C.C. 2d 1010 (1976),[5] be extended. Since *WFMY,* The impact of new or changed VHF service on unused UHF allocations can only be considered if opponents show that there will be an applicant for the unused UHF channel within two to three years. We are now proposing that the potential effect of the proposed new VHF service on *unused* UHF allocations not be considered in allotment rulemakings. Opposition to new VHF service based on allegations of harm to *existing* UHF stations will continue to be allowed at the allocation rulemaking stage. Unlike the current approach, however, it is proposed that the opposition to the new VHF service should have the burden of proving that the alleged adverse impact outweighs the strong public interest in additional television service.

7. The Commission's decision last week to add short-spaced VHF allotments in four cities [6] represented the first application of the *WFMY* policy to a VHF drop-in. Based on the same technical criteria that underlie the proposals before us today, a strong public interest justification was made for the four allotments. Events in the rulemaking on those cities, however, illustrates a major weakness of current policy that today's proposal could remedy. The existing market-by-market waiver procedure proved costly and lengthy. It took over six years and a tremendous investment of resources to reach the point of concluding the proceeding. The proposed rule changes before us today would alleviate the situation where petitioners expend huge sums fo money on allotment proceedings with no assurance that they will be the party ultimately granted a license.

8. In addition to promoting diversity, these proposed measures should increase the efficiency of the use made of that portion of the spectrum set aside for broadcast television, in accordance with the mandate of Section 303(g) of the 1934 Act. In a time when the demands on spectrum use are rapidly growing, the Commission must review all of its policies with spectrum conservation in mind. In this regard, we are also proposing rule modifications that will have additional spectrum saving benefits. For example, the joint implementation of precise offset or synchronous carrier technology by short-spaced stations will reduce co-channel interference, thus expanding service to the public. In the past, the dropped-in station has borne the entire cost of installing this technology. Because efficient use of the spectrum is a responsibility that should be shared by all licensees, we propose that each station bear its own share of the costs of offset precise or sychronous carrier equipment and calibration.[7]

9. Finally, we recognize that our proposed approach could result in some degradation of the television signals received by some viewers. We believe, however, that any potential loss experienced will be more than offset by the benefits of such a policy—additional television service for the public. We also look to recent and future technological advances in television receivers and antenna systems and greater transmitter frequency stability to more than offset any decrease in the signal quality of those who view stations that are affected by the addition of more television stations as a result of this proceeding.[8] As we detail in paragraph 106, *infra,* the use of outdoor receiver antennas with reasonable front-to-back ratios and the introduction of precise frequency offset (paragraph 117, *infra*) can be used to compensate for any added interference, providing distant viewers of existing stations with a grade of service (i.e., picture quality) equivalent to what is provided by our rules in the absence of the new station's interfering signal.

10. In general, it is in the public interest for the Commission to promote opportunities for additional service to the American public. Increasing the number of television competitors is likely to (1) put pressure on competitors to be more responsive to the wants and needs of consumers, (2) increase the total amount of service available to comsumers, and (3) increase the diversity of service offered. The proposed rule changes, by providing the opportunity for additional VHF service, would give entrepreneurs greater flexibility in choosing the most effective means of delivering television service to the public. Because there is strong evidence of considerable unmet demand for both more television service and more diverse television service,[9] the proposed rule changes would provide substantial public benefits.

11. We are aware that proposals similar to those before us today have been made in the past and, on those occasions, have been rejected by the Commission. We believe, however, that changed conditions—especially the major improvements and penetration of the UHF television service, technological improvements in television transmission and reception

[3] *See Report and Order* in Docket No. 20418 allocating new VHF–TV channels for Knoxville, Tennessee; Johnson, Pennsylvania; Charleston, West Virginia; and Salt Lake City, Utah, adopted September 9, 1980.

[4] *See* Section V, *infra.*

[5] In *WFMY,* the Commission, recognizing "that UHF broadcasting had advanced it to the point where a much more 'substantial' impact can be tolerated without disservice, overall, to the total public interest," 59 F.C.C. 2d at 1017, held that regardless of the extent of impact on UHF, the VHF applicant would be allowed to show that overall the public interest would be advanced. Interested parties will continue to be allowed at the allotment rulemaking stage to demonstrate adverse impact on UHF stations. Unlike the current approach, however, it is proposed that the opposition to the new VHF service should have a heavy burden to prove that the UHF impact outweighs the strong public interest in additional television service.

[6] *Report and Order* in Docket No. 20418, —— FR —— (October —, 1980—).

[7] For a fuller discussion, *see* paragrpahs 112—116, *infra.*.

[8] As long as strict mileage separation rules are imposed, there are no incentives for equipment manufacturers to invest in research and development aimed at developing receivers with the improved performance characteristics needed in an intensively used spectrum environment. With the easing of these rules, such incentives are created. Note, for example, the development of more spectrally efficient mobile radio equipment as the frequency bands allocated to that service have become more crowded. Similary significant advances in the bandwith, selectivity and susceptability of present day television receivers have not taken place, although the technology necessary for this type of progress is already available. *See, e.g., Final Report for High Performance Television Receive,* D. L. Ash and C. S. Hartmann, Texas Instruments Inc., F.C.C./OCE 78–01 (March 1978).

[9] *See* paragraphs 12–20, *infra.*

that allow for better service in a congested environment, and continued growth in demand for television services—yield a situation in which the public benefits from the proposed rule changes now may outweigh the costs. Given that the proposed rule changes are evolutionary in nature but offer the potential for substantial new service to the public, we believe it is appropriate at this time to propose the changes.

II. Public Interest Benefits of Additional Television Service

12. To the fullest extent possible, opportunities to provide service should be made available whenever would-be broadcasters are willing to offer such service. That is, subject to appropriate technological constraints (i.e., limiting interference to acceptable levels), it is in the public interest to have a regulatory framework that permits the maximum number of signals that can be economically viable.[10] Only if the provision of a smaller amount of additional service to the public now would foreclose the possibility of a greater amount of service in the future should restrictions be placed on potential providers.[11]

13. There are two major public interest benefits from allowing, whenever technically feasible, all who want to broadcast to have access to the capacity to do so. The first is the increased benefits to viewers from filling an excess demand for service that is unmet today. The second is the first amendment gains from additional voices.[12]

14. For a number of years various students of television have pointed to the existence of a desire by viewers for more signals than the number they were receiving.[13] These studies have been extensively discussed and analyzed by the Commission in the *Cable Economic Inquiry* and by our staff in the Low Power Television Staff Report.[14] Those discussions need not be repeated here. There is, however, additional, if indirect, evidence that more stations could be economically viable than are currently on the air.

15. Because most television service is not directly purchased by consumers, it is difficult to get direct estimates of how much service consumers would be willing to support. An indirect indication of the demand for television service is the demand by entrepreneurs for broadcast and nonbroadcast systems of television service. It is useful to note the number of channel allotments that have already been licensed or applied for. Table 1 summarizes the use of television channels as of December 31, 1979. It is clear that the VHF-band is virtually saturated. There were no vacant commercial VHF Channels in the top 100 markets, and only 6 vacant, unapplied for commercial V's in the second 100 markets. A computer run on September 9, 1980 indicated that here were no allocated frequencies—UHF of VHF—available in the top 36 markets. Although the UHF band continues to have some vacancies in markets below the top 36, applications were pending for 72 new commerical UHF channel in the top 100 markets and 14 more in the second 100 markets. The non-commercial channels were virtually saturated in the VHF band, somewhat saturated for the top 100 markets in the UHF band.

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[10] Attempts to determine in advance how many stations are economically viable in any given market are extremely difficult and subject to a high degree of uncertainty. Viability depends upon many factors, including, perhaps most importantly, the potential broadcaster's successful estimate of what services will appeal most to his target audience.

[11] In the context of this proceeding, the only possibility of such foreclosure lies in the possible impact of additional VHF service in given markets upon the viability of UHF television as a whole. This question is discussed in Sections IV and V, *infra*.

[12] In addition to the value of allowing more diversity of voices, additional opportunities for broadcast signals allow viewers more ability to influence the type of services that will be made available. If the number of outlets increases, each may serve a slightly smaller audience. The smaller audience size in turn is likely to make the broadcaster more sensitive to the specific tastes of that audience.

[13] Several economic studies have shown that viewers were willing to pay more for such additional service than it would have cost to offer the service. See, for example, Noll, Peck, and McGowan, *Economic Aspects of Televison Regulation*, (Washington, D.C.: Brookings Institution, 1973), which (at 25–26, 287–288) attempted estimates in the early 1970's of consumers' valuations of televison service based on data collected in the late 1960's. First, they examine by income group what people "* * * would pay rather than have free TV disappear * * *" They found that, on average, in 1965 the level of services available were worth approximately $350 per household. *Id.* at 26. The authors were careful to note that for the poor, especially, the estimates probably understated the value of the services. Therefore, the $350 figures was likely to be too small, all else equal. The analysis was based upon data collected during a study performed in Hartford, Connecticut, from 1963 to 1965 involving an experimental broadcast subscription TV service, and using certain assumptions by the authors regarding the income elasticity of demand for the TV service.

See also Cable Economic Inquiry, Report in Docket No. 21284, at 47–50, not 5, for a summary. Other studies are W.S. Comanor and B.M. Mitchell, "Cable Television" (1971); R.E. Park, "Prospects for Cable in the 100 Largest Television Markets." 3 *Bell Jour. of Econ. and Management Sci.* 130 (1972); Charles River Associates, Inc., "An Analysis of the Demand for Cable Television." (1973); The John Hopkins University Center for Metropolitan Planning and Research, K. Lyall, R. Duncan, and C. DeKay, *Estimation of an Urban Cable Demand Model and its Implications for Regulation for Major Markets* (1976).

[14] *See* Staff Report on: *Low Power Television (BC Docket No. 78–253)*, September 1980.

Table 1: Use of Television Channels Summarized as of December 31, 1979

Channel Status	Market Designations a/																			
	1-50		51-100		Total 1-100		101-150		151-200		Total 101-200		Total 1-200		201-609		Total U.S. b/		Commonwealth and Possessions 610-626	
	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U	V	U
Commercial Channels																				
Total Allocated c/	157	190	108	143	265	333	112	95	65	78	177	173	442	506	136	142	578	648	12	23
Licensed d/	157	79	107	53	264	132	109	31	57	19	166	50	430	182	70	25	500	207	10	1
Construction Permit e/	—	31	1	12	1	43	1	10	2	9	3	19	4	62	3	7	7	69	1	--
Application	—	48	—	24	—	72	—	11	2	3	2	14	2	86	8	20	10	106	--	1
Vacant	--	32	—	54	—	86	2	43	4	47	6	90	6	176	55	90	61	266	1	22
Non-Commercial Channels																				
Total Allocated c/	31	99	17	76	48	175	21	56	15	46	36	102	84	277	52	293	136	570	6	8
Licensed d/	28	55	17	35	45	90	17	21	10	11	27	32	72	122	34	47	106	169	4	--
Construction Permit e/	1	2	--	3	1	5	2	2	--	--	2	2	3	7	2	5	5	12	--	--
Application	1	2	--	3	1	5	--	3	1	2	--	5	1	10	--	5	2	15	--	--
Vacant	1	40	--	35	1	75	2	30	5	33	7	63	8	138	15	236	23	374	2	8

a/ The market designations are those used in the FCC industry market reports of television broadcast financial data. The markets numbered 1-212 are in approximate Arbitron rank by ADI television households, 1978. Additional markets numbered 213-609 are listed alphabetically by states; the markets in Alaska and Hawaii are included in this group. The markets in Guam, Puerto Rico and the Virgin Islands are numbered 610-626.

b/ Excludes 24 UHF Channels assigned for land mobile use and not available until further FCC action.

c/ VHF and UHF Channels allocated for commercial use but reserved or used for non-commercial use are included with non-commercial channels. UHF channels assigned for land mobile use and not available until further action by the Commission are excluded.

d/ May include stations licensed but not on the air.

e/ May include stations not licensed but on the air with program test authority.

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16. It is not surprising that the television spectrum, as currently allocated, is totally saturated in the large markets. The Table distributed channels geographically such that the number of stations *per capita* was smaller in large markets than in smaller markets.[15] The low number of stations per capita and total saturation in the large markets suggests there is unmet consumer demand for television services in these markets. Predictably, alternate methods of delivering television signals—such as multipoint distribution systems (MDS)—have been implemented or been applied for in those cities. In fact, the demand for MDS has been so great, resulting in many mutually exclusive applications, that the Commission currently has an open rulemaking proceeding in which it is considering expanding the number of MDS channel.[16] Also, despite the great cost of laying cable in urban canyons,[17] cable television is being demanded and introduced in these markets—often with the capability for many channels in recognition of the great diversity of tastes in large urban markets.

17. In medium sized markets, there remain some vacant UHF channels. This could be interpreted to indicate a lack of demand for additional television service. It is possible, however, that there exists an unmet demand, but because of the higher cost of television signal delivery inherent in UHF vis-a-vis VHF,[18] a potential broadcaster would not be able to recover his costs in the UHF mode, but could with VHF. Thus, allowing short-space VHF might afford the broadcaster greater flexibility in his investment decision and might result in additional service to the public that might not otherwise be provided or that might not be provided for a lengthy period of time.

18. The continued flow of applications for conventional television, subscription television, and multipoint distribution system licenses indicates that entrepreneurs are willing to risk their capital to provide additional television service. This, in itself, is a strong indication that knowledgeable parties believe there remains a substantial unmet consumer demand for television service. Most dramatic of all, of course, is Comsat's announced intention to implement a direct broadcast satellite system at a cost of over half a billion dollars. These investment decisions are consistent with the fact that both television station profits and television station transfer prices continue to rise rapidly. Broadcast income for all television stations increased from $513.2 million in 1974 to $1,273.5 million in 1978, a 25.51% per annum compound rate of growth.[19] During the same period of time, the implicit price deflator for the gross national product, a measure of the rate of inflation in the economy as a whole, rose from 116.02 to 152.05, a compounded annual rate of only 6.99%.[20] There is no aggregate picture of the value of television station licenses; we must rely on transfer price information. When scrutinizing transfer prices, there are many variables at play (e.g., size of market, UHF vs. VHF, power, etc.) and too few transfers to yield many observations. Hence, we are not able to estimate the rate of growth in the value of television stations. Nonetheless, trade press accounts suggest rapidly increasing transfer prices. For example, an article in the August 20, 1979 issue of *Broadcasting*,[21] entitled "Price tags for stations on a skyrocket," cites specific examples of, and quotes industry experts who refer to, the rapidly increasing prices for television stations.

19. The finding of unmet demand is also buttressed by the findings of a Louis Harris and Associates survey performed for the UHF Comparability Task Force.[22] The survey of a nationally representative sample of viewers indicated that 50 percent of the viewers would pay $5.00 per month for a first-run movie channel, 20 percent would pay that amount for an all-sports station, but less than 20 percent would pay $5.00 for variations of currently available programming such as is found on PBS or commercial networks. Although 80 percent of the viewers were satisifed with the number of channels available to them, only 66 percent expressed satisfaction with the availability of programs that appealed to them.[23] Moreover, to the extent that a new station in a market reduces expected market shares and makes specialty audiences more attractive to stations, then added channels will result in programming more responsive to consumer tastes. In all, despite the lack of hard data to directly measure demand, there is strong evidence that substantial unmet demand for television service exists and that the provision of additional service would be in the public interest.

20. The second benefit from increased service is the potential it brings for increased diversity in programming voices. Diversity of programming has long been a prime Commission goal and is closely related to first amendment objectives. As noted many years ago, the first amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *" *Associated Press* v. *United States*, 326 U.S. 1, 20 (1944). It has also been said that "[i]t is the purpose of the first amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market * * *" *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969). Clearly, adding more television voices in markets where our past policies have had the effect of limiting them promotes this first amendment purpose. We also recognized the benefit of diversity in our pending Radio Deregulation proceeding where we stated "society as a whole benefits when its citizens have access to many points of view (or diversity of opionions or 'voices') on both problem-oriented and issue oriented matters," *Deregulation of Radio*, 73 F.C.C. 2d 457, 516 (1979); and concluded that while some of our rules and policies aid in this goal "a better key to attaining many voices * * * is a structural one—maximizing the number of stations in a market." *Id.* at 517. Thus, our proposal today is another step in advancing this important First Amendment objective.

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[15] For example, the top three markets (New York, Los Angeles, and Chicago) contain approximately the same number of television households as do the 123 smallest markets combined, though nowhere near as many stations.

[16] However, it is in those large markets where additional channels are least likely to be available.

[17] An "urban canyon" refers to a densely populated area where cable must be run underground. In some of these urban areas, the underground cable ducts already may be full, thus requiring the installation of new ducts.

[18] *See* Staff Report on: *Comparability for UHF Television:* Final Report, September 1980, Chapter 5.

[19] "TV Broadcast Financial Data—1978." F.C.C. News Release 19540, July 30, 1979, Table 3. These are the most recent aggregate data available. The total number of television stations whose data were included in these totals increased from 696 in 1974 to 708 in 1978. The compounded annual rate of growth of income *per station*, therefore, was 24.99%.

[20] *Economic Report of the President*, January 1980, Table B-4, at 208, Department of Commerce, Bureau of Economic Analysis.

[21] Vol. 97, No. 8, at 23-24.

[22] *See* Staff Report on: *Comparability for UHF Television:* Final Report, September 1980, at 29-30.

[23] In assessing these results, it is worth keeping in mind that cable subscribers were excluded from the sample. Hence, in those areas where cable was available, those who most valued increased viewing options were probably excluded from the sample, since they probably subscribed to the cable service, making these relatively conservative estimates of demand. Approximately 21 percent of the potential respondents were excluded because they subscribed to cable.

III. Background Concerning Television Channel Allotments[22]

21. The history of television allotment principles has been set forth many times, including a detailed discussion in the 1977 *Notice* in Docket No. 20418, and need not be repeated at length here.[23] Recitation of that history's highlights, however, with a view toward the action proposed today, is appropriate.

22. Present fundamental television allotment principles, including the Table and the mileage separations on which it is based, date from the *Sixth Report and Order*, 41 F.C.C. 148 (1952). In addition to adoption of a Table alloting specific VHF and UHF channels to communities throughout the United States to be used by television stations licensed to serve those communities [24], the *Report and Order* set forth some other concepts especially pertinent here:

(a) The Table adopted contained [and still contains] many communities with both VHF and UHF channels alloted, a so-called "intermixed" system. Rejecting arguments by Allen B. DuMont Laboratories, Inc., and others that UHF would not develop under these circumstances, the Commission concluded that in time UHF would be able to compete effectively. Despite arguments that greater spectrum efficiency would result from an allotment system that created separate all-VHF and all-UHF markets,[25] the Commission chose intermixture primarily for two reasons:

An all VHF market might restrict service in some large cities to the limited number of stations possible on VHF television channels, while at the same time "all-UHF" cities and surrounding areas might be deprived of the wide-area coverage provided by VHF. The suggestion of moving all television to UHF was also rejected, the Commission noting the absence of any specific showings or proposals that might serve to justify the extensive reallocations and reassignments that would be required.[26]

(b) The *Sixth Report* adopted rather large permissible maxima for both effective radiated power (100 kilowatts (kW) for low VHF channels, 316 kW for high VHF channels, 1 megawatt (MW) for all UHF channels [27]) and antenna height above average terrain (1,000 ft. for VHF in zone 1 [28], 2,000 ft. for VHF in other zones, 2,000 ft. for UHF in all zones), in order to afford opportunity for stations to achieve wide-area coverage. In support of its policy favoirng wide-area coverage, the Commission adopted minimum mileage separations between stations designed to provide each station with a fairly large interference-free area. Since various proposals under consideration at the time for limited power stations and shorter spacings would have vitiated the benefits the Commission saw accruing from its plan for wide-area coverage stations, it rejected such proposals, stating that it did "not believe that limited power stations should be provided for in The Table of (Television Channel Allotments) *at this time* in order to squeeze in additional allotments." [29]

(c) The Commission discussed requests that, in appropriate cases, the "shielding" between stations afforded by rough terrain be taken into account, to permit assignments at less than minimum separations. It also considered suggestions that shorter separations be permitted where one station would protect the other by a directional transmitting antenna. Despite the fact that both of these concepts were rejected, essentially on the ground that not enough was yet known about the full implications of such operations, their future use was clearly not ruled out if a more information record could be provided.[30]

23. After several years experience with the framework provided by the *Sixth Report and Order*, it was clear that many UHF stations were having financial problems and that VHF service was fast becoming the medium of preference.[31] This is turn was impeding the establishment of a nationwide television service.

24. On September 10, 1955, the Commission promulgated a *Notice of Proposed Rulemaking (NPRM) in Docket No. 11532 to consider proposals directed at solving the television allotment problem, noting that:*

A nationwide competitive television service has not been realized to the extent contemplated at the time the Commission issued its *Sixth Report and Order*. Many of the smaller communities are without a first local outlet and the expansion of multiple, competing service in the larger economic and population centers of the country is lagging. Difficulties encountered in achieving successful operation of stations in the UHF band have been a significant factor leading to this situation.[32]

25. On June 25, 1956, the Commission issued its *Second Report on Deintermixture* [33], concerning the issues raised in its *Notice of Proposed Rule Making* in Docket No. 11532, *supra*. [34] It admitted that at least two serious problems hindered the continued expansion of television services. The first was the severe limitation on the number of channels available in the VHF band, and the second was the "UHF problem," which was accentuated by, (a) the preponderance of VHF-only receivers in use, (b) the serious performance deficiencies in UHF transmitters and receivers, and (c) the resulting preference of program and revenue sources for VHF outlets. The Commission concluded that "many UHF stations which normally cannot provide a viewing audience comparable to those of their VHF competitors have been forced to operate on a marginal or submarginal basis or cease operation." [35]

26. In the *Second Report on Deintermixture*, the Commission evaluated the proposed solutions submitted by the various parties. Four major proposals were analyzed.

(1) The Allocation of Additional VHF Spectrum

27. The Commission stated that before the initiation of Docket No. 11532, it had undertaken negotiations with The Office of Defense Mobilization to ascertain whether any government VHF frequencies could be made available to broadcasters. Citing "National security requirements and the need of air navigation and air communications," the Office of Defense Mobilization

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[22] The findings and arguments in this Section are primarily based on Section VI, "Commission Attempts to Rescue UHF" of the staff report on: *Preliminary Report on Prospects for Additional Networks* (Preliminary Report) Network Inquiry Special Staff, Federal Communications Commission at 96 (February 1980).

[23] *See, e.g., Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 markets and to Assure that the New Stations Maximize Diversity of Ownership Control and Programming*, 63 F.C.C. 2d at 847–856 (1977). *See also*, a recent comprehensive account contained in "The Effect of the Federal Communications Commission's Spectrum Management Policies Upon the Number of Television Networks", Thomas L. Schuessler, contained as an Appendix in the Commission's Network Inquiry Special Staff's *Preliminary Report on Prospects for Additional Networks* at 1–88 (February 1980).

[24] The Table was adopted as a way of providing more efficient channel usage than would a "demand" application system, as a way of providing channels for smaller markets where demand might be slower to develop, and as a means of expediting the handling of the forthcoming flood of applications. *See* 41 F.C.C. at 151–152 (paragraphs 13–16) (1952).

[25] The shifting of all television service in a community to either all VHF or all UHF Channels is called "deintermixture."

[26] 41 F.C.C. 155, 208, para. 25, 197 (1952).

[27] Since raised to 5 MW (except within 250 mile of the U.S.-Canada border). *See Report and Order* in Docket No. 11592, 13. R.R. 1571 (1956).

[28] Zone I corresponds roughly to the Northeastern United States except for extreme Northern New England; Zone III consists of a band of land approximately 150 miles wide along the Gulf Coast; and Zone II consists of the remainder of the continental United States, Puerto Rico, Alaska, Hawaii, and the U.S. Virgin Islands. *See* 47 CFR 73.609.

[29] 41 F.C.C. 148, 188 (1952), emphasis added.

[30] *Sixth Report and Order*, 41 F.C.C. at 187, paragraph 133, (1952); 41 FCC 213–215, paragraphs, 215–221 (1952).

[31] *See Preliminary Report on Prospects for Additional Networks*, Network Inquiry Special Staff, at 90, Federal Communications Commission.

[32] *Notice of Proposal Rulemaking* in Docket No. 11532, 20 Fed. Reg. 8501 (November 16, 1955).

[33] 13 R.R. 1571 (1956). (Hereinafter referred to as the *"Second Report."*)

[34] Some of the important issues raised in the NPRM for alleviating the difficulties involved: (1) The reduction of the minimum mileage separation to create additional VHF allotments; (2) proposals for modification of the then present standards that would permit the use of directional antennas, cross polarization, new limits on antenna height and power restrictions; and (3) deintermixture.

[35] *Second Report, supra* at 1574.

concluded that such frequencies could not be released.[36]

(2) Short-spaced VHF Allotments

28. The American Broadcasting Company (ABC), then the weakest of the three networks, proposed the allotment of additional VHF channels at mileage spacing substantially shorter than that required in the *Sixth Report*. However, the Commission was doubtful that the allotment of additional VHF channels with substantially shorter mileage separations would adequately serve future needs. Such short spaced stations, it observed, would "reduce the service area of existing VHF stations and create new interference areas within which satisfactory signals might not be received either from existing stations or from the new stations." [37] The Commission acknowledged, however, that interference problems could be limitated to some extent by requiring the station to use directional antennas, lower antenna heights, reduce power emission and implement cross polarization. Yet perhaps more important, it concluded that even with maximum exploitation of short spaced allotments, it was unlikely that enough television stations could be created by this method to meet the expected nationwide needs in the future. Moreover, the Commission feared that the wide-spread use of such allotments would discourage the development of additional UHF stations as well as having an adverse impact on those on the air.

(3) Deintermixture

29. Several parties advocated deintermixing markets containing both "UHF and VHF channel allotments in order to more nearly equalize competitive opportunities in individual markets while at the same time utilizing both the VHF and UHF bands in the nationwide television system." [38] Although the Commission rejected deintermixture on a nationwide basis because there was little support for eliminating VHF in areas with low UHF set saturation, it stated that deintermixture deserved careful consideration as a means of enhancing the opportunity for effective competition among a greater number of stations in certain individual areas.[39]

(4) All UHF Television

30. Another recommendation by some industry representatives involved shifting all television broadcast to the UHF band. This would have had the effect of depriving VHF stations of their technical superiority over UHF and place all stations on a comparable technical basis. The Commission reasoned, however, that such an approach was fraught with problems. One was the effect that terrain and natural impediments had on weakening and blocking UHF transmission. The second problem was the tremendous cost and dislocation to the public and industry of switching to an all UHF system.[40]

31. These proposed alternatives were rejected, not so much for their technical insufficiency, but basically for the same reasons as in the *Sixth Report*. The Commission was still convinced that its plan as set out in the *Sixth Report* held the best opportunity for a truly competitive nation-wide television service. With particular reference to additional VHF allotments utilizing reduced power and height and directional transmitter antennas, the Commission recongnized some of the interference problems could be solved, but concluded that the creation of "numerous" small VHF stations with very limited service areas would not further two long-range objectives, i.e., wide area coverage and UHF growth.

32. Five years later, however, with the continuing and increasing pressure for three competitive commercial outlets in cities of substantial size to serve as outlets for each of the three existing networks, efforts were again undertaken to speed the institution of new television service. In the 1961 *Report and Order* in Docket No. 13340,[41] the Commission recognized shortcomings in its allocation structure, and concluded that short-spaced VHF allotments should be proposed in eight markets that met certain conditions.[42]

33. The Commission examined the various means for adjusting its planning factors to minimize the increase in interference that would result if full facility stations were added at less than the minimum separation distance. It settled on a procedure first suggested to it by proponents of limited power VHF stations during the deliberations that culminated in the *Sixth Report and Order*. The methodlology, called "equivalent protection," involved a separation distance—effective radiated power (ERP) trade-off.[43] The concept of equivalent protection was adopted by the Commission in Docket No. 13340 as a possible means of alleviating the shortage of VHF stations in some large cities.[44]

34. The question of equivalent protection was again discussed by the Commission in its 1967 decision providing for the establishment and use of antenna farm areas. In the *Notice of Proposed Rule Making* in this proceeding we proposed to amend § 73.612 of the Rules—a rule section which limits the nature and extent of protection from interference accorded television Broadcast stations—to provide for short-spaced stations "only on the basis of equivalent protection." [45] In its *Report and Order* in Docket No. 16030, 10 R.R. 2d 1514 (1967), the commission adopted a new § 73.612(b) which provided that:

> When the Commission determines that grant of an application would serve the public interest, convenience and necessity and the instrument of authorization specifies an antenna location in a designated antenna farm area which results in mileage separation less than those specified in this subpart, TV broadcast station permittees and licensees shall be afforded protection from interference equivalent to the protection afforded under the minimum mileage separations specified in this subpart. 47 CFR § 73.612(b)

35. This action was taken over the objections of Maximum Service Telecasters (MST) that the equivalent protection concept had been adopted by

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[36] *Id.* at 1575.

[37] *Id.*

[38] 13 R.R. 1571, 1576 (1956).

[39] *Id.*

[40] "In 1955 a Commission economist predicted that an all UHF system would result in a loss of service to as many as three to six million families which now receive VHF stations. In addition, he predicted that many more would lose service as the result of poor terrain despite the fact they were well within the service area of potential UHF stations." Staff Report on: *Preliminary Report on Prospects for Additional Networks (Preliminary Report)*, Network Inquiry Special Staff, Federal Communications Commission at 107 (February 1980).

[41] *Interim Policy on VHF Television Assignments and Amendments of Part 3 of the Rules Concerning Television Engineering Standards*, 21 R.R. 1965, 1709 (1961 Supp.).

[42] The eight markets were Oklahoma City, Okla.; Johnstown, Pa.; Baton Rouge, La.; Dayton, Ohio; Jacksonville, Fla.; Birminghan, Ala.; Knoxville, Tenn, and Charlotte, N.C.; Providence, R.I. and Syracuse, N.Y. were originally included but then ways were found to provide additional VHF channels at standard spacings. The requirements were that the market be among the top 75 and have two VHF stations operating, that there be minimal dislocation to existing stations and no significant impact on UHF stations in other cities, that the potential service gains outweigh the losses, that international requirements were met, and that the separation would not be less than 140 miles for co-channel stations or 40 miles for adjacent channel stations.

[43] The idea of this type of trade-off was something the Commission had long recognized as desirable in some instances. The Rules already provided that licensees could employ antennas in excess of the specified maximums if they compensate by lowering their effective radiated power sufficiently. *See* 47 CFR 73.612(b) (1978).

[44] 10 R.R. 2d 1514, 1523, paragraph 17 citing *Interim Policy on VHF TV Channel Assignments*, Docket No. 13340, 21 R.R. 1699 (1961); *Supplement to Report and Order*, Docket No. 13340, 21 R.R. 1709 (1961).

[45] *Report and Order* in Docket No. 16030, 10 R.R. 2d 1514 (1967).

the Commission in Docket No. 13340 only for the limited purpose of the drop-in cases before the Commission in 1961 and therefore should not be employed in this late context. The Commission noted that

> MST's arguments against the "equivalent protection concept" have been considered by this Commission in Docket (No.) 13340, and in subsequent proceedings. After completion of the rule making in Docket (No.) 16004, in which we expect to adopt curves and procedures for * * * TV broadcasting, we will issue an Order outlining the procedure to be followed in determining equivalent protection for * * * VHF and UHF co-channel stations. As far as the VHF adjacent channels . . . these matters will be considered on an *ad hoc* basis if and when the problems arise. 10 R.R. 2d at 523–24 (1967).

By rejecting MST's "attack [on] the equivalent protection concept which [the Commission] adopted in Docket [No.] 13340," the Commission effectuated the following results:

(1) It reaffirmed its earlier conclusion that equivalent protection concept was technically acceptable means of short spacing stations;

(2) It implemented the concept by adding a provision to the rules requiring short-spaced stations to use the equivalent protection methodology;

(3) It confirmed that the methodology used was that set out in the *Supplement* to the *Report and Order* in Docket No. 13340; and,

(4) It indicated that the existing calculation methodology would be modified after completion of the proceeding revising the FCC propagation curves (Docket No. 16004).

36. Docket No. 16004 was terminated with a *Report and Order*, 34 R.R. 2d 361 (1975), which amend § 73.699 of 47 U.S.C. to add revised propagation curves to the Rules. At that time the Commission did not issue an order revising its outstanding equivalent protection methodology, to incorporate the revised F(50,50) and the new F(50,10) curves. As developed in detail below, we are today proposing rule changes which would incorporate the equivalent protection methodology into our Rules explicitely for the first time. Given the above somewhat contradictory history of whether or not equivalent protection is to be calculated using the current or the pre-1975 propagation curves, we wish to state clearly that the curves specified in the Rules at the time a petition or application is considered by the Commission are the curves referred to in the proposed rule section (§ 73.614(b)(5)). The propagation curves adopted in 1975 are presently the applicable curves. In addition, in section VIII, *infra* we will discuss how we propose equivalent protection of VHF adjacent channels to be calculated.

37. Seven of the short-spaced allotments proposed in the 1961 *Report and Order* were denied and one, Oklahoma City (more correctly a "move-in", *See* Para. 39, *infra)* was granted. *Television Assignment—Third Service,* 41 F.C.C. 1119 (1963). The decision to deny these new allotments was predicated on the enactment, by Congress, of the All-Channel Receiver Act [46] in July of 1962, empowering the Commission to adopt rules requiring that all television receivers shipped in interstate commerce, or imported, be capable or receiving all frequencies allocated by the Commission to television broadcasting. The Commission viewed this legislation as Congressional ratification of the FCC's commitment to the promotion of UHF as an integral part of the nations's television system, requiring hiatus in its VHF drop-in activities until this new authority could take effect. The Commission stated that its "judgment to reject short-spaced VHF (allotments) rests on optimism for the long range future of UHF * * *." [47] It should be noted, though, that the Commission's optimism was tempered with the commitment that "if events prove us wrong * * * we can always consider the "interim" or "short-range" actions such as these short-spaced (allotments)." [48] Having reached this conclusion, the Commission firmly stated its policy to scrutinize all VHF applications for their impact on UHF development, a policy that dominated the thinking in this area for over a decade. This policy is discussed in some detail in Section IV, *infra.*

38. The only true VHF drop-in allotment allowed after Docket No. 11532 was a short-spaced allotment made in *Charlotte Amalie, V..I.,* 26 F.C.C. 2d 853 (1970), for educational use. The station was required to provide equivalent protection to the stations to which it was short spaced.[49] Aside from the strong public benefit involved in the promotion of educational television, there were two distinctive factors: All of the predicted interference area was over water and, therefore, would affect no population, and there was no UHF station or application involved.

39. While there have been no new short-spaced VHF allotments in the continental United States, there have been a number of "move-in" authorizations—stations at standard spacings authorized to move closer to their city of license, even though such a move violated the minimum mileage separation rule. These have generally been permitted for two reasons—to improve the station's service and thus its competitive situation vis-a-vis others in the market or to permit location in an "antenna farm" or otherwise meet air navigation safety considerations. Equivalent protection was successfully utilized to protect existing co-channel television stations to the degree they were protected prior to the interim move.[50]

40. In other cases in the late 1950's and early 1960's, VHF channels, called "squeeze-ins," were newly alloted to communities at separations quite close to the minimum, sometimes with changes in other VHF allotments being necessary to accommodate the new channel. Many of these were the third VHF commercial allotment designed to provide three competitive network outlets.[51] Three such decisions in 1961 involved Grand Rapids, Mich., 21 R.R. 1737 (1961) (a second VHF channel for Grand Rapids and a third for the Grand Rapids-Kalamazoo market); Rochester, N.Y., 21 R.R. 1748 (1961); and, Syracuse,

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[46] Pub. L. No. 87–529, 87th Cong. 2d Sess. (1962), 47 U.S.C. 303(s) (1962).

[47] 41 F.C.C. at 1124 (1952).

[48] *Id.* at 1124.

[49] 26 F.C.C. 2d 853 (1970).

[50] Examples of moves to improve service are *Peninsula Broadcasting Corp.,* 45 F.C.C. 1662 (1964), *Television Broadcasters, Inc.,* 45 F.C.C. 1897 (1965), and two Albany, N.Y. stations *Capital Cities Broadcasting Corp.,* 24 R.R. 1067 (1963) and *Van Curler Broadcasting Corp.,* 24 R.R. 1079 (1963). The Commission's policy concerning antenna farms was set forth in *Antenna Farm Areas,* 8 F.C.C. 2d 559 (1967). Examples of authorizations granted on this basis are *Midcontinent Broadcasting Co.,* 45 F.C.C. 1798 (1964); *Coral Television Corp.,* 6 F.C.C. 2d 749 (1967); *WTCN Television, Inc.,* 14 F.C.C. 2d 870 (1968) and *The Outlet Company,* 11 F.C.C. 2d 528 (1968). In 1962 the New Bedford, Mass. channel 6 station was permitted to move in closer to Providence, R.I., to a location which is short-spaced with respect to Schenectady-Albany Channel 6 (WRGB). As a result, all three Albany-Schenectady-Troy VHF stations are short-spaced with respect to co-channel stations.

[51] Some of the inequality between VHF anf UHF can be explained by the inherent propagation advantages of VHF transmission. To that extent, it enhances spectrum efficiency to use the VHF television spectrum intensively to provide broader service to the public. Some of the advantage is accentuated and perpetuated, However, by past allotment practices that have been designed to assure at least three-network service stations, but not more, to each of the top markets. These policies have restricted entry into these markets, conferring supernormal profits on some of our VHF television licensees, giving them a chronic competitive advantage over the UHF operator. In 1978, the average VHF station had net revenues of $3,784,600. After adjustment for a 13.8% increase in expenses, the resulting profit was $1,072,900 or a 32.5% increase in profits over the previous year. *Broadcasting* at 23 (July 9, 1979). In the long run, intensified competition in the VHF television band could be expected to distribute both service and profits more evenly and so make the UHF operator more comparable to its VHF television competitors than is true today.

N.Y., 21 R.R. 1754 (1961). The earlier Albany-Schenectedy-Troy, NY. decision led to the allotment of two VHF channels at near-minimum standard spacing and, as mentioned the stations were later permitted to move in.[52] A later action, *Mt. Vernon, Illinois*, 17 R.R. 2d 1620 (1969), is perhaps an extreme example of this: To meet separation requirements, the station's transmitter would have been required to be located approximatedly 30 miles north of Mount Vernon, within a small triangular area with sides one to two miles long.

IV. History of the UHF Impact Policy

41. When, in the late 1950's it became evident that UHF television was not developing at the rate expected at the time of the *Sixth Report*, the Commission instituted an affirmative policy of fostering such development. The core of this policy involved the denial of attempts to create new or change existing VHF service which might have an adverse effect on UFH stations. In *Triangle Publications, Inc.*, 29 F.C.C. 315 (1960), the Commission denied an application by a New Haven, Connecticut, VHF station to move its trasmitter some 14 miles north in the direction of a Springfield, Massachusetts, UHF station. The reasoning in this case became a standard followed for years thereafter—that economic injury to a UHF station is reason to deny a change in a VHF facility if the public interest would be affected by injury to the UHF service. The decision quoted as follows from the *Fresno Deintermixture* rule making decision (Docket No. 11759, 19 R.R. 1581, 1585, (1960):

> If there is one circumstance which has been established beyond doubt in the manifold experiences of UHF operators everywhere that they compete with VHF, it is that, for a complex of familiar reasons related to receiver conversion, advertiser support, program availabilities and other related factors, UHF operations, however serviceable to the public, are subjected to competitive adversities which impose seemingly inescapable and substantial burdens upon the chances for financially successful operation of a UHF service in competition with an available VHF service.

42. After enactment of the 1962 All-Channel Receiver Law, the Commission denied various rulemaking proposals for additional VHF channels, both short-spaced allotments and others at standard separations such as in *Columbia, South Carolina*, 25 R.R. 1714f (1963). It was concluded that the statutory enactment of the All-Channel Receiver Law was an implicit directive to the Commission to foster UHF development, requiring denial of opportunities for additional VHF service that might adversely affect such development. Although no substantive data was relied on, the conclusion was reached that an "inevitable" negative affect would result. In a second *Triangle Publications, Inc.*, decision, 37 F.C.C. 307, 321 (1964), the Commission adhered to this policy, despite enactment of the All-Channel Receiver Law, stating: [53]

> For UHF to be a truly competitive service, there must be a capability of reception throughout the service contour and not merely within the limits of its home counties. It will be several years before the all-channel receiver legislation has an appreciable effect upon set conversion, whereas the impact upon the existing UHF stations from the encroachment of the VHF signal upon their service areas will be immediate. As we stated in the *Springfield Deintermixture Case*, FCC 62-798, 23 R.R. 1579, 1590 (1962): "[I]n time, the all-channel receiver legislation may alleviate this situation by, for example, increasing to 100 percent the number of homes in Champaign and Vermilion Counties equipped for UHF reception (now estimated to be 62 and 81 percent, respectively). But surely it makes little sense to take dislocating action to worsen the competitive situation in the hope that it will be improved years from now." Moreover, our goal is to hasten UHF conversion in advance of expectable set replacement to the extent possible.

43. Denial of VHF facility increases, however, was not automatic. In designating for hearing three Iowa VHF-TV station applications for increases in output power because of impact on a Ft. Dodge, Iowa UHF station, the Commission stated that it was appropriate to explore the extent to which other services would be available to populations served by the UHF station in the event of its demise. Two of the three applications were later granted because of the small extent of impact (VHF Grade B overlap of only 16% of the UHF coverage area), various joint measures taken to guarantee the UHF station's survival, and the lack of potential for other UHF stations in the small communities within the overlap area. *KTIV Television Co.*, 4 R.R. 2d 243 (1965). In *Atlantic Telecasting Co.*, 3 F.C.C. 2d 442 (1966), the Commission refused to designate for hearing a VHF-TV station's application for an increase in facilities on the basis of unsupported allegations of UHF impact.

44. During the 1960's and 1970's, "UHF Impact" cases often became battles of experts, since there was no reliable indicator as to what was "injury adverse to the public interest." A multitude of criteria were employed in various cases, including: Stability of the market and maintaining a fair possibility for UHF development, *Midwest Television, Inc.*, 13 F.C.C. 2d 478, recon. denied, 15 F.C.C. 2d 84 (1968); decreased ability to attract advertising, *Cosmos Broadcasting Corp.*, 21 F.C.C. 2d 729 (1970); ability to secure or retain network affiliation, *Cosmos, supra; Selma Television, Inc.*, 12 F.C.C. 2d 781 (1967); *WLVA, Inc.*, 15 F.C.C. 2d 757 (1968); *South Carolina Educational Television Commission*, 39 F.C.C. 2d 180 (1972);[54] audience fragmentation, future UHF potential, *Selma Television, supra: Daily Telegraph Printing Co.*, 20 F.C.C. 2d 976 (1969); first time overlap and/or increased overlap of signals, *Daily Telegraph, supra;* first time service for audience *Cosmos, supra;* and past financial profitability of UHF station, *Capital Cities Communications, Inc.*, 59 F.C.C. 2d 435 (1976).

45. It was early recognized that in this area any conclusion would often be highly speculative, since seldom if ever would there be positive proof of impact or the absence of it. In *Midwest Television, Inc.*, 13 F.C.C. 2d 478 (1968), the Commission, applying for the first time the "UHF Impact" policy to the importation of distant signals on CATV, stated that no definite finding could be reached that UHF television would or would not succeed in the market (San Diego); the only way to find out is to maintain the market for a period free of distant signal competition, to give UHF television a chance to develop. If no UHF station materialized, the situation could be reexamined (13 F.C.C. 2d 502 (1968)).

46. While "UHF Impact" has been applied in some other cases (e.g., *Jefferson-Pilot Broadcasting Co.*, 42 F.C.C. 2d 908 (1973)), it has not always stood as a bar to increased VHF service or improvements in facilities. In *Mount Vernon, Illinois*, 17 R.R. 2d 1620 (1969), the Commission added a VHF channel (at minimum separations) because of the substantial first service and local outlet benefits that would accrue. The very slight impact on existing or potential UHF development was found not to be a ground for denial.[55] The same result was

[52] *Report and Order* in Docket No. 11751, 15 R.R. 1514a (1975).

[53] The second *Triangle* case involved the same requested facilities change as the first *Triangle* case except that the antenna would be directionalized to afford a degree of protection to the UHF stations. This too was denied.

[54] The *South Carolina* case held that where there is a network "white area," i.e., an area with no usable signal containing a sizeable community (there, Florence, South Carolina and the ABC network), there is a presumption that a UHF station would get a network affiliation.

[55] In view of the passage of time since the All Channel Law, the *Mount Vernon* case stated that it is unnecessary to "insulate every UHF station or potential station from any possible small wind of VHF impact where there is a substantial service

Footnotes continued on next page

reached in *Cosmos Broadcasting Co., supra,* concerning increased transmitter facilities. There the VHF station showed the likelihood of only minimal, rather than substantial, impact and there were substantial first and second service benefits to be gained.

47. *The Cosmos* case put the "UHF Impact" question in terms of a balance between two potentially conflicting objectives: (1) Encourgaging VHF stations to expand to make the most efficient use of their channel allotments by serving more people; and, (2) fostering UHF development. In *South Carolina Educational Commission, supra,* it was held that where these policies come into real conflict—i.e., where the UHF impact is more than minimal—the UHF policy must prevail. If the impact would be only minimal, the VHF application need not be denied, particularly if substantial public benefits would result. The same result was reached by the Commission in *Daily Telegraph Printing Co.,* 56 F.C.C. 2d 990 (1975), where it was held that, if there will be substantial adverse impact on existing or potential UHF development, the VHF application could not be granted even if the benefits would outweigh any loss.

48. Shortly thereafter, however, the Commission changed its analysis of this principle. In *WFMY Television Corporation, Inc. ("WFMY, Inc."),* 59 F.C.C. 2d 1010 (1976), it held that regardless of the character of the impact, "minimal" or "substantial," a comparison would be made between the possible adverse consequences of impact and the gains from the increase in VHF service to determine whether the public interest would be better served by the increased VHF service. This change was premised upon the Commission's belief that "UHF broadcasting had advanced to the point where a much more 'substantial' impact can be tolerated without disservice, overall, to the public interest." The *WFMY, Inc.* case also modified the requirements for establishing impact, requiring a showing of the likelihood of *specific* impact related to the advent of expanded VHF service. The Commission noted its disinclination to insulate UHF stations from competition and stated that what is important is "that the UHF station be afforded an opportunity to develop free from * * * substantially adverse competitive circumstances (citation omitted)." If the opposition to the expanded use of VHF service was based on a claim of impact on *potential* UHF development, the party urging UHF impact had the burden of establishing the likelihood that, absent the VHF expansion, an application for a new UHF station would be filed within two or three years. In adopting this standard the Commission stated that it did not believe "that the public interest is served by foreswearing indefinitely the benefit of additional VHF service while awaiting the germination of dormant interest in an idle UHF allocation."[56]

49. The modified policies announced in *WFMY Inc.* were based on UHF porgress in the years just prior to the decision. The Commission stated that:

> We are aware of significant advances made by UHF television since the enactment in 1962 of the All-Channel Receiver Law, 47 U.S.C. § 303(s). These advances are beyond even those noted by Commission in the *Mount Vernon* allotment case, *supra,* at 1630. For example, in 1974 (the most recent year for which data is available) 48% of the UHF television stations reporting financial data indicated profitable operations for the year. UHF penetration, i.e., the percentage of households with UHF receivers, has increased, nationally, from 55 percent in 1969, the year of the *Mount Vernon* decision, to 89 percent in 1974, a figure exceeded in many areas with more than one UHF station. *WFMY Inc.,* 59 F.C.C. at 1015 (1976) (footnotes omitted).

50. There have been three significant "UHF Impact" cases since *WFMY Inc.* Two cases, *Central Alabama Broadcasters, Inc.,* 68 F.C.C. 2d 1339 (1978) and *KOTV, Inc.,* FCC 79–607, 44 FR 60818 (October 22, 1979), are in hearing status. The third, *North Carolina Television, Inc.,* 42 R.R. 2d 1685 (1978), was a grant of a VHF application without hearing. It was concluded that the benefits from the expanded VHF service (in terms of population receiving first and second services and first NBC service) outweighted the impact that could result from increased overlap with the UHF station, also NBC-affilitated. It was noted that the latter would have a stronger signal in the overlap area, and was in a larger market than the VHF station. It was also observed that the bulk of the overlap resulted from a recent transmitter move by the UHF station in the direction of the VHF station.

V. The Relevance of UHF the Impact Policy Today

51. The history of the "UHF Impact" issue demonstrates that since the enactment of the All Channel Receiver Law, the Commission has taken into account the overall profitability of stations in the UHF television service and the effects of implementation of that law when balancing the diversity gained from additional VHF service against the potential harm to UHF television service. Analysis of these factors today points to a conclusion that our past deep concern for the development of UHF television may no longer need to stand in the way of the added service possible from short-spaced VHF allotments. UHF television has made tremendous progress in recent years, as indicated in several areas. In 1978, the revenues of UHF commercial stations were $514 million, including $255 million to stations that were network affiliates and $259 million to independent UHF stations. These represented increases of 26.2 percent and 30.2 percent respectively over 1977 figures.[57] UHF network-affiliated and independent stations had 1978 profits of $42 million and $52 million respectively, up 53.6 percent and 18.2 percent from the corresponding 1977 net income figures. In 1973, only 31 percent of UHF stations reported net income; in 1975, UHF stations as a group were profitable for the first time with 52 percent showing profits; and in 1978, 73.1 percent of those reporting showed net income (136 out of 186). See the FCC's *Revised TV Broadcast Financial Data—1978* (July 17, 1980) and corresponding reports for earlier years.

52. Further, the number of UHF stations in operation has increased rather substantially, from 180 in 1970 to some 218 in early 1980. Even more striking is the increase in the demand for new UHF facilities evidenced by applications filed—between 8 and 15 per year during the 1971–1975 period compared to 94 in 1978, with more than 240 pending as of July 31, 1980.[58] The growing demand is also shown by high selling prices for stations. ABC mentions in its comments in Docket No. 20418 the $11,600,000 figure paid for a Houston independent UHF station in 1976; since then a UHF station sold for $20,000,000 (WRET–TV, Charlotte, North Carolina in 1979) and there have been at least three other sales of $15,000,000 or more (stations in Ft. Smith, Arkansas, Washington, D.C., and a pending application for a Baltimore, Maryland station).

53. Equally important as the increased profitability and the increased level of applications for UHF television stations are the developments that have followed

Footnotes continued from last page
benefit involved in a different course. The time when such caution was appropriate has, in our judgment, passed." (17 R.R. 2d at 1630 (1969)).

[56] *WFMY, Inc., supra* at 1016.

[57] VHF figures for the same classes of stations were 20 percent and 9.0 percent respectively.

[58] For a recital of figures in this connection, see the *Notice of Proposed Rule Making Concerning Multiple Ownership of AM, FM and TV Broadcast Stations,* FCC 79–537, 44 FR 55603, (September 1, 1979).

from the implementation of the All-Channel Receiver Law. In *Triangle Publications, Inc.*, the Commission was concerned, in part, about the impact of increased VHF service availability on the market for UHF converters. In this period, viewers who wanted to receive UHF signals had to acquire a separate UHF converter. The demand for converters clearly related to the number and quality of the UHF signals in the market, as well as to the programming those stations offered. Moreover, most potential UHF viewers had to buy the converter before they could sample the programming to see if they really did want to watch it. From the point of view of potential UHF broadcasters, therefore, the more converters that were already in the hands of the public, the less risky was an attempt to start a UHF station.

54. The All-Channel Receiver Act changed the situation. Since its implementation, the number of viewers who do not have all-channel capacity has declined steadily. In the *WFMY Inc.* decision, the Commission noted that all-channel receivers were in 89 percent of households in 1974, up from 55 percent in 1969. It is now 98 percent or better.[59] Moreover, widespread penetration of all-channel receivers has not been the only result of the All-Channel Receiver Law. In a series of proceedings the Commission has moved to require that the technical parameters of the UHF portion of the receiver be comparable to those of the VHF portion. Thus, in the 1960's and 1970's the Commission ordered improvements in such features as (a) tuners,[60] (b) weak signal performance (noise figure),[61] and (c) comparable attached antennas.[62] As long as the tuning process is mechanical, it may be necessary generally to have UHF tuning involve an extra step, albeit a simple one; but electronic tuning, now coming into widespread use, promises to remove even that difference.

55. Nor do we intend to stop seeking further improvements that might offer significant gains to UHF reception. In 1978 the Commission formed a UHF Comparability Task Force to study measures for alleviating the remaining differences and, if possible, eliminating them completely. This group has issued a number of notices of inquiry and several reports, including one (September 1979) reviewing the whole area of VHF–UHF comparability.[63] In a companion proceeding today we have released the *Final Report of the UHF Comparability Task Force* [64] and are issuing a *Notice of Inquiry and Notice of Proposed Rulemaking* that seeks further improvements in UHF reception.[65] Nor is this work complete. Several ongoing research studies are looking at various aspects of UHF reception.

56. These efforts at technical improvement are doubly relevant here: They provide reasonable assurance that the "UHF–VHF difference" will be less than it is now at the time in the future when stations are likely to go on the air using any new VHF allotments, and reconfirm that the Commission is firmly committed to continuing to ensure that viewers will be capable of receiving comparable UHF service.

57. The *Final Report of the UHF Comparability Task Force* states that further technical gains in UHF reception, at least given the current technology, must come by inducing viewers to purchase and install improved UHF receiving antenna systems. To convince viewers to make such purchases requires that UHF broadcasters offer to viewers a program package that the viewers find particularly attractive. It can be argued that the problem of convincing viewers that better antennas are worthwhile is no different than that faced by the early UHF broadcasters, namely, to convince viewers to buy UHF converters. There are, however, at least two differences.

58. First, prior to the All-Channel Receiver Act viewers without a UHF converter had no access at all to UHF programming. In contrast, most viewers today can sample UHF programming. As already noted, due to the All-Channel Receiver Act virtually all viewers use receivers capable of tuning in UHF stations. Furthermore, most viewers can receive watchable if not always good quality pictures from UHF stations with their existing antenna equipment.[66]

59. Second, early UHF broadcasters who lacked network affiliations faced a severe shortage or program material suitable for advertizer sponsorship. UHF broadcasters now have a broader selection of programming than was available in the 1950's. The intervening years have seen the creation of a vast amount of programming, both material originally for television as well as movies, that can be acquired by UHF broadcasters.[67] Means of delivering these programs are also proliferating. Further easing the UHF programmer's task is the fact that video program production is no longer a new field, making it less difficult to learn how to produce local material should the broadcasters prefer that route.

60. In light of all these changes since the adoption of the UHF Impact policy, namely full implementation of the All-Channel Receiver Act, improvements in the technical parameters of the UHF television service, and the much more abundant programming available, the concern of the Commission that the amount of VHF coverage in a market would decrease the penetration of UHF receivers, expressed in the *Fresno Deintermixture* rulemaking decision, Docket No. 11759, 19 R.R. 1581, 1585 (1960), repeated in *Triangle Publications, Inc.*, 29 F.C.C. 315 (1960), in the second *Triangle Publications, Inc.* decision, 37 F.C.C. 2d 307 (1964), and in the *WFMY Inc.* decision, 59 F.C.C. 2d 1010 (1976), seems now to be answered.

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[59] *See* note 66, *infra*.

[60] *See, Report and Order*, 21 F.C.C. 2d 245 (1970); *Memorandum Opinion and Order*, 23 F.C.C. 2d 793 (1970); *Report and Order*, 32 F.C.C. 2d 612 (1971); *Report and Order*, 43 F.C.C. 2d 395 (1973).

[61] *First Report and Order* in Docket 14769, 27 Fed. Reg. 11698 (September 28, (1962)); *Report and Order*, 70 F.C.C. 2d 1176 (1978).

[62] *Report and Order*, 62 F.C.C. 2d 164 (1976).

[63] *"Comparability for UHF Television: A Preliminary Analysis"*, prepared as part of General Docket No. 78–391 and available from the National Technical Information Service, Springfield, Virginia, NTS No. PB 301267–AS. The report found three main areas of differences—channel selection (tuning), picture quality, and programming. It noted the potential of electronic tuning in the first area, and, in the second, new developments in receiving antennas and also a more efficient UHF transmitter which could reduce the tremendous (and costly) amounts of power which UHF stations now use just to produce a signal comparable in geographic reach to VHF stations having much lower power. The report concluded that differences in programming (largely reflecting UHF unwillingness or inability to pay high prices) will tend to disappear as technical differences continue to be reduced.

[64] This Report is available from the National Technical Information Service, Springfield, Virginia, NTS No. ——.

[65] *Further Notice of Inquiry and Notice of Proposed Rule Making* in General Docket No. 78–391, —— FR —— (——).

[66] A Louis Harris and Associates survey of UHF viewers conducted for the UHF Comparability Task Force included an objective test of reception of two UHF stations for each viewer interviewed: 75 percent to 69 percent of viewers who were within the Grade A contours of the UHF stations tested and who relied on indoor UHF antennas were able to receive the UHF stations. (*A Survey of Consumer Attitudes and Experience Regarding UHF Television*, Study No. 792–806, September 1980.) A higher percentage of viewers using outdoor UHF antennas received UHF stations. Approximately 75 percent of viewers within the A contours of these stations used outdoor or indoor UHF antennas. Of those who used no UHF antenna, 56 to 52 percent still were able to receive the UHF stations tested. The percent of viewers using at least an indoor UHF antenna may be expected to increase since the Commission in 1978, required, under the authority of the All-Channel Receiver Act, that all sets sold in interstate commerce with VHF attached antennas also must have UHF attached antennas (*Report and Order* in Docket No. 20839, 62 F.C.C. 2d 164 (1976)). Finally, a viewer without a UHF indoor antenna could, at a cost of under $10, buy one in order to sample UHF programming.

[67] For more detail about the program supply market, *see* Staff report on: *An Analysis of Television Program Production, Acquisition and Distribution* (Preliminary Report), Network Inquiry Special Staff, Federal Communications Commission (June 1980).

The likelihood that a viewer is now able to receive programming on UHF television no longer depends on the nonavailability of three VHF channels to carry the three networks. Receivers now automatically have the technical capability to receive UHF and alternative programming fare exists. Thus, it no longer appears that adding VHF service in the near term will lead, through adverse impact on the UHF television service as a whole, to reduction in the total amount of television service available to viewers in the long term. Rather, UHF is now sufficiently mature and viable to compete directly against VHF competition on the basis of its ability to provide programming of superior interest to the viewing public.

61. Accordingly, as we view the current situation, our duty is to open the way to more service by providing opportunities for it in the form of additional television channels, in accordance with the mandate of Section 303(g) of the Act to further "the larger and more effective use of radio. As the Commission stated in *Channel Assignment at Glendive, Montana*, FCC 69–183, 15 R.R. 2d 1559 (1966):

> When there is under consideration a proposed action which would permit the addition of an additional broadcast service to a community and area . . . we believe that there must necessarily be a presumption that the action should be taken. Otherwise we run the risk of thwarting the mandate of Section 303(g) of the Communications Act, which adjures the Commission to further the larger and more effective use of radio. This presumption is of course subject to rebuttal; but it is nonetheless a substantial one * * * As we stated in the *Dickinson, North Dakota* decision * * * we should be slow to act in a manner which would thwart the development of competition. 15 R.R. 2d at 1564 (1966), *supra*.

62. Basically, now that UHF–TV has achieved a *reasonable* degree of viability, it should be left to the market place to determine whether new service comes from VHF or UHF. A prospective broadcaster who wishes to offer a service to a market would be free to compare the costs and revenue potential of a full-coverage UHF allotment with a limited facility VHF allotment and choose which would be most effective for his service were the Commission ultimately to adopt these proposed rules. To achieve full coverage using the UHF allotment would cost more for power and equipment, but the operator would be free to cover the entire market with the signal, unlike the limited facility VHF allotment.[68]

63. Finally, it also most be borne in mind that the policy of "UHF Impact" protects against new VHF competition not only actual or potential UHF stations but also existing *VHF* stations—those in the same market where the limited facility VHF allotment would be located. Thus, in *Jefferson Pilot Broadcasting Co.*, 42 F.C.C. 2d 908 (1973), the "UHF Impact" was on potential use of the Greensboro, North Carolina UHF allotment (a station operating on it had recently gone dark), but the immediate beneficiaries of the policy's application were the three VHF stations in the market that includes Greensboro.[69] this aspect of this policy is undesirable in any event, since it limits the availability of alternative program sources and competition, and affords protection to entities that do not need it.

VI. The Proposed Procedure for Adding New Allotments to the VHF Television Table

64. The preceeding discussion in Sections II through V sets forth why increased potential VHF television service is in the public interest, e.g., satifaction of unmet demand for more television service by viewers as well as prospective broadcasters and promotion of the first amendment principles, by increasing diversity of voices and competition. That discussion also recites the history of Commission actions aimed toward improving television service to the public. The history reflects an evolutionary approach by the Commission in this area. As will be explained in this section, this evolutionary process has brought the Commission to the point where the next incremental developoment of the legal and policy precedent makes possible an opportunity for significant expansion of television service. There are three basic areas where we are proposing changes:[70] (1) A presumption that the new service from a new station is a benefit exclusive of other considerations; (2) the general allotment rulemaking process by which short-spaced VHF television allotments are made, and (3) how any alleged adverse impact on UHF television service is considered in the overall allotment rulemaking process.[71] Our proposed changes in the general allotment rulemaking process for VHF will be addressed first.

General Proposals Involving New VHF Allotments

65. Under the rules in existence today, if a prospective broadcaster requests a television channel allotment not presently specified in the Table, his petition falls into one of two categories under existing FCC procedures. If it is possible to fit an allotment into the selected principal community in conformity with the minimum cochannel and adjacent channel mileage separation distances, the petitioner's task is relatively straight forward. Once it is established that the standard spacing requirements can be met, the Commission issues a notice of proposed rulemaking (NPRM) to amend the Table to add the new allotment. During the comment period of this NPRM, parties opposing the new allotment can introduce evidence which they believe show why the addition of the new allotment is not in the public interest. Proponents of the new allotment can file reply comments supporting the addition of the allotment or rebuting the adverse comments. If there are no opposing comments filed, the rule amendment to the Table is adopted as a matter of course, given the obvious benefit the new service to the public that would result.

66. If there is opposition to the new standard spaced allotment, the Commission weighs the evidence on both sides and denies the proposed new allotment only if the result of granting it would be a net loss of service to the public. In this type of proceeding those filing in opposition to the new station have the burden of introducing evidence to contradict the obvious public interest benefit of the added service the new allotment would bring. The opponents of the proposed standard spaced allotment also have the burden of proving that the presumption in favor of an additional allotment is unwarranted in the particular community under the high standard of the *Carroll* doctrine (proof that losses of existing service will

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[68] Indeed, there may be situations where "drop-in" VHF stations go on the air before vacant UHF allotments in the same markets are applied for. This obviously would be a reflection of the continued perceived gap in comparability between UHF and VHF stations. While this demonstrates the need to pursue vigorously technical improvements in UHF television, *see* paragraph 55, *supra*, it is difficult to find how the public interest would be served by depriving viewers in a given market of immediate additional service merely because it comes from a VHF rather than a UHF station

[69] Two of them were the objecting parties.

[70] It should be noted that the changes referred to at this point are exclusive of the technical modifications set forth in Sections VII and IX.

[71] It is proposed that these changes not apply to applications for changes in existing VHF television stations. Those situations do not offer the same degree of potential for new service, a fundamental basis for the action proposed here, and, consequently, should continue to be determined under the existing approach.

outweigh the service gains).[72] We note that the impact of proposed VHF allotments on vacant VHF allotments is not considered in these service gain and loss calculations. For example, if the addition of the allotment to city A brings new service to both city A and nearby smaller city B, the availability of a vacant VHF allotment in city B that potentially could have served the two cities but has not yet begun to do so is never a basis for refusing the allotment to city A.

67. Under current rules, if it is not possible to fit in a standard spaced allotment into the selected principal community, the prospective broadcaster can request that the rule requiring that the specified minimum, mileage separation distances be waived and that a short spaced allotment be granted. Such an allotment could then be applied for by a station using reduced effective radiated power and reduced antenna height—a limited facility station (LFS). Under this waiver procedure, the proponent of the new service has both the burden of coming forward with evidence showing why a waiver of the rule would be in the public interest, and the ultimate burden of proving that a grant of the waiver would serve the public interest, convenience and necessity. In waiver situations this burden is always a heavy one.[73]

[72] Since the "loss" to be shown under the *Carroll* doctrine is *actual*, rather than theoretical loss of service we propose that opponents to the new allotments who base their objections on predicted cochannel interference must take into account the availability of precise carrier frequency offset equipment, discussed in detail at paragraphs 117 to 121, *infra*, and front-to-back ratios of typical home roof top antennas, discussed in detail at paragraphs 103 to 108, *infra*, in calculating predictions of interference losses.

[73] One example of what is involved is the recently completed proceedings in Docket No. 20418; a proceeding which ultimately resulted in four waiver requests being granted. The successful petitioners had to show that: (1) The principal community to be served was one of the top 100 markets; (2) they provided a grade A signal to the city of license; (3) antenna sites were available; (4) that the proposed allotments would not be more than 17.65% short spaced to other allotments in the table; (5) they were not short spaced to Mexico or Canada; (6) existing UHF stations would not be substantially harmed; (7) they were not in an all UHF market or would not provide substantially the same service as an existing UHF station; and, (8) a net service gain to the public was likely. In addition, they were called on to rebut evidence that: (1) the proposed markets would not support an additional station; (2) antenna orientation problems would prevent acceptable service to the principal community; (3) a complement of three networks, one educational and one independent was adequate service; (4) the utilization of vacant UHF channels was a better means of providing for additional service; (5) the move towards a demand system of allotments would be costly and complex; (6) any VHF drop-ins at all would have a psychologically negative impact on UHF television general; and, (7) they would cause unacceptable interference.

68. Under the new proposal, if the required equivalent protection formula is met, the proposed allotment would now be treated in the same manner as, under current rules, we treat petitions for new, standard spaced allotments. Initially, the proposed allotment would be presumed to be in the public interest. But this presumption would not be irrebutable. Any interested party could attempt to demonstrate in the rulemaking proceeding to add a new allotment that the proposed new service is not in the public interest. While we propose to presume that the gain of service to the public that will result from the addition of a new VHF station will in most circumstances outweigh any "lost" service because of interference created by the added station, any interested party will have the opportunity to show that, because of increased interference the public interest would best be served by rejection of the petition to add the new station. But the burden of coming forward with sufficient evidence and the burden of proving that the clear benefits of added service that would result from any new channel allotment are outweighed by increased interference would be a heavy one.[74] The practical effect of this procedural change would be to permit the addition of new, LFS VHF television allotments to the Table in much the same way that standard spaced allotments are now added.

Comments Related to UHF Impact

69. In our decision in *WFMY Inc.*, 59 F.C.C. 2d 1010 (1976), the Commission was confronted with claims of adverse impact on potential and existing UHF stations as a result of an application by a VHF station to modify its facilities to increase its coverage. In repudiating its past practice concerning determination of the UHF impact issue, the Commission stated that "[W]e simply do not believe that the public interest is served by forswearing indefinitely the benefit of additional VHF service while awaiting the germination of dormant interest in an idle UHF allocation." 59 F.C.C. 2d at 1016 (1976). The Commission explained that while the applicant for VHF facilities bears the ultimate burden of proving that a grant of the application would be in the public interest, the burden of demonstrating at the threshold the existence of substantial adverse impact to the opportunity for UHF service must be carried by the party alleging adverse impact. Moreover, the Commission modified its approach whereby it would weight the benefits of improved VHF service against adverse competitive impact on UHF only in cases where the adverse impact was already determined to be "minimal." In *WFMY Inc.*, the Commission recognized "that UHF broadcasting has advanced to the point where a much more 'substantial' impact can be tolerated without disservice, overall, to the total public interest." 59 F.C.C. 2d at 1017 (1976). Therefore, the Commission held that regardless of the characterization of the impact on UHF—whether "substantial" or "minimal"—the VHF applicant would be permitted to demonstrate by countervailing evidence, that, overall, the weight of the public interest favors a grant of the application." *Id.*

70. In this proceeding, we propose to extend the "substantial adverse impact" policy announced in *WFMY Inc.* generally to all new proposals for short-spaced VHF allotments. As set forth in Section V, *supra*, we have carefully scrutinized the current viability of the UHF television service and considered its ability to continue to provide service to the American public in the future. We have concluded that generally the potential negative impact on UHF service from additional VHF service is limited and far outweighed by the benefit to the public from additional UHF service.[75] Consequently, we are proposing that we will not consider in allotment proceedings for new VHF stations the potential effect of the proposed VHF service on vacant UHF allocations. To repeat again what we concluded in *WFMY Inc.*: "We simply do not believe that the public interest is served by forswearing indefinitely the

[74] Under our proposal, we do not envision that objections to loss of service because of interference created by a new station would be considered in the license assignment proceeding. The most appropriate time to raise such objections is during the allotment proceeding where these claims can be considered in the context of the allotment decision. Unless a party were to come forward with some newly discovered evidence which for good reason was not available at the time of the allotment proceeding or otherwise demonstrate good cause, we do not contemplate that "gain" versus "loss" issues will be considered again in an assignment proceeding to determine if an application for the allotment should be granted. Agencies, like courts, apply the doctrines of *res judicata* and collateral estoppel to administrative proceedings in order to promote efficiency and finality in agency decisionmaking. The Supreme Court has specifically approved the application of *res judicata* to agency proceedings. *United States v. Utah Construction and Mining Co.*, 384 U.S. 394, 422 (1966). The FCC has applied both the doctrines of *res judicata* and collateral estoppel to its own proceedings with the approval of the courts. *Gordon County Broadcasting Co. v. FCC*, 446 F.2d 1335, 1338 (D.C. Cir. 1971); *Sayger v. FCC*, 312 F.2d 352, 356 (D.C. Cir. 1962); *Tomah-Mauston Broadcasting Co. v. FCC*, 306 F.2d 811, 813 (D.C. Cir. 1962).

[75] See Section II, *supra*, for a discussion of the public interest benefits of additional television service.

benefit of additional service, while awaiting the germination of dormant interest in an idle UHF allocation." 59 F.C.C. 2d at 1016. If the record before us supports the view that there is a large unfulfilled present demand for television service which could be met by prompt initiation of additional VHF service, we do not believe the public interest would be served by consideration of potential impact on UHF allocations which have remained unapplied for to this time. We are soliciting comment concerning whether consideration of potential impact on idle allocations should be foreclosed in cases where applications for those UHF channels are pending or only in those cases for which no applications have been filed.

71. With respect to the impact on existing UHF stations from additional VHF allotments, we do not propose to foreclose consideration of such impact in the rulemaking proceeding proposing a new allotment. While any interested party will have the opportunity in the allotment proceeding to contend that the impact of the proposed VHF allotment on existing UHF service is sufficient to warrant denial of the allotment, the burden of proving that the UHF impact outweighs the stong public interest in additional television service will be particularly heavy. Under the *Carroll* doctrine,[76] the Commission presently is required to consider claims that the public interest would be harmed by actual loss of existing service caused by authorization of new service. Thus, we propose now to consider claims of adverse impact to existing UHF service from new VHF allotments as we would consider under the *Carroll* doctrine claims of adverse impact to any existing broadcast service. But, as the Court emphasized in *Carroll*, the party claiming adverse impact as a result of additional service bears the burden of proving the adverse impact—"and it is certainly a heavy burden." 258 F. 2d at 444. It is entirely appropriate for the party claiming such adverse impact to bear such a heavy burden because as the court in *Carroll* noted, "[c]ompetitors may severely injure each other to the great benefit of the public." *Id.* at 443.[77]

72. The approach we are proposing for consideration of UHF impact would represent only an evolutionary extension of the Commission's *WFMY Inc.* decision. By utilizing this rulemaking to make well-supported findings concerning the public interest benefit in authorizing the prompt initiation of additional VHF service rather than foreclosing such service while awaiting perhaps for many years some potential unrealized UHF service, the Commission will be able to avoid the lengthy delays that would be required to authorize additional service under the present system.

73. The Commission's recent decision to add short-spaced VHF allotments in four cities[78] represented the first application of the *WMFY* policy to a VHF drop-in. Based on the same technical criteria that underlie the proposals before us today, a strong public interest justification was made for the four allotments. The events in those four instances however, illustrates a major weakness of current policy that today's proposal could remedy. *See* note 73, *supra*. The proposed rule changes before us today would alleviate the situation where petitioners expend huge sums of money on allotment proceedings and yet never gain consideration for assignment.

74. The rule changes we are proposing today, while a small change from past practices are, we believe, of extreme importance to the public because of the benefits that should result from their implementation. Specifically, the proposed rule changes should result in a significant amount of new television service. This service will be in response to actual, immediate demand for that service, as identified by the potential broadcasters and others who will prosecute the petitions to add these news allotments to the Table. Thus, the remaining VHF television spectrum capacity will be put to use satisfying real needs, as opposed to being held idle, thus increasing the efficiency of spectrum use in accordance with Section 303(g) of the Communications Act.[79]

VII. Background Technical Information

75. The following discussion of the technical side of our proposal is best understood if proceeded by a brief review of the conceptual basis of the Table and the underlying phenomena of television signal propagation, service contours, and interference. The reader is cautioned that for the sake of clarity (and brevity) we have omitted what we believe to be unnecessary details.

76. Using the extensive data accumulated as a result of its long deliberation up until that point, the Commission adopted a scheme of standard separation distances and the Table in the *Sixth Report and Order, supra*. Three important factors in that decision are also crucial to our decision today. First, having developed a set of field strength propagation curves (a mathematical model that predicts how strong a television station's signal is at various distances from the station), the Commission selected cochannel (i.e. stations on the same frequency) and adjacent channel (i.e. stations one channel higher or lower than the subject channel) separation distances that resulted in a predicted amount of interference to viewers near the edge of each station's service area. The distances chosen represented a trade off between a desire to have stations tightly packed together, to provide as many channels as possible in the major population centers, and a desire to have the stations far enough apart to permit reception of their signal in sparsely populated areas well outside the urban centers. As is explained in paragraph 97, *infra*, the level of interference selected by the Commission in this decision will be preserved by the rule changes proposed today, but the separation distances used to implement them will be replaced with a system of reducing effective radiated power in the direction of the existing station commensurate with the reduction in mileage separation between the stations.

77. Second, the Commission limited the maximum output power allowed and selected conservative (i.e. extra far apart) separation distances to ensure that the future addition of stations in more sparsely settled areas of the country (e.g. outside of Zone I) did not deny rural viewers the little service they then received.[80] Given the situation then facing the Commission (in 1952 most of these rural viewers had at most only one viewable program source), this cautious protection of each station's fringe service areas was well justified. This situation has changed substantially.

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[76] *Carroll Broadcasting Co.* v. *F.C.C.*, 103 D.C. App. 346, 258 F. 2d 440 (1958).

[77] Again, as with consideration of traditional "gain" versus "loss" issues, we do not contemplate that impact on viewers on existing UHF stations will be considered in assignment proceedings. Any party wishing to contend that new VHF service should not be authorized because of UHF impact should do so in the allotment proceeding, and it is not in the public interest to relitigate the same issue during the assignment proceeding absent the proffer of newly discovered evidence which for good reason, was not available at the time of the allotment proceeding or other good cause. For a discussion of the application of the principle of *res judicata* and collateral estoppel to agency proceedings, *see* note 74 *supra*.

[78] Report and Order in Docket No. 20418, FR (October , 1980).

[79] Although the Commission has no direct statutory mandate to protect the economic well being of television broadcasters, VHF or UHF, we must be concerned if the impact of a proposed new service on existing broadcast stations is so severe that a real and significant decrease in the amount of service reaching the public can be demonstrated. *See Carroll Broadcasting Co.* v. *F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958).

[80] *Sixth Report and Order*, 41 F.C.C. 148 at para. 111 (1952).

Most rural Americans now receive signals from four or five different stations, rather than zero or one. Alternative video delivery systems such as cable television make the loss of a particular over-the-air signal less significant. Also, the maturation of home rooftop antenna technology to provide a more consistently high quality antenna means that today rural viewers are now more likely to employ a receiving antenna superior to their 1952 counterpart. Furthermore, recent advances in television reception technology may result in the availability of even better reception systems before the effect of the proposed rule changes occurs.

78. Third, in the *Sixth Report and Order* the Commission decided not to take advantage of several recognized ways of placing stations more closely together. It chose instead to reserve these possibilities as "safety factors" that would resolve future problems if the newly developed propagation curves proved to be overly optimistic and a large amount of unexpected interference resulted. This margin of error was provided by not taking into account the effects of terrain shielding (i.e. the presence of high mountain and rough terrain causing the station's signal to decrease in strength more rapidly than the propagation curves predict), precise frequency control (i.e. controlling the carrier frequency of the trnsmitter with an extremely high degree of accuracy, resulting in a lessening of the cochannel interference effects), and receiver antenna front-to-back characteristics (i.e. a characteristic of typical rooftop television antennas that results in their receiving a signal arriving from the front much better than another signal arriving from the rear).[81]

79. The Commission faces a very different situation today than in 1952. The VHF portion of the Table is virtually saturated and over 600 VHF stations are on the air, yet problems of television co-channel interference have been minimal. The propagation curves, amended twice since 1952, have proved to yield reasonably accurate predictions of service area. Technological advances have made the accurate control of transmitter frequency widespread. As the use of precise frequency control technology has spread, its cost has declined. And, as mentioned above, home receiver antennas have been standardized on a few superior performing configurations so that front-to-back ratio of at least 12 dB [82] on any channel in the VHF band are the norm and more expensive antennas with 20 or 25 dB front to back ratios are available to resolve special reception problems. Only the terrain shielding effect is not yet amenable to precise quantification, and therefore not available as a tool to configure more efficiently the placement of future VHF station allotments. Given this greater understanding of these phenomena, and the greater availability of this improved equipment (plus the advent of computer calculation capabilities) the Commission is now in a position to reassess its decision to limit interference between television stations by means of fixed mileage separation distance.

Table of (Television Channel Allotments).

80. The Commission sought to obtain a suitable balance among several objectives in its *Sixth Report and Order*—wide area service by each station, multiple service in populous areas, and an equitable distribution of stations throughout the country. To help accomplish these goals, it developed a set of parameters it called "planning factors." The planning factors described different technical characteristics of the television delivery system that determine when and where service can be expected when different arrangements of transmitter and receiver equipment are employed in the system. The receiving antenna front-to-back ratio and the propagation curves mentioned above are two of the planning factors then relied upon by the Commission. The height of the receiving antenna, the amount of co-channel interference acceptable, the amount of adjacent channel interference acceptable, the "selectivity" of the "typical" receiver (how well the average receiver picks out a desired signal from other unwanted signals on nearly the same frequency), the receiver noise figure (a measure of how much "snow" is added to the television picture by the home receiver), and the transmitter output power, antenna pattern, and antenna height, are some of the other planning factors quantified by the Commission as part of these deliberations.

81. The Commission was confronted with a situation involving hundreds of applicants requesting channels in hundreds of cities, all wishing to begin construction and operation as soon as the Commission lifted its "freeze" on further licenses. Which cities could be served depended on a combination of variable factors including what transmitter power and antenna height was selected and the distance to other cochannel and adjacent channel stations. Both to resolve the administrative nightmare of selecting the location and characteristics of so many different stations, and to ensure that service was equitably divided among different cities and between urban and rural areas, the Commission set about its task by fixing exact values on each of the technical planning factors. All rooftop antennas were assumed to be exactly 30 feet above the ground. All terrain was assumed to consist of gently rolling hills. All receiving antennas were assumed to have no front-to-back ratio. Maximum transmitting antenna height and output powers were specified for different parts of the television bands and different parts of the country. Stations were assumed to be operating at these maximum output powers and antenna heights. All receivers were assumed to have at least a certain selectivity and noise figure, and so forth. The result of these fixed assumptions was to define a minimum distance at which two cochannel or adjacent channel stations could be placed and still meet all the planning assumptions.

82. The Commission than distributed these stations among the existing cities in a scheme it called the "Table of Assignments" (now, Table of Television Channel Allotments). Two important decisions resulted in the Table being configured as it is today. First, by selecting prescribed cochannel and adjacent channel desired-to-undesired signal ratios at 28 dB and 0 dB respectively the Commission determined that each station's service area would be interference limited in the direction of adjoining stations in the Table. In other words, the Commission selected a mix of noise-limited and interference limited television service as the vehicle likely to maximize service to the public.

83. Second, and more important to the discussion at hand, the Commission selected a system of maximum antenna heights and transmitter power and incorporated an assumption that all stations would operate with these maximum facilities. Given the above described maximum permissible levels of co-channel and adjacent channel desired-to-undesired signal ratios, station allotments had to be spaced at certain minimum distances in order to operate with these assumed maximum facilities. These minimum spacing requirements were then incorporated in the rules, thereby insuring that the prescribed desired-to-undesired signal ratios were preserved whenever stations wer added to the Table. The assumption that all stations would operate with the maximum permitted facilities is critical.

[81] *See* note 106 *infra.*
[82] *See* paragraph 108, *infra.*

Stations operating with less-than-maximum facilities could maintain the prescribed desired-to-undesired ratio (i.e. cause no more interference than planned on by the *Sixth Report and Order*) and could be spaced at less than the minimum distances currently specified in the rules. In other words, the Commission decided in its *Sixth Report and Order* to limit the amount of interference by assuming a certain uniform effective radiated power and then prescribing fixed station separation distances accordingly.

84. An equally valid means of achieving the same objective—to ensure that no more than the prescribed levels of interference are created—would be to allow station allotments at variable distances, but to vary the stations' effective radiated power such that the permitted desired-to-undesired signal ratios between each pair of co-channel and adjacent channel stations are not exceeded. This would provide existing stations with protection from interference that is equivalent to the protection accomplished by the standard mileage separation distances in the Rules. Because the Commission was faced with many hundreds of prospective applicants and because extensive hand calculations were necessary to specify individual limits for each station's effective radiated power, the administrative burden of adopting this case-by-case engineering approach would have resulted in extremely long delays in getting this "new" service to the public. The Commission was thus quite reasonable in adopting the simplifying assumption that all stations should be assumed to employ the same transmitter facilities. The system selected worked well. Over 600 VHF stations have come on the air. And most of them have, in fact, selected close to the maximum permitted facilities. Today, however, few additional stations can be squeezed into the Table with transmitter power outputs at the maximum level; certainly no more stations could be added to any of the larger television markets.

85. Given the present circumstances—more information on home receiver antennas, a saturated VHF Table, computer technology with which to calculate more expeditiously individual station characteristics, and thirty years of experience with the effects of adding stations at distances predicted to cause the maximum permitted amount of interference—we believe the time has come to reexamine the decision that all stations should be assumed to operate with the maximum specified facilities. The grid of VHF stations that has developed contains numerous spaces too small to fit maximum facility stations, but large enough to place more limited facility stations (LFS) which, given appropriate restrictions on their radiated powers would not exceed the desired-to-undesired cochannel and adjacent ratios assumed as planning factors by the *Sixth Report and Order*. It is the means of accomplishing this which we now wish to explore.

Multiple Interference

86. The question of multiple (in the sense of cumulative or additive) interference was addressed in the *Third Notice* and repeated in paragraph 180 of the *Sixth Report and Order supra*. The Commission concluded that the effect of two interfering co-channel stations was no worse than the effect of each treated separately. That is, given the geometry of a situation where three stations are all located at minimum separations with respect to one another, and where directional receiving antennas are employed, the interference at any point within a Grade B contour should be no worse than that which would be caused by a single undesired signal. 41 F.C.C. at 203 (1952).

87. In this proposal the possibility exists that two undesired stations may be closer together than would otherwise be permitted with fixed minimum spacings. This creates a mathematical possibility of interference slightly greater than would be caused by either station alone. We are persuaded, however, that the likelihood of measureable harm is insignificant, for these reasons:

1. First, the effect of two interfering signals is not directly additive. The worst case of two equal interfering signals raises the level of received interference approximately 3 dB. This causes a reduction in the quality of service of less than ½ TASO grade or, alternatively, a reduction in the radius of the interference-limited contour by, at worse, about 4 miles.[83]

2. Second as the likelihood of an LFS causing multiple or cumulative interference increases, the attractiveness of such an LFS allotment decreases. In any situation where an LFS is capable of causing additive interference, the geometry of its placement will result in it also receiving interference from the equivalent of two full-powered stations. In such a case, the LFS will have been required to reduce its effective radiated power in two directions, rather than the one normally contemplated. The result should be an unusably small service area.

3. Third, we will deny any proposal in which it appears that the costs clearly do outweigh the benefits. Anomalous situations, if they arise, will be dealt with individually, as part of the rule making proceeding adding the LFS allotment.

Coverage

88. Although an LFS is required to reduce its radiated power in the direction of a co-channel adjoining station, the effect on its predicted coverage is not so extreme as to make the allotment worthless. For example, in the case of a channel 10 station operating in Zone I at a short spacing of only 106 miles, its estimated Grade B coverage is approximately 2,800 square miles. If the spacing were increased to 122 miles, the coverage would exceed 7,100 square miles. Both are enough to serve urban, suburban and rural areas. If the effects of home rooftop antenna front-to-back ratios and the use of precise frequency offset are taken into account, the possible service areas of these LFS' for spacings of 106 and 122 miles would be approximately 5,400 and 8,200 square miles respectively. Of course if there is any question as to the coverage of a potential station—say, because of rough terrain—an enterpreneur can choose to make preliminary measurements for his own analysis before applying for an allotment.

Probabilities and Uncertainty

89. In considering calculations based on the propagation curves, we consider it instructive to refer to a remark made in the *Third Notice* and repeated in paragraph 85 of the *Sixth Report and Order:*

> * * * the propagation charts are sufficient to afford an adequate statistical basis for describing field intensities *under average conditions*, but it is expected that there may be substantial variations in individual areas. [emphasis added]

Because of these expected but unpredictable variations the Commission, in 1952, selected minimum separation criteria which erred, if at all, on the side minimizing unacceptable interference. 41 F.C.C. 148 at paragraph 113 (1952). Since the notion of equivalent protection is based on the propagation curves and separation criteria, the safety factor inherent in the original

[83] While it is difficult to quantify the impact of noise on the quality of reception, one group—a panel of the Television Allocations Study Organization (TASO)—conducted studies which found that increasing the signal to noise ratio by 4 dB would cause roughly one-third of all television viewers to raise their description of picture quality by one "TASO grade." TASO grades are labeled "unusable", "inferior", "marginal", "passable", "fine" and "excellent." Charles E. Dean, "Measurements of the Subjective Effects of Interference in Television Reception," 48 *Proceedings of the IRE* 1042 (June 1960), Figure 8. This estimate was obtained as follows. For each TASO grade the percentage of observers classifying a picture as that TASO grade was determined for ± 2 dB around the median observer. The differences were then averaged across all six TASO grades.

spacings is preserved in our current proposal. Furthermore, developments in home receiving antennas add a much greater margin of safety than was possible in 1952. Lastly, and this is one additional point that is all too easy to overlook, the station separation criteria have been in use for almost 3 decades. In the interim numerous VHF stations have been added to the existing system. In over forty of these instances short spacing to another station was involved. Nevertheless, a general review of our records of interference complaints and a detailed review in the six shortest spaced cases uncovered no pattern of service interruption or consumer reports of increased objectionable interference. With the advantage of hindsight we may conclude that the original criteria were correct, if not overly conservative, and that confidence is warranted in calculations based on those standards. We do not deny that it is possible to find situations in which our current propagation curves may not apply, but we do assert that such instances are not so common as to cast doubt on the validity of the present proposal and can be treated on a case-by-case basis.

VIII. Technical Proposals

90. The strength of a television signal more than a few miles from the transmitting antenna cannot be predicted with a high degree of certainty. The field strength of a television signal at any particular point is a function of effective radiated power, antenna height above average terrain, frequency and distance from the transmitting antenna. The signal also varies with time and location because of atmospheric and terrain effects. To describe such a signal properly we find that we must resort to statistics, using terms based on median values of field strength (i.e., signal strength) exceeded at a given percentage of locations for a given percentage of time. We can use standard statistical methods to describe these variations so as to predict the strength of the signal within certain calculated confidence limits. The notation F(L,T) means the value of field strength equaled or exceeded at L% of the receiving locations for T% of the time or better.

91. Estimates of the variation of signal strength with distance are obtained from curves contained in the Commission's rules. These curves were derived from many measurements on different stations under varying conditions and therefore represent average values; they are intended for allocation purposes and general studies and will likely prove inaccurate in individual cases that deviate significantly from the norm.[84] The Commission has officially adopted two sets of curves, called the F(50,50) and F(50,10) curves. For a given channel, radiated power, transmitting antenna height and distance, the F(50,50) curves predict the value of field strength that should be equaled or exceeded at 50% of the potential receiving locations for 50% of the time, when measured at a height of 30 feet. The F(50,10) curves are similar except that they predict the value of field strength equaled or exceeded 10% of the time. For convenience in calculations, the field strengths predicted by the F(50,50) and F(50,150) curves are expressed as logarithmic ratios in decibels (dB) above a reference field strength of one microvolt per meter. This unit of field strength is commonly abbreviated dBu.

92. The rules define two service contours that relate to two grades of service. Grade A service is a signal capable of providing an acceptable picture at least 90% of the time at the best 70% of receiving locations, in the absence of interference from other stations. Grade B service is a signal capable of providing an acceptable picture at least 90% of the time at the best 50% of receiving locations, also in the absence of interference from other stations. Both types of service are "noise limited" in that they ultimately are limited by natural or man-made electrical noise.

93. The Grade A and B contours represent the outer limits within which the population, taken as a whole, receives that particular grade of service, or better. These contours are depicted in figures 1(a) and 1(b), which also show their relationship to a propagation curve. The example is based on a station operating on channel 8 in Zone I with an effective radiated power of 25 dBk[85] and an antenna height of 1,000 feet.

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[84] To avoid any misperception on the part of television service licensees, the F.C.C. Rules contain an explicit provision to make it clear that the definition of these field strength contours are not for the purpose of defining a protecte service area. Rather, a television station's theoretical service area is defined in terms of whatever service area results when it operates in the presence of co- and adjacent channel stations operating with maximum antenna height and power at the minimum separation distances in the rules (a) service area that would not be reduced as a result of the equivalent protection criteria proposed today). To wit: "Permittees and licesees of television boradcast stations are not protected from interference which may be caused by the grant of a new station or of authority to modify the facilities of a existing station in accordance with the provisions of this subpart. The nature and extent of protection from interference accorded to television broadcast stations is limited solely to the protection which results from the minimum (allotment) and station separation requirements and the rules and regulations with respect to maximum powers and antenna heights set forth in this subpart." Sec.§ 73.612(a) of the rules, 47 CFR § 73.612(a) (1978).

[85] 25 dBk is 25 decibels above one kilowatt, or 316 kilowatts. The antenna height is actually height above-average-terrain (HAAT).

FIGURE 1 (a)

Decrease of Signal Strength with Distance

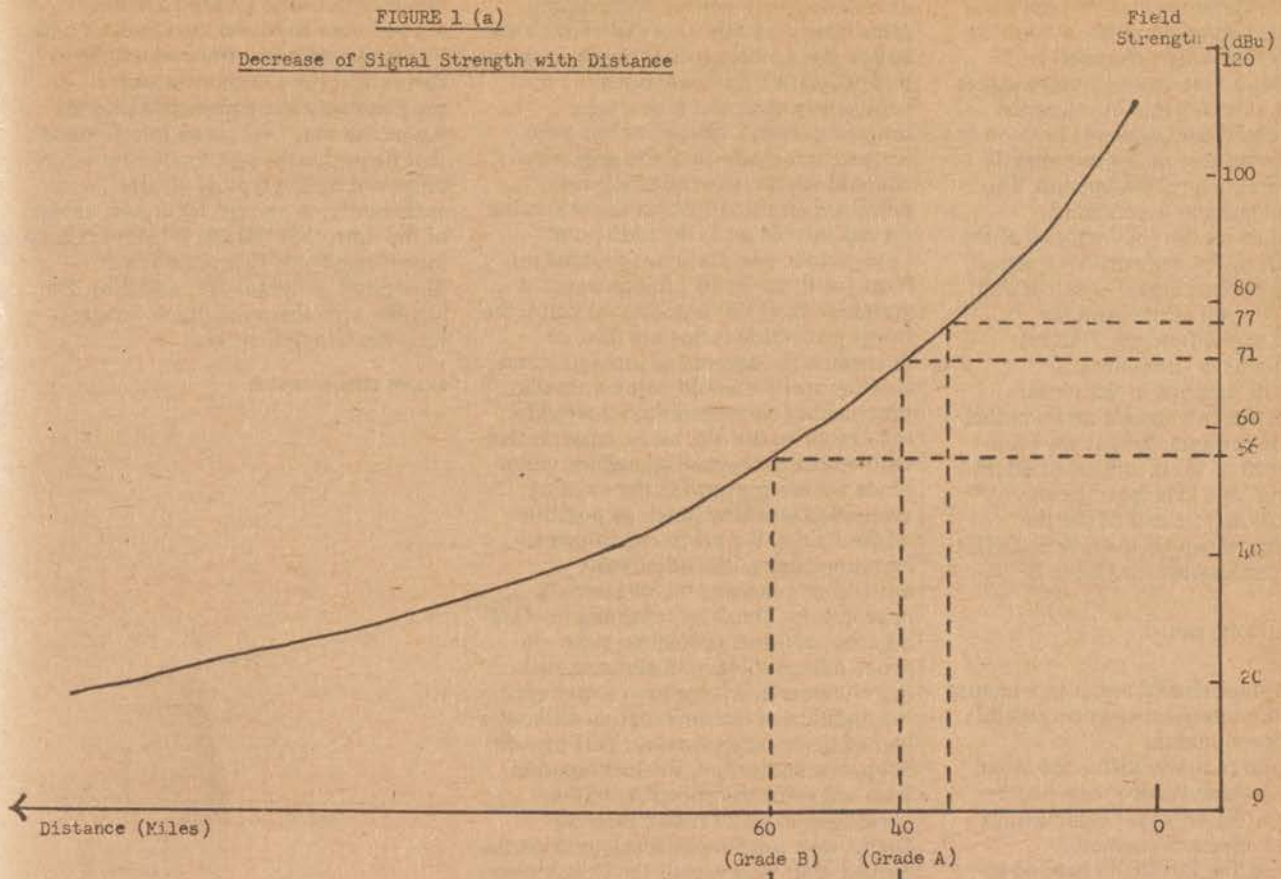
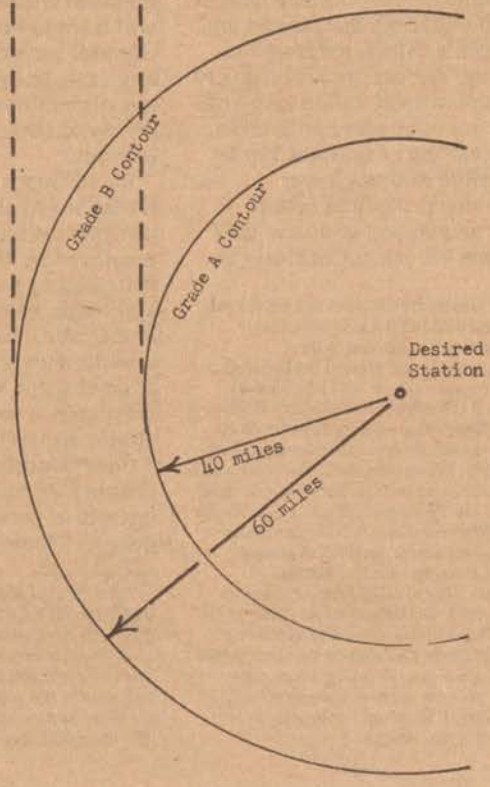


FIGURE 1 (b)

A Plan View of Grade A and B Contours



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94. A television station that operates sufficiently close to another station on the same channel (co-channel) will interfere with that other station's signal. The point at which this interference becomes significant depends both on the relative magnitude of the two signals and their frequency relationship. The relative magnitude is commonly expressed as a ratio (in decibels) of the desired (D) to the undesired (U) signal, where the desired signal is calculated from the F(50,50) curves and the undesired signal from the F(50,10) curves. The term "frequency relationship" applies to the visual carriers of the two signals and whether they are on the same frequency (non-offset), by 10 ± 1kHz (offset) or offset by 10,010 ± .005 kHz (precise offset).[86] In the *Sixth Report and Order* the Commission accepted the following D/U ratios as permissible for Grade B service:

Non-offset, 45 dB; and
Offset, 28 dB.

These values should result in a picture in which the interference is perceptible but not objectionable.

95. Interference can also arise when two stations operate near one another on immediately adjacent channels. In the case of adjacent channel interference, the D/U ratio needed to provide equivalent protection from adjacent channel interference is −6 dB and −12 dB for the upper adjacent channel.[87] We propose, however, to use OdB as the appropriate planning factor in either case with both the desired and undesired signals calculated from the F(50,50) curves. We are not proposing to incorporate the revised values (−6 and −12dB) into our equivalent protection criteria for a variety of reasons. First, the incorporation of these lower adjacent channel protection ratios would allow an existing or a new VHF station to come several miles closer to an existing VHF station without any reduction of its effective radiated power below the maximum. The implications of this possibility have not been sufficiently explored to warrant proposing such a change at this time. Second, our analysis of the adjacent channel interference question was premised on substitution of new service for old service up to the OdB point between the two stations (equidistant between them for two full power stations). If, at this equidistant point, the lower protection ratios are used to determine the amount of protection, an existing station would enjoy a smaller protected service area than it would receive using the old, more conservative OdB adjacent channel protection ratio. Since we are preserving the existing protection levels as much as possible while making the proposed changes, continued use of the admittedly antiquated planning factor seems appropriate. Third, by retaining the OdB adjacent channel protection ratio we space adjacent channel stations such that viewers in a large area experience the addition of the new station without a loss of the existing service. This benefit mitigates, somewhat, the lost benefits from not using the spectrum in the absolutely most intensive manner. Lastly, new receiver technology is on the horizon that may permit the Commission to do away with the adjacent channel separation distances altogether. If this capability reaches the marketplace sufficiently quickly, the whole system of adjacent channel separation distances will have to be revised in a much more comprehensive manner in the future in any case. In that context, an incremental adjustment now may cause more disruption than its long term usefulness justifies.

96. Although neither the co-channel nor adjacent channel ratios were incorporated in the Rules, they were employed by the Commission in establishing power, height and spacing standards adopted in the *Sixth Report and Order*. Thus, the Commission intentionally defined an acceptable level of co-channel and adjacent channel interference when it set up the minimum station separation distances used in the Table.[88] Under our current rules co-channel stations are permitted to operate at minimum distance separation provided their carriers are offset. The result of this is to create a crescent-shaped area between the Grade A and Grade B contours within which the theoretical interference becomes progressively more objectionable. By "objectionable" we mean interference that degrades the picture quality observed by the typical viewer sufficiently, in enough locations, enough of the time, that "Grade B" service is no longer received. This situation is illustrated in figures 2(a) and 2(b). The shaded area theoretically no longer receives Grade B service.

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[86] If the visual carrier frequencies are separated by less than about 0.50 to 0.1 Hz or less, the required protection ratio appears to be approximately 28 dB. A new station could achieve this "zero offset" condition (± 0.1 Hz) either by having both it and the affected co-channel station use very precise frequency standards or by phase locking the new carrier to the carrier frequency of the existing station. When two stations achieve zero offset they are said to have "synchronous carriers." *See A Review of the Technical Planning Factors for VHF Television Service*, Gary S. Kalagian, FCC/OST/RS 77-01, at Appendix E (1977), National Technical Information Service No. 266341.

[87] The adjacent channel ratio is lower than the value assumed in the *Sixth Report and Order* to reflect changes in television receivers that have taken place in the thirty years since that action. *See A Review of the Technical Planning Factors for VHF Television Service*, Gary S. Kalagian, FCC/OST/RS 77-01, (1977), National Technical Information Service No. 266341.

[88] *See Notice of Proposed Rule Making* in Docket No. 20418, 63 F.C.C. 2d 480 at paragraph 55 (1977). Although the Commission cited these "permissible co- and adjacent channel levels" in the *Sixth Report and Order* (41 F.C.C. at 177), it concluded that their inclusion in the rules was unnessary since the standard station separations then adopted ensured that these limits would be observed.

FIGURE 2 (a)

Relationship of a Desired Signal to an Undesired Signal

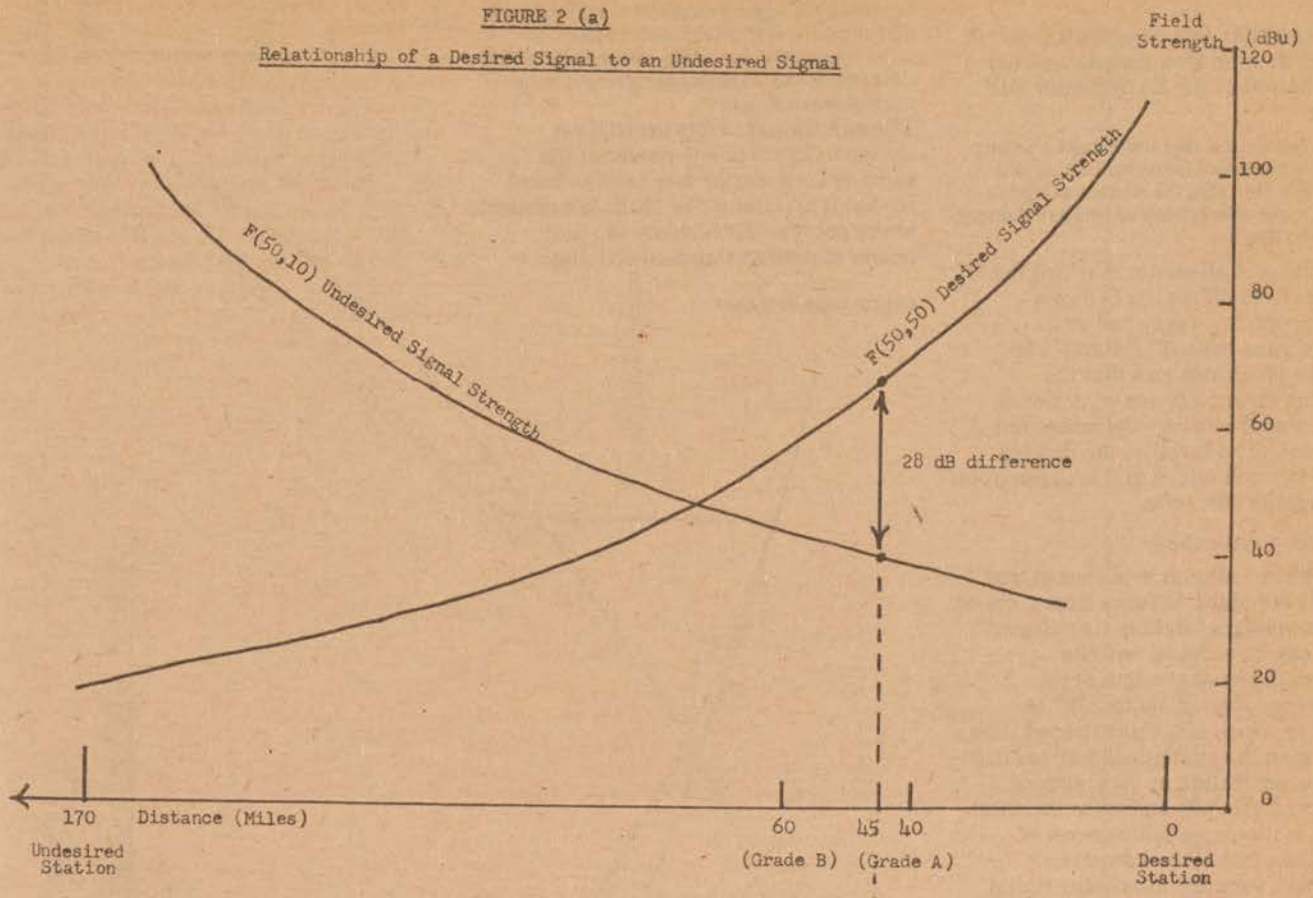
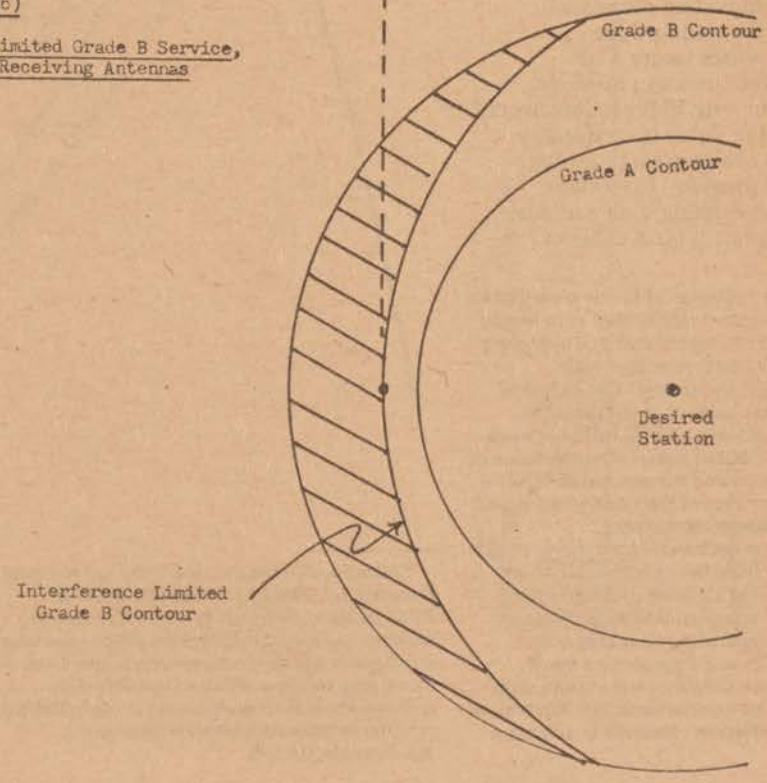


FIGURE 2 (b)

A Plan View of Interference Limited Grade B Service, Assuming Non-directional Receiving Antennas



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In examining this diagram it is worth keeping in mind a statement made in paragraph 94 of the *Sixth Report and Order:*

"It is recognized that there exist no sharp line of demarcation between service and interference but that the service available may be more satisfactory or less satisfactory in varying degrees.

The joining of all points at which the D/U ration is 28 dB results in a new contour which we may call an "interference-limited" contour. The example given assumes that the receiving antenna is non-directional, that is, that it receives the undesired signal equally as well as the desired signal. We will return to this assumption in paragraph 106, *infra.*

Equivalent Protection

97. When a station is placed at less than the standard distance from a co- or adjacent-channel station, its radiated power can be reduced until its (undesired) signal strength at the interference limited contour of the station to which it is short spaced is no higher than the strength of a signal from a full power station at the standard distance. If this adjustment in the short spaced station's radiated power is made, the other station receives *protection* from the interfering signal that is *equivalent* to that provided by the minimum separation distances adopted by the Commission when the Table was set up. We now propose to adopt this "equivalent protection" standard as the standard for determining where future VHF television allotments can be made. Allotments for new VHF stations would be added to the Table in conformity with the rule changes we proposed today if they provide "equivalent protection" to existing VHF stations. "Equivalent protection is achieved as follows:

by limiting the radiation of the new station so as to cause no more interference than would result between cochannel stations operating at standard minimum spacings with maximum height and power. The technical definition is that amount of suppression sufficient to maintain a 28 dB ratio between the estimated F(50,50) signal strength value of the desired signal and the estimated F(50,10) signal strength value of the undersired signal (45 dB in the case of nonoffset, nonsynchronous cochannel operation), at the same distance from the existing station as would occur if the stations were operating with the maximum permissible facilities at standard minimum separations. In other words, a drop-in could present no more interference than would a new station with full facilities and no short-spacing. Equivalent protection to adjacent channels is achieved following the same procedure to maintain a 0 dB ratio between the estimated F(50,50) signal strength value of the desired signal and the estimated F(50,50) signal strength value of the undesired signal.[89]

The application of this principle is shown in figure 3. The power of the short-spaced station has been reduced so that it maintains the 28 dB difference at the point established by the full power station at standard spacing.

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[89] *Memorandum Opinion and Order and Notice of Proposed Rule Making* in Docket No. 20418, 63 F.C.C. 2d 840 at paragraph 41 (1997). Note that this definition assumes the protected station is operating at full power and maximum antenna height. Thus, if the existing station to which a Limited Facility Station (LFS) is short spaced is not at full facilities it can later increase its facilities without any adjustment by the LFS.

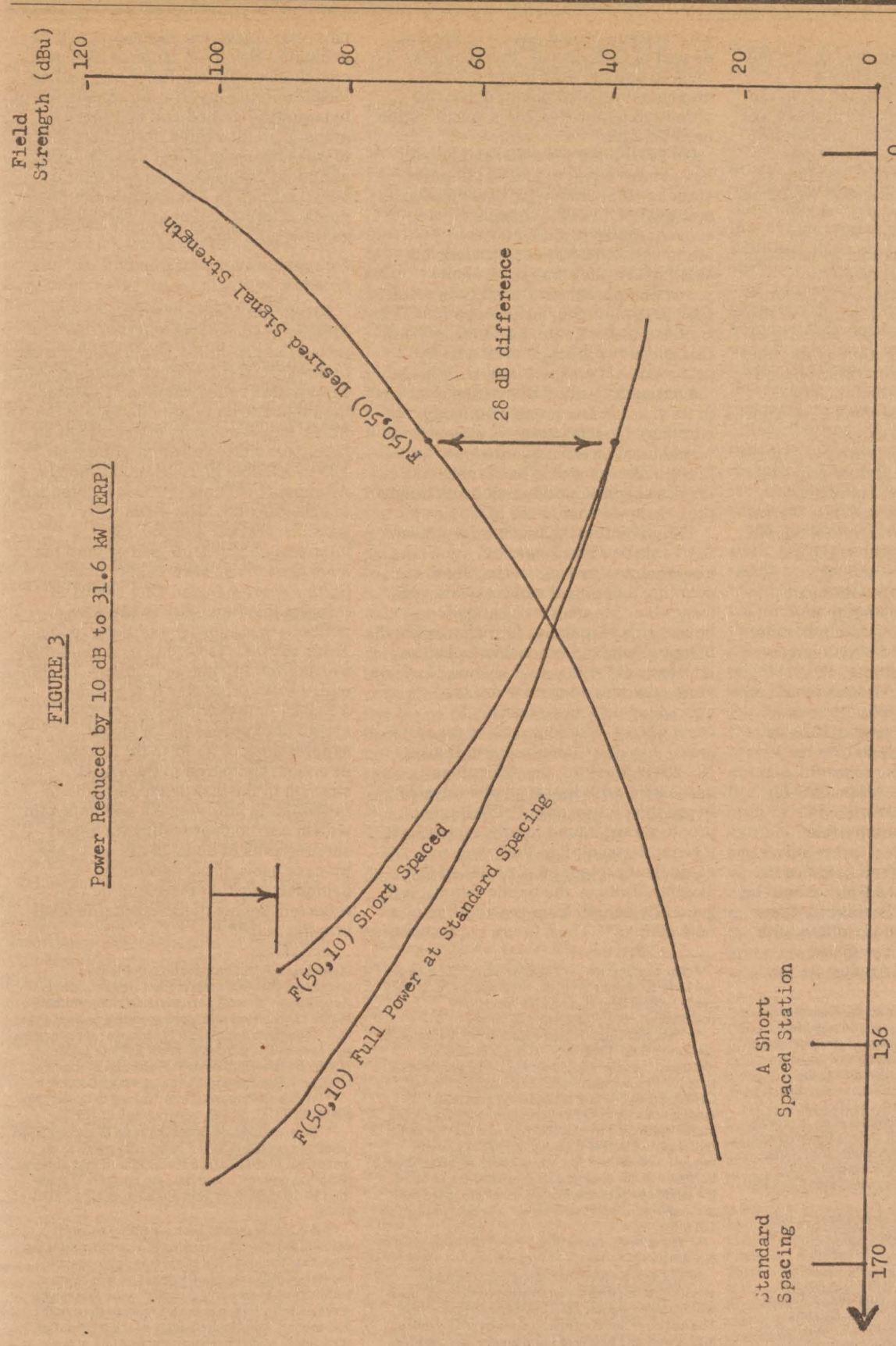

FIGURE 3

Power Reduced by 10 dB to 31.6 kW (ERP)

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98. Implementation of the "equivalent protection" standard assumes a departure from existing practices in the allotment process. First, we propose to amend our Rules to reflect this reduced spacing criterion. Petitions for the addition of new allotments meeting the equivalent protection criterion would be explicitly provided for in our Rules. Such petitions would be treated as routine, in the same manner as petitions for new allotments that meet the standard mileage separation criterion.[90] Second, because of the flexibility of this approach, we think the vast majority of proposals for new VHF allotments could be accommodated within the proposed rules. While we would continue to entertain petitions for waiver of this part of our rules, we would expect petitioners for new allotments to expend their first effort to adapt their proposals to the constraints of the equivalent protection criterion. Thus, future waiver applicants would face the initial burden of demonstrating that they tried, but were unable, to comply with this fundamental technical requirement. They then would be subject to the customarily high burden required under the waiver standard.[91] Third, requests for new allotments that meet this equivalent protection criterion would no longer be characterized as "drop-ins." Once approved, these new allotments would then be available to license applicants as is now the case with additions to the Table. Allotments for stations that are not authorized to operate at maximum permissible transmitter power or that are required to directionalize their antenna pattern in order to comply with the Rules would be designated as Limited Facility Stations (hereinafter "LFS") and identified with an "L" in the Table of Television Channel Allotments.[92] Applicants for such stations would have a limitation, as part of their license, that requires them to operate with lower than the maximum radiated power otherwise permitted by the Rules in some direction or directions.[93]

99. In all other respects, an LFS will have status equal to that of full power stations. Thus, following Commission approval of an LFS allotment, subsequent applicants for new allotments would have to provide an existing LFS the same equivalent protection provided to a full power/full spaced station. Similarly, one a new LFS is added to the Table, its status as a full-fledged VHF allotment would imply protection of its signal from changes in the antenna location of existing stations in its vicinity. Licensees of existing stations proposing antenna moves that would have an adverse effect on the LFS's coverage would have their licenses conditioned to require that they provide protection to the LFS.[94]

100. As proposed, future additions to the Table need no longer be accompanied by engineering studies counting theoretical service gains and losses (i.e., the number of added households reached or formerly reached but now believed unreachable due to interference) within and outside of variously defined service areas according to variously defined assumptions. The four waiver requests granted by the Commission in Docket No. 20418 illustrate the difficulties associated with that type of analysis.[95] In granting future new VHF allotment proposals we intend to rely, instead, on a general assumption that, where equivalent protection is provided to existing stations, the public interest will generally benefit from the addition of a new station.[96] Thus, future requests for new VHF television allotments will be evaluated strictly in terms of technical compliance with our Rules and will no longer initially involve the calculation of hypothetical gained and lost service areas. If an interested party does choose to raise the issue of lost service during allotment proceeding, he will bear a heavy burden to demonstrate that the public interest will not be served by the gains in additional service.

Directionalization of transmitter antenna.

101. In the *Notice of Proposed Rule Making* in Docket No. 20418,[97] we raised the possibility of allowing the use of directional transmitter antennas with suppression ratios equal to or greater than that currently provided for in the Rules, thus enhancing the ability of an LFS to provide equivalent protection.[98] The new Table of Television Channel Allotments we now propose is intended to be as flexible as is technically possible, and yet still provide interference levels no greater than the level chosen as "acceptable" in the *Sixth Report & Order*. One means of insuring this flexibility is to allow petitioners proposing additions to the Table to make use of the best available transmitter antenna technology. To this end, we are proposing a new Rule § 73.685(e), that will allow routine approval of proposals for signal suppressions of up to 15 dB in any direction, compared to the signal strength in the maximum direction of radiation. In addition, we will entertain waiver petitions providing for signal suppressions of up to 25 dB, on a case-by-case basis, if the petitioner demonstrates that there will be no reflected signals of unacceptable level into the null.[99]

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[90] When a petition is filed with the Commission requesting the addition of a new allotment in conformity with the standard spacing requirements a proponent of a mutually exclusive use of the channel must submit its proposal during the comment period of the rule making proceeding. If no opposing party comes forward, the allotment request is normally granted. If preclusion is raised, in comments, the Commission weighs the evidence before it and allots the channel where it provides the most needed service. This same procedure would apply to preclusion questions raised by LFS allotment petitions.

[91] Petitions for such waiver would face "a high hurdle even at the starting gate," *WAIT Radio v. F.C.C.*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

[92] While we wish to maximize the flexibility provided by these new allotments, it is not our intention to change the underlying distribution of television service the Table ensures. Existing licensees will therefore continue to be required to conform to the rules now in effect. Requests for waivers of these rules will continue to be subjected to searching scrutiny for conformity with the precepts of the *Sixth Report and Order*.

[93] The designation will also indicate that they do not have to comply with the requirement for a "city grade" signal over their entire "principle community". *See* paragraph 125, *infra*.

[94] This procedure would result in the limitation on the future flexibility of the existing station's allotment, i.e., the station would no longer be able to move its antenna closer to the LFS allotment. Consequently, we are considering accepting applications for construction permits from existing stations affected by the addition of a LFS for some initial period before granting the LFS allotment request without this limitation being added to their license, e.g., for three months, or until the close of the comment period in the notice of proposed rule making proposing the allotment. *See also* paragraph 128 *infra*.

[95] See note 72, *supra*. *Report and Order* in Docket No. 20418, ——FR —— (October ——, 1980).

[96] We also believe that, generally, the new service provided on an equivalent protection basis will be much greater than any service that is lost. The basis for our conclusion as to overall service loss is outlined below in our discussion of receiver antenna directivity, terrain shielding and other service area considerations, below at paragraphs 103 through 111. It is possible in rare situations involving atypical propagation and terrain situations, that this presumption will be incorrect. Accordingly, we will entertain comments to the notice of proposed rule making adding each of these new allotments addressing the issue of service gains and losses. The burden of proof in these instances, will be on those opposing the addition of the new allotment. *See* Section VI., paragraph 64, *supra*.

[97] *Notice of Proposed Rule Making* in Docket No. 20418, 63 F.C.C. 2d 840, at paragraph 61 (1977).

[98] The existing rule limits the ratio of maximum to minimum radiation in the horizontal plane to no more than 10 dB because it was feared that antenna radiation pattern would become unstable if more than 10 dB directivity was allowed. 47 CFR 73.685(e) (1978).

[99] We would expect such a petition to make a detailed engineering showing of two preconditions: First, that the immediate topography surrounding the (proposed) antenna site must be free of large buildings or large natural obstructions that might serve as reflectors into the antenna pattern nulls; and second, that the frequency of the transmitter is sufficiently stable to ensure the antenna acts as designed. Since we expect the majority of these new stations to be required to implement precise offset.

Footnotes continued on next page

102. In reaching the conclusion that a rule allowing up to 15 dB suppression should be proposed, we have considered the studies cited by Association of Maximum Service Telecasters (AMST) in opposition ot this idea. We conclude, however, that the technical basis for the existing limit (10 dB), though once valid, is now antiquated.[100] Twenty years have passed since the compilation of the data on which we based our earlier conclusion. In the interim, technology has advanced to the point where transmitters with frequency stability necessary to allow higher directivity are now routinely available on the equipment market. More importantly, experience with antennas in Canada and elsewhere has demonstrated that greater directivity, without unacceptable degradation of protection criteria, is achievable with today's antennas.[101] In light of this record, we think it is important that we amend our Rules to take advantage of this increased technical flexibility to intensify utilization of the valuable VHF television spectrum.

Receiver Antennas Front-to-Back Ratio

103. We are less satisfied with the amount of information in the record of Docket No. 20418 on the question of receiver antenna directivity. That record is devoid of quantitative data except for some limited observations by the Group for the Advancement of Television Service (GATS). Historically, the Commission has assumed the receiving antenna to be nondirectional. The *Sixth Report and Order* gave three major reasons for this assumption:

(1) Directivity is needed as a safety factor to permit adjustment of the antenna to minimize multipath distortion and local oscillator radiation;

(2) Not taking into account the directivity of the receiver antenna allows use of the antenna in a compromise orientation for the reception on the same antenna of several desired signals from stations located in different directions; and,

(3) Directivity should be used as a safety factor to permit adjustment of the antenna to minimize the effect of multiple source interference.

In other words, *Sixth Report and Order* treated the receiving antenna directivity as a safety factor that would tend to reduce the amount of interference resulting from two full facility stations operating at or near the minimum required distance separation. This safety factor was appropriate at the time because of uncertainty regarding how well the interference model reflected the real situation. Even if the model used in the *Sixth Report and Order* had been reasonably accurate, it was not clear at the time that the choice the Commission made regarding the amount of interference to be tolerated was the best compromise available. The Commission was comfortable with this uncertainty because when the safety factors (*e.g.* terrain shielding, directional receiver antenna, etc.) utilized in its allotment scheme were factored in, the safety factors would prevent extensive damage to the overall service. If actual experience turned out to be approximately that predicted by the curves there would be considerably less interference than the acceptable worst case projection.[102] Today, with twenty-five years of experience, we no longer face this same degree of uncertainty. It now appears clear that the present separation distances (or protection equivalent to that guaranteed by the standard separation distances) causes little unacceptable interference.[103]

104. We now know that high gain, directional receiving antennas[104] have been well used by viewers to overcome many situations involving potential interference and lack of service. Their use has made an important contribution to the quality and quantity of television reception in many, generally rural, areas. Their use has also reduced the actual loss of service in the predicted interference areas of stations meeting the minimum spacing requirements. In addition, since we propose to allow this spectrum to be more heavily used, this safety factor will take on even more importance in the future. Rather than automatically assuming the universal use of directional receiver antennas, we believe it is preferable to continue to use this technical tool in individual instances to overcome particular cases of interference.[105] Thus, we will continue to treat receiver antenna directivity as a safety factor rather than incorporating it into our equivalent protection criterion.

105. Even if we wished to incorporate some adjustment factor for high gain receiver antennas into our VHF television frequency allotment scheme, we do not a this time have available, in the record of Docket No. 20418 or elsewhere, the type and amount of data necessary to quantify this parameter with the necessary degree of accuracy. Furthermore, the test studies cited in footnote 104, *supra*, raise numerous problems with the incorporation of an assumed average receiving antenna front-to-back ratio[106] in our protection criteria. First, although all antennas exhibited some front-to-back ratio across the entire VHF–TV band, variations of more than 10 dB were observed in the performance of a single antenna on different channels. Second, the direction of the high and low gain areas are frequency dependent, thus an antenna oriented to maximize the

Footnotes continued from last page
we do not expect this frequency stability requirement to be a significant additional cost in most instances.

[100] Filings in the record of Docket No. 20418 report operational VHF television transmitter antennas with signals suppressed below the maximum effective radiated power (ERP) by as much as 23 dB. In the absence of tall buildings or mountains situated so as to cause reflection of unacceptable levels of signal into the "null," we conclude that the use of these more directional antennas is possible provided each proposal is carefully reviewed to protect existing spectrum users.

[101] *See Memorandum, Opinion and Order* in Docket No. 20418, 63 F.C.C. 2d 840 (1977) at paragraph 61 and 62.

[102] *Sixth Report and Order*, 41 F.C.C. 148 at paragraph 109.

[103] During the first decade following the *Sixth Report and Order* the Commission licensed an average of 45 VHF stations per year; the second decade averaged 11 per year and the last eight years average 5 per year. As the available channels filled up, particularly in the Eastern and Western coastal corridors, numerous stations have been added at or close to the minimum mileage separation distances. At this point virtually every East Coast station has one or more channel stations at close to the minimum mileage separation distances from it and six stations have stations less than this minimum from them. (In these six instances the Commission utilized equivalent protection to "move-in" stations below the mileage standards.) We note that the addition of the last 25 stations to the already crowded Table of the six instances involving move-ins using equivalent protection did not result in a surge of interference (RFI) complaints by viewers of the existing stations. Since television viewers have historically been very quick to alert the Commission to instances of RFI, this silence strongly suggests that objectionable interference rarely results from the addition of a new television station at the minimum separation distances (or below these distances if equivalent protection is used.)

[104] *See e.g., NBS Report No. 6099*, Performance of VHF–TV Receiving Antenna *(May 26, 1960); NTIA Report 79–23*, Television Antenna System Components, *R. G. Fitzgerrell* et al. *(June 1979)*, Johnstown VHF Drop-In Study, *W. P. Huber, F.C.C., Pittsburgh Field Office (February 15, 1980)*; Report of the Television Allocation Study Group, *Table 3, at 138 (1957)*.

[105] This would include the availability of such highly directional receiver antennas to reduce the actual loss of service in predicted interference areas of stations meeting the equivalent protection requirement as well.

[106] We use "front-to-back ratio" to mean a measure of an antenna's ability to discriminate against signals striking it from the back. The front-to-back ratio compares the reception of signals hitting the front 180° of the antenna to the back 180°. This is contrasted with antenna "directivity" which is the ratio of the maximum radiation intensity of the antenna to the average radiation. A third term also used to describe an antenna's performance characteristics is "gain" by which we mean a ratio of the maximum radiation intensity of the antenna to the maximum radiation intensity from a reference antenna (usually a half wave dipole) with the same power input.

desired-to-undesired ratio of the signal received from one station may in fact be maladjusted for optimum rejection of an undesired signal at a different frequency. Lastly, it was determined that under actual field conditions the directional patterns of receiver antennas in use often varied greatly and generally were different than when measured on the antenna test range. Because of these problems, we will not assign a value to the receiving antenna directivity factor or grant waivers to our equivalent protection requirement based on attempts to show that directionalized antennas permit closer spacing of stations.[107] We aknowledge its availability as a tool that, in many cases, can be used to reduce or eliminate predicted interference, but we think this potential has already been adequately factored into our process for spacing television allotment.

106. Although we have not chosen to incorporate antenna directivity into our proposal of equivalent protection, its value as a safety factor should not be underrated. In the example given earlier we followed the longstanding practice of treating all receiving antennas as non-directional. This is highly artificial because, insofar as we are aware, *all* receiving antennas *are* directional to a greater or lesser extent. In fact studies show that, despite their variability, rooftop antennas of reasonable quality (generally, those selling for $35.00 and up) can usually achieve an 8 to 12 dB front-to-back ratio. In fact, not unduly expensive antennas are available that provide 20 dB front-to-back ratios. Choosing the least of these figures and drawing on the discussion beginning in paragraph 90, *supra*, we will provide one last diagram. The employment of precise carrier offset reduces the required D/U ratio to 24 dB. The use of a receiving antenna having a front-to-back ratio of 8 dB has the effect of reducing the D/U ratio still further to 16 dB. This produces a shift in the location of the interference-limited contour in a direction away from the existing stations, as shown in figures 4(a) and 4(b). The assumed station parameters are the same as those used in the preceding illustrations.

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[107] Naturally, a television household at the perimeter of a station's interference limited contour is more likely to employ an outdoor antenna having better characteristics than a household located inside, say, the Grade A contour. In addition, while it is more of a sociological than an engineering observation, the households most strongly desiring the station have resorted to self-help to improve their reception, so that theoretical losses of service must be offset by the probability that those most in need of service and most lacking in over-the-air alternatives long since have taken their own corrective action, where it was technically possible to do so. In short, we believe that it is a serious mistake to underestimate the determination and intelligence of TV watchers, particularly in isolated rural areas where the problems of poor reception and the strategies for overcoming it have been a familiar part of the landscape for many years.

FIGURE 4 (a)

Relationship of Desired to Undesired Signal

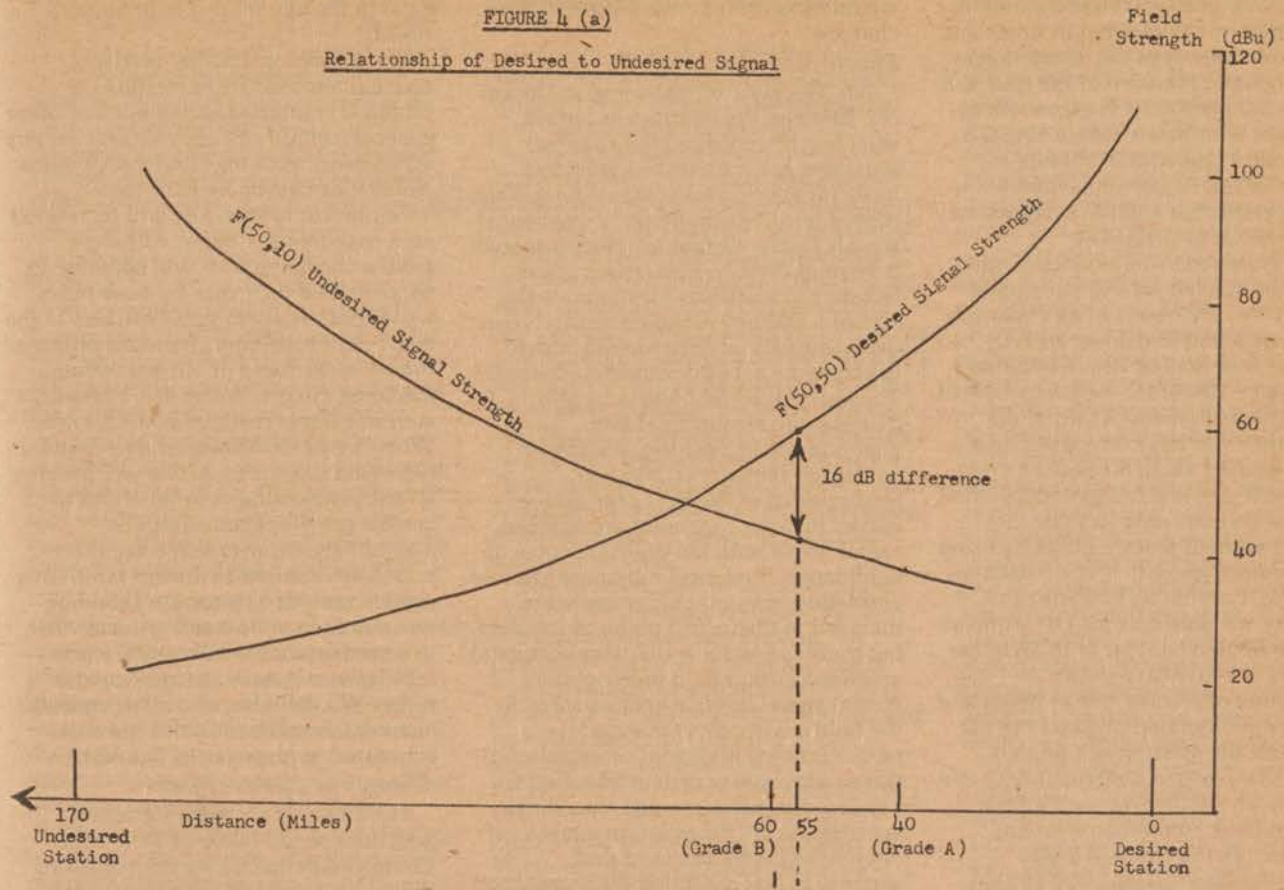
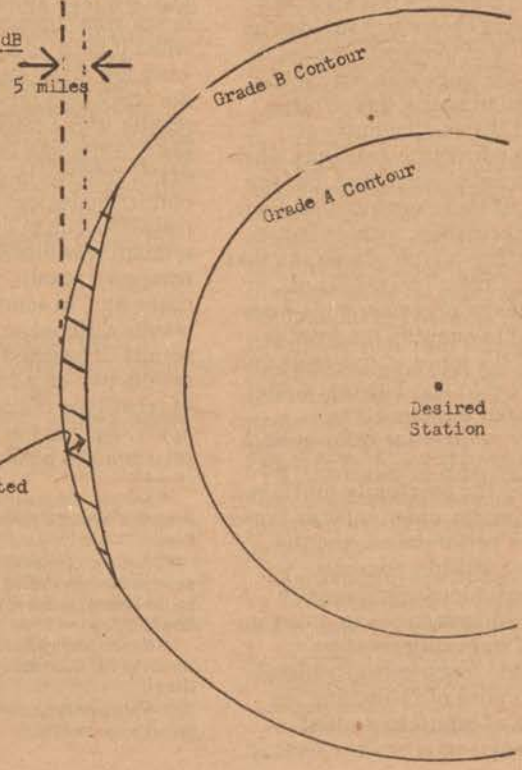


FIGURE 4 (b)

A Plan View of Interference Limited Grade B Service Assuming Precise Offset and a Front-to-Back Ratio of 8 dB



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107. Several observations concerning picture quality are in order at this point. The picture quality at the interference-limited contour received at the best 50% of the locations 90% of the time will be equivalent to or better than a TASO 3 (interference perceptible but not objectionable). At the noise-limited Grade B contour it will have decreased to approximately a TASO 4 (interference somewhat objectionable). Within the shaded area the quality of service will vary from TASO 3 near the interference limited contour to TASO 4 near the noise limited Grade B contour for the same 50% of the locations/90% of the time measurement. At worst the interference will have increased by a modest amount along the outer margin of a cresent measuring 5 to 6 miles thick. The same results could have been achieved without precise offset by using a receive antenna with a 12 dB front-to-back ratio. Continuing this line of reasoning, we note that the D/U ratio at the noise limited contour is 16 dB in the examples we have given. Any combination of precise carrier offset and antenna directivity adding up to 16 dB would shift the interference-limited contour to a position congruent with the noise-limited contour. In such a case there would be no predicted loss of service within the Grade B area.

108. During the pendancy of Docket No. 20418 the Commission's staff investigated the question of receiver antenna characteristics. As a result, several observations on typical home receiver antenna characteristics can be made. A survey of rooftop antennas in Grade B service areas was conducted. Though limited in scope, this survey indicated that the vast majority of homes employed rooftop antennas when cable TV was not present, and that the vast majority of these antennas had ten elements or more; these include log periodics which is a type of antenna that did not exist in 1952. The results of studies of antenna characteristics were then reviewed to quantify the front-to-back ratios of the types of antennas that are in actual use today. The reported studies indicated these types of antennas have an average front-to-back ratio, across the VHF band, of 11.5 dB. to 12 dB. Given the possibility that some viewers still employ older antenna types that have poor performance, and the possibility that multiple source or multipath interference might require intentional misalignment of an antenna, we selected a more conservative average antenna front-to-back ratio of 8dB for the purpose of estimating the actual amount of interference that would be caused by the proposed rule changes.

Effects of terrain

109. The state of the record in Docket No. 20418 on the question of terrain shielding of undesired (co-channel) signals is not sufficient to provide a basis for specific rules at this time. That rugged terrain can attenuate co-channel signals from a distant interfering source is beyond dispute. Similarly, rugged terrain can significantly attenuate the size of a station's Grade B service area, decreasing the service area to which interference actually would be caused. The unresolved problem is how to quantify the terrain shielding phenomenon in the form of a terrain correction factor that could be incorporated in the FCC propagation curves in order to predict the reduced signal levels with the desired degree of confidence. Studies of automated terrain correction computer programs were included in the record of the proceeding, but these models are still developmental and need further field measurement.[108] Actual signal levels were measured in the field environment in support of particular new allotment proposals, but these submissions cannot be relied on because the measurement procedures specified in the Rules (or an equivalent alternative) were not used and supporting test condition documentation was missing.[109]

110. A terrain correction factor was developed and incorporated into the FCC Rules in 1975, but reliance on this factor was suspended later that year when it became apparent that there were too many unusual situations where the procedure produced illogical results.[110] A similar situation of uncertainty and lack of field verification exists relative to the automated terrain correction factors submitted for consideration in Docket No. 20418.[111] No attempt was made to verify the computed results of the various test cases and, in some instances, computed results differed so greatly from the results of selected hand calculated results (which allow rational selection of what type of correction factors to apply, but are too cumbersome to utilize on a general basis) that errors obviously exist in the automatically processed results.

111. We recognize that in highly unusual circumstances, neither the proposal contained herein nor any other general method will provide satisfactory estimates of coverage and interference. Anomalies caused by extreme variations in topography will be treated on a case-by-case basis. Although terrain considerations will continue to be examined on a case-by-case basis, we do not expect to grant waivers to the equivalent protection standard proposed today on the basis of alleged terrain shielding effects. We prefer, instead, to continue our investigation of this area. When we have developed an adequate record on this question, we will propose a further amendment to the Rules to correct our propagation curves accordingly. Prior to that time, the added attenuation to distant interfering signals provided by terrain shielding will continue to be a safety factor that, in some instances, will result in less interference than is assumed by our Rules. We will also, of course, consider any additional data on this question submitted in response to this *Notice*.

Changes in Carrier Offset

112. Under the system for future additions to the Table of Television Channel Allotments we are proposing today, new stations are required to provide equivalent protection to existing co-channel stations. We are defining this protection using a desired-to-undesired signal ratio of 28 dB at the protected station's interference limited contour, assuming the added and existing stations are offset.[112] Adding new stations to the VHF television service will frequently require existing stations to change their offset designation. As more stations are added, the number of existing stations thus affected may increase. When proposing how to allocate this added expense (and the added expense of precise offset discussed below in paragraph 47), one of the Commission's most important concerns is to do so in a manner that encourages the use of these spectrum saving techniques and also equitably distributes the expense of utilizing the available radio spectrum more extensively.

113. The burden of the equipment cost to existing VHF television licensees necessitated by the addition of a new station to the existing VHF service can be shared in several ways. At one

[108] *See e.g., Techniques for the Evaluation of Proposed VHF TV Drop-Ins*, G.A. Hufford, OT Report 77-112 (July 1977).

[109] *See, e.g.*, Engineering Exhibit attached to petition for rule making (RM-2727) filed July 9, 1976 by the Group for the Advancement of Television Service.

[110] *Report and Order* in Docket Nos. 16004 and 18052, 53 F.C.C. 2d 855 *but see*, 56 F.C.C. 2d 749, 750 (1975).

[111] *Notice of Proposed Rule Making*, 63 F.C.C. 2d 840, at para. 66 (1977).

[112] When offsetting is not possible and synchronous carrier frequency control is not utilized, a 45 dB protection ration must be observed. *See* paragraph 94, *supra*.

extreme, the proposed new station can bear the entire burden of any changes necessary to accommodate its presence. At the other extreme, each licensee affected by a new station can bear its own additional costs. Or, as an intermediate approach, a cost sharing scheme could be negotiated between the stations. Requiring that the new licensee bear the cost of every stations' modifications will create an additional financial barrier to the introduction of new stations. In certain instances this barrier may foreclose the creation of a new broadcast outlet that would otherwise provide additional service to the public. Furthermore, it might be inequitable to require the new station applicant, merely because it appears on the scene later in time, to bear the entire cost of imposing on other licensees spectrum efficiency measures that have a general public interest benefit.[113]

114. As the spectrum became more crowded, the Commission has decreased channel bandwidths,[114] required the addition of polarization diversity,[115] increased the channel loading and in other ways intensified the utilization of the available spectrum in order to accommodate the growth of demand for the spectrum resource.[116] In these situations, it has been our general policy to require each user to bear the cost of upgrading its own equipment to the new, more spectrum efficient standard.[117] This approach was adopted because radio spectrum is a public resource in which no user gains a vested right. Every time the Commission has found it in the public interest to mandate more efficient equipment, we have decided that each user had to share the burden of the additional equipment cost, as part of its right to continued use of the spectrum. Under this approach each station would bear the cost of modifying its own equipment in order to accommodate additional spectrum users.

115. The manner in which the Commission now allocates the cost of adding new television channels to the Table is contrary to the approach followed elsewhere when we have implemented spectrum conservation measures. The eventual permittee for a new television allotment bears the cost of offset changes of existing licensees necessary to accommodate the proposed new station. Although this procedure does not involve a sharing of the burden, it is not totally one-sided. The tradeoff is that the existing station consents to an immediate modification of its license to implement the needed offset adjustment, rather than waiting until the end of its three year license term or insisting upon a hearing. This benefits the new station and the public by allowing an earlier operational date.[118]

116. Continuation of this procedure may not be required in the future, if, in the context of this rule making, we determine that this type of shifting of costs is not in the public interest. The record on the desirability of maintaining or abandoning this practice is not sufficiently complete to warrant Commission action on the matter at this time. Accordingly, we will leave this question open for further comment. When the rules proposed today are considered for adoption by the Commission we will also define our policy, if indeed any is needed, on future conduct as to the allocation of costs in these circumstances. At this point, we believe the approach most consistent with the Commission's practices generally and most approach most consistent with the Commission's practices generally and most desirable from a public interest viewpoint would be to require each licensee to bear the cost of equipment modifications necessary for its continued use of the spectrum.

Use of Precise Offset

117. We also are considering the possibility of requiring the use of precise offset,[119] to provide further improvements in picture quality beyond that provided by our equivalent protection criteria.[120] This raises a corollary issue of how to allocate the costs of precise offset if its use were required. At the outset, we can state unequivocally that the use of precise offset is desirable and we wish to encourage its use. The use of precise offset has been demonstrated to improve the quality of reception of a desired signal in the presence of an undesired co-channel station by the equivalent of four to six dB.[121] As the VHF television spectrum becomes more valuable, reflecting both increasing demand for existing services and the increasing number of potentially beneficial uses of the spectrum, it becomes increasingly important that spectrum be used as intensively and efficiently as possible. Once a particular licensee receives limited rights to a portion of the spectrum, there is little or no incentive to be concerned about interference to other spectrum users (*e.g.*, to invest additional resources to replace current equipment with newer, more spectrum efficient equipment). In fact, to the extent that adjacent or co-channel spectrum users represent potential competitors, interference to them may benefit the licensee.

118. A major reason why the individual licensee does not have the incentive to make such investments is that it does not pay for the spectrum it uses. This has two effects: (1) If a licensee has unlimited free use of the spectrum protected by minimum separation requirements there is very little incentive to improve equipment to permit more intensive use of the spectrum; and, (2) because the licensee has a guaranteed market share arising from monopoly control over a particular portion of the spectrum resource, there is no motivation to negotiate with prospective competitors to reach an agreement by which new entry into its market can take place. Thus, in the absence of a spectrum fee it may be more in the public interest to require that resources be expended on equipment that permits more efficient use of the spectrum than and prospective new LFS operators. Since the technology for precise offset now appears to be available at a modest cost compared to the total investment in a VHF television station, the approach we shall propose will be one designed to foster its use in as many circumstances as possible.

119. We propose to use precise offset as an interference reducing tool that either new or existing licensees can use to capture (or recapture) service areas not guaranteed them by our equivalent

[113] When precise offset is utilized both stations enjoy an enlargement of their coverage areas.

[114] Channel-Splitting in the Maritime Band, 156–162 MHz. 13 F.C.C. 2d 874 (1968); Frequency Allocations 450–470–MHz. Band, 11 F.C.C. 2d 648 (1968); Frequency Allocations 450–470–MHz. Band, 10 F.C.C. 2d 885 (1967); channel Splitting 450–470–MHz. Band, 8 R.R. 2d 1629 (1966); *Report and Order* in Docket No. 18263, 19 R.R. 1663, 1670 (1970). *Cf.* Report of the Advisory Committee on Land Mobile Radio Service, Vol 1 at 45 (1967).

[115] *See e.g., Notice of Proposed Rule Making* in Docket No. 21505, F.C.C. 79–310, 44 FR 32420 (June 6, 1979), 45 R.R. 2d 1203 (1979).

[116] *See e.g., Further Notice of Proposed Rule Making* in Docket No. 13847, 10 F.C.C. 2d 885, 896, paragraph 36 and 37 (1967).

[117] The Commission has also implemented antenna performance standards in the Common Carrier Point-to-Point Microwave and Private Operational Fixed Microwave Service, in each case requiring each spectrum user to bear their own costs. 47 CFR 94.75(b), note 1.

[118] *See e.g., Booneville, Mississippi*, 40 F.C.C. 2d 629, 634 (1973).

[119] Precise Offset is accomplished by offsetting a station's carrier frequency 10,010 Hertz and keeping it within about 2.5 Hertz of that frequency. To accomplish this, the station must be equipped with special equipment that currently costs approximately $10,000, but which should cost somewhat less in the future as the demand for this type of equipment grows. *See* paragraphs, 120–121 *infra*.

[120] *See* paragrph 106 *supra*.

[121] *See, Notice of Proposed Rule Making* in Docket No. 20418, 63 F.C.C. 2d 840 at paragraph 59 (1977).

protection criterion. The 28 dB equivalent protection standard we propose to adopt as the cornerstone measurement of a station's protected service area limits objectionable interference to an area close to a station's noise limited Grade A contour (as defined in § 73.683 of the Rules). If a new station begins operating at the allowed minimum distance from an established station, there may be viewers in the established station's audience within the region between the noise limited A and B contours who will no longer be able to receive an acceptable picture from the established station. In addition, a very small portion of the predicted Grade A service area will be degraded to slightly less than Grade A service quality (but still better than Grade B). We have concluded, based upon the record in Docket No. 20418, that, because of terrain shielding in some cases, the ability to orient highly directional receiver antennas in others and the availability of substitute sources for the "lost" signal (e.g., cable systems), many of these potentially "lost" viewers will not be lost or can be recovered. We propose to reserve the use of precise offset as an additional safety factor to be used at the election of the affected stations.

120. Specifically, we propose to allow either of two stations so spaced that it receives interference within its noise limited Grade B contour (i.e., a D/U ratio of less than 28 dB at the noise limited Grade B contour) to elect to use precise offset to regain some of the potential service area lost to this mutual interference. If one station requests the use of precise offset, both stations will be required to use precise offset. Consistent with our general policy of distributing the cost of spectrum saving technologies among all users of the spectrum, we propose to require each station to bear the cost of its own equipment modification. This cost distribution is equitable, we believe, because both stations will enjoy larger interference-free Grade B service area as a result of the introduction of precise offset operation.

121. Since a station required to go to precise frequency offset operation by one co-channel station will face no additional cost if it requests that other co-channel stations interfering with its signal also be required to go to precise offset, we expect the majority of stations in the more spectrally crowded areas of the country to convert to precise offset over a period of time as a result of this chain of requests spreading. The introduction of this new equipment, with costs borne by all spectrum users, is appropriate for efficient utilization of the highly-valued spectrum in these high demand areas and the resultant more intensive use of the spectrum is clearly in the public interest.

IX. Additional Policy Considerations

122. The cumulative result of the technical and policy changes we propose above is a new orientation toward the expected service area of both existing and new VHF television stations. The existing Table of Television Channel Allotments is virtually saturated in medium and large markets. The objectives of the VHF television allotment scheme implemented by the *Sixth Report and Order* [122] have been substantially achieved. The only additional service that can arise from this spectrum must come from its more efficient utilization. A significant amount of VHF television spectrum remains vacant, though primarily it falls outside the Table, and largely outside the major markets. In the absence of demand for television services we might not be concerned about this unused spectrum capacity. But, in light of the continued strong demand for more television programming, both in terms of quantity and diversity offered, it cannot be in the public interest to allow this spectrum to remain fallow.

123. To achieve this greater efficiency, we propose to introduce a flexible allotment scheme that permits the tailoring of each station's effective radiated power (ERP) to use up to the full remaining capacity of these under-utilized spectrum areas, stopping short of causing more interference than was initially found acceptable under the *Sixth Report and Order*. The existing grid of VHF television allotments, and the fixed UHF television allotment scheme, will remain in place to guarantee basic television service to the vast majority (over 96%) of the population. Superimposed on this fundamental system,[123] we envision a patchwork of new limited VHF television allotments dictated in size not by a desire to provide broad universal coverage to large areas of the country, but rather defined by the existence of sufficient demand for television service to support a station. Of course the parameters of these new stations will be constrained by the limited amount of spectrum still available.

124. Since these new stations must fit into and protect an irregular distribution of existing stations, each will be unique to the particular underserved market it seeks to serve. Therefore, certain rules and practices used by the Commission to evaluate the desirability of creating new allotments or granting new license assignments, based on general criteria that were relevant to the 1950's, are no longer desirable. *See* Section VI, *supra*. The type of analysis used to consider and reject VHF drop-ins in the past is of questionable validity not only in terms of spectrum efficiency but also because it proceeds from the improbable assumption that the Commission, rather than the prospective broadcaster, has the most knowledge about the demand for additional service and the other criteria that determine how this remaining spectrum capacity might best be used. Thus, the justification for a proposed new allotment will not depend on how many people it can potentially serve, but rather on how many people will actually be interested in the service. The prospective broadcaster will define the desired service, limited only by the requirement that existing stations be protected from unacceptable interference, i.e., by providing equivalent protection, and by preclusion. *See* Section VI, *supra*. Since starting up a television station requires a large capital investment, we think it is unlikely that proposals for allotments serving minimal service areas will become a real source of spectrum waste.[124] Furthermore, the economic dynamics of television service creates a strong natural incentive for the businessman to try to serve as large an audience as possible.[125]

125. Consistent with this deemphasis of an idealized service area as a measure of a new station's desirability, we propose to no longer consider the

[122] Adoption of the Table was predicated on three primary considerations: (1) Efficient use of the spectrum allocated to television; (2) a truly universal nationwide television service and, (3) preventing procedural delay in the granting of licenses. *Sixth Report and Order*, 41 F.C.C. at 152 (1952).

[123] Which serves, among other purposes, the statutory goal of guaranteeing a fair and equitable distribution of this radio service to all citizens. 47 U.S.C. 307(b) (1962).

[124] Assuming a straight line depreciation over 15 years, it is estimated that the annual cost associated with a transmitter and antenna, including its electrical needs is $55,360 and $82,350.00 respectively for 100 KW (low VHF) and 316 KW (high VHF). These figures are exclusive of the cost of personal, building and plant, especially studio equipment. *Staff Report on: Comparability for UHF Television*, Table 5–1 at 76 (September 1979). The low power television service, adopted by the Commission in a rulemaking on September 9, 1980, provides a less expensive option for achieving this objective. *See* NPRM in Docket No. 78–253, 45 FR 69178 (October 17, 1980).

[125] For example, of the 583 commercial VHF television stations licensed in the 48 contiguous states, 531 have facilities that result in a predicted noise limited Grade B contour within 20 miles of the maximum possible Grade B contour (i.e., 60 miles of a possible 80 mile radius, or 45 of a possible 65 mile radius.)

"city grade service" or coverage of the complete "principal community" as a criterion when evaluating proposals for new VHF television allotments.[126] We expect the petitioner to seek an allotment that would serve as much of a potentially available audience as is technically feasible and will continue to award merit on this basis in rule making proceedings involving a selection between different cities. Outside of such situations, no consideration would be given to whether the service area of future LFS allotments are designed to comprise a complete city or urban area, or whether the complete "principal community" receives a "city grade signal." We propose this change for two reasons: (1) The areas of unmet demand may not conform exactly to city boundaries; and, (2) many potential LFS allotments (where spectrum is currently going unused) may not conform exactly to city boundaries. In neither of these situations should potential new service be denied because of geographical or historical accident.

126. It is our intention, for the present, to continue to require applicants for new channel allotments and LFS licensees to ascertain the programming needs of the "community" they serve.[127] Consistent with the flexibility with which LFS licensees can define their proposed service area, however, we propose to allow LFS licensees to define any "community" as their "principal community" for the purpose of Section 73.685(a) of the Rules. We also propose to allow LFS licensees to specify "communities" that are subdivisions of cities, towns, villages, or other political delineations, as well as contiguous combinations of such areas as their "principal community" for the purpose of ascertainment.[128]

127. Consistent with our more flexible interpretation of "community," we also invite comment on how the comparative licensing policy for LFS facilities could be modified to give comparative weight to applications proposing to serve "communities" defined other than geographically, e.g., for ethnic, racial, or cultural groups.

Notice to Existing Licensees.

128. When a request is filed with the Commission for the creation of a new VHF television allotment under the rules proposed today, existing licenses within a 200 mile radius may be affected. Stations to which the proposed station is short spaced must be provided equivalent protection or they will experience unacceptable interference. Furthermore, stations in the same or overlapping markets will experience increases competition. In addition, there may be other factors that warrant providing notice of any new allotment to these existing stations and to other parties.[129] Consequently, we will continue our practice of placing petitions for rule making to amend the Table on 30 days public notice prior to disposition of the request. In addition, to ensure direct notice to those licensees who may be required to provide protection to the LFS signal, we propose that the petitioner be required personally to serve notice to all co- and adjacent channel stations to which it has less than standard spacing.[130]

Impact on Vacant Allotments.

129. A small number of unused VHF television allotments still exist in smaller cities. Because an application for a new allotment creates the immediate prospect for a new television service while the vacant allotment holds only the promise of a new service that might someday go into service, we believe it is inappropriate to restrict the service area of proposed LFS allotments to protect allotments presently in the Table.[131] Thus, the rules we are proposing do not require equivalent protection of vacant allotments. Once a licensee has been granted for an LFS allotment, a subsequent proposal for use of any vacant allotment at less than the standard spacing from the LFS will have to provide equivalent protection to that LFS. The equitable issues in the distribution of frequencies can be addressed by all interested parties in the course of rule making to amend the Table of Television Channel Allotments, whenever an LFS allotment would have a preclusionary effect upon the use of a pre-existing allotment that lies vacant and unapplied for.

130. If an application to activate a vacant allotment at less than standard spacing from a proposed LFS is filed before the Commission grants the new allotment, we propose to consider the license application without regard for the short spacing to the LFS, and the LFS application will be required to modify its proposal to reflect the added full facility station. In order to eliminate the possibility that applications for vacant channels will be filed in these circumstances simply to delay the introduction of an LFS or to preserve the unrestricted status of a vacant allotment for some projected future demand, license applications filed under these circumstances will be rigorously scrutinized for any indication that they are motivated by a desire to delay the introduction of an LFS. Furthermore, we plan to adopt a policy of refusing to grant requests for extensions of construction permits ("C.P.'s") granted under these circumstances. If the proposed unrestricted facilities do not begin operation on schedule, extensions of C.P.'s of such stations will be granted only if they propose to provide equivalent protection to the LFS petitioners and licensees.[132]

131. We believe that applicants who are proposing to fill an immediate demand for service should be preferred over allotments that have been available for almost 30 years and yet remain vacant. Adherence to this new policy will result in the reallotment of

[126] *See* 47 CFR 73.685; *WSTE–TV, Inc. v. F.C.C.*, 41 R.R. 2d 1117 (1977), 33 F.C.C. 2d 435,451 (Rev. Bd. 1972); *Shenandoah Valley Broadcasting, Inc.*, 5 R.R. 2d 552 (1965); *Central Coast Television*, 2 F.C.C. 2d 306 (1966), 14 R.R. 2d 575 (Rev. Bd. 1968); *Cf. Riverside Amusement Park Co., Inc*, 69 F.C.C. 2d 1040 (1978).

[127] Section 73.685(a) of the rules requires each license to cover its "principal community" with a "city grade signal". This same principal community is the licensee's area of primary responsibility for ascertainment purpose. *See Ascertainment of Community Problems by Broadcast Applicants (Primer)*, paragraph 10, 36 FR 4093 (March 3, 1971).

[128] Accordingly, LFS licensees would not be bound by the earlier definitions of principal community in 73.685(a) of our Rules and cases such as *Capitol Broadcasting Co.* 5 R.R. 2d 231 (1965); *KSD/KSD–TV, Inc.* 38 R.R. 2d 1208, 1211, paragraph 11 (1976); *North American Communications Corp.*, 44 R.R. 2d 1635, 1643, paragraph 11 (1976); *North American Communications Corp.*, 44 R.R. 2d. 1208, 1211, paragraph 7 (1978). Cf. *Notice of Inquiry and Proposal Rule Making* in BC Docket No. 80–130, 45 FR 26390 at paragraph 15 (March 18, 1980).

[129] For example, existing stations may wish to relocate their transmitter antenna facilities prior to Commission approval of a nearby LFS allotment in order to avoid the requirement that they provide equivalent protection to the LFS. *See* paragraph *30, supra.*

[130] *See paragraph 99, supra*, specifying the circumstances under which we propose to require existing stations to provide protection to LFS allotments. Existing stations will have the period between, for example, the date an application for a new VHF allotment is put on public notice and the close of the comment period in the rule making proceedings proposing the new allotment in which to request changes in their facilities without being required to protect the proposed new allotment. Extensions of time on construction permits (C.P.'s) granted to existing stations under these circumstances will not be extended so that C.P.'s are not used as a means of preventing or delaying the introduction of a new allotment into an area.

[131] Because they are located primarily in small cities more than the minimum mileage separation distances from the top 100 markets, only two of the existing vacant educational allotments are close enough to a top 100 market to be significantly affected by the addition of an LFS allotment. We, therefore, do not propose special rules regarding the protection of vacant educational channels.

[132] Since our proposed new policy of not granting C.P. extensions under these circumstances could have harsh repercussions in certain circumstances, applicants for new or changed facilities at less than standard spacing from a proposed LFS should be careful to ensure that construction is completed within the 18-month period provided for by § 1.596(a) of the rules.

spectrum from the potential Grade B contour of the vacant standard spaced station to the actual Grade B contour of a soon to operate LFS station.

132. We conclude that this reallotment is desirable for several reasons. First, and foremost, this shifting of spectrum capacity will meet existing demand for new service. Thus limited spectrum will be realloted to areas where there is immediate demand for its use. Second, although there may be some shifting of maximum potential service area from the vacant allotment to the LFS allotment, we consider the potential service area thus shifted to be relatively unimportant. The radius of the interference limited Grade A contour of a typical VHF station is roughly 30 miles. Even with some restrictions imposed on it, the Grade A contour of a normally equipped station outside the largest cities (none of which have vacant television allotments) is many times larger than any city or metropolitan area to which it would be licensed. Thus there is little likelihood that the loss of even a substantial percentage of its potential Grade B service area will seriously affect a vacant allotment's ability to serve its designated city or seriously decrease its potential audience.

133. Third, the Low Power Television service we proposed in our *Notice of Proposed Rule Making* in BC Docket No. *78–253* adopted on September 9, 1980,[133] presents a much nore cost effective,[134] spectrally efficient,[135] substitute to the use of full power station allotments to provide service to a medium or small urban area. Given these considerations, we think it is in the public interest to make this spectrum available to those wishing to provide new service now.

Impact on Translators and Low Power Stations

134. Some of the proposed additions to the Table of Television Channel Allotments likely to be received as a result of the proposed rule changes will be for the use of frequencies currently utilized by television translators under Part 74, Subpart G, of our Rules. In addition, in a separate, recently instituted proceeding, we propose to create a new "Low Power Television Service" that may add hundreds of additional secondary [136] spectrum users to the VHF television bands. As television spectrum utilization outside the major urban centers intensifies (partially as a result of the various rule changes we propose today), situations will arise where existing translators and low power television will be forced to change frequencies by recrystalizing or, less frequently, by buying new UHF equipment because of the addition of an LFS close to their service area. In paragraph 206 of the *Notice of Proposed Rule Making* in Docket No. 20418, it suggested that the cost associated with this type of frequency shift of the translator (and, in the future, Low Power Television Stations) might be borne by the VHF Drop-in applicants.[137] After careful consideration of the equities involved, we conclude that it may not be in the public interest to burden potential applicants for full service VHF television stations with the cost of accommodating secondary spectrum users. Secondary spectrum usage is a license status accepted by this type of licensee with full knowledge that its user privileges are subordinated to the needs of those proposing to use the spectrum for the purpose to which it was principally allocated. There is no expectation of any repayment for costs incurred or user opportunities supplanted as a result of the licensing of a primary service spectrum user. Allowing this cost shifting in the circumstances at hand would be inconsistent with this fundamental spectrum management principle and would create a misleading and inappropriate precedent. Users in a secondary service implicity accept this risk in return for the use of spectrum that otherwise would not be available. If the spectrum they occupy is needed for its primary use, no payment or substitute spectrum is expected or required, especially from the primary user the status was designed to protect. We therefore propose not to require applicants for VHF assignments to pay for costs incurred by secondary television services.

Policy Favoring the Highest Possible Transmitter Antenna Height

135. If a licensee of a station with facilities below the maximum permitted in the Table wishes to enlarge its service area, there are two basic ways of accomplishing its goal: Increased transmitter power and increased transmitter antenna height.[138] If the licensee chooses to expand its service area by increasing its transmitter power (e.g., achieving a 6 dB increase by quadrupling its transmitter output power), for every 1 dB increase in its viewable signal there is an approximately 1 dB increase in its signal strength beyond its viewable area. In other words, using higher transmitter power to increase service area also proportionately increases potential interference caused to other stations. If the same service area increases are accomplished by increasing antenna height (e.g., a 6 dB gain by doubling antenna height) a 1 dB increase in the service area signal strength is accompanied by a much smaller increase in signal strength beyond the horizon, far from the areas where the station is viewable. Increasing antenna height increases service area primarily by increasing the radius of the station's line of sight signal coverage area rather than by increasing distant signal strength. The greater spectral efficiency of the increased antenna height approach is obvious.

136. The Commission is interested in encouraging the selection of equipment configurations that provide the most efficient possible use of the spectrum. Because of countervailing consideration such as: (1) The great cost of constructing self supporting towers; (2) restrictions on tower site availability or height because of air navigation safety considerations, or (3) the possibility of shared use of existing, but less than maximum height towers at a great cost saving, we do not believe it is desirable to propose rules defining minimum antenna heights for either new or all licensees at this time.[139] On the other

[133] *Notice of Proposed Rule Making* in BC Docket No. 78–253, note 124 *supra*.

[134] The projected cost of a low power television station will be significantly below the cost of a full service station because of its limited technical capabilities and the less demanding technical standards we are proposing for that service. Thus, for small coverage areas, low power television should be more cost effective than a full service station.

[135] Because of the § 73.614(a) requirement that VHF television stations radiate a minimum of 100 Watts in every direction and our assumption when calculating equivalent protection ratios that the LFS is operating with the maximum permitted antenna height, the minimum co-channel spacing of LFS allotments will be on the order of 100 miles. If a prospective broadcaster, who wished to serve a very small service area utilizes an LFS station two inefficiencies may result. First, he will be required to radiate a least 100 watts in every direction resulting in a service area of about 1,000 square miles; possibly much more than he wishes to serve. Second, no one else could use that VHF channel for primary services within approximately 100 miles of him, needlessly tying up more spectrum than might otherwise be the case. Thus, when small coverage areas are desired, the low power television service we will be a more spectrum efficient choice.

[136] We use "secondary" here in the technical sense of the word, meaning a user who may not cause harmful interference to primary spectrum users and must accept harmful interference from them.

[137] 63 F.C.C. 2d 480 at paragraph 206 (1977).

[138] Going to precise offset and encouraging the use of better receiver antennas and lead-in can also be options.

[139] *But Cf. Notice of Proposed Rule Making* in BC Docket No. 80–90, where the Commission placed a stricter requirement on FM radio stations by proposing rule changes that require FM radio

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hand we do wish to encourage the selection of the highest practicable tower whenever existing VHF television facilities are changed or new facilities proposed. By way of furthering this objective, we propose that the maximum power an LFS may radiate is to be calculated on the basis of an assumed maximum antenna height. If the applicant proposed a less than maximum antenna height, it may not increase its proposed output power to regain lost service area above the maximum allowable had the maximum antenna height been selected. As a result, only by selecting maximum antenna facilities will the licensee enjoy the largest potential viewership.

137. In addition, in situations involving competing technical proposals, such as comparative hearings between mutually exclusive applicants for the same allotment, we propose to award a comparative merit to proposals incorporating the greater spectral efficiency of higher antennas. Beyond these limited proposals, we will accept comments and solicit suggestions on regulatory mechanisms that will encourage this and similar conscious choices concerning spectrum efficiency by current and future users of the VHF television spectrum.

Substitutes for Lost Service Area

138. As discussed in paragraphs 90–93, *supra*, the radius of the Grade A and B contours of a full facility VHF television station (i.e. operating with the maximum permitted facilities several hundred miles from either co- or adjacent-channel stations) is predicted on the basis of the signal levels calculated using the FCC propagation curves.[140] The radius of a "noise limited" Grade B contour is significantly greater (e.g. 15–30 miles farther away) than the radius of an "interference limited" contour of a maximum facility station surrounded by maximum facility co-channel stations at minimum spacing. These limited contours involve the same type of statistical predictions of average signal conditions as the noise limited Grade A and B contours.

139. A television station that operates completely free of interference from all other television stations is assumed to experience a reduction in coverage from its noise limited boundary to its interference limited boundary when a maximum facility station placed at the minimum spacing from it begins operation.[141] An equal or smaller reduction of its predicted Grade B coverage is expected when an LFS that is placed at less than standard distance from it begins operation in conformity with our proposed "equivalent protection" criteria. In either case, a theoretical crescent shaped "loss" area will be created within its predicted noise limited Grade B contour but outside its predicted noise limited Grade A. Within this "loss" area an unknown number of that station's distant viewers may experience some loss in quality of service with their existing television equipment.[142] We are proposing the addition of such VHF stations despite this conclusion because we are confident that much more new television service (and local service at that) would be created as a result of the more intensive utilization of the VHF television spectrum we are proposing today. Simply stated, many people would gain service and a few would lose service. The overall public interest would be best served by introducing the new station even if some viewers suffer a reduction in service. As will be shown, in most cases the loss of service will be minor, generally would involve the loss of relatively distant signals, and in many cases may be remedied by the use of directionalized receiver antennas and precise offset.[143]

140. Highly directional receiver antennas are routinely available to consumers and are in widespread use in outlying areas.[144] If distant viewers of a station lose service because of the addition of an interfering station, in most cases a solution is available. Those with highly directional rooftop antennas can, in effect, tune their receiver system to recapture the impaired signal by either pointing the highest gain "lobe" of the antenna towards the desired station or pointing the lowest gain "null" of their antenna towards the interfering station. Those viewers with low gain rooftop antennas (or no outside antennas at all) have the option, if that lost service is sufficiently valuable to them, of purchasing better (i.e., higher gain) antenna systems and adjusting them during installation to take into account the possible interference. Furthermore, cable television service and translators are increasingly available as a means of regaining this lost service.

141. A second reason we use the term "loss" advisedly is that in some instances the predicted service "loss" is either the "loss" of service that was never available or, if previously available, will not in fact be lost as a result of the addition of a new station. If rough terrain or mountains exist between a station and an area predicted to be within the station's noise limited Grade B contour, terrain attenuation can result in a usable signal being received in a significantly smaller percentage of the locations than the present FCC curves predict. These viewers will not lose service since they never received the service in the first place. Similarly, in some instances there are mountains or rough terrain between the theoretically predicted lost viewer and the interfering signal. In these instances, service that the FCC propagation curves predict would be lost due to interference caused by the new signal will not be lost because the level of the interfering signal will be significantly below the theoretically predicted level.

142. A third reason for treating predictions of lost service with caution

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stations to have certain minimums for antenna height or be subject to reclassification to a lower class of station. BC Docket No. 80–90, 45 FR 17602 at paragraph 9 (March 19, 1980).

[140] The fact that we refer to these curves as predictions is significant. The curves are statistical averages and so cannot be relied on to predict precisely the actual presence or absence of service at a given distance from a station. Furthermore, as highlighted above in paragraphs 109–111, *supra*, the FCC propagation curves do not take into account the presence of large obstructions such as mountains or extremely rough terrain. Thus the interference limited contours and the strength of interfering signals from distant television stations may both be significantly overstated for specific situations.

In addition, these contour areas, in and of themselves, are average statistical descriptions of difficult to characterize, extremely variable parameters, signal strength and resultant picture quality at great distances from the transmitter site. By definition (*See* § 73.683) only the best 50 percent of the locations receive the prescribed signal leval (e.g. a signal strong enough to produce a TASO 3 picture or better 90 percent of the time. A TASO 3 picture is a picture of acceptable quality that displays perceptible, but not objectionable interference. This is further complicated by the included assumptions that 30 foot rooftop antennas are used, that the receiver antennas are nondirectional, that all receivers have average performance characteristics.

[141] We note that § 73.612 of the rules provide for reduction of service area and specifies that licensees are not entitled to protection from this "new interference" if the interference is "caused by the grant of a new station * * * in accordance with the provisions of the subpart of the rules." 47 CFR 73.612(a) (1978). For this reason existing stations cannot prevent the addition of a new channel to the Table on the basis of allegations that peculiar conditions will result in more than the predicted amount of interference. Any interference resulting must be tolerated. As a practical matter, the safety factors discussed, *supra*, in paragraphs 106, 109, and 117 have minimized the amount of actual harmful effects, minimizing the amount of controversy that has actually resulted.

[142] We use the term "loss" advisably for a series of reasons outlined *infra*, at paragraphs 140–145.

[143] *See* also paragraphs 106–8, *supra*.

[144] *See* paragraphs 103–108, *supra*. Outdoor television receiver antennas are available with a wide range of performance characteristics. *See Staff Report on: UHF Comparability (A Preliminary Analysis)* Philip B. Gieseler, *et al.* (September 1979) and studies cited therein. Thus, by selecting an appropriate receiving antenna the consumer could potentially "engineer" his reception system to his signal environment.

is the probable adjustment of television reception equipment characteristics to reflect the changes in the signal environment as we move from a noise limited to an interference limited television service delivery situation. In several technical respects, for example, adjacent channel interference susceptability, the performance of television receivers has not improved perceptibly in thirty years. This is true despite the introduction of several generations of improvement in other communications services that use the radio spectrum—improvement that relies on technical innovations that could be incorporated into television reception equipment e.g., solid state devices with unusually low noise figures, or highly selective tuners, or receiver antennas with significantly improved front-to-back ratios. Equipment manufacturers operate in a highly competitive environment and are responsive to market demand. The lack of improvement in such reception equipment results from the lack of market place pressure to produce equipment with superior performance of this type. That is, our rigid mileage separation rules have made efforts to improve in these areas unnecessary.[145]

143. The television reception equipment market is essentially both unregulated and extremely competitive. Few performance characteristics are presently mandated by the FCC rules as a precondition for type certification of new receiver models. No performance characteristics are presently mandated for receiver antennas or lead-ins. Since most existing television stations are spaced well beyond the standard co- and adjacent-channel spacing, a significant percentage of today's television service is noise limited (that is, limited as a result of random and atmospheric noise), rather than interference limited. As a result, there is little present consumer demand for television reception equipment with the characteristics that are suited for the interference limited environment that will result if every bit of available VHF television spectrum is utilized to its full capacity.[146]

144. The same marketplace forces that currently direct engineering energies in other directions can direct this energy towards improved television receivers and antennas if our rules changes create the appropriate incentives. As the spectrum becomes more congested, consumers will desire (and, hence demand) television receivers that are more selective and less susceptible than their 1950–1980 predecessors.[147] Superior antennas that can resolve much of the cochannel interference problems may become standard equipment. As a result, much of the theoretical service "loss" will be lost in a temporary sense only. Thus, over time, improvements in receivers and antennas should do much to reverse any degradation experienced by viewers as a result of the proposals we make today.

145. A last reason we do not believe the issue of service "loss" is of overriding concern is because we recently also proposed a source of substitute service that we believe will provide a more spectrally efficient means of serving the small population pockets that typically make up the audience out near a station's Grade B contour. The most opportunity for new VHF allotments will be outside the 10 largest cities. In these markets, urbanized areas rarely approach the 20 to 40 mile radius of a full power station's Grade A contour. Fifty to eighty miles from the station's antenna at the noise limited Grade B contour, where potential service loss could take place, most viewers live in small towns or cities that are a fraction of a mile in diameter. Currently, to provide service to these scattered population pockets, stations in the distant urban centers blanket hundreds of miles of scarcely populated land with high power signals. In the Low Power Television Notice of Proposed Rulemaking, *supra*, we are proposing a new television service that will permit the creation of small local television outlets with signal patterns tailored exactly to cover each pocket of unsatisfied television demand. Our proposal here and our Low Power Television proposal, in effect, go hand in hand. We believe that the new low power television service, together with other alternative delivery systems, future improvements in television receivers, the installation and use of directional receiver antennas, and the safeguards implicit in the FCC propagation curves and contour definitions, will overcome any actual, short term losses of present television service as a result of the rule changes we propose. When this limited amount of loss is weighed against the large amount of additional service that will result, the public interest choice is clear.

Conclusion

146. The rule changes the Commission proposes today would constitute only a small, though extremely significant, step in our procedures for identifying potential new VHF television allotments and selecting who will be assigned a license to operate on that channel. Petitioners for new allotments will continue to be scrutinized by the Broadcast Bureau's Policy and Rules Division to ensure that use of the spectrum in other communities where a demand exists is not more in the public interest. Prospective licensees would continue to be scrutinized by the Broadcast Bureau's Facilities Division, though the burden of providing a "city grade" signal over the entire community of license and the requirement that the community of license be a particular type of "community" would be significantly deemphasized. New VHF television allotments made possible by the proposed changes would be assigned to licensees who would be traditional, full fledged television broadcasters in every other sense. The Commission's rules involving technical standards, fairness and political broadcasting, public service programming, licensee qualifications, and obscenity would apply in full to these new licensees exactly as they are now applied.[148]

147. We are proposing a fundamentals change of one particular criterion for determining where VHF allotment will go. In place of a rigid system of fixed mileage separations, we are proposing to maximize the flexibility with which entrepreneurs can utilize the limited remaining VHF television spectrum capacity. We propose to employ as a

[145] The Commission has recently acted to stimulate the improvement of several television receiver characteristic by financing the development of "improved" television receivers. *Final Report for High Performance TV Receiver*, D. L. Ash and C. B. Hartmann, Texas Instruments Inc., FCC/OCE CE 78.01 (March 1978). RF Monolithics, Inc. contact to develop a prototype Improved High Performance Receiver with superior selectivity. FCC News (June 1, 1979) "FCC Issued Contract for Improved High Performance Television Receiver."

[146] *Cf. Notice of Inquiry* on *Radio Frequency Interference to Electronic Equipment*, General Docket No. 78-369, 43 FR 50062 (November 30, 1978).

[147] Even absent any changes in our VHF allotment rules, some of these improvements will be necessary in order to preserve the present level of service because the home spectrum environment is rapidly changing in many respects. With the increasing popularity of personal communication systems such as C.B's, home computers, paging devices, mobile telephone, wireless or electronic switches, and door openers, the home environment is becoming more and more crowded with potential sources of interference. This situation has already dramatically increased the number of complaints of radio frequency interference to television receivers. Commission investigations have determined that most of the problems result from the interference susceptibility of the television receiver being affected and not the improper operation of the source originating the interfering signal. This matter is under consideration in the Commission's outstanding *Notice of Inquiry* in Gen. Docket No. 78-369 released November 21, 1978.

[148] The Commission will, of course, continue its ongoing process of revising rules that have became outmoded or undesirable, but such rule changes will apply to all television broadcast licensees, whether LFS, full facility VHF or UHF station operator.

principle feature of our new rules a technical criterion long recognized and utilized by the Commission—"equivalent protection"—which will simplify the procedure by which stations are to be engineered to fit into fragments of unused spectrum too small for standard spaced allotments. This rule change, if adopted, would allow the creation of dozens of new VHF television stations in areas where there is still a stong unsatisfied demand for additional television service, utilizing spectrum capacity that would otherwise remain unused. Careful consideration of this potential for new service is clearly in the public interest.

148. In proposing this change in our station separation standards we recognize that we are reexamining a proposal that was considered and rejected by the Commission both during its deliberations that culminated in the *Sixth Report and Order* and twice since.[149] We conclude, however, that a reexamination of this question is now appropriate. Technology has changed. We now have computer programs that will calculate variable effective radiated power and protected contours in an efficient and accurate manner. Alternative video technologies are in use or on the threshold of introduction that will mitigate service losses that might be caused by the more heavy use of VHF television spectrum. And the UHF television service has matured, no longer requiring absolute protection from VHF television competition.

149. In order to maximize the flexibility of this new allotment criterion the Commission also proposes a number of related, minor rule changes. The proposals relating to a flexible definition of community, the relaxation of the "city grade" signal requirement, and the proposal to allow more directional transmitter antennas will ease the problems associated with utilization of the remaining spectrum capacity by eliminating restrictions that now prevent the addition of some possible allotments and that would be even more restricting under the proposed new allotment system.

150. Lastly, we are proposing several changes in our rules and policies that are consistent with the increased value of the spectrum resource and consistent with each licensee's status as a prospective user of a public good that is entrusted to its use without charge. The Commission proposes to change its procedures to encourage the use of certain spectrum saving techniques, such as carrier offset, precise carrier offset, sychronous carrier, higher transmitter antennas, and the freer reallotment of unutilized or underutilized spectrum to more immediate potential users.

151. Taken as a whole, these proposals may result in the most significant potential for new VHF television service since the 1952 *Sixth Report and Order*. In adition to public comment on these proposed rules, the Commission welcomes public comment on the policy changes being proposed, for example the way that we propose to allocate the cost of spectrum saving equipment. We also solicit further comment on specific proposals set out in the *Notice of Proposed Rule Making* in Docket No. 20418,[150] but not carried over as specific rule proposals here—for example, the question of how to incorporate a terrain shielding factor into our propagation curves. Possible further refinements in our allotment policies and procedures, based upon these comments, could then be considered in a further notice in this proceeding.

152. Accordingly, it is proposed to amend Part 73 of the Commission's rules and regulations as set forth in the attached Appendix.

XI. Procedural Matters

153. Interested persons desiring a VHF television allotment at a specific community that would be available only under the proposed rules should not submit a petition for rule making to amend the Table of Television Channel Allotment (Section 73.606(b)) during the comment period. Rather they should wait until a decision is made in this proceeding. Assuming positive Commission action, the request would then be made through the normal "petition" procedures (*see* Section 1.401 *et.al*).

154. Authority for the actions taken herein is contained in Section 4(i), and 303(a), (b), (c), (d), (e), (f), (g), (h), (n) and (r) of the Communications Act of 1934, *as amended*.

155. Pursuant to precedures set out in §§ 1.4, 1.415, and 1.419 of the Commission's rules and regulations, interested parties may file comments on or before December 15, 1980, and reply comments on or before February 15, 1981. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

156. In accordance with § 1.419 of the Commission's rules and regulations, an original and five copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying docket number BC 80.499.

157. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

158. For further information concerning this proceeding contact Benjamin Perez, Federal Communications Commission, Broadcast Bureau, 1919 M Street, NW., Washington, D.C. 20554. Phone (202) 632-3861. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contracts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

159. All comments, reply comment, and other matter in the record of Docket No. 20418 are hereby incorporated into the record of this proceeding.

160. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations requested by the Commission. If a member of the public does wish to comment on the merits of this proceeding in this manner, he or she should follow the Commission's procedures governing *ex parte* contacts in informal rule making. A summary of these procedures is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554. Phone (202) 632-7000.

Federal Communications Commission.[15]

William J. Tricarico,

Secretary.

APPENDIX

PART 73—RADIO BROADCAST SERVICES

It is proposed to amend Parts 73 and 1 of the Commission's rules and regulations as follows:

[149] *Sixth Report and Order* at para. 129, 41 F.C.C. at 206 (1952); *Intermin Policy on VHF Television Channel Assignments*, Docket No. 13340, 21 R.R. 1695, 1697 (1961); *Second Report on Deintermix*, in Docket No. 11532, 13 R.R. 1575-1576 (1956); *Report and Order* in Docket Nos. 14231-14238, 25 R.R. 1687, 1692 (1963).

[150] *Notice of Proposed Rule Making* in Docket No. 20418, 63 F.C.C. 2d 480 (1977).

[15] See attached statements of Chairman Ferris and Commissioners Lee, Quello and Washburn.

1. It is proposed to revise § 73.606(a) to read as follows:

§ 73.606 Table of Television Channel Allotments.

(a) *General.* The following table of allotments contains the channels alloted to the listed communities in the United States, its Territories, and possessions. Channels designated with an asterisk are allotted for use by noncommercial educational broadcast stations only. A station on a channel identified by a plus or minus mark is required to operate with the carrier frequencies offset 10 kHz above or below, respectively, the normal carrier frequencies. When a station is required by § 73.1545(c)(3) to operate with a carrier frequency tolerance of ±3 Hz in lieu of ±1,000 Hz, on a channel identified by a plus or minus mark, it shall operate with the carrier frequencies offset 10,010 Hz above or below, respectively, the normal carrer frequencies. Channels designated with an "L" are allotted for use by stations with a limited effective radiated power in the direction of a co-channel or adjacent channel station where the distance between stations is less than the standard minimum distance separation.

* * * * *

2. It is proposed to amend § 73.610 by revising the introductory clauses of (b) and (c) and by adding (b)(3) and (c)(3) to read as follows:

§ 73.610 Minimum distance separations between stations.

* * * * *

(b) Minimum co-channel allotment and station separations:

(1) * * *

(2) * * *

(3) Limited allotments may be located at communities separated by distances less than those specified in this paragraph. Stations occupying allotments which are so limited must meet the requirements of § 73.614(b)(5).

(c) Minimum allotment and station adjacent channel separations applicable to all zones:

(1) * * *

(2) * * *

(3) Limited allotments may be located at communities separated by distances less than those specified in this paragraph. Stations occupying allotments which are so limited must meet the requirements of § 73.614(b)(5).

* * * * *

3. It is proposed to revise § 73.612(b) to read as follows:

§ 73.612 Protection from interference.

* * * * *

(b) When the Commission determines that grant of an application would serve the public interest, convenience, and necessity and the instrument of authorization specifies an antenna location which results in a distance separation less than that specified in this subpart, TV broadcast station permitees and licensees shall be afforded protection from interference equivalent to the protection afforded under the minimum distance separation specified in this subpart. Such equivalent protection shall be determined in accordance with the provisions of § 73.614(b)(5).

* * * * *

4. It is proposed to add a new § 73.614(b)(5) as follows:

§ 73.614 Power and antenna height requirements.

* * * * *

(b) * * *

(5) The procedure for determing the restriction on the maximum effective radiated power of a station operating on a limited allotment shall be as follows:

(i) A straight line will be drawn between the proposed site of the new station and the site of the existing co-channel or adjacent channel station which is to be afforded protection. This line will be extended beyond the location of the proposed new station to a distance from the existing station equal to the standard minimum separation that would apply to the zone location of the actual proposed site.

(ii) A hypothetical station will be assumed to be operating at a point on this line that is at the standard minimum separation determined in subparagraph (5)(i) of this paragraph. This hypothetical station will also be assumed to have a circular radiation pattern centered on the hypothetical site and to be operating with the following parameters: Zone I, Channels 2 to 6 inclusive—100 kW ERP and 1000 ft.; Zone I, Channels 7 to 13 inclusive—316 kW ERP and 1000 ft.; Zones II and III, Channels 2 to 6 inclusive—100 kW ERP and 2000 ft.; Zones II and III, Channels 7 to 13 inclusive—316 kW ERP and 2000 ft.

(iii) Regardless of the actual power and antenna height employed by the existing station, it will be assumed to be operating with the maximum facilities for the zone in which it is located as detailed in subparagraph (5) (ii) of this paragraph, and it too will be assumed to have a perfectly circular radiation pattern center on its transmitter site. For co-channel stations, the "interference limited" contour resulting from the assumed operations will then be established as the line through all points where the estimated F(50,50) signal of the existing station is exactly 28 decibels higher than the estimated F(50,10) signal of the hypothetical station. For adjacent channel stations, the "interference limited" contour resulting from the assumed operations will then be established as the line through all points where the estimated F(50,50) signal of the existing station is exactly equal to the estimated F(50,50) signal of the hypothetical station.

(iv) If the proposed new station is located in Zone I and its proposed antenna height is less than 1,000 feet above average terrain, it will be assumed to have an antenna height above average terrain of 1,000 feet for determining its power limitation. If the proposed new station is located in Zone II or Zone III and its proposed antenna height is less than 2,000 feet above average terrain, it will be assumed to have an antenna height above average terrain of 2,000 feet for determining its power limitation. If the proposed antenna height above average terrain is greater than 1,000 feet in Zone I or 2,000 feet in Zone II or III, the actual proposed antenna height above average terrain is to be used for determining the power limitation.

(v) For co-channel stations, the proposed new station shall reduce its effective radiated power to the extent necessary so that its estimated F(50,10) signal is at least 28 decibels below the estimated F(50,50) signal of the existing station (45 decibels lower in the case of non-offset, nonsynchronous carrier operation) at any point on or within the interference limited contour of the existing station, established as set forth in subparagraph (5)(iii) of this paragraph. For adjacent channel stations, the proposed new station shall reduce its effective radiated power to the extent necessary so that its estimated F(50,50) signal is not greater than the estimated F(50,50) signal of the existing station at any point on or within the interference limited contour of the existing station, established as set forth in subparagraph (5)(iii) of this paragraph.

* * * * *

5. It is proposed to revise § 73.683(c)(4) to read as follows:

§ 73.683 Field strength contours.

* * * * *

(c) * * *

(4) In determining equivalent protection using § 73.614(b)(5).

* * * * *

6. It is proposed to revise § 73.684(a) to read as follows:

§ 73.684 Prediction of coverage.

(a) Except for limited facilities stations, predictions of coverage made pursuant to this section shall be made without regard to interference and shall be made only on the basis of estimated field intensities. Limited facilities stations may include a supplemental showing of their interference limited contours to demonstrate compliance with § 73.636. The peak power of the visual signal is used making predictions of coverage.

* * * * *

7. It is proposed to revise § 73.685 (a) and (e) to read as follows:

§ 73.685 Transmitter location and antenna system.

(a) Except for stations oprating on limited assignments (See § 73.606(a), the transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum field intensity in decibels above one microvolt per meter (dBu) will be provided over the entire principal community to be served:

Channels 2–6, 74 dBu
Channels 7–13, 77 dBu
Channels 14–83, 80 dBu

Stations operating on limited assignments are expected to serve as much of their principal community as possible, but no minimum field intensity is required.

* * * * *

(e) An antenna designed or altered to produce a noncircular radiation pattern in the horizontal plane is considered to be a directional antenna. Antennas purposely installed in such a manner as to result in the mechanical beam tilting of the major radiation lobe are included in this category. Stations operating on Channels 2–13 and stations operating on Channels 14–83 with transmitters delivering a peak visual power output of more than 1 kilowatt will not be permitted to employ a directional antenna having a ratio of maxiumm to minimum radiation in the horizontal plane in excess of 15 decibels. Stations operatng on Channels 14–83 and employing transmitters delivering a peak visual power output of 1 kilowatt or less are not limited as to the ratio of maximum to minimum radiation.

8. It is proposed to revise § 73.687(c)(1) to read as follows:

§ 73.687 Transmission system requirements.

* * * * *

(c) *Requirements applicable to both visual and aural transmitters.*

(1) Automatic means shall be provided in the visual transmitter to maintain the carrier frequency within one kilohertz of the authorized frequency; automatic means shall be provided in the aural transmitter to maintain the carrier frequency 4.5 Megahertz above the actual visual carrier frequency within ± one kilohertz. If pursuant to § 73.1545(c)(3), a carrier frequency tolerance of ± three Hertz is required, automatic means shall be provided in the visual and audio transmitter to maintain the carrier frequencies with ± three Hertz of the authorized carrier frequencies.

* * * * *

9. It is proposed to add a new § 73.1545(c)(3) as follows:

§ 73.1545 Carrier frequency departure tolerances.

* * * * *

(c) *TV stations. (1)* ***

(2) ***

(3) In a situation where two co-channel stations are causing unacceptable interference to each other, the Commission may, upon a showing of such interference by either licensee or permittee, require a visual and aural carrier frequency tolerance of ±3 Hertz in lieu of the ±1000 Hertz tolerances specified in subparagraphs (1) and (2) of this paragraph. For this purpose "unacceptable interference" is defined as occurring where the F(50,10) signal from an interfering co-channel station is less than 28 dB below the Grade B contour of the requesting station as defined by § 73.683(a).

PART 1—PRACTICE AND PROCEDURE

10. It is proposed to revise § 1.401(d) to read as follows:

§ 1.401 Petition for rule making.

* * * * *

(a) Petitions for amendment of the FM Table of Assignments (§ 73.202 of this chapter) or the Table of Television Channel Allotments (§ 73.606) shall be served by petitioner on any Commission licensee or permittee whose channel allotment would be changed by grant of the petition. Petitions for amendment of the Table of Television Channel Allotments which request a limited allotment shall be served by petitioner on any Commission licensee or permittee whose station the proposed allotment would be limited to protect (§§ 73.610(b)(3), 73.610(c)(3) and 73.614(b)(5)). The petition shall be accompanied by a certificate of service on such licensees or permittees. A draft Notice of Proposed Rule Making may be submitted with a petition for amendment of the FM Table of Assignments or Table of Television Channel Allotments.

September 18, 1980.

Separate Statement of Charles D. Ferris, Chairman

Re: VHF Drop-In Rulemaking Proposal

When the Commission unveiled the original VHF television allocation scheme in 1952, unleashing the potential of TV, it could not have predicted the choice and diversity this medium would offer. Twenty-eight years have passed, and demand to serve the public with new channels has burgeoned, not quieted.

Today's proposals would alter our method of adding new channels to the nation's VHF television table of allotments. The direct result would be to bring viewers in many markets more over-the-air television service than at present.

In many markets, all existing VHF and UHF television outlets are filled or applied for. Entrepreneurs may well find new VHF stations, even short-spaced ones, to be financially viable. In other markets competing applicants are fighting for remaining vacant UHFs. A short-spaced VHF may be the carrot to lead some of these applicants out of the costly contests for these full-power UHF stations.

Finally, there are those markets, mostly below the top 50, where still vacant and unapplied for UHF television stations remain. In these markets, decades-old dormancy of these UHF outlets may indicate that the costs of full-power UHF operation may be too high a deterent to these UHFs coming on the air in the near future. A short-spaced VHF may, contrarily, be financially viable.

Perhaps our action last week proposing cheaper, low-power UHF television operation will begin to stimulate a more efficient use of UHF channels in swollen markets, with the potential for full power UHF upgrading later. In the interim, a short-spaced VHF outlet could provide immediate additional TV service to those citizens, to be later complemented by UHF operations.

We have in no way backed away from our strong support of expanded UHF TV service. Last week's action in the low power TV field is but another in a long string of recent FCC actions to strengthen the UHF service. We have removed the barrier that there could be only one subscription TV service in a market. This action, taken last fall, has broken a longstanding log jam in competing UHF STV applications. Today's *UHF Comparability Task Force*

Report analyzes the "UHF handicap" more thoroughly than ever before and proposes new means to close the gap with VHF.

Allowing new, short-spaced VHFs could redound to the ultimate benefit of UHF television. This action could lead to creation of a fourth commercial network based on short-spaced VHFs in some markets, UHFs in others. This development could not only strengthen network-affiliated UHFs, but also attract viewers to the UHF band generally, making other UHF operations more attractive.

Programming possible with new short-spaced VHFs would not be limited to adding a fourth commercial network. Public broadcasting, primarily a UHF service, has long wished to expand its operations to VHF. The higher costs of UHF power, particularly in these times of rapidly increasing energy costs, weigh heavily on publicly-supported, non-commercial broadcasters. These broadcasters, in some major markets, may wish to switch to a short-spaced VHF and reach its basic audience at less cost, freeing the UHF channel for commercial operation. Or they could continue to operate the UHF outlet as an instructional service while using the VHF to carry the basic PBS service.

These proposals offer not only the potential for more program services for more viewers. They also offer the opportunity for new owners of television facilities. Minority entrepreneurs are benefiting by our policies stimulating transfers of existing television stations their way through favorable tax treatment for sellers and the ability of licensees designated for possible loss of license to sell out at a distress price to minority purchasers. But the process of bringing minority owners into the media could be speeded up by encouraging minority applicants to apply for these new potential TV channels.

I hope that we receive wide comment in this docket not only from existing VHF and UHF broadcasters, non-commercial and commercial, but also from individuals throughout the country as to whether they would like additional television service, and from entrepreneurs who would seek to apply for the new channels.

Dissenting Statement of Commissioner Robert E. Lee In Re: Drop-Ins to the Table of Television Allotments

The Eyes of the Beholder

I dissent. I cannot agree that this proposal is a small incremental step in the evolution of the Commission's television policy. This proposal turns past policy and precedent inside-out for the sake of a "diversity" which can be achieved easily through the allotment of UHF channels at the spacings presently prescribed in our rules.

I certainly am not opposed to diversity. That would be like being opposed to motherhood. What I object to is the use of "diversity" as the rationale for short-sighted, short-spaced VHF drop-ins. I believe that the public will get better, more diverse service in the long run if the Commission adheres to its standards for the time being and insists on full UHF development before authorizing substandard VHF channels. Otherwise, I am afraid the Commission may retard the development of the maximum possible number of television outlets.

The *Notice* does note that there are adverse consequences to the proposed drop-ins in the form of increased interference, particularly in rural areas. However, the *Notice* dismisses the problem as inconsequential because, if the affected consumers are willing to spend money, they can purchase the equipment necessary for maintaining the quality of their reception or they can seek non-broadcast alternatives.

While this tradeoff might make sense at some future time, it doesn't today when broadcast channels are still available in the UHF band. I recognize that a large number of UHF allotments are in use and that no channels listed in the Table of Allotments are available in some of the larger markets. However, consideration of available channels shouldn't end with those already listed in the Table. It should also include the potential for adding new full-spaced UHF channels. The potential is there. With a little juggling to reflect actual demand, I believe the Commission can add UHF channels to most if not all of the present television markets. The proposal here to drop-in bobtailed VHF channels when UHF channels are still available strikes me more as a vote of no-confidence for UHF than as a vote for increased diversity.

I am also concerned about the *Notice's* reliance on the equivalent protection theory as the reason why any increase in interference will be negligible if the Commission deviates from the present separation standard. According to this theory, if the drop-in can be engineered to produce the same effect on an existing station as would be produced by a full facility station located at the required minimum mileage separation, the existing station is afforded equivalent protection and the qualitative standards of the *Sixth Report and Order* can be maintained. This theory assumes that the real world result of decreasing power to compensate for a reduced mileage separation will approximate the predicted result. Unfortunately, we still do not know enough about propagation to be sure of achieving this result in most cases. To provide the parameters of equivalent protection, two factors must be evaluated. First, one must be able to evaluate the effect on an existing station if a full facility station is operated at the required minimum distance from the existing station. Then, one must determine the required power level for the short-spaced station to duplicate these effects.

Under current assignment standards, an existing station is subject to whatever interference accrues when a new full facility station is assigned at the minumum standard separation. The actual interference experienced may be more than, or less than, that which would be predicted, based on calculations utilizing the Commission's TV proportation curves. Since it is proposed that the prediction method will be used to evaluate equivalent protection, it is important to understand how results arrived at by that method may differ significantly from actual results.

The Commission's TV proportation curves have been derived by determining a best fit to a large number of measurements. The measured values, which are true indications of observed signal levels, exhibit a wide dispersion around the best fit curve. The degree of dispersion can be quantified in terms of "the standard deviation." The standard deviation identifies the dispersion limit for approximately 68% of those measured values which most nearly fit the curve. The remaining 32% of the measurements are at greater variance from the curve.

FCC Report No. R.6602, Development of VHF and UHF Propagation Curves For TV and FM Broadcasting, includes a Table showing a standard deviation of F(50,50) data as 9.0 db for low VHF, and 7.4 db for high VHF. Note is made that the relatively low values for high VHF can be attributed to the fact that nearly all of the data pertinent to the study were taken over relatively smooth terrain. It is important to recognize that the specific db levels given for the standard deviation are not of critical concern. What is important is that actual observed signal strengths are almost always different from predicted signal strengths, and the difference can be quite substantial.

To demonstrate the significance of all of this, it should be examined in the context of a real-life situation. Consider that a drop-in is to be made at low VHF in TV Zone I. This drop-in will be

assumed to be separated from an existing station by 140 miles.[1] The normal required separation is 170 miles. Under the proposed rules one would initially determine the location of the predicted interference limited Grade B contour of the existing station if a new full facility co-channel station is authorized at the standard required separation of 170 miles. If the 9 db standard deviation referenced above obtains, the location of the predicted interference limited contour can be significantly different from the location of the actual interference limited contour in a full third of the short-spaced cases which will eventually be before the Commission.

By way of illustration, the location of the interference limited contour is a function of two signals (desired and undesired) and these two signals are characteristically uncorrelated. That is, in an actual case, observed signal levels will be independently related to predicted values—one can be higher than predicted while the other can be lower than predicted. To further complicate matters, signals from two stations, when one is 30 miles more distant from an observation point (hypothetical full facility station at standard separation) than another (drop-in), will not necessarily be correlated. In these circumstances, and based on a 9 db difference between actual signal strength and predicted signal strength, the location of a predicted interference limited contour could be approximately 20 miles removed from the location of the actual interference limited contour.

At the other end of the scale, the power limit imposed on the drop-in pursuant to the proposed rules, is a function of the predicted interference limited contour. If the actual interference limited contour is 20 miles from the predicted interference limited contour, the power limit imposed on the drop-in can be off by a factor of 9 db, which, for example, can be the difference between 10 kilowatts of radiated power and 80 kilowatts of radiated power.

It follows therefore, that under the proposal, and due to the limited adequacy of available tools for predicting service and interference in specific cases, approximately one-third of the drop-in cases which may come before the Commission will be decided on terms which may be significantly unfair, either to an existing station or to the drop-in.

[1] The separation of 140 miles merely reflects the short spacing which the original OTP report suggested could be readily accommodated.

Because I do not believe that the premises for this drop-in proposal have been adequately studied or understood, I dissent. This isn't the time to give up our goal of one television service made up of both VHF and UHF channels.

Dissenting Statement of FCC Commissioner James H. Quello

In re: Notice of Proposed Rulemaking re: Table of TV Channel Allotments (Limited Facility Stations—LFS Drop-ins) September 18, 1980.

The Commission is unwisely rushing to judgement on one of the most significant and potentially disruptive proposals in FCC history.

We simply do not have sufficient information on which to base an informed, responsible decision for a Notice of Proposed Rulemaking for Limited Facilities Stations.

In an attempt to achieve some idealistic but unproven social benefits which may be predestined to failure, the majority is dismantling the landmark Sixth Report and Order which provided an orderly, responsible TV allocations process. The proposed restructuring of TV with LFS (Limited Facilities Stations) is potentially damaging to this nation's television system because of interference to existing service and the disruption and confusion to consumers. It could well result in disservice to the overall public, minorities and majorities alike, with inferior, inadequate or lost service.

This massive step should be considered only after the most thorough study and analysis developed by a comprehensive inquiry. We must know more about the *full* consequences of LFS interference with full service stations and the effect on consumers in fringe and loss areas. There is a wide variation in interference in different areas. The "equivalent protection" theory is subject to valid challenge—it seems more like a "paper" rather than practical alternative. Further, we should not rely on propagation curves for individual cases which do not adequately predict the interference levels in the real world.

We should have guidelines and specific, complete information as to what services will be affected or eliminated. We should know more about the relative stability of directional TV antennas in the VHF band. We need to know more about specific capabilities and total costs to consumers of receiving antennas which might reduce interference. We obviously need more information on effective use of terrain roughness factors in calculating propagation curves.

I particularly need considerably more information about the advantages of Limited Facilities Stations in relation to UHF stations before I can support a proposed rule. In my opinion, the staff greatly exaggerated the comparability of UHF and VHF. The proponents of this new allocations policy have conveniently concluded that there is no longer a UHF handicap and that the millennium has arrived. If this is true, I see no immediate need for LFS since there are numerous UHF allocations which are not being utilized.

Historically, soon after the Commission first decided that VHF and UHF stations could co-exist within the same markets, it became obvious that the decision was based on inadequate information. Many UHF stations were constructed in the 50's only to go dark within a short time because they were unable to compete. Now that UHF is finally showing signs of progress, the majority is, in effect, adding new impediments to its further growth by proposing nationwide VHF drop-ins.

Also, if UHF is now fully comparable to VHF, it certainly isn't appreciated in New Jersey or Delaware, two states with justifiable complaints about no full VHF–TV service. I welcome even the promise of VHF service to New Jersey. However, it is doubtful if petitioners for full VHF service would be satisfied with low power drop-ins of LFS.

If substantial VHF service is really technically feasible for New Jersey, we should promptly provide that needed service without awaiting the outcome of this proceeding. Last October, the Commission was informed by our staff that there was "no possible way" to provide VHF service in New Jersey or Delaware. Since I am not aware that the laws of physics have been amended, I hope the technical judgments made today are superior to those made last October and that finally we can overcome this serious problem. If feasible, we should provide VHF service authorizations to New Jersey and Delaware on a special basis without awaiting the outcome of this rulemaking. The needs of these two states are obvious and unique and should be accorded specific, immediate attention without requiring a nationwide Limited Facilities Service allocation.

Overall, I can't understand why it is so imperative to restructure the entire television industry in September 1980 instead of adopting a more reflective, responsible approach based upon more complete knowledge and analysis.

I believe a matter of this significance and impact should receive the guidance and approval of Congress, not an "arm of Congress." It should be determined on

a higher level by elected officials directly responsible to the American people—by the Congress and not by appointees to regulatory agencies. I have a nagging concern the majority is rushing into a course of action that may have a negative, disruptive impact on our quality of service and on the entire American TV system—a system that with all its flaws and human errors is still the most informative, creative and diversified in the world.

Dissenting Statement of Commissioner Abbott Washburn

Notice of Proposed Rulemaking re: Table of Television Channel Allotments

Adverse Impact on UHF

The executive Summary of the Report of the Comparability Task Force (approved by the Commission on September 18, 1980) speaks of the goal of "a fully competitive and prosperous UHF service". Its closing sentence reads "* * * this goal is now beginning to be achieved * * *"

In direct contrast, this Notice on page 29 states "* * * UHF is now sufficiently mature and viable to compete directly against VHF * * *"

The first statement is the correct one. UHF has begun to turn the corner. It should not now be subjected to additional hazards. Many UHF stations are still marginal. UHF channels remain available to be applied for and to be activated.

This rulemaking, in proposing to do away with the minimum mileage separations and substituting so-called "equivalent protection", is an abrupt reversal of the Commission's long-standing policy of bending every effort to assist the development of UHF. With the issuance of this proposed rulemaking, the continued healthy growth of UHF will be stifled. Entrepreneurs will prefer to opt for the short-spaced "V's". In my judgment we should not now propose such a drastic change of direction.

"Equivalent Protection" Approach Seriously Flawed

The Notice states that "the proposed approach will eliminate much of the uncertainty* * * of the current procedure." In point of fact the opposite will be the case. In place of today's clear-cut mileage separations, the "flexible criteria" here proposed will lead to greater uncertainty. There will be costly arguments in television markets throughout the country as to whether or not specific applications for short-spaced VHF stations will provide the required "equivalent protection". Engineers and lawyers will reap a harvest contesting and defending these applications. Rather than shortening the process, the proceedings resulting from this approach will be as long or longer than those we now have.

Adding to the disruption and uncertainty is the definition of "equivalent protection". The use of the F(50, 50) and the F(50, 10) curves to define "equivalent protection" in specific instances is a misapplication of the engineering principle underlying the derivation of these curves. In paragraph 91, on page 43, the authors of the Notice recognize this:

> These curves were derived from many measurements on different stations under varying conditions and therefore represent average values; they are intended for allocation purposes and general studies and *will likely prove inaccurate in individual cases that deviate significantly from the norm.* (Emphasis added.)

Statistically, 68% of the data points will fall within plus or minus 9 dB of the interference curve. 32% of them will fall more than 9 dB outside of the curve. Thus, in almost one third of the cases the use of the curve to allot a channel produces an unrealistic and unfair result: Either penalizing the drop-in station by imposing a power limit that is too low to enable it to serve its market, or allowing too high a power level causing serious interference to the existing station. (In the latter case an exceedingly heavy burden-of-proof rests on the existing station.) The curves, therefore, are neither a fair nor a workable tool. To attempt to so use them can only cause uncertainty and contention.

It is like taking a mean January temperature for 100 U.S. cities of 50° and concluding from this that motorists in Detroit, Duluth and Cheyenne won't need snow tires and chains next winter.

In addition to the unsound use of the curves to predict service or interference in specific situations, the Notice relegates several significant elements to the status of mere "safety factors". For example, in paragraph 104 on page 56 *receiving antenna directivity* is not incorporated into the "equivalent protection" criteria.* Likewise in paragraph 111, page 60, *terrain shielding* is relegated to an additional "safety factor" and does not enter into the protection standard. These considerations are of over-riding importance in specific drop-in situations and should be factored into the allotment methodology as such.

A More Accurate Recommended Procedure

In any specific case there are three possible types of propagation paths from the interfering transmitter to the protected receiver. Each of these three paths has distinct characteristics. However, in the derivation of the FCC curves they have necessarily been averaged, which explains the wide variability associated with those curves. The three categories of propagation paths are:

1. Line of sight between the transmitter and the receiver, normally limited to relatively short paths (less than 50–60 miles).

2. Paths with one obstacle where the transmitter and receiver essentially share the same horizon. These paths are normally of an intermediate distance, and in some of the short-spaced stations envisioned here this type of path applies. These one-obstacle paths can either offer shielding or they can result in significant gain over the average values depicted in the FCC curves. Where these paths exhibit gain they are known as knife-edge diffraction paths and this phenomenon was originally described by Bullington.* The situation where the knife-edge diffraction results in significant gain can occur in as many as three-quarters of a random sample of one-obstacle paths. Furthermore, these knife-edge diffraction paths exhibit a greater stability over time than do other propagation paths. Where this type of transmission is present it would seem risky to rely on the FCC curves alone.

3. Two-obstacle paths exhibit no such gain but only shielding effects. These paths generally occur at greater distances and usually obtain under the present rules where minimum distance separations of 170 miles or more are required.

Additionally, there are certain cases where there is very flat terrain between the interfering transmitter and the protected receiver where the terrain roughness factor described in the FCC rules is slightly positive. Today's Notice of Proposed Rulemaking attempts to treat terrain solely as a "safety factor". This is appropriate only insofar as terrain provides attenuation or shielding. It is not appropriate to consider it solely as a "safety factor" if the terrain shielding factor is positive nor is it appropriate to disregard knife-

*Notwithstanding the uncertainties highlighted in paragraph 105, page 56, front-to-back ratios of "typical" home rooftop antennas ar required to be added to the near impossible showing under the *Carroll* doctrine (see footnote 72 page 31) by those who file in opposition to the drop-in.

* K. Bullington, "Radio Propagation Fundamentals," Bell System Technical Journal, vol. 36, no. 3, Fig. 7, AT&T.

edge diffraction gain in those single-obstacle paths where it applies.

While I would prefer that each drop-in proposal be supported by its own unique measured data and calculations, I recognize that such a policy might be unduly cumbersome and expensive for the applicant and the Commission. However, I find that the variability in the simplistic use of the average FCC curves, as proposed, entails too much risk of significant interference. Accordingly I would suggest that, as a mimimum, consideration be given to augmenting the use of curves by having the drop-in applicant furnish appropriate path profiles and some minimum amount of measured data. It has been estimated that very minimal supplementary measurements** would reduce the variability in the FCC curves from 9 or 10 dB without measurements to around 4 to 6 dB.

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** For a fuller explanation of how to obtain improved prediction by measurements, see National Bureau of Standards Technical Note No. 102, August 1961.

federal register

Monday
November 3, 1980

Part V

Environmental Protection Agency

General Pretreatment Regulations for Existing and New Sources

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[EN-FRL-1629-4]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: On June 26, 1978, the Environmental Protection Agency promulgated the final General Pretreatment Regulations at 43 FR 27736. Amendments to these regulations were proposed on October 29, 1979, at 44 FR 62260. The October 29 proposal included an amendment to § 403.10(g) specifying the information to be included in a request for State pretreatment program approval. This notice amends the requirements for approval of State pretreatment programs to give EPA clear authority to approve State pretreatment programs submitted by National Pollutant Discharge Elimination System ("NPDES") States in the absence of implementing state regulations if certain requirements are met.

DATE: The effective date of 403.10(g)(1)(i)–(iii) is November 18, 1980.

In accordance with 40 CFR 100.01 (45 FR 26048), these regulations shall be issued for purposes of judicial review at 1:00 p.m. eastern time on November 18, 1980.

FOR FURTHER INFORMATION CONTACT: Nancy Hutzel, Environmental Protection Agency, Permits Division (EN-336), 401 M St., S.W., Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

Under Section 402(b) of the Clean Water Act ("the Act"), States desiring to administer their own permit programs for discharges into navigable waters may submit such programs to the Administrator for approval. States approved by EPA become part of the National Pollutant Discharge Elimination System ("NPDES"). Section 402(b) of the Act also requires that NPDES States have a program to ensure compliance by publicly owned treatment works ("POTW's") with various requirements now prescribed in the General Pretreatment Regulations (40 CFR Part 403, June 26, 1978). States with approved NPDES programs must seek modifications of their programs, if necessary, to incorporate pretreatment authorities. States which have not yet received NPDES authority must develop the requisite pretreatment program elements before their application to assume NPDES authority can be approved.

This amendment would modify the requirements set forth in Section 403.10(g) of the General Pretreatment Regulations for approval of pretreatment programs submitted by NPDES States. (Elsewhere in today's **Federal Register**, EPA is proposing an amendment to the General Pretreatment Regulations which would allow NPDES States requesting approval of pretreatment programs a grace period in which to revise statutes or regulations as necessary to comply with the final Consolidated Permit Regulations, 40 CFR 122–124, 45 FR at 33290.)

Amendments to the General Pretreatment Regulations (43 FR 27736, June 26, 1978), were proposed on October 29, 1979, at 44 FR 62260. The October 29 proposal included an amendment to § 403.10(g) clarifying the information to be included in a request for State pretreatment program approval. The proposed § 403.10(g) required that all "statutes and regulations" upon which a State relied in attesting to its authority to implement a pretreatment program be in "full force and effect" at the time the program was approved. The quoted phrases appear in similar form in the NPDES program regulations pertaining to State application requirements which have been interpreted to require the submission of complete State implementing regulations before program approval. (40 CFR Part 123). The Agency believes, however, that State regulations pertaining to pretreatment authorities are not a necessary prerequisite to pretreatment program approval for existing NPDES States. Accordingly, we are amending § 403.10(g) to allow existing NPDES States to submit pretreatment programs which may be approved in the absence of State pretreatment regulations if: (1) the State has sufficient statutory authority, and (2) the State has submitted a detailed description of the procedures by which it proposes to implement the program.

There are several reasons for approval of these State pretreatment programs without regulations. First, NPDES States have already demonstrated their ability to carry out a complex NPDES permit program on a statewide level. Thus, specific regulations detailing the manner in which a State must exercise its authorities are not essential to ensure implementation of the program. Moreover, substantial environmental benefit will result from early approval of State pretreatment programs which would otherwise be delayed while State regulations are being promulgated. The application of State resources to the pretreatment program implementation is likely to improve compliance with the program and thereby decrease the introduction of pollutants into POTW's and the navigable waters. Second, many of the authorities that are necessary to carry out the pretreatment program are part of the NPDES program and are encompassed by the State's existing NPDES regulations. Existing authorities encompass the ability to levy civil and criminal penalties, to enter and inspect, and to carry out other requirements of the Clean Water Act. Thus, many of the requirements for a pretreatment program will already be satisfied by the previously approved NPDES program. For those matters that are unique to the pretreatment program, the Agency believes that a statement describing how the State intends to carry out this portion of the program and to promulgate regulations in the future, if necessary, will provide sufficient public notice and assurance of the State's authority and intention to carry out the program.

These factors are also the basis for distinguishing between requirements imposed on NPDES States and non-NPDES States. While NPDES States will be permitted to submit programs without final and complete regulations, non-NPDES States must submit either detailed statutory authority or broad statutory authority with detailed implementing regulations.

The remaining amendments to the General Pretreatment Regulations which were proposed on October 29, 1979, will be promulgated in final form shortly.

Effective Date

These regulations shall take effect on November 18, 1980. In accordance with 5 U.S.C. 553(d)(3), the Administrator finds good cause that the effective date not be postponed until 30 days after publication in the **Federal Register** because several State applications have been pending before EPA which require immediate action. One State advised EPA that if the Agency does not approve the State program immediately, it will have to reallocate the pretreatment program funds to other programs. This would delay the pretreatment program until the next fiscal year. Another State cannot take any action with respect to planning, budgeting, or implementation until EPA approves its program. Other States will have similar problems if program approval is not immediately forthcoming. In addition, the Agency's regulations require that EPA approve or disapprove State programs

expeditiously. 40 CFR Part 123. Thus, EPA must decide rapidly whether to approve or disapprove programs that have been awaiting decision for some time. The public interest will be served by early action on these program submissions. The Administrator also believes that the public has received adequate notice of the changes in these regulations to justify an early effective date.

Executive Order 12044

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 regulations "specialized". I have reviewed this regulation and determine that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 28, 1980.

Douglas M. Costle,

Administrator.

Part 403 of Title 40 of the Code of Federal Regulations is amended by revising § 403.10(g)(1) to read as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

§ 403.10 Development and Submission of NPDES State Pretreatment Programs.

* * * * *

(g) The request for State Pretreatment Program approval will consist of:

(1)(i) A statement from the State Attorney General (or the Attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to implement the requirements of this Part. The authorities cited by the Attorney General in this statement shall be in the form of lawfully-adopted State statutes or regulations which shall be effective by the time of approval of the State Pretreatment Program.

(ii) Copies of all State statutes and regulations cited in the above statement.

(iii) Notwithstanding paragraphs (g)(1)(i) and (ii) of this section, if the State has the statutory authority to implement the requirements of this Part, and if the State at the time of submission of this request has an approved NPDES program, then regulations setting forth the requirements of this Section need not be promulgated by the State if the Administrator finds that the State has submitted a complete description of procedures to administer its program in conformance with the requirements of this Section. States without an approved NPDES program will be required to comply with the requirements of paragraphs (g)(1)(i) and (ii) of this section.

(Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (Pub. L. 95.217) (33 U.S.C. 1251, *et seq.*), Sections 204(b), 208(b), 301(b), 301(h), 301(i), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a))

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November 3, 1980

Part VI

Environmental Protection Agency

Proposed Guidelines for Registering Pesticides in the United States: Hazard Evaluation of Use of Pesticides for Nontarget Plants and Microorganisms

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 163 and 172

[OPP-30044; PH FRL-1545-3]

Proposed Guidelines for Registering Pesticides in the United States: Subpart J: Hazard Evaluation: Nontarget Plants and Microorganisms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes one subpart of the pesticide registration guidelines. Subpart J describes certain data required to support the registration of pesticide products, and deals principally with the potential damage that pesticides may inflict on desirable plants within or outside the site where pesticide applications are to be made. Guidelines in this subpart state the conditions under which specific data would be required to support applications for registratin of pesticide products. These guidelines also specify the standards for acceptable testing, provide references to test protocols in the scientific literature, and describe the formats for reporting data. The Agency believes that adherence to these guidelines would result in more reliable data to support applications. Furthermore, uniform testing and data submission in accordance with the guidelines will accelerate and upgrade the Agency's review and evaluation of applications. In addition, the Agency believes that these guidelines would aid applicants in planning the development of data to support new and improved pesticides.

DATE: Interested persons are invited to submit written comments on these proposed rules to the EPA. Comments must be received prior to the close of business on or before: February 2, 1981, and identified with the Document Control Number OPP 30044.

ADDRESS: Written views and comments should be submitted to: Document Control Officer, Office of Pesticides and Toxic Substances (TS-793), Chemical Information Division, Environmental Protection Agency, Room E447, 401 M Street S.W., Washington D.C. 20460; Attention: Pesticides.

AVAILABILITY OF SUPPORT DOCUMENTS AND COMMENTS: The support documents mentioned in this preamble and all written comments received under this notice are available for public inspection in the OTS Reading Room from 8:00 a.m. to 4:00 p.m., Monday through Friday except holidays [Room E447, 401 M Street S.W., Washington, D.C. 20460].

FOR FURTHER INFORMATION CONTACT: William Preston, Hazard Evaluation Division (TS-769), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460; Telephone 703-557-1405.

SUPPLEMENTARY INFORMATION:

I. Authority

These reproposed guidelines are published under the authority of §§ 3(c)(2), 5(d), and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA") (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 *et. seq.*). Section 3(c)(2) states that "The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time."

II. Background

On July 3, 1973, the Environmental Protection Agency ("EPA", "Agency") promulgated final registration regulations, 40 CFR Part 162, Subpart A. These regulations established the basic requirements for registration of pesticide products. Section 162.8 lists the kinds of data which the Agency would generally require to register a product.

On June 25, 1975, EPA published proposed Guidelines for Registering Pesticides in the United States ("1975 proposed guidelines", 40 FR 26802). The 1975 proposed guidelines were intended to describe with more specifically the kinds of data which must be submitted to satisfy the requirements of the registration regulations. They included sections explaining the scope and intent of the guidelines, detailing the product performance hazard evaluation, and chemistry data requirements for registration of a pesticide product, and providing guidance on proper label development. Some of the information now included in Subpart J regarding phytotoxicity, nontarget plant injury and spray drift appeared in the Product Performance portion of the 1975 proposed guidelines.

During the past year, the Agency has distributed prepublication drafts of Subpart J to the public in connection with reviews of this document by the FIFRA Scientific Advisory Panel. As a result, EPA received submittals of additional comments on these guidelines. The Agency has also considered these comments in the development of these proposed guidelines.

The Agency intends that the guidelines provide meaningful instruction to applicants, registrants, and the general public on the specific data requirements to accompany applications for an experimental use permit and for registration of a pesticide product. Such guidance should enable the pesticide industry to anticipate the costs and time involved in preparation and review of such applications and to plan research and testing programs using methodology acceptable to the Agency.

Toward these ends, these proposed guidelines would specify: (1) the standards for acceptable testing, stated with as much specificity as the current scientific disciplines can provide; and (2) the information required in a test report. The guidelines also indicate when an applicant should consult with the Agency before initiating certain tests. In addition, the appendix to the Subpart J guidelines provide useful information and references for designing test protocols and, in some cases, examples of acceptable protocols for conducting the required testing.

At present and until these guidelines are published as final, the procedures and data requirements for registration, the standards for acceptable testing, and the information required in a test report will be determined on a case-by-case basis. The Agency will, however, consider these proposed guidelines as a general statement of policy regarding the nature and extent of the data required to support pesticide registrations.

The Agency intends that these guidelines be revised from time to time to keep up with policy changes and technology. Revisions will be made in accordance with the Administrative Procedures Act (5 U.S.C. 551 et seq.). Under that Act, routine changes that have well-publicized precedent or minor changes that reflect no impact on policy may be made without proposal and opportunity for public comment. Changes having a significant impact on the registration process, registrants, applicants, testers, outcome and evaluation of studies, and similar related activities and affected parties, would require public notice and opportunity for comment. Until all such changes (important or minor) have been published as final rules, however, the Agency can implement them on a case-by-case basis. (For example, the Agency can use its authority on a case-by-case basis to waive certain data requirements, approve non-conforming tests, and require data from additional tests.)

The Agency has already published four other subparts of the guidelines: B, D, and E, as proposed rules on July 10, 1978 (43 FR 29696); and F, as proposed rules on August 22, 1978 (43 FR 37336). The Agency has also published proposed rules for good laboratory practices as part of Subpart F on April 18, 1980 (45 FR 26373). Subpart B would contain general provisions applicable to all subparts of the guidelines. Subparts D, E and F would establish the requirements for product and environmental chemistry fish and wildlife toxicity data, and toxicology for human and domestic animal safety evaluation, respectively. The Agency solicits comments on any section of Subparts B, D, E, or F which would be affected by provisions contained in this proposal. Additional subparts of the guidelines will be proposed in the future, including Subpart G, Product; Performance Subpart H, Label Development; Subpart I, Experimental Use Permits; Subpart K, Exposure Data Requirements: Reentry; Subpart L, Hazard Evaluation: Nontarget Insects; Subpart M, Data Requirements for Biorational Pesticides; Subpart N, Chemistry Requirements: Environmental Fate (derived from Subpart D; will be promulgated as a final rule); Subpart O, Chemistry Requirements: Residue Chemistry; and Subpart P, Data to Support Disposal Instructions.

EPA's Office of Toxic Substances has developed testing rules under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 15 U.S.C. 2601 et seq.) which contain data requirements comparable to those proposed by section series 163.122 through 163.123 of Subpart J. The Agency's policy is to reduce the burdens on the regulated public which might arise from competing requirements under these different sets of regulations and guidelines. Therefore, the Agency will establish testing rules under TSCA and guidelines under FIFRA which are consistent to the extent permitted by the different laws.

III. Organization and Philosophy of Subpart J

Subpart J has been organized into seven series of sections. The first section series (163.120) would deal with the overview and scope of the subpart, the definitions of specific words used in the subpart, the basic standards for testing, the general evaluation and reporting requirements and the tier testing sequence policy. The second section series (163.121) would deal with target area plant toxicity testing, that is the toxicity of those plants that would be intentionally sprayed. The next four section series (163.122, 163.123, 163.124, and 163.125) would comprise the tier testing sequences (tiers 1, 2, 3 and 4, respectively) employed to study and report on pesticide toxicity nontarget area plants. The effects of the pesticides would be performed on a series of tests as dictated by specific requirements of each test and each tier. The tests would be designed to gather pesticide effects information on terrestrial and aquatic plant growth as influenced by geographical, seasonal, and species variation, on nitrogen fixation potential, and on plant mutagenicity effects. The final section series (163.126) would measure the potential for pesticides to cause plant damage by spray drift when applied by aircraft (fixed and rotary wing), mistblower (air carrier), and other application techniques. The other application techniques may include but are not limited to overhead sprinkler irrigation devices, and roadside and right-of-way sprayers.

Each individual test section would contain an opening paragraph indicating under what circumstances and for what products the data are required. These test sections would also contain specific standards and reporting requirements. In addition to these specific test standards and test requirements, the general test standards and reporting requirements would apply to the conduct of required studies.

The proposed nontarget area plant and microorganism data requirements would be arranged in a tier system. The requirement to produce data from studies in the higher tiers would depend on the results of studies in the lower tiers. The tier system is intended to reduce repetititve consultation between the registrant and the Agency about the need for tests of greater complexity, and as a result, to reduce the time required to develop data for registration of a pesticide. [Those portions of this Subpart that refer to microorganism testing other than the testing of algae may be removed to a new Subpart, yet to be designated and developed.]

The proposed subpart would establish standards and requirements for testing and data submission concerning the effects of pesticides on nontarget plants and microorganisms. These data would be used by the Administrator, along with other information to make the determination required by FIFRA § 3(c)(5), whether a pesticide "* * * will perform its intended function without unreasonable adverse effects on the environment", and thus whether the pesticide might be registered. The proposed standards and requirements specifically concern: pesticide toxicity to desirable plants within the target area; pesticide toxicity to plants and microorganisms outside the target area, as measured through a tier system test series, and spray drift evaluation.

Specific reference to data requirements concerning hazard data is given in 40 CFR 162.18–2 (c)(2) and (d)(4) of this chapter for manufacturing-use and end-use formulated products, respectively.

The data submitted from these studies and from other unsolicited sources would be used to evaluate and draw conclusions concerning the toxicity of the pesticide to microorganisms and plants (which would include food and cover vegetation for animals, and food, fiber, timber, and ornamental plants for man). No set of results from these tests will automatically preclude the registration of a pesticide product. In certain cases, limitations, precautions, and/or restrictions would be imposed upon the use of the pesticide because of its toxicity coupled with proposed use patterns and transport characteristics.

The data requirements for this subpart are a portion of the overall environmental risk assessment. A pesticide may have a detrimental effect on several levels of production and consumption in the ecosystem. The combination of the information submitted in response to the requirements of this subpart with information derived from studies performed concerning the enviriomental fate of the pesticide, and the effect of the pesticide on fish, wildlife, invertebrates, and laboratory animals will lead to an all-encompassing risk assessment or hazard evaluation.

Concern has been expressed regarding the use which the Agency would make of data on mutagenicity and on microorganisms if such data reflected positive adverse effects. Generally, the Agency would take this adverse data into account in its overall hazard evaluation of the chemical (or its products) in relation to the proposed uses. Specifically, the Agency may, as a result of positive test results, require label restrictions or deny registration, depending on the evaluation of hazard in relation to specific use patterns. Examples of specific Agency actions regarding positive mutagenicity tests might include requirements for warnings in the instructions, such as: "Do not use for crops grown for seed production" or "Do not use except where total kill of target vegetation is intended and expected." For example of an action regarding positive test results that portend major adverse effects to certain comon soil microorganisms, a warning in the instructions might be required, such as: "Do not use in areas where soil

nitrification bacteria or mycorrhiza are important in crop production or in health of desirable ornamental plants."

A. "When Required" Paragraphs.

Each of the sections of this subpart which would establish data requirements begins with a paragraph entitled "When required." These paragraphs would estabish the conditions under which specific data would be required to support the registration of a pesticide product.

This subpart would require the necessary data to support the registration of pesticides intended for outdoor application [that which occurs outside of enclosed man-made structure(s), 40 CFR § 162.3(cc)]. There will however, be certain uses or situations where the use pattern would eliminate or markedly reduce a particular kind of risk; in such cases, the data requirements would accordingly be reduced or eliminated. For example, data from testing at higher tiers (3 and 4) normally would not be required for pesticides applied by tree injection, by directed sprayers having capture and recycling capabilities, or by incorporation into the soil. There may also be other instances in which the Agency would routinely require data to support the registration of a formulated product, even though the product was not used outdoors. For example, testing would be rquired for pesticides that are used within industrial structures where the waste water would be discharged into the environment without treatment. Finally, testing of products to be used in greenhouses would be required under the section dealing with "Target Area Plant Toxicity Testing" (§ 163.121.1).

B. "Test Standards" Paragraphs.

The proposed standards for acceptable testing are set out in the "Test Standards" paragraphs which follow the "When required" paragraphs in all of the test sections (proposed section series 163.121 through 163.126). In addition, testing would be required to be performed in accordance with the "Basic Standards for Testing", proposed § 163.120.3. The general and specific test standards for acceptable testing would identify the factors in the perfrmance of a test which EPA has determined would be necessary to ensure the reliability and completeness of the data. The test standards would cover such aspects of testing methodology as the test substance and its state, test species and life stages, number of organisms to be tested, the duration of the test, and the dosage levels.

The references provided in the test standards paragraphs or the protocols of the Appendix are recommended only.

C. Deviation from Test Standards.

The test standards are not intended to be inflexible rules or to be the exclusive methods of meeting the specified data requirements. The Agency recognizes that the prescribed standards would not be appropriate for every pesticide product. Equally effective alternative test procedures may exist and new procedures for deriving data may be developed. Accordingly in Subpart B (in § 163.40.3), the Agency proposed procedures for acceptance of data which would be derived from tests which deviate from the prescribed Agency standards (43 FR 29696, 29707, July 10, 1978).

Proposed § 163.40.3(a)(1) contains a provision governing acceptance of data which are derived form nonconforming tests: "All data required to support the registration or reregistration of a pesticide product must be derived from tests which satisfy the purpose of the standards for acceptable testing." An applicant would be required to inform the Agency whenever data have been derived from tests which do not conform to the standard. In the case of data submitted to the Agency prior to the effective date of these guidelines, the Agency may conduct this evaluation on its own initiative.

Agency files contain large amounts of data derived from tests already performed. The Agency proposes to apply the guidelines test standards to these data in a common-sense manner. To avoid expending scarce laboratory resources in repeating tests, data will not be rejected merely because they were not developed in accordance with the guidelines test standards. Rather, the Agency will accept as valid those data which permit sound scientific judgments to be made.

In addition other published and unpublished research has been conducted in the areas of seed germination, plant vigor, and spray drift that may be submitted in order to fulfill the requirements of the studies of the testing regimes proposed in these guidelines. (The term "unpublished data" means data from tests already performed but not yet submitted to the Agency or published in a scientific journal. Refer to proposed §§ 163 120.5(c) and 163.126.1(a) concerning these data substitutions.

Commenters within the Agency have questioned whether label changes could preclude certain data requirements in this subpart. Typical label instructions changed by the registration applicant are normally made in response to studies that show the product to be more hazardous than originally thought. In cases where application for registration has not yet been made, such label changes are easily made, and certain data may not be required. The Agency should be consulted when such steps are anticipated. However, label changes that reflect over-labeling (i.e., label statements warning of or implying a hazard greater than the actual hazard for such products) are not acceptable as an alternative to submittal of data. Indeed, such over-labeling would usually prompt the Agency to deny registration unless data are submitted to demonstrate how the implied hazard can reasonably be avoided.

The acceptability of data derived from nonconforming tests would depend on a number of factors. In the first place, the Agency would have to consider the characteristics of the pesticide product to determine whether an appropriate test methodology was used. Assuming that the standards for acceptable testing are appropriate for the pesticide product, the Agency would consider both the extent and the significance of the deviation and the particular test results. In general, the less significant the deviation from the standards, the more willing the Agency would be to accept data from these tests. Furthermore, the Agency would be more willing to accept data when it appears unlikely that the particular deviation would significantly affect the test results. The preamble to Subpart B contains an example and additional discussions of how these provisions would be applied (43 FR 29696, 29698).

D. Waivers and Additional Data

The amendments to FIFRA enacted on September 30, 1978, provide the Administrator with the authority to waive requirements for submittal of efficacy testing data. The Agency in testimony before Congress, stated that it is most concerned about ensuring a product's effectiveness when a lack of efficacy could result in adverse human health effects. In keeping with this concern, the Administrator has deemed that all products not having a direct impact on public health may have their efficacy requirements waived. However, under certain conditions (such as when pesticides are under cancellation or suspension, or under rebuttable presumption against cancellation), efficacy data would be required.

In the past, plant toxicity (phytotoxicity) data on desirable target area plants have been associated with efficacy data. Accordingly, data on phytotoxicity to desirable target area

plants (proposed § 163.121–1) will not be required for products with use patterns for which efficacy data requirements would also be waived.

A detailed discussion of the efficacy waiver policy with the waiver of target area phytotoxicity data requirements appeared in the preamble to the recently-published regulation on conditional registration of pesticides (44 FR 27938–27940, Friday May 11, 1979). This discussion is quoted below, in its entirety:

Section 3(c)(5) of the Act provides that the Administrator may waive data rquirements pertaining to efficacy of a product under consideration for registration, and that if he waives the requirement for data, he may also waive the finding of efficacy required by FIFRA section 3(c)(5)(A). Since efficacy data waiver is a major deregulation action, the Agency will consider the waiver policy enunciated in these regulations as an experiment in public policy. If there is sufficient evidence to clearly establish that this deregulation is being abused (such as a significant increase in complaints from the agricultural community, other user groups, or the general public about ineffective products), the Administrator may take any steps necessary to correct the abuses, including withdrawal of any or all waivers of efficacy data requirements.

The decision to pursue efficacy waiver as an Agency policy stemmed from a need to reduct the amount of resources devoted to reviewing product performance so that additional effort could be devoted to the evaluation of health and safety data, and from a desire to reduce regulatory burdens in pesticide registration. Data review obligations placed on the Agency by the requirements for registration were important factors influencing the decision. Maintenance of a rigorous efficacy data submission and review posture for registration and reregistration would require the reevaluation of much of the 1.5 million items of product performance data that have been amassed by the EPA. Because many of these studies are quite old, their value as tools for assessing current levels of product performance is questionable in many cases. Therefore, commitment of the resources needed to fully evaluate these data for purposes of reregistration was determined to be less than an ideal use of limited resources for pesticide regulation.

The Agency's viewpoint concerning waiver of efficacy data requirements is in line with a general belief among persons in the pesticide industry, the U.S. Department of Agriculture and the agricultural community that the efficacy of agricultural pesticides can be effectively regulated by the marketplace (in conjunction with extension services and university research personnel). This opinion has subsequently received some qualified support from the findings of A.D. Little Inc. (Draft Report: Evaluation Design for a Change in the Pesticide Regulatory Process: The Waiver of Efficacy Data). As originally proposed in the draft Conditional Registration regulation of October 6, 1978, the efficacy waiver was to apply to all product uses except for those termed "public health uses." These public health uses were restricted to certain disinfectant uses and a limited number of vertebrate and invertebrate control agents aimed at potential disease vectors such as bats, rats, and mosquitoes. The proposal of efficacy data waiver generated a mixed response from commenters. The pesticide industry was generally supportive of the concept of efficacy waiver. On the other hand, comments from State researchers and Cooperative Extension Service personnel expressed reservations about various facets of the proposed waiver. Many commenters expressed concern over the extent of efficacy waiver, arguing that the scope of "public health" uses should be greater than that proposed. The efficacy data requirement contained in § 162.18–2 retains the concept of public health uses, but has clarified and expanded public health uses to include additional disinfectant, rodenticide and insecticide uses, and one fungicide use.

Some commenters expressed the belief that waiver of efficacy data requirements will signal an open season to unscrupulous "fly-by-night" operators who will defraud the public by marketing ineffective products, or products with exaggerated or unwarranted efficacy claims on labeling and in advertising. Undoubtedly, there will be instances in which the marketplace will fail to operate as expected. The Agency believes that foreseeable imperfections in marketplace self-regulation are acceptable tradeoffs in return for a reduction of overall Federal regulation in the efficacy area.

EPA, in cooperation with the Experimental Technology Incentives Program of the National Bureau of Standards will monitor the impacts of the efficacy waiver policy to determine if:

(1) Consumer fraud increase[s]; or

(2) Consumer fraud is effectively reported and curtailed through existing market institutions including State regulation processes, USDA and the Extension Service, farmers associations and the marketplace.

The Agency expects that all registrants will perform the tasks necessary to assure themselves that the products the market will perform their intended functions when applied in accordance with label directions and commonly accepted pest control practices. The Agency must rely upon the integrity of the industry, the soundness of extension service recommendations and the good judgment of pesticide users to insure that abuses seldom occur. The Administrator reserves the right to request submission of efficacy data in support of label claims for to request submission of efficacy data in support of label claims for any registered product. A request may be made for any product for which a pattern of inadequate performance has been reported.

Some respondents feared that efficacy data waivers would lead to a lack of sound information on the "benefits" side of the risk/benefit analyses performed as part of the Rebuttable Presumption Against Registration (RPAR) or cancellation processes. Benefits analysis in the RPAR process entail substantially more than reconsideration of efficacy data supporting the original registration. Concern in the benefits analysis is not with historical but with current product performance. In addition, economic factors pertaining to the current use of the pesticide and efficacy of alternative chemicals or non-chemical control practices must be considered. Front-end efficacy review does not provide useful information on the suitability of alternatives. However, when a substantial risk of unreasonable adverse effects has been identified via the RPAR or cancellation/suspension processes for old use patterns of a pesticide, it is incumbent upon the Agency to more carefully scrutinize new or added uses of the pesticide, weighing those risks with the benefits they offer. Thus, the waiver policy has been amended to include a requirement for efficacy data for new or added uses of products which have been RPAR'd, cancelled or suspended for adverse effects of other uses, if the identified adverse effects would also be expected to occur with the new or added use.

A. The Agency is limiting its direct concern to, and requiring efficacy data for health-related use patterns and new and added uses of chemicals which have been identified as posing a risk of unreasonable adverse effects. Specifically, the Agency will require product performance data in support of registration for the following uses:

1. *Public health uses.* A public health use exists whenever the continued presence of the target pest organisms may pose a threat to human health, either by direct action or through transmittal of disease. Such uses include, but are not limited to:

a. *Disinfectant uses.* Performance data will be required for all antimicrobial products intended to control microorganisms infectious to man in any area (inanimate surface) where these microorganisms may present a health hazard.

b. *Fungicide uses.* Performance data will be required for products intended for control of organisms that produce aflatoxins.

c. *Invertebrate uses.* Performance data will be required for: (1) Invertebrate control products intended for use in or on humans (or in or on pets for control of pests which attack humans) to control pests such as fleas, mites, lice, ticks, biting flies, and mosquitoes. (2) Invertebrate control products intended for use either in premises or in the environment to control pests of sanitary or public health significance such as mosquitoes, biting flies, ticks, fleas, houseflies, cockroaches, fire ants, hornets, wasps, poisonous spiders, scorpions, centipedes, and bedbugs.

d. *Rodenticide uses.* Performance data will be required for: (1) Commensal rat and mouse products. (2) Products used to control or disperse birds from buildings, roosts and other areas where they present health hazards. (3) Products used to control rabies vectors such as bats, skunks, raccoons and canids. (4) Products used to control rodents considered to be significant plague vectors.

2. New uses of pesticides containing active ingredients some uses of which have been:

a. Suspended, or cancelled by the Agency for reasons of human or environmental safety (if the risks identified in the suspension/cancellation action also apply to the new use).

b. The subject of a Notice of Rebuttable Presumption Against Registration (if the risks identified in the RPAR notice also apply to the new or added use).

If efficacy data are required, the applicant may in all cases satisfy the requirement by submitting data developed in accordance with the Registration Guidelines. In some cases, the applicant may choose instead to cite all applicable data in Agency files, in accordance with §§ 162.9–1 through 162.9–8.

For disinfectant products and bait formulations or rodenticides, efficacy data, when required, must be developed and submitted for the individual formulation proposed by the applicant. The applicant may not rely on, and need not offer to pay compensaton for, data already in our files pertaining to similar formulations. It has been the Agency's experience borne out by efficacy data submitted in the past and by enforcement actions, that efficacy data in the disinfectant and rodenticide bait areas cannot be transferred from one formulation to another, even though the formulations may be virtually identical. Small variations in manufacturing process, order of addition of ingredients, or quality and age of ingredients in bait formulations appear to radically affect the ability of the product to perform as intended. Thus each individual product must be supported by its own efficacy data.

B. Efficacy data will generally not be required for products of the following types:

1. Nearly all agricultural pesticide products (including forest and crop uses). Exceptions include products falling into category A.2. above;

2. Disinfectants: Products used to control bacteria producing odor or deterioration and spoilage of products such as paint, industrial fluids, leather, where product failure does not have human health consequences;

3. Algaecides and slimicides, herbicides, fungicides, nematicides, and rodenticides except as provided in A above. Several commenters in the public meeting requested clarification as to whether phytotxicity data are included within the meaning of efficacy data. The Agency takes the position that data on phytotoxicity to the target site, i.e., crop or plants, are part of an efficacy evaluation and are thus waived. On the other hand, data on phytotoxicity to crops or other plants that are non-target sites are considered to be hazard data and must be submitted for all products as prescribed in the Registration Guidelines (Subpart J).

Notwithstanding the waiver of efficacy data, the Agency must have sufficient information about the use patterns proposed to permit evaluation of the hazards of the product to humans and fish and wildlife. In the past, efficacy data have served the purpose of providing supplementary information to the labeling use directions, enabling the Agency to accurately assess the hazards of the proposed use, and to label and classify the product to protect the public and the environment.

If the labeling submitted with an application for conditional registration is not sufficiently detailed as to the use pattern proposed, the Agency will request more detailed information may be required to be placed on the lable in the form of use directions, precautionary statements, or use restrictions if it is deemed essential to the proper use of the pesticide, or if lack of such information could potentially result in adverse effects from use of the pesticide.

In addition to the concerns reflected in the discussion quoted above, the Agency staff have also expressed concern that the waiver policy might result in ineffective products being made available on the market and in products that carry fraudulent label claims. They pointed out that failure of such products to perform the functions claimed on the label might also require regulatory action by the Federal Trade Commission.

The Agency, acting under 40 CFR 162.8(c), can impose data requirements which are not listed in these guidelines. EPA expects that the information required by the proposed guidelines will generally be adequate for hazard assessments. Occasionally, however, the Agency may need additional data in order to make the statutorily-required findings concerning the effects of pesticides on humans or the environment. EPA will decide whether to require additional data on a case-by-case basis. The guidelines will be amended to include the additional data requirement, if it has general applicability.

E. Combined Testing.

In the interest of efficient use of test organisms, facilities, and personnel resources, the Agency encourages applicants and registrants, when possible, to fulfill multiple data requirements through utilization of combined testing. Whenever a single test is performed to satisfy two or more data requirements, all applicable test standards would have to be met. For example, the appropriate tier 1 and tier 2 tests of seed germination (§ 163.122–1 and § 163.123–1) may be combined where the pesticide (such as a herbicide) has a known or suspected phytotoxic property. Also, those organisms used in growth studies (proposed §§ 163.122–1 and –2) may be used in the biochemical studies such as the nitrogen fixation potential determination (proposed § 163.125–3). The registrant should note that the species used for testing in tiers 1 and 2 (preliminary tests) (section series 163.122 and 163.123) would not be acceptable to satisfy the data requirements of tier 3 (section series 163.124) where an expanded number of species in different taxonomic groups would be used.

F. "Data Reporting and Evaluation" Paragraphs.

The proposed data reporting requirements are included in each of the test sections. These requirements, together with the requirements of § 163.80–4 would prescribe the format and content of test data reports. Generally, the test report would be required to include a summary of test results and an evaluation of test results supported by specific detailed information.

The paragraphs specifying the required data are quite detailed and would ask for considerably more basic information than has previously been required. Some of this information would be considered "raw" data. Some comments already received point out that the Agency is requiring too much detailed data. The data required by this subpart would be the basic data necessary for making independent analyses of a test. The applicants would be required to perform the analyses and evaluation of the basic data before submittal in order to become more aware of the environmental effects of their products. EPA considers it appropriate for applicants, in addition to the Agency staff, to perform this work in order that each may make independent analysis of a test.

It must be noted that data concerning equipment and certain environmental measurements used in the evaluation will not necessarily have a direct bearing on the label statements. These equipment and environmental data are necessary for the Agency to compare different studies and to obtain a more complete understanding of the various testing situations.

After the final guidelines of this subpart become effective, EPA will not accept any data which are not in conformity with the intent of the reporting requirements. However, this policy will become effective only after the passage of a reasonable time period following the effective date of the final guidelines. This time period will be specified in the final guidelines. The Agency welcomes comments on a time period that would be reasonable. Until the final guidelines become effective, the Agency strongly encourages applicants and registrants to follow the reporting requirements in the proposed guidelines.

G. Appendix.

This proposed subpart contains a single appendix which provides acceptable protocols and recommended references to other suggested protocols. Some of the proposed protocols are combinations of several methods

provided in the literature which are currently the most acceptable methodology for that specific test. Other protocols provided in the proposed appendix have been published and are generally acceptable test procedures in use by private and governmental organizations.

IV. The Standards for Acceptable Testing

A discussion of the test standards governing the methodologies of this subpart is provided below.

A. Test Substances.

The "test substance" paragraphs prescribe what chemical element, compound, or mixture(s) would have to be tested to generate the required data. One of the following substances would be required to be tested in a particular study: the technical or purer grade of each active ingredient in the product; or (one or more) typical formulated products; or the applicant's formulated product. The terms "manufacturing-use product" and "formulated product" are defined in § 163.40–2 (c) and (d) of the proposed guidelines (43 FR 29696, 29707), and were previously discussed in this preamble. The term "technical grade of the active ingredient" is also defined in § 163.40–2(a) of Subpart B of the proposed guidelines (43 FR 29696, 29707). "Technical grade of the active ingredient" or "technical chemical" refers to a certain level of purity in the active ingredient of a particular chemical substance. Presently, the purity of the technical chemical is not fixed by an absolute standard. It is usually determined by traditional industry standards, and usually refers to that identifiable stable substance produced during the normal manufacturing process which contains the highest concentration of the active ingredient.

In all tests, the composition of the test substance would have to be precisely identified. When the required test substance is a manufacturing-use product or formulated product, its composition would also have to conform to the limits certified in accordance with § 163.61–6 of the proposed Product Chemistry guidelines (Subpart D) (43 FR 29696, 29707). The purpose and uses of certified limits are discussed in more depth in the preamble to that subpart (43 FR 29696, 29700).

In most field studies, the formulated product would be tested, since this is the substance that will be intentionally introduced into the environment. The formulated product contains one or more pesticidally-active ingredients and usually one or more inert ingredients. The inert ingredients in the formulated product may affect the placement of the active ingredient on or into the plant and the subsequent absorption by the plant. Therefore, the inert ingredients may alter the phytotoxic nature or selectivity of the pesticide.

When the technical or purer grade of the active ingredient would be tested (such as in greenhouse, laboratory, and first tier studies), other substances may have to be added to modify its solubility, dilution, or stability. This would require the use of both negative and intermediate controls to test the effect of these added substances. Testing of the technical or purer grade along with the formulated product would demonstrate effects caused by possible synergism or other interaction.

The Agency proposes that the technical or purer grade of each active ingredient in a product is the test substance used in tier 1 and 2 tests. The proposal also provides that an applicant could satisfy the data requirements for tier 1 and tier 2 tests by providing comparable data which the applicant had already produced or published in scientific journals. The Agency notes, however, that such data must be derived from studies using the technical or purer grade of an active ingredient in the applicant's product.

The Agency invites public comment on whether the laboratory and field studies should be performed using the technical or purer grade of the active ingredient(s) or the formulated product.

B. Test Species.

The test standards would specify which species of plant or microorganism must be used in the test. The species have been selected to fulfill a number of criteria specific to the organism: widely acceptable usage; existence of acceptable test methodology; economic or biological importance; and the appropriateness of its representation within the taxonomic and/or physiological group of plants to which it belongs.

Ten plant species would be required for use in the proposed seed germination and vegetative vigor studies (§§ 163.122–1 and 163.123–1). Five of these are from the basic set of plants recommended by the Franklin Institute Research Laboratories, Philadelphia, Pa., in a report to EPA (EPA 560/5–75–008). The five species are corn, oats, ryegrass, cucumber, and tomato. A sixth recommended species, green bean, would be replaced with soybean because the latter is a better indicator of soil-influencing nitrogen fixation, and its smaller seed volume would provide a more rapid indication of detrimental effects. Lettuce and cabbage have been added because both are very sensitive to chemical injury and are representative of groups that are sensitive to various environmental pollutants. Common onion has been added as a representative of an economically important and often very sensitive monocot group, the lily family. Carrot was added as a dicot representative root crop which can be directly affected by edaphic conditions and by soil-applied pesticides. By increasing the number of plants to be tested, a better indication of selective phytotoxicity would be possible, and would lead to a more accurate hazard evaluation.

Other factors influencing species selection were seed size and research utilization. The size of the seed is recognized as being directly related to the extent of phytotoxicity expression. A relatively small endosperm or nutrient supply forces the young plant to derive its nutrient more quickly from the surrounding environment; therefore, it may be affected more quickly by pesticides in the environment. Seven of the ten species required have relatively small seeds. The required species have also been utilized by a large number of researchers both as test organisms and teaching subjects to demonstrate the effects of various environmental factors on seed germination and vegetative vigor.

For the proposed aquatic plant growth studies (§§ 163.122–1 and 163.123–2), the required plant species are a duckweed and four species of algae (three freshwater and one marine). The duckweed, *Lemna gibba* G3, has been extensively used as an aquatic pollution test organism and is recommended by leading researchers in this field as the *Lemna* species to be used in these tests. The widely-used *Lemna minor* was not chosen because in too many instances *Lemna* plants have been mistakenly presumed to be *L. minor* or possibly a species of the closely-related *Spirodela*.

The four algal species represent a small cross section of a very large and diversified plant grouping. Three species, *Anabaena flos-aquae*, *Selenastrum capricornutum*, and *Skeletonema costatum* have been used in the development of acceptable algal assay bottle tests to determine the effects of pollutants on both freshwater and marine algae. The National Eutrophication Research Program, EPA, Corvallis, OR, and the Environmental Research Laboratory (for oceanic research), EPA, Gulf Breeze, FL, have selected these organisms as widely accepted representatives. In addition,

each of the species has certain strengths as a test species. *Skeletonema* is a marine diatom. It is a sensitive indicator species of aquatic pollution [Patrick, R., and C. W. Reimer. 1966. The diatoms of the United States. Vol. 1. Monographs of the Acad. Nat. Sci. Phila. (No. 13). Philadelphia, Pa. 19103]. *Anabaena* is included not only to represent the blue-green algae, but also to serve as the second indicator species of nitrogen fixation potential. *Selenastrum* has been selected by the EPA Laboratory in Corvallis as the test organism for green algae because it is nonmotile, sometimes colonial, cosmopolitan, and is easily counted by mechanical means. Testing using these aquatic species should provide a good indication of possible adverse pesticidal effects on aquatic plants.

A fourth algal species, *Navicula seminulum*, was selected as a representative of a freshwater diatom. However, it is no longer available for use, and an appropriate replacement is being sought. Scale field testing is required (tiers 3 and 4), the number of plant species would be increased to include representatives of other taxonomic groups. More species would be tested in the given taxonomic groups to determine if there is any pattern of sensitivity. Those plants of the less familiar groups would be tested because of their ecological importance. These plants are primarily the cryptogams which include the mosses, liverworts, and ferns.

The plant species proposed for testing mutagenic effects are those that have been extensively used in laboratory tests and for which the mutagenic expressions are known and easily recognizable.

Anabaena flos-aquae and the soybean *Rhizobium* symbioses have been chosen for the proposed initial nitrogen fixation potential determination. They represent two different types of organism systems capable of nitrogen fixation. *Anabaena flos-aquae* is a free-living, autotrophic, blue-green alga, and soybean contains the symbiotic, heterotrophic, nitrogen-fixing bacterium, *Rhizobium japonicum*. When an indication occurs that both plant species suffer from a lack of fixed nitrogen, the guidelines would require that the nitrogen fixation potential of a larger number of plants be evaluated more directly. *Azolla* with its nitrogen-fixing phycobiont, *Anabaena azollae*, would be required for the nitrogen fixation study due to its increasing importance as a green fertilizer for rice production in the U.S. (California) and worldwide. *Azotobacter vinelandii*, a free-living bacterium, is a major component of the soil nitrogen fixers. The method used to test nitrogen fixation potential would be the widely accepted acetylene reduction method which measures ethylene production by gas chromatography. Testing this group of organisms for nitrogen fixation potential will provide data that would allow EPA to assess the effects of pesticides on any combination of nitrogen fixers, free-living and symbionts, autotrophs and heterotrophs. The nitrogen fixation tests required by this subpart should be coordinated with those required in proposed § 163.62–8(f)(3) of Subpart D.

The selection of species for testing of pesticides is being coordinated with the Interagency Regulatory Liaison Group (IRLG) and the group within the Office of Toxic Substances working on the Toxic Substances Control Act (TSCA).

The Agency invites public comment on the selection of test species for the various tests.

C. Selection of Dose Levels.

The first level of tier testing would be required to be conducted with a dose level equal to 3 times the maximum application rate. Such levels of exposure may occur in several different situations: for example, overlapping of applications, abnormal spray drift patterns, misapplications, and extended residual activity through repeat applications. The Agency has detected numerous situations involving commonly recognized practice where the actual dosage level has exceeded the maximum recommended label rate by 2 or 3 times. By testing at the 3-fold level of the maximum recommended label rate, these situations may be assessed.

The test standards in subsequent tiers would require testing with lower concentrations of the test substance to determine the 10 and 50 percent detrimental effect levels and to ascertain a no-observed-effect level. There may be instances where responses to the calculated 10 percent and no-observed-effect levels are the same or cannot be distinguished. The concentration levels should be a progression, either geometric or logarithmic, to facilitate the determination of these detrimental effect levels. The levels should be of such a factor (about 2 for geometric progressions) as to facilitate statistical determinations.

The Agency recognizes that, in order to satisfy these standards, applicants may find it useful to perform a range-finding test before the full scale study. The Agency also recognizes that these preliminary tests can yield other information helpful to the design of the full scale study.

D. Control Groups.

In testing the formulated products, only negative control groups and the experimental groups would be required. However, when testing would involve the technical grade of the active ingredient, a second control group will be needed to ascertain the effects of added "insert ingredients" or adjuvants including solubilizers, carriers, driers, penetrators, and similar materials that are needed in order to work with the test substance. This second "intermediate" control group would be identical to the standard or negative control group but would be treated with the "inert ingredients" of the proposed pesticide product to determine any possible synergistic (or antagonistic) effects.

V. Reporting Requirements

The proposed reporting requirements for each proposed study of this subpart are separated into two sections. Proposed § 163.120–4 would establish reporting requirements that would generally apply to all testing conducted under Subpart J. The individual testing sections would establish specific reporting requirements tailored to present the results of each different kind of test. Those requirements for target area plants are given in proposed § 163.121–1 and include situations, applications, and locations where phytotoxicity is likely to occur with outdoor and greenhouse applications. Reporting requirements for the nontarget area plants are found in the individual tier sections (section series 163.122 through 163.125), and would include reporting such information as: the species, the response, and the statistical analysis. The reporting requirements for the proposed special tests of spray drift evaluation (section series 163.126) call for reporting of the equipment, methodology, and various other factors that may influence spray drift.

VI. Progression Requirements of the Tier System

The proposed tests for evaluating toxicity to nontarget area plants and microorganisms are arranged in a tier or hierarchical system. The requirements to develop data from the higher tiers would depend on the results of tests in the lower tiers. At the end of each proposed tier test section of this subpart are descriptions of the kinds of results which would result in the requirement of additional data. The tier system is arranged in a way that the applicant or registrant can develop all of the data

necessary to allow a comprehensive and complete evaluation of the hazards to nontarget plants and microorganisms. Also, the "When required" paragraph of each of the higher tiers of testing restates the proposed requirement for that test based on the results of the lower tier studies.

Comments already received question the use of EC10 as a criterion for progression from tier 1 to tier 2 and from tier 2 to tier 3 or 4. The comments state that this criterion is too stringent. EPA recognizes that certain crops can, at times, suffer a significant reduction in growth without any effect on yield, but that a detrimental effect to growth or appearance of certain other crops such as ornamentals is generally considered unacceptable. Therefore, the EC10 was selected as the criterion.

The EC50 value for progression in the aquatic plant studies was selected based on information concerning the population dynamics of these and other aquatic organisms. Some comments received have stated that an EC95 is sufficient for the progression criteria especially with respect to algae while others refute this statement on the grounds of natural population dynamics.

For both terrestrial and aquatic plant testing, the Agency invites comments concerning the EC value system as the criterion for tier progression and also whether different standards for food and fiber crops and for ornamentals and for aquatic plants are appropriate. The tests of the various tiers may be combined or substituted with similar ones as provided for in proposed § 163.120–5. The purpose of this is to reduce the cost of testing where similar tests from various tiers would be required. Substitution of tests with similar tests already performed would also be permitted to reduce redundant testing. In all instances the test standards should be followed and the reports developed as required.

VII. Discussion of Individual Tests

This section of the preamble presents the purpose of requiring data from each of the different kinds of tests and the major issues identified in developing the individual tests.

A. Target Area Plant Phytotoxicity Testing.

The data from testing of pesticides in the target area under actual or simulated use conditions would be used to evaluate the effect of the pesticide on the growth and development of the crop or host plant and on the yield and quality of the commodity by methods of application not prohibited on the label.

B. Seed Germination and Vegetative Vigor.

Seed germination is one of the most widely accepted means of testing the effect of a substance on growth and development of plants. The seed germination study would be required to evaluate the germination process as affected by pesticides applied before or during planting.

The vegetative vigor study is included with the seed germination study, and data derived from this study would be used to predict major vegetative growth phase. The purpose is to evaluate pesticide effects on nontarget area plants with which the pesticide may come into contact.

The vegetative vigor study is a greenhouse or field plot study.

In the case of both seed germination and vegetative vigor, pesticidal effects are assessed using both processes because nontarget effects of pesticides on plant growth and development during the area plants may be exposed to pesticides at any one stage or several stages of growth.

C. Lemna Growth and Flowering.

The *Lemna gibba* test is the only study in tiers 1 and 2 which is performed with an aquatic macrophyte. It therefore can be used to assess the effect of pesticides on a representative of a very large, diversified number of vascular plants that inhabit aquatic ecosystems. *Lemna gibba* G3, when cultured axenically as indicated in the appendix to this subpart and with the addition of EDTA (9 mg/1) and sucrose (10 g/1), can be a flowering aquatic plant. These tests with this plant are the only ones contained in the first and second tier levels which would permit assessment of the effect of a pesticide on a plant while in flower.

D. Algal Studies.

Data from the testing of aquatic plants would be used to evaluate the effect of pesticides that may be applied directly or introduced into the aquatic ecosystem by leaching, runoff, or spray drift. The species selection would allow the evaluation of both fresh water and marine aquatic ecosystems.

The test procedures for the algae have been extensively evaluated by academic, governmental, and private researchers. The studies have illustrated the consistency of testing results, using the species and conditions prescribed by scientifically competent people, regardless of where the test has been performed.

It has been suggested that the tier 1 algal test use *Selenastrum capricornutum* as the sole test species. *Anabaena, Skeletonema,* and a freshwater diatom (yet to be selected) would be used in the tier 2 testing, if necessary. This would be a financial and time-saving step. The Agency invites comments on this possible modification to the algal tier testing scheme.

E. Mutagenicity Studies.

This subpart would require studies to assess possible mutagenic effects of pesticides on plants. Mutagenicity requirements are divided into two tiers. The first tier of study (proposed § 163.122–3) would be required if a pesticide produced mutagenic effects in the testing required for human hazard evaluation (see proposed guidelines §§ 163.84–1 through –4). Positivie results in the first tier of study would lead to testing in the second tier (proposed § 163.124–3). All mutagenicity test results would be used to determine the degree to which the pesticide can produce mutagenic effects in plants.

The first tier of the mutagenicity test (§ 163.122–3) would involve testing with *Tradescantia* and observing the number of pink (mutant) staminal hair cells in the exposed organisms. At present, *Tradescantia* is being used as a monitor for possible chronic mutagenic substances in air and water. There are several other tests, including the expression of waxiness in corn pollen grains, which can be used to observe mutagenic changes in plants. Some of these and additional species and methods are provided in proposed § 163.124–3.

Pesticides may cause mutations in plants in at least three ways:

(1) These pesticide may be the direct causative agent as in the case of auxin herbicides (Tomkins, D. J., and W. F. Grant. 1976. Monitoring natural vegetation for herbicide-induced chromosomal aberrations. *Mutat. Res.* 36:73–84);

(2) The pesticide may enter into the cellular metabolism process and be altered to form a mutagenically-active chemical; or

(3) The pesticide may alter a cellular metabolite which may become a mutagenically-active chemical (Plewa, M. J., and J. M. Gentile. 1976. Mutagenicity of atrazine: Maizemicrobe bioassay. *Mutat. Res.* 38:287–292).

Comments already received have questioned EPA's need for any data on the mutagenic effects of pesticides in plants. The Agency notes that in laboratory and recently in field studies, pesticides have been found to cause abnormalities in plants which are

expression of mutagenic changes [Tomkins and Grant. 1976. (above)].

Although no substantial adverse effects on plants have been reported which can be attributed to mutagenic effects caused by pesticides, theoretically, such mutations in plants would have environmental and economic significance. For example, a pesticidally-induced mutation in a pest organism could make the pest more resistent to the controlling pesticide or, in the case of a weed, more competitive with the desirable nontarget plants. As a result of natural selection pressures, the representation of these kinds of mutations would be likely to increase in the gene pool of the species. Other mutations could make individual organisms less adapted to their environment. These mutations might be expressed in crop plants which are less tolerant to pesticides or adverse growing conditions or which are less resistant to pest attack. These latter changes generally are less likely to be perpetuated in the gene pool of the species due to natural selection pressures.

EPA expects that mutations in plants are most likely to be of concern to people who use pesticides to treat plants in flower which eventually will produce seed for future crops. At present, however, several seed producers contacted by the Agency feel that testing of pesticides at a primary level for mutagenic effects is not necessary to protect seed crop plants. They state that their tightly controlled production methodology would preclude carrying any significant yield or quality changes due to pesticidally-induced mutation(s) farther than one or two generations.

EPA requests comment on the need to evaluate the potential of pesticides to cause mutagenic effects on plants. Comments should describe the nature of the problem(s) associated with pesticidally-induced mutations in plants.

Comment already received suggest that EPA would obtain adequate information about the mutagenic potential of pesticides on plants from date required to assess mutagenic hazards to humans in proposed §§ 163.84–1 through –4 (43 FR 37336, 37388.) These comments state that if it is necessary to evaluate the mutagenic effects of pesticides on plants, the data from tests using bacteria and fungi would be adequate. EPA disagrees in part with these comments. While genetic material from bacteria, fungi, and higher plants has a similar molecular structure, there are differences between these orgamisms with respect to metabolism, cytoplasm, protective membranes, cell walls and possibly mechanisms of DNA repair. These differences might affect the ultimate incidence and expression of mutations. In summary, EPA feels that testing with higher plants would provide the most reliable data for assessing mutagenic effects in higher plants. The Agency welcomes comments on the use of bacteria and fungi mutagenicity data to assess mutagenicity hazards to higher plants.

Data from mutagenicity testing using higher plants may have a second use. EPA would examine the correlation of results from plant tests with results from bacterial, yeast, mammalian, and other studies to assess mutagenic hazards to humans and consider whether the correlations support use of plant mutagenicity data to evaluate human risks. If plant-test systems are reliable predictors of possible human risks, they should be included in the battery of tests used to assess mutagenic risks to humans. These test systems possess many advantages over other test systems. They are easily adapted to the study of actual exposure conditions including low level and long duration exposures. A recent review and workshop brought out other advantages: (1) plant chromosome structures are similar to those in mammals, including man; (2) plant responses to given mutagens are similar to those of other non-mammalian and mammalian systems; (3) regeneration is possible from single haploid and diploid cells; (4) mutagen response is sensitive with short life cycles; (5) the plants are relatively inexpensive to culture and data are easily obtained from them; and (6) *in situ* monitoring is possible [Nilan, R.A. 1978. Potential of plant genetic systems for monitoring and screening mutagens. *Environ. Health Perspectives* 27: (181–196). NIEHS Workshop on Higher Plant Systems as Monitors of Environmental Mutagens, Marineland, Florida, January, 1978].

In addition to the advantages brought out by the workshop, greater statistical reliability can be attained with plant systems than with animal systems. *Tradescantia,* the most commonly-used higher plant species, contains millions of potential observable units, staminal hairs. This compares with animal tests in which only 100 or so rodents or a few thousand *Drosophila* can be used.

It is apparent that plant studies may be a readily acceptable means of testing pesticides for mutagenic effects. Numerous chemical companies have routinely submitted data from these relatively inexpensive plant studies to the Agency for evaluation to determine some of the mutagenic effects of pesticides on organisms. The continued submission of these data is encouraged until the Agency makes a final determination whether such data are or are not required by this subpart.

The Agency also invites comments concerning the second use of higher plants studies to evaluate the mutagenic potential of pesticides on humans.

F. Field Tests.

The field tests are employed to evaluate the phytotoxic nature of the pesticide in environmental conditions and situations under which the pesticide will be used.

The increase in number of species and the geographical areas will permit the Agency to more accurately evaluate the risks associated with pesticide selectivity and the varied species susceptibilities. By increasing the number of test areas, it will be possible to evaluate the effect of different environmental variables on the toxicity of the pesticide to nontarget plants and microorganisms.

G. Sorption Studies.

The sorption study (proposed § 163.125–4) is designed to derive information concerning the effects of pesticides on aquatic plants when the pesticide is likely to be carried into the aquatic system sorbed to soil or organic matter. These pesticides normally will not readily dissolve in water, nor will they have exceptionally high soil or organic carbon sorption coefficients. The pesticides so carried could be readily transferred from the soil or organic matter carrier directly to the plant surface, root, or submersed foliage, as is the normal occurence with nutrients for plants.

The other aquatic studies (proposed § 163.122–2, 123–2, and 124–2) are designed to assess the effects of dissolved material only on aquatic plants.

Because experimentation of this nature has not been conducted with the requirement to measure the various parameters, a defined level with relation to "readily sorbed" is not available. The Agency, therefore, invites the submission of information and comments concerning this type of study and a reasonable value or range of values.

VIII. Special Tests

A special test series (§ 163.126) is proposed by this subpart of the guidelines to evaluate spray drift potential of pesticides that are to be applied by aircraft (fixed wing and helicopter), air carrier (mist blower), and other ground application equipment. Examples of such ground application

equipment include but are not limited to overhead sprinkler irrigation, and sprayers for roadsides and railroad rights-of-way.

A recent amendment to the Act states "The term 'to use any registered pesticide in a manner inconsistent with its labeling' means to use any registered pesticide in manner not permitted by the labeling: Provided, that the term shall not include. (3) employing any method of application not prohibited by the labeling under FIFRA sec. 2(ee)." Under this new interpretation, liquid or wettable powder pesticides not normally expected to be sprayed (i.e., soil-injected or -incorporated) might be sprayed on occasion without the spray application being illegal or grossly "inconsistent" with the labeling. Therefore, products formulated such that there may exist a reasonable likelihood of application by spraying would generally be subject to the requirements of the spray drift studies, §§ 163.126–1 through –4.

These guidelines would establish data requirements which primarily address hazards from swath displacement. The results from the testing would be used to develop appropriate limitations on the use of the pesticide to reduce the hazards identified. Such restrictions might include general equipment restrictions, wind velocity limitations, buffer zone establishment, and release heights.

From the definition of extended airborne displacement and from the fact that damage from such drift has been significant up to several miles from the target areas, it can be seen that protection from airborne displacement cannot always be effected by means of small buffer zones around the target area. The primary factors which could equally reduce drift hazard from both swath and extended airborne displacement are related to droplet size. Hazards from both swath and extended displacement can be reduced simultaneously when technology reaches the point where uniformly-sized and -distributed droplets are: (1) sufficiently large to reduce drift, but small and numerous enough to maintain efficacy; (2) sufficiently few to prevent uneconomical and inefficient applications; and (3) which possess sufficient integrity to maintain droplet size from formation until deposition. Until that time, it would seem that reduction of drift hazard from swath displacement can be regulated and attained through specific label restrictions, buffer zones, and precautions, while reduction of drift hazard from extended airborne displacement must rely upon adherence to a combination of general label precautions and awareness by those applying pesticides of potential hazards in a particular area.

The evaluation of swath displacement is a three-part study (see proposed § 163.126–1). The first part is a bioassay study (proposed § 163.126–2) to determine the phytotoxic levels of the pesticide on plants that may be grown in close proximity to areas of application. The bioassay test performed in tiers 1 and 2, vegetative vigor (proposed §§ 163.122–1 and 123–1), may be substituted for the plant activity spectrum test. The protocols for this bioassay test are those given in the appendix: vegetative vigor (foliar application). Data to fulfill the requirement of the plant activity spectrum may be substituted by submission of published or unpublished information.

The second part of the spray drift evaluation would be the droplet volume spectrum study under proposed § 163.126–3. Inclusion of this set of data is of great importance. Droplet sizes along with wind speed are the primary determining factors of spray drift. A wind tunnel or similar device can simulate to some extent the wind conditions that may occur in the field, and can be used to study the effect of various nozzle types and cores, pressures, angles, product formulations, and droplet distribution from nozzle to impact. It should be noted, however, that the wind tunnel studies are not intended to be total substitutes for the field studies.

Because it is impossible to test all possible nozzle types and utilize all expected weather conditions, the droplet size spectrum studies would be performed using a good cross-sample of commonly-used or label-recommended nozzle types and arrangements under typical weather conditions expected during application. Equipment and conditions that simulate "worst-case" conditions for spray drift should be evaluated. The registrant or applicant would be required to determine the droplet size and volume distributions for each set of conditions. By performing these relatively less expensive tests, the number of the more expensive field studies can be reduced, and predictions of spray drift patterns under various conditions can be made.

The third part of this evaluation, the actual field determination of swath displacement spray drift using commercial equipment (proposed § 163.126–4), would be required when the plant activity spectrum indicates that plants outside the target area are likely to be detrimentally affected. Data from the field test would provide the Agency with information from actual situations and allow a more accruate hazard evaluation.

To fulfill the requirements of the droplet spectrum study and the swath displacement spray drift study, registration applicants may either conduct the studies according to the standards set forth in these guidelines, or submit published information regarding droplet size distribution and spray drift patterns which would be expected to be similar to those of the prospective pesticide product. When published information is submitted, it would have to be supported by a rationale concerning the claim of "similar or identical" spectra and patterns. While most registration applicants would probably choose to supply published data, a few may choose to develop their own data by following the standards set forth in these guidelines, simply because published information would not support the superior or different characteristics that have been incorporated into the formulations planned to be marketed.

IX. Regulatory Impact Analysis

Although individual sections of the guidelines may not be "significant" regulations under Executive Order 12044, EPA has decided to pursue the following procedure because of its concern over the total impacts of the guidelines. EPA issued an economic impact analysis of the proposed guidelines as they existed in mid–1978 published in the **Federal Register** of September 6, 1978 (43 FR 39644). As sections are reproposed or promulgated, or as new sections are proposed, EPA will estimate or revise its estimates of the costs for the relevant sections of the guidelines. The costs for these sections would be set into the context of the cost of the overall guidelines. Reference would be made to the economic impact of the total guidelines by summarizing the impacts estimated in the 1978 analysis. Once a significant proportion of the guidelines has either been reproposed or promulgated, EPA will make at least one further revision, once the guidelines are substantially complete.

A paper entitled "Economic Impact Analysis of Pesticide Registration Guidelines for Subparts G, I, and J" contains the cost and context information for the FIFRA guidelines Subpart J. This analysis is available by contacting the Document Control Officer at the address given above. The Agency

welcomes public comment on this report.

In summary, the projected total costs of reregistration for Subpart J total approximately $6 million. This amount represents a small percentage, about 0.6%, of the total data requirement costs of pesticide registration.

EPA's economic impact analysis of the proposed guidelines of 1978 was based on Subparts B, D, E, and F proposed in July and August of that year. The annualized total for registration and reregistration was estimated then at $76.5 million, some 33% lower than the current estimate of $140 million. Based on the 1978 estimates, EPA made the following conclusions about the economic impact of the whole set of registration guidelines:

1. Sales value of pesticides at the basic producers level would increase by between 1.4 and 4.4 percent.

2. Pesticide research and development expenditures would increase by between 20 and 63 percent.

3. Pesticide users would face about a 1.3% increase in pesticide costs.

4. Overall added consumer costs are estimated to be quite small (about 35 cents per capita per year).

5. Employment dislocations of 38 to 75 jobs per year are expected to be largely offset by continued industry growth.

6. The guidelines are expected to have little impact on the economic viability of the roughly 200 major active ingredients.

7. Of the 300 to 550 smaller volume active ingredients subject to reregistrtion during the 1980's, however, the guidelines were estimated to cause about 35% to become uneconomical unless significant waivers of data requirements are requested and granted.

8. The "minor use problem" [i.e., how to register or maintain registration of products for minor agricultural (and other) uses] is not expected to be significantly aggravated by the guidelines, provided a minor use policy [utilizing the USDA/State Inter-Regional Project No. 4 ("IR–4"), other existing programs, and new efforts] can be developed by EPA.

9. Major pesticide firms are not expected to be adversely affected by these guidelines. A major impact on competition in the industry, however, consists of the guidelines operating as barriers and making it more difficult for smaller firms to compete effectively. This impact may be lessened as a result of the implementation of the 1978 amendments to FIFRA.

10. The effects on pesticide formulators are not fully known at this time, and are currently being examined by the Agency through its own investigations and through contract studies.

11. There is a possibility that resource constraints (laboratory facilities and personnel) may hinder the implementation of the testing guidelines. The extent of that potential problem is currently unresolved and is being investigated.

No attempt has been made to relate Subpart J to the economic impacts summarized above.

Note.—The Environmental Protection Agency has determined that Subpart J, in and of itself, does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107.

Dated: October 28, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Addendum I to Preamble

FIFRA section 25(a)(2)(A) requires the Administrator to provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** This provision is to permit the Secretary opportunity to comment on the proposal, and he did so for the guidelines and preamble for Subparts G, I, and J. The comments of the Secretary and the Administrator's response thereto are published below. In this instance, correspondence was exchanged between Edwin L. Johnson, Deputy Assistant Administrator for Pesticide Programs, EPA, and Robert C. Riley for Barry R. Flamm, Director, Office of Environmental Quality. Each of the individual comments from USDA on Subpart J is reproduced in full, but USDA comments on Subpart G and I (also included in the letter) were not included here. The page numbers mentioned in USDA comments refer to pagination in the June 22 draft being reviewed at the time. For purposes of brevity in this addendum, each USDA comment is followed immediately by insertion of the corresponding EPA response set off in brackets.

Department of Agriculture,
Office of the Secretary,
Washington, D.C., August 6, 1979.
Mr. Edwin L. Johnson (TS–766),
Deputy Assistant Administrator for Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C.

Dear Mr. Johnson: Thank you for your July 5, 1979 letter, transmitting copies of EPA's proposed "Guidelines for Registering Pesticides in the United States." The guidelines transmitted include Subpart G—Product Performance; Subpart I—Experimental Use Permits; and Subpart J—Hazard Evaluation: Nontarget Plant and Microorganisms.

We are pleased that the U.S. Environmental Protection Agency is making progress in the development of guidelines for registering pesticides in the United States. These guidelines will be of value to those wishing to pursue registration of pesticides.

USDA cursory comments on each of the subparts are attached. We expect to have additional comments during the 90-day comment period after the guidelines are published in the **Federal Register.**

We waive the 30-day waiting period requirement for publication in the **Federal Register** after receipt of USDA comments as you requested in your letter.

We hope you will find our comments constructive. We look forward to continued cooperation with the U.S. Environmental Protection Agency as the development of these important registration guidelines progress.

Sincerely,

Robert C. Riley (for)

Barry R. Flamm,

Director, Office of Environmental Quality.

USDA Comments on Draft of Subpart J

Subpart J—Hazard Evaluation: Nontarget Plants and Microorganisms

I. Organization and Philosophy of Subpart J

This section should emphasize only essential information to fit the basic needs of regulation. *Mutagenicity studies with plants* (163.84 and 163.124–3) do not appear essential and it is recommended that the requirements be deleted.

[EPA response: The proposed tests described in §§ 163.122–3 and 163.124–3 provide that, if chemicals cause mutagenic changes in animal and microorganism systems as determined through testing under Subpart F (§§ 163.84–1 through –4), the chemicals should also be tested to determine if they also adversely affect plant systems. The Agency is concerned about the possible adverse effects on plants of mutagenic chemicals that are or may be marketed as pesticides, as discussed in the preamble at part V. E. EPA assumes that the Department has considered the Agency's reasons for proposing mutagenicity testing requirements, and that the Department disagrees with them. The Department's comment will be considered along those supplied by the public on the appropriateness, scientific merit, and feasibility of the requirements, and on the criterion that invokes the requirements.]

Pages 7 and 8—The topic of overlabeling needs further clarification to avoid confusion or improper regulation.

[EPA response: The preamble, at part I. C., paragraph 5, indicated that overlabeling (label statements implying hazard far in excess of actual hazard) of

pesticide products is not an acceptable alternative to the submittal of hazard evaluation data. The original statement has been modified slightly to clarify meaning and intent. A more detailed discussion with regard to overlabeling problems and prohibitions will be set forth in Subpart H "Label Development".]

[II. The Standards for Acceptable Testing]

Page 14—It would seem logical that EPA should only be concerned with laboratory and field phytotoxicity studies of the formulated products. There appears to be no reason to require data on unformulated components not intended for use in the environment.

[EPA response: Nontarget plant toxicity testing, as required by tiers 1 and 2 (§§ 163.122–1 and –2, 163.123–1 and –2) employs the technical or purer grade of the active ingredient ("technical chemical") for several reasons. The information on plant response to the technical chemical is sufficiently indicative of the phytotoxic nature of the chemical for preliminary evaluation, and is far less costly to develop than to require individual tests on each and every pesticide formulation. When phytotoxic effects are found, further testing at tiers 3 and 4 (§§ 163.124 and 162.125) may be required, in which case field testing employing the formulated product is performed. Since the technical chemical is the required test substance in the first 2 tiers of testing, data from already-performed tests with the technical chemical and published (or unpublished) reports of tests with the technical chemical can be substituted for actual testing by the applicant and submitted as support for the registration.] Page 18—It should be pointed out that nitrification has been addressed previously in the guidelines. Is there a need to duplicate on p. 18?

[EPA response: Nitrification (the process in which the oxidative state of nitrogen is increased) is not addressed in Subpart J. Nitrogen fixation (the process in which dinitrogen's oxidative state is reduced to produce ammonium ions) is addressed in § 163.125–3 and discussed in the preamble at part II. B., paragraph 8. The nitrogen fixation studies required by this subpart are to be coordinated with the nitrogen fixation requirements of § 163.62–8(f)(3) of Subpart D (Environmental Chemistry). Statements have been added in both the preamble and the guidelines to prevent, to the extent possible, duplication of testing.]

[V. Discussion of Individual Tests]

Page 23—The seed germination and vegetative vigor section is too broad and lacks definition. This seems to be a section concerning primarily herbicides. Soil type, moisture, content of soil, pH and other variables contribute to difficulty of interpreting laboratory, green house or early field test studies.

[EPA response: The discussion regarding seed germination and vegetative vigor in the preamble at part V. B., paragrahs 1 and 2, was modified to explain better the scope of the required studies and the intended use of the data.]

Page 25—We do not understand the relationship of plant mutagenicity testing, human hazard and practical regulation. We recommend that plant mutagenicity testing be deleted from the regulation. [EPA response: See the EPA response to the first comment in this Addendum.]

[VI. Special Tests]

Page 31 (Special Studies—Section Series 163.126)—USDA is concerned about the relationship of spray drift potential as presented in Subpart J and the need for an interagency task force between the EPA and Department of Agriculture to develop application methodology and pesticide labeling directed toward an advisory opinion relative to the "misuse" provisions concerning dilution (concentration) and unspecified methods of application. It would seem that our knowledge of spray drift as related to formulation and equipment needs greater study and followup recommendations before this part of Subpart J is accepted in final form.

[EPA response: One of the major causes of nontarget plant damage is drift of pesticides applied as sprays to areas outside the intended application site. The Agency proposes to establish data requirements to evaluate the potential of a product to drift when applied as a spray. Since these guidelines will not be published in final form for many months, there is opportunity for more information to be developed which would help the Agency provide more specific testing standards and data requirements for spray drift studies. The Agency published an advisory statement in March 1979 concerning the "misuse" of a chemical where its application concentration may not be other than indicated on the label. This opinion was provided in response to FIFRA § 2(ee). Presently, the Agency and the Department of Agriculture are involved in developing a second advisory statement on the "misuse" provision concerning dilution (concentration) and unspecified methods of application.]

General Information and Testing Requirements

The general principle of tier testing is considered acceptable but there is concern about cost if all tests are required on a pesticide product.

[EPA response: An economic impact analysis with regard to this subpart is published with these proposed guidelines. It should be noted that there are several statements in the guidelines indicating that data based on the testing requirements may be substituted with data from tests already performed (§§ 163.120–5(c) and 163.126–1(a)). Also, applicants may request that certain testing requirements be waived (see preamble at part I. D., paragraph 1), thereby reducing the costs of testing.]

Page 3—USDA is concerned about the lack of clarity in discussing target area phytotoxicity data requirements. It would seem that target area phytotoxicity studies would be generated by the States testing the product prior to developing recommendations for the farmers of the State.

[EPA response: The concern about lack of clarity is not sufficiently precise to prompt the Agency to make any changes to clarify the requirements of this subpart. With reference to the latter comment, phytotoxicity information generated by the States would definitely benefit farmers and certain other pesticide users. However, such State-generated information usually would not be available at the time EPA needed to decide whether to register a particular pesticide product. Accordingly, the burden of producing target area phytotoxicity data (when such are required) usually falls on the registration applicant.]

Page 14(3)—Maintaining plants under their normal or natural cultural environment will be impossible for many microorganisms.

[EPA response: The comment refers to § 163.120–3(e)(4) which states that test organisms "should be maintained under conditions similar to their natural or normal cultural environment." The Agency recognizes the validity of the Department's comment, but calls attention to the fact that this statement actually is only advisory in nature: note that organisms "should" (not "shall") be maintained under conditions "similar to" (not "exactly like") those natural conditions.]

Page 21—Detrimental or adverse effects to be reported do not include "effects on root systems."

[EPA response: The Agency concedes that this was an important oversight in the draft supplied to the Department for review. In response to the comment, the following wording has been added, in § 163.120–4(c)(3): "Effect on root growth and structure".]

Page 22(8)—Addressing pesticide effects on nontarget areas, other than nontarget plants, seems repetitious since other Subparts of the Guidelines cover the subject.

[EPA response: The language of the statement referred to (§ 163.120–4(c)(8) has been changed to reflect the intent of the requirement more clearly, such that duplicative requirements are no longer implied.]

[Tier 1 Testing]

Page 41—Section 163.122–1(1)—The formulated product should be the "test substance" rather than the technical chemical.

[EPA response: See the EPA response to the third comment on Subpart J in this Addendum.]

Addendum II to Preamble

FIFRA section 25(a)(2)(A) requires the Administrator to provide the FIFRA Scientific Advisory Panel a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** This provision is to permit the Panel opportunity to comment on the impact on health and the environment of the proposal. The specific comments of the Panel on a June 22, 1979 draft of Subpart J and the Administrator's responses thereto are published below. In this instance, correspondence was exchanged between Edwin Johnson, Deputy Assistant Administrator for Pesticide Programs, and Wade Fowler, Executive Secretary of the Panel. In the letter from the Panel provided in this addendum, deletions were made that referred to the Good Laboratory Practice proposal that was reviewed at the same time. Also, readers should note that the Panel also reviewed Subparts G and I at this time; the Panel's specific comments on these 2 subparts are also deleted. For purposes of brevity in this addendum, each Panel comment on Subpart J is followed immediately by insertion of the corresponding EPA response and set off in brackets.

United States Environmental Protection Agency
Office of Toxic Substances.

Washington, D.C. 20460, October 22, 1979.

Subject: Review of Proposed Guidelines for Registering Pesticides in the United States

From: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS–766).

To: Deputy Assistant Administrator for Pesticide Programs (TS–766).

The FIFRA Scientific Advisory Panel has completed review of Subparts . . G, I, and J of the Guidelines for Registering Pesticides in the United States. The review was completed in open meetings held in Arlington, Virginia, during the period July 19–20, 1979. Attached is a report of findings by the Panel.

This report was delayed due to a shift of office resources for resolution of Panel business relating to conclusion of the RPAR's on 2,4,5–T and Silvex. The secretariat regrets the delay and sincerely hopes that the delay did not significantly impede progress with proposed rulemaking on the Guidelines.

Please convey our special thanks to Dr. Preston, Mr. Jordan, and all members of the EPA staff who participated in the meeting for an excellent briefing on the important features of the proposed rulemaking documents.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel; Review of Proposed Guidelines for Registering Pesticides in the United States

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel completed review of several additional Subparts of Proposed Guidelines for Registering Pesticides in the United States during open meeting held in Arlington, Virginia, during the period July 19–20, 1979. The following specific subparts were reviewed during the meeting:

1. ***
2. Subpart G. Product Performance.
3. Subpart I. Experimental Use Permits.
4. Subpart J. Hazard Evaluation: Nontarget Plants and Microorganisms.

Maximum public participation has always been encouraged at all meetings of the FIFRA Scientific Advisory Panel. In respect to this session of the Panel, a **Federal Register** Notice was published on July 3, 1979. In addition, telephonic notices and special mailings were sent to the general public who had previously expressed an interest in activities of the Panel. Written statements relative to the Proposed Guidelines, Subpart G, Product Performance, were received from Huntington Laboratories, Inc. In addition to comments by EPA staff, informal comments were received from the general public and representatives of the pesticide industry.

The superb efforts of Dr. William H. Preston, Jr. and other technical staff of EPA who presented various Subparts of the Guidelines to the Panel are worthy of special recognition. The Panel wishes to commend the Agency for being exceptionally cooperative in their working relationship with the Panel in all matters dealing with the proposed Guidelines. This has materially aided in the expeditious review of a large amount of technical material. Additionally, the Panel wishes to recognize the value of preliminary review of massive documents such as Subpart G, Product Performance (676 pages). Introduction of the document to the Panel and the public in Houston, Texas, during a special subcommittee meeting in November 1978 made it possible to focus attention on a limited number of central issues and avoid lost time in discussions emanating from problems of communication relative to isues easily resolved by Agency officials.

In consideration of all matters brought out in the meeting and a careful review of the proposed rulemaking document * * *, the Panel submits the following report:

The FIFRA Scientific Advisory Panel is of the opinion that the *** subparts of the Guidelines (Subparts *** G, I, and J) submitted to the Panel as proposed rulemaking during the Twenty-fourth meeting of the Panel, July 19–20, 1979, deals effectively with the intended procedures with a limited number of specific exceptions and recommendations:

The FIFRA Scientific Advisory Panel unanimouslyu submits the following comments on the *** proposed subparts of the pesticide registration Guidelines:

I. ***
II. ***
III. ***

IV. Subpart J Hazard Evaluation: Nontarget Plants and Microorganisms.

This subpart encompasses concerns relative to potential damage to plants within the target area that are intended to be protected as well as valuable plants outside target areas. Panel Comments and Recommendations: The Scientific Advisory Panel concurs with this subpart with the stipulation that the Agency will provide appropriate remedies to a series of minor issues identified and recorded by EPA staff during the meeting.

[EPA response: The more important of the minor issues noted and acted upon by the Agency include:

(1) Preamble, part II. B., paragraph 2: The statement mentioning statistical analysis between species has been deleted.

(2) Preamble, part IV., paragraph 6: A paragraph has been added regarding testing of combinations of nozzles and nozzle configurations. It explains that studies should be performed using a good cross sample of commonly-used or label-recommended nozzle types and

arrangements used under typical weather conditions, and that, during field evaluations, the commonly-used equipment and expected weather conditions that provide "worst case" conditions should be used.

(3) § 163.120–3(e) and § 163.120–4 (throughout): The repetitious wording "nontarget plant and microorganism test species" has been changed to "test organism".

(4) § 163.120–3(f): A paragraph on nontarget organism safety has been added to help ensure that endangered or threatened plant and animal species will not be adversely affected by conducting the field tests required by this subpart.

(5) § 163.120–4(a): A statement has been added to reflect the need to obtain an experimental use permit for field studies where more than 10 acres are involved or where spray drift studies are to be performed.

(6) §§ 163.122 and 163.123: The statement under "Test substance" referring to use of water as a diluent has been deleted.

(7) § 163.125–3: Cross reference is made to § 163.62–8(f)(3) of Subpart D to prevent duplication of testing for nitrogen fixation potential effects.

(8) Appendix Item (2): A change has been made indicating that vegetative vigor studies using *Rhizobium*-inoculated soybeans should be conducted during the 7–9 week period so that the effect on *Rhizobium* nitrogen fixation can be observed.]

[End of comment.]

It is proposed to add a new Subpart J to 40 CFR Part 163 to read as follows:

Subpart J—Hazard Evaluation: Nontarget Plants and Microorganisms

General

Sec.

163.120–1 Overview.
163.120–2 Definitions.
163.120–3 Basic test standards.
163.120–4 General evaluation and reporting requirements.
163.120–5 Tier testing sequence.

Target Area Testing

163.121–1 Target area plant toxicity testing.

Tier 1 Testing

163.122–1 Seed germination/seedling emergence and vegetative vigor (Tier 1).
163.122–2 Growth and reproduction of aquatic plants (Tier 1).
163.122–3 Mutagenicity effects (Tier 1).

Tier 2 Testing

163.123–1 Seed germination/seedling emergence and vegetative vigor (Tier 2).
163.123–2 Growth and reproduction of aquatic plants (Tier 2).

Tier 3 Testing

163.124–1 Terrestrial field testing (Tier 3).
163.124–2 Aquatic field testing (Tier 3).
163.124–3 Mutagenicity testing (Tier 3).

Tier 4 Testing

163.125–1 Widespread geographical uses (Tier 4).
163.125–2 Widespread seasonal uses (Tier 4).
163.125–3 Nitrogen fixation potential (Tier 4).
163.125–4 Readily sorbed materials (Tier 4).

Special Testing

163.126–1 Spray drift: General requirements.
163.126–2 Spray drift: Plant activity spectrum studies.
163.126–3 Spray drift: Droplet size spectrum studies.
163.126–4 Spray dreft: Field evaluation.

Appendix A to subpart J

Authority: Secs. 3, 8, and 25(a)(1), Federal Insecticide, Fungicide, and Rodenticide Act, as amended; 92 Stat. 819; (7 U.S.C. 136 et seq.; 1972, 1975, and 1978).

General

§ 163.120–1 Overview

(a) *General*—(1) *Scope.* This subpart deals with data requirements to support registration of all outdoor use pesticides that come in contact with plants and microorganisms. This subpart addresses testing for adverse effects to nontarget plants, including those which are within the pesticide application target area (such as crop plants that are growing with weeds or are hosts for insecs and disease organisms), those which are outside the target area (such as typical adjacent crop plants, desirable ornamentals, important wildlife food and cover species, and forestry, lumber, and conservation plantings and endangered and threatened plant species), and microorganisms both within and outside of the target area. This subpart is concerned with toxicity resulting from direct exposure (i.e., application of a pesticide to a plant or microorganism) and from indirect exposure (i.e., exposure resulting from movement of the pesticide through the environment).

(2) *Organization.* This subpart contains three broad areas of data requirements:

(i) Toxicity to plants in the target area (§ 163.121–1);

(ii) Toxicity to plants and microorganisms outside of the target area (section series 163.122, 163.123, 163.124, 163.125); and

(ii) Evaluation of spray drift potential (section series 163.126). These data must be derived from tests and reported in a manner which complies with the general test standards contained in § 163.120–3 and the general reporting requirements contained in § 163.120–4 as well as the specific standards and reporting requirements of each section listed in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Waiver of requirements for target area phytotoxicity*—(1) Section 3 of FIFRA requires an applicant for registration of a pesticide to submit data showing that the product "will perform its intended function without (causing) unreasonable adverse effects on the environment." Toxicity data are necessary to show that products do not cause undue damage to nontarget organisms, including plants, in the environment. However, in accordance with Section 3(c)(5) of the amended FIFRA, "(i)n considering an application for the registration of a pesticide, the Administrator may waive date requirements pertaining to efficacy, in which event the Administrator may register the pesticide without determining that the presticide's composition is such as to warrant proposed claims of efficacy." The Administrator has determined that efficacy test data include target area phytotoxicity testing data, and that data submittal for such testing may ordinarily be waived for most kinds of pesticide products. Such products generally include all pesticides whose uses result in direct or indirect application to plants in the target area such as agricultural, lawn, and garden use. Target area phytotoxicity data submittal will not be waived for pesticides that are under review in a cancellation or suspension proceeding, or aginst which a rebuttable presumption against registration (RPAR) notice has been issued.

(2) Even though the Administrator will ordinarily waive the requirement for submittal of target area phytoxicity test data as indicated in paragraph (b)(1) of this section, he reserves the authority to require such data on a case-by-case basis whenever he deems that such data are necessary to evaluate the acceptability of a product for registration. Thus the guidelines in this subpart shall be used by registration applicants as phytotoxicity test standards and phytotoxicity data reporting requiremetns when target area phytotoxicity data must be submitted to support registration applications. The guidelines may also be used to provide helpful guidance on testing to support the claims and directions for use on product labeling for products for which target area phytotoxicity data submittal is waived.

(c) *Nontarget area phytotoxicity testing.* Data concerning the determination of pesticidal effects on nontarget area plants and microorganisms required to support the registration of pesticide products for outdoor applications are arranged in a tier system. Each tier test section

specifies the conditions under which the data are required. Tests in the lower tiers (1 and 2) are designed to screen those technical chemicals to determine the potential to cause adverse effects on seed germination, vegetation vigor, and aquatic plant growth and reproduction. The higher tiers (3 and 4) are designed to broaden knowledge concerning any determination effects on nontarget plants and microorganisms of either technical chemicals or formulated products. Waivers of specific nontarget phytotoxicity test data may be requested. The request for waiver must address the product applicaiton methodology, the pesticide product's chemical and physical properties, and the known phytotoxicity properties of the pesticide product.

(d) *Pesticide movement that relates to phytotoxicity evaluations.* During and after pesticide application, pesticides may be transported through the environment to nontarget areas where they may induce undesirable effects on nontarget plants. For some uses and some pesticides, data may be required concerning transport by wind (via spray drift, volatilization), water (via leaching, lateral movement in soil, runoff, drainage), movement of contaminated soil itself, and movement of treated plant material. The spray drift evaluation guidelines of section series 163.126 will not deal with other types of pesticide aerial movement such as violatization and movement by wind of treated or contaminated soil or plant material.

(e) *Application rates in relation to phytotoxicity evaluations.* Application rates for these tests generally include stated on product labeling, but may also include higher concentrations or more frequent applications that label-recommended rates to cover those use situations where commonly recognized practices of pesticide usage frequently involve over-application.

(f) *Comparability tests.* (1) In certain circumstances, the registrant may establish the comparability of detrimental effects between proposed and registered uses of formulations rather than conducting a large-scale testing program in which all variables pertinent to the amended use or altered formulation are extensively reevaluated. These circumstances may exist when a registrant seeks to amend his registered label by altering directions for use, rates, or applicaton techniques, or by adding tank mixes, serial applications, adjuvants, or alternate carriers, or when a registrant seeks initial registration of an alternate formulation of a product which he has previously registered. Use of this approach will generally decrease the time and expense involved in generating toxicity data in support of registration. Prior to initiating testing to establish comparability, the applicant should discuss with the Agency the propriety of this approach and the toxicity data required in the specific situation encountered. Establishing comparability requires direct comparisons of results from plots (preferably adjacent ones) subjected to identical test condition.

(2) Since tests may be fewer in number and smaller in size than those involved in full scale testing programs, more emphasis must be placed on selection of test conditions such that comparability will be evaluated under the most rigorous test conditions.

(g) *Relation of Subparts B, D, F, G, and H to Subpart J.* (1) The registration applicant is referred to Subpart B—Introduction to the Guidelines for: purpose of the guidelines, definitions of widely-used terms, policy on flexibility in relation to deviation from test standards and acceptable protocols, and requirements for retention and submission of raw data, specimens, and samples of test substances.

(2) Data required by other sections of these guidelines for pesticide registration contain information which may be considered in the evaluation of pesticidal hazards to plants resulting from the use of a pesticide. This information appears in the following section series:

Sec.
163.62 Environmental chemistry.
163.84 Mutagenicity testing.
163.90 Overview, definitions, and general requirements.
163.91 Efficacy of antimicrobial agents.
163.92 Efficacy of aquatic pest control agents.
163.93 Efficacy of fungicides and nematicides.
163.94 Efficacy of terrestrial herbicides, plant regulators, desiccants, and defoliants.
163.95 Efficacy of invertebrate control agents.
163.96 Efficacy of vertebrate control agents.

In no instance will the data requirements of these sections be imposed such that duplicative data would have to be submitted to meet the requirements of these sections and of this subpart.

(3) The registration applicant is referred to Subpart H—Label Development for requirements on pesticide labeling. One of the important objectives of the testing programs required in Subpart J is to develop sufficient data to support appropriate and adequate precautionary statements and instructions for use, with respect to nontarget plants and microorganisms. Applicants should read the appropriate paragraphs of § 163.100–4 and section series 163.104 dealing with phytotoxicity and nontarget plant effects.

§ 163.120–2 Definitions.

Terms used in this subpart shall have the meaning set forth in FIFRA at § 162.3 of this chapter, at § 163.40–2, at § 163.60–2, and at § 163.90–2. In addition, for the purposes of this subpart:

(a) The term "algae" includes all chlorophyllous *Thallophyta* other than the *Bryophyta*. It includes the blue-green algae (*Cyanophyta*), green algae (*Chlorophyta*), golden algae and diatoms (*Crysophyta*), brown algae (*Phaeophyta*), red algae (*Rhodophyta*), and golden-green algae (*Xanthophyta*).

(b) The term "aquatic plants" includes those plants which are totally aquatic (free-floating or attached, submersed, and emersed) and those which are semi-aquatic such as swamp and wetland plants.

(c) The term "drift" as defined in 40 CFR 162.3(n) means movement of a pesticide through air during or immediately after application or use to a site other than the intended site of application or use. Drift includes two major components:

(1) Swath displacement downwind: that which is deposited in or adjacent to the intended target area.

(2) Extended airborne displacement: that which is carried and deposited beyond and not necessarily adjacent to the target area.

(d) The term "ECx" means that external pesticide concentration required to cause a detrimental change or alteration (in a nontarget plant) expressed as a percent (x) in comparison to untreated control plants. An EC10, EC50, and EC90 are the concentrations required to effect a 10, 50, or 90 percent detrimental change, respectively, on nontarget plant growth or activity.

(e) The term "EDx" means that internal pesticide concentration or dosage required to detrimentally affect dry weight gain (in a nontarget plant) expressed as a percent (x) in comparison to untreated control plants.

(f) The term "Ix" means that pesticide concentration required to effect a detrimental change (usually inhibition) in enzymatic activity in a nontarget plant expressed as a percent (x) in comparison to that in untreated control plants.

(g) The term "microorganism" means any of those organisms classified as algae, fungi (*Myxomycota* and

Eumycota), and bacteria (*Schizomycota*).

(h) The terms "nontarget plant" and "nontarget microorganism" mean any plant and microorganism species considered not to be pests. These species are not intended to be controlled, injured, killed, or detrimentally affected in any way by a pesticide. "Nontarget plants" include desirable or pest host plants such as crops or ornamentals within the target area, and desirable plants outside the target area.

(i) The term "pest-free" means as free of pests as possible. For example, for herbicide tests which require pest-free plots, such plots should be free of weeds; for tests with insecticides which require pest-free plots, such plots should be free of damaging insects.

(j) The term "phytotoxicity" means unwanted detrimental deviations from the normal pattern of appearance, growth, and function of plants in response to toxic pesticides and to other toxic chemicals that may be applied with the pesticide. The phytotoxic response may occur during germination, growth, differentiation, and maturation of plants, and may be of a temporary or long-term nature. Phytotoxic responses include adverse effects on growth habit, yield, and quality of plants or their commodities to the extent that a relationship between cause and effect can be established.

(k) The term "plants" includes vascular and nonvascular plants, algae, and fungi.

(l) The term "target area" means the area actually treated with a pesticide when label use directions are followed.

(m) The term "target area plants or microorganisms" means all plants or microorganisms located within the target area, and includes both desirable and undesirable species.

§ 163.120–3 Basic test standards.

(a) *Scope.* This section contains test standards which apply to all studies in this subpart unless another section of this subpart contains a specific test standard on the same subject, in which case the specific test standard in the other section shall apply to the conduct of that particular study.

(b) *General.* The experimental design, execution of the experiments, classification of the organism, sampling, measurement, and data analysis in support of an application for registration must be accomplished by use of sound scientific techniques recognized by the scientific community. The uniformity of procedures, materials, and reporting must be maintained throughout the toxicity evaluation process. Refinements of the procedures to increase their accuracy and effectiveness of the evaluation are encouraged. When such refinements include major modifications of any test procedure or standard, the Agency should be consulted before implementation. All references supplied with respect to protocols or other test standards are provided as recommendations.

(c) *Personnel.* (1) All testing and evaluation must be done under the direction of personnel who have the education, training, and/or experience to perform the testing and evaluation in accordance with sound scientific experimental procedures. The Agency may require resumés of personnel who have supervised, performed, evaluated, or reported the testing.

(2) To help assure consistency in the development of data, one person should be responsible for each particular phase of study.

(d) *Test substance.* (1) Plant hazard evaluation tests to support the registration of a pesticide shall employ either the technical or purer grade of the active ingredient or the formulated product(s), as specified in the following series of sections in this subpart: 163.121, 163.122, 163.123, 163.124, 163.125, and 163.126.

(2) The composition of the test substance shall be determined, including the name and quantity of contaminants and impurities, as far as is technically feasible, in order to account for 100 percent of the test sample. If the test substance is a formulated product, it shall be within the limits, if any, certified in accordance with § 163.61–6(b).

(3) Samples from the same lot of the test substance shall be used throughout a particular test or study. The samples shall be stored under conditions that maintain their purity and stability. In the case of formulated products, storage should be under conditions as found in commonly-recognized storage practices. If the stability of the test substance cannot be maintained for the duration of the study or if, for other reasons, it is not possible to use the same lot throughout the test, subsequent lots of the test substance should be selected that are as nearly identical physically and chemically to the original lot as practical. Chemical assays shall be performed to assure this identity and permit reporting of any deviations in compositions.

(4) For long term studies, such as field tests, when the test substance is incorporated into or applied to soil or water, the initial concentration of test substance in the soil or water shall be determined and samples collected periodically to determine the concentrations. (This information may be cross-referenced to the data requirements of §§ 163.62–7 through 163.62–11 in Subpart D.)

(5)(i) If a carrier, vehicle, or adjuvant is used to dissolve, dilute, or modify the physical characteristics of the test substance for any study, it should be chosen to possess as many of the following characteristics as possible:

(A) It should not interfere with the metabolism of the test substance;

(B) It should not alter the chemical properties of the test substance; and

(C) At levels used in the study, it should not produce physiological or toxic effects to plants.

(ii) Products with labeling which recommends the addition of separately-packaged adjuvants to the spray tank must be tested to determine whether any detrimental effects (such as increased crop phytotoxicity) may result from their addition to the pesticides. The adjuvants to be tested for use with a pesticide are those adjuvant brand names or defined adjuvant classes specifically named on the pesticide label. If a range of adjuvant rates is recommended, the maximum and minimum rates within that range must be evaluated in conjunction with the intended pesticide product.

(6) For testing pesticides in aquatic systems, the test substance must be solubilized in the water to the extent that it will be present in the environment as though introduced by a formulated product.

(7) In addition to or in lieu of data required by this subpart, the Agency may require, after consultation with the applicant, data derived from testing to be conducted with:

(i) An analytically pure grade of an active ingredient;

(ii) The technical grade of an active ingredient;

(iii) An inert ingredient of a pesticide formulation;

(iv) A contaminant or impurity of an active of inert ingredient;

(v) A metabolite or degradation product of an active or inert ingredient;

(vi) The pesticide formulation;

(vii) Any additional substance which enhances the phytotoxic activity (up to and including synergistic effects) of the product for which registration is sought; or

(viii) Any combination of the test substances mentioned in paragraphs (c)(7)(i) through (vii) of this section.

(8) When tank mixtures are recommended on product labeling, a study must be conducted to demonstrate the extent of antagonism and synergism with respect to detrimental effects on

nontarget plants and microorganisms of the products of tank mixtures. Antagonism and synergism are best evaluated in adjacent plots where possible interactions are subjected to statistical analysis.

(9) Data requirements for serial application(s) of one or more pesticide(s) preceding or following another pesticide on the same crop area in the same growing season are identical to those described in paragraph (d)(8) of this section for tank mixes with respect to phytotoxicity, when such serial applications are recommended on the label.

(e) *Nontarget plant and microorganism test species.* (1) The organism species or groups to be tested are specified in the following series of sections of this subpart: 163.121, 163.122, 163.123, 163.124, 163.125, and 163.126.

(2) Healthy plants must be used.

(3) Either cultivated crop, ornamental, or wild indigenous plants may be used; endangered or threatened species as determined by the Endangered Species Act of 1973 (Public Law 93–205) shall not be used.

(4) Test organisms that are obtained from natural systems and which are to be used for testing should be maintained under conditions similar to their natural or normal cultural environment.

(f) *Nontarget organism safety.* While performing field tests, all necessary measures shall be taken to ensure that nontarget plants and animals, especially endangered or threatened species, will not be adversely affected either by direct hazard or by impact on food supply or food chain.

(g) *Controls.* (1) Control groups are used to assure that effects observed are associated or attributed to the test substance exposure. In phytotoxicity evaluations, all treated plots, plants, and commodities must be compared directly to untreated control plots, plants, and commodities. The appropriate control group shall be similar in every respect to the test group except for exposure to the test substance. Within a given study, all test organisms including the controls shall be from the same source. To prevent bias, a system of random assignment of the test plants to test and control groups is required. Where a carrier, vehicle, or adjuvant other than water is used, appropriate experiments and controls should be included to distinguish the possible action of the carrier, vehicle, or adjuvant.

(2) When technical chemicals are formulated with dissolving or dispersing agents to make solutions or mixtures suitable for the performance of the tests, the solutions or mixtures without the technical chemical must be included as additional controls in the test regimen.

(h) *Equipment.* (1) All equipment used in conducting the test, including equipment used to prepare and administer the test substance, and equipment to maintain and record environmental conditions, shall be of such design and capacity that tests involving this equipment can be conducted in a reliable and scientific manner. Equipment shall be inspected, cleaned, and maintained regularly, and be properly calibrated.

(2) The application equipment used in testing products in small field plot studies must be designed to simulate conventional farm equipment. This can be accomplished by using the basic components of commercial application equipment in the design of the small-plot equipment. For example, nozzle types, sizes, and arrangements on small plot sprayers can be identical to those used by growers on commercial ground sprayers; or single-row commercial granular application equipment mounted on a garden tractor for small plot trials should produce results comparable to a multiple of such units on a large tractor. For large-scale field trials, commercial application equipment must be used. Specific details as to description of equipment design, adjustment, and operation must be provided in test reports.

(i) [Reserved]

(j) *Observations.* All observed signs or absence of toxicity to plants and microorganisms and related detrimental effects must be determined and reported.

§ 163.120–4 General evaluation and reporting requirements.

(a) *General.* (1) The registration applicant is reminded that certain efficacy data submittal requirements may be waived as described generally in § 163.120–1(b) of this subpart.

(2) The registration applicant is also reminded that an experimental use permit will usually be required in order to conduct field spray drift studies described in § 163.126–4. Also, experimental use permits may be required for the testing of pesticides under field conditions involving more than 10 acres, such as in described in §§ 163.121–1, 163.124–1, 163.124–2, 163.125–1, and 163.125–2.

(3) The report shall include a detailed and accurate description of test procedures, materials, results and analysis of the data, a statement of conclusions drawn from the analysts, and a tabular summary and abstract of results. When they have been determined, the primary and secondary modes of action with respect to plant morphogenic and biochemical levels should be reported.

(4) The metric system shall be used in test reports. The U.S. standard measures also be included in field test studies. The two systems shall not be mixed (e.g., g/sq. ft.).

(5) The English language shall be used in all test reports. English translations must be provided with foreign language reports.

(b) *Test materials and methods.*—(1) *Dates.* Actual dates of the studies shall be reported, including date(s) of initiation (planting, transplanting, and cultural practices), application(s), observations, and harvest.

(2) *Laboratories.* The names of the laboratories or institutions performing the tests shall be included.

(3) *Personnel.* Name and title of each principal investigator, and the name, address, and phone number of the employer shall be reported.

(4) *Test substance.* Identification of the test substance shall be provided, including:

(i) Chemical name, molecular structure, and quantative and qualitative determination of its chemical composition;

(ii) Relevant properties of the substance tested, such as physical state, pH, and stability; and

(iii) General identification and composition of any vehicles (e.g., diluents, suspending agents, and emulsifiers) or other materials used in the testing of the substance.

(5) *Untreated control (check) plots.* Detailed descriptions of plots and plants or microorganisms used as control treatments for comparisons of toxic effects must be included for each test. Data must indicate if the control plot or plants were untreated (received no pesticide), received standard cultural practices (which must be described) similar to those for plants in the experimental plot, and received other pesticides (which must be listed). Data from untreated plots or plants must include measurements of the same factors to be evaluated in determining detrimental effects resulting from use of the proposed pesticide.

(6) *Test organisms.* The description shall include the indentification of the test organisms (genus, species, and cultivar or variety, as appropriate), rationale for selection of the species employed, and location of plant collection areas including their physiographic data. When plant species othe than those identified for specific studies have been tested, their degree of susceptibility to the pesticide must be included in the test report. This

susceptibility should be reported in terms of EC values as in the regular test plant reports.

(7) *Location.* Geographic location, including relation to the target sites, shall be reported.

(8) *Substrate conditions.* (i) For aquatic pesticide applications, the following physiographic conditions shall be reported:

(A) Type of aquatic site, such as lake, pond, reservoir, stream, or irrigation ditch with flow rate (if moving water);

(B) Size (area and depth or volume or length, width, and depth of the treated areas, and of the whole site), as is the appropriate to the type of application and the type of target organism(s);

(C) Water quality, including pH, temperature, hardness, alkalinity, salinity;

(D) Turbidity, conductivity, and dissolved oxygen (for submerged plants only); and

(E) Soil texture, including that of soils along the immediate shoreline or ditchbank and the submersed soil where the target pests are present (with the percent organic material in the soil also reported). (Recommended methods and soil texture classifications may be found in the Walkley-Black Procedures in *Soil Sci.* 63:251, 1947, and the Soil Survey Manual, U.S. Dept. Agr. Handbook No. 18, 1951, Fig. 1, and *Soil Sci. Soc. Amer.* 26:305–317, 1962.)

(ii) For terrestrial pesticide applications, the following physiographic conditions shall be included:

(A) The edaphic conditions and characterization including soil type and texture, approximate pH and temperature, and presence of a hard pan or shallow bedrock;

(B) The degree and direction of slope and its orrientation to the row direction.

(9) *Environmental conditions.* (i) For growth chambers and laboratory experimentation, the light quality, light quantity (lux), air temperature, humidity, photo- and thermoperiods, and watering schedules shall be reported.

(ii) For greenhouse and field experiments, the approximate light quantity (usually expresed in degree of cloudiness), high and low daily air temperatures, relative humidity, and photoperiod (day length) shall be reported. The field environmental conditions are required only for the day of application. Area environmental conditions may be used to satisfy long term study data requirements.

(10) *Application*—(i) *General.* The test substance application method shall be reported, including dosage rates, application equipment (nozzle, orifice, pressure), time and number of applications (with reference to season and stage of growth), spray dilution, spray volume per unit area, and adjuvants;

(ii) *Dosage rates.* Dosage rates shall be reported in units of active ingredient or acid equivalent as appropriate. Rates may be expressed as units of ingredient per unit of land area to be treated, units of concentration (such as parts per million), units per flow rate, or units of ingredient per unit volume applied to obtain a specified degree of foliage coverage (such as "to runoff"). If a product is applied more than once within a year or growing season, each rate and the interval between applications must be indicated. If products are applied in a tank mixture or are applied serially, rates and intervals, as appropriate, must be reported with identification and formulation for each product.

(iii) *Timing of applications.* When the test substance, particularly herbicides, plant regulators, desiccants, or defoliants, is applied to any desirable nontarget plants within or adjacent to the target area, the plant's stage of growth or development at application must be described in test reports.

(iv) *serial applications.* In addition to the detrimental effects of the pesticides, the times of application (or application interval) must be indicated for each product or tank mix involved in the serial application.

(c) *Observations.* (1) Observations shall be reported to include all variations, either inhibitory or stimulatory, between the treated test organisms and the untreated control test organisms. Such variations may be phytotoxic symptoms (chlorosis, necrosis, and wilting), formative (leaf and stem deformation) effects, growth and development rates, and stage of development and dates when adverse results occurred and subsided or recovered.

(2) Observations shall be reported in sufficient detail as to allow complete evaluation of the results. This evaluation, to be performed by both the registrant and the Agency, shall include the degree or extent of effects exerted by the pesticide in question for each replicate and variable.

(3) The detrimental or adverse effects to be considered and reported during the observation period of terrestrial studies shall include:

(i) Stand or plant population;

(ii) Overall vigor of the plants expressed as height, weight, diameter, length, or other similar aspect of growth;

(iii) Phytotoxicity or visible symptoms such as discoloration, malformation, desiccation, or defoliation;

(iv) Lodging of plants;

(v) Effect on root growth and structure;

(vi) Development delay or acceleration with respect to emergence, vegetative growth, flowering or sporulation, and maturation;

(vii) Yield of the crop or commodity that is affected as compared to those of crops or commodities of untreated check plots; and

(viii) The effects of pesticide applications on grass or the other desirable plant stands and growth where these plants are used to prevent erosion.

(4) Where pesticides are applied to aquatic systems and influence plant growth and development in aquatic systems, the effects of that pesticide on nontarget plants must be evaluated and reported, including vigor of the plants, phytotoxicity or other visible symptoms, and delay or acceleration with respect to vegetative growth, flowering or sporulation, and maturation.

(5) Uniform scoring procedures shall be used to evaluate the observable toxic responses.

(6) At least two methods of evaluation (such as linear and mass determinations) must be used in the evaluation of pesticide effects on growth, reproduction, and yield of plants in greenhouse and controlled chamber experiments. When direct measurements cannot be made, such as in large field evaluations, a zero to one hundred (0–100) or zero to ten (0–10) scale shall be used, where zero (0) indicates no injury and one hundred or ten (100 or 10) indicates a total kill produced by the test substance. An explanation of the steps of the rating scale employed shall be included with the report.

(7) Observation reports shall include the basic data used for the statistical analysis [see paragraph (d) of this section]. Such data shall include the actual values used to determine any percentages of effects. Raw data (chromatographs, field reports, and analysis data) may also be included to substantiate the basic data that are required.

(8) The effects of pesticides on plants in nontarget areas adjacent to the target area must be evaluated and reported. These areas may include any aquatic or terrestrial site where pesticides may drift, be carried by soil erosion or surface water runoff, or otherwise be transported by natural means.

(d) *Statistical analysis.* (1) When test results such as efficacy, phytotoxicity, or yield indicate adverse effects on crops and other nontarget test organisms, statistical analysis is

required to evaluate the response(s). The statistical analysis shall consist of:

(i) The tablulation of the response data at each treatment level;

(ii) Calculation of the slope of the dose response line;

(iii) The determination of 10, 50 and 90 percent detrimental effect levels (e.g., EC10, ED90, I50, as appropriate) and the 95 percent confidence limits for each;

(iv) A goodness of fit test of the dose response curve; and

(v) The estimated non-discernible effect level. This is the level at which there would be no significant effect on the intended yield, quality, or aesthetics of the crop or plant which might be exposed. The value reported may be either calculated (usually calculated as a 5 percent reduction in growth, yield, or quality) or observed directly.

(2) Statistical analysis is also useful in evaluation of interactions resulting from studies supporting tank mixtures or serial applications.

(e) *References.* Copies of references or literature used in modifying the test protocol, performing the test, making and interpreting observations, and compiling and evaluating the results shall be submitted. Copies of unpublished literature shall also be included. Copies of the recommended literature referenced in these guidelines are not required.

(f) *Special test requirements.* In addition to the data required in this subpart, data from other tests may be required by the Agency for making judgments regarding safety to nontarget plants. Such data will be required where there are special problems, such as a proposed pattern of use, mode of phytotoxic action, or a unique chemical property. Methods are usually derived from those already described or cited in other subparts of these guidelines.

§ 163.120–5 Tier testing sequence.

(a) *General.* The data requirements and their associated protocols in section series 163.122, 163.123,163.124, and 163.125 are arranged in a hierarchical or tier system. Data from certain basic tests will be required of pesticides for registration (tier 1, §§ 163.122–1 through 163.122–2). Additional tests will be conducted on the basis of criteria addressing certain data requirements and standards. The criteria to proceed from one tier to the next are contained in the "Tier progression" paragraph of each section. The requirements to perform a specific test or test series are also given in the "When required" paragraph of each section.

(b) *Performance.* Before a product is to be considered for registration, all tests required by the tier testing systems must be performed or referenced.

(c) *Substitutions.* If the pesticide has been extensively tested by the registrant using screening tests similar to those of tiers 1 and 2, the data from those tests may be submitted in lieu of tier 1 and 2 test data (other than mutagenicity). The term "extensively tested" means testing of at least the plants or plant families represented in §§ 163.122–1(b)(2) and 163.122–2(b)(2) under environmental conditions suitable to determine any phytotoxic effects. The reports shall be submitted as provided in paragraphs (c) of §§ 163.122–1, 122–2, 123–1, and 123–2. The Agency will reserve the right to require testing as provided in tiers 1 and 2 (exclusive of mutagenicity testing) if the submitted test data do not prove to be adequate to assess a pesticide's phytotoxic nature.

Target Area Testing

§ 163.121–1 Target area plant toxicity testing.

(a) *When required.* Data concerning the phytotoxic effects of a pesticide on desirable target area plants are required to support the registration of each formaulated product intended for outdoor and greenhouse applications. Such data submittal are waived or not waived in accordance with the policy set forth in § 163.120.1(b).

(b) *Test standards.* In addition to the general standards set forth in § 163.120–3, the target area phytotoxicity testing shall meet the following standards:

(1) *Test substance.* The formulated product shall be tested to support the registration of a formulated product.

(2) *Test species.* Those desirable target area or pest host plant species as listed on the label (for example, the crop plant or ornamental) which will be within the target area shall be tested. The plant cultivars to be tested shall include representatives of the cultivars that are most likely to be used.

(3) *Dose levels.* (i) The minimum, maximum, and 3 times the maximum label dosage levels shall be tested. Levels greater than 3 times the label rate may also be included. The estimated non-discernible effect levels shall also be determined.

(ii) The multiples of the dosage rate to be tested are those various quantities of the formulation in the label-recommented quantity of carrier (such as water) to be used per land or aquatic use area.

(iii) Appropriate controls shall be utilized. Refer to § 163.120.4(f).

(4) *Adjuvants.* Products with labeling which allows or recommends the addition of separately-packaged adjuvants to the spray tank must be supported with data indicating any detrimental effects (such as increased crop phytotoxicity) which may result from their addition to the pesticide, especially a herbicide, plant regulator, desiccant, or defoliant. If a range of adjuvant rates is recommended, the maximum and minimum rates within that range must be evaluated in conjunction with the intended pesticide product.

(5) *Site.* The test shall be performed in crop fields or greenhouses where it is intended that the product would be used.

(6) *Protocol.* The protocols, methods, or practices shall be those employed during the actual use of the pesticide product. Specific points of information that should be addressed concerning use patterns, application methodology, cultural practices, responses, and subsequent planting are found in paragraph (c) of this section.

(c) *Reporting.* In addition to the information required by § 163.120–4, the test report shall include the following information with respect to phytotoxicity to the plants within the target area (with the exception of weeds). This information shall include the method of application, cultural practices, plant responses, subsequent plantings, and use patterns that may be involved.

(1) *General information*—(i) *Timing of applications.* When crops or desirable target area plants are or will be involved in the application of any pesticide, their stage of growth or development at application must be described in the test report.

(ii) *Meteorological conditions.* Where meteorological conditions cause detrimental effects on plants which in turn allow the pesticide to further adversely affect the plants, the specific factor(s), such as temperature, wind conditions, precipitation, or daylength, affecting product activity must be measured and reported. Edaphic factors, such as soil moisture content and temperature, which are directly affected by meteorological conditions, must also be reported. Soil moisture may be observed and expressed in terms of dry and cracked, waterlogged, or other similar conditions.

(iii) *Spray dilutions.* In foliar applications, when a pesticide is applied as a diluted spray and the quantity is dependent upon the number of trees per area or density of vegetation, any detrimental effects to the nontarget plants must be reported.

(iv) *Untreated controls (checks).* In phytotoxicity evaluations, all treated plots, plants, and/or commodities must

be compared directly to untreated control plots, plants, or commodities. All quanlity and/or yield evaluations of pesticide-treated plants or commodities must be compared to control plants or commodities receiving the same pesticides (e.g., herbicides, insecticides, fungicides) except the one being evaluated. Detailed descriptions of plots and plants used as control treatments for comparisons of detrimental side effects must be included for each test. Since such control plots are established to evaluate any direct detrimental effects of the pesticide on the crop or commodity rather than an evaluation of efficacy, any detrimental effects on the crop or commodity resulting from the pests intended to be controlled must be eliminated by controlling these pests in another manner. In other words, the control plots must be both untreated by the pesticide in question and as pest-free as possible. If, in addition to the untreated control plots, plants, and/or commodities, a registered product is also applied (as a standard) for comparison of detrimental effects, data must indicate the standard product's name, active ingredient, dosage rate, and performance results.

(2) *Use patterns.* When the following use patterns are found on the label, the corresponding information as detailed below must be reported.

(i) *Use in field crops.* Effects of pesticides on desirable target area plants must be evaluated and reported. The extent and duration of the effect must be expressed in terms of stand and vigor, recovery, yields, and degree of phytotoxicity.

(ii) *Use on pastures and rangelands.* Effects of pesticides on desirable target area plants must be evaluated and reported. Severity and duration of adverse effects on desirable plant species, expressed in terms of stand and vigor reductions, recovery, and changes in yields, must be reported. Data must be submitted addressing: Reseeding intervals which minimize adverse effects on reseeded plants, and animal grazing recommendations which allow recovery of desired plant species. Data must be submitted which describe general shifts in desirable plant populations due to treatment.

(iii) *Use on and around fruit and nut trees.* Applications of pesticides on and around fruit and nut trees require evaluation and reporting of detrimental effects on foliage, and changes in growth compared to pre-application measurements. Pesticide applications to bearing fruit and nut tree areas also require evaluation and reporting of detrimental effects on yields and commodity (produce) quality for the year of and the year after application. Supporting data must address, for all trees, the age of the trees, the transplant-to-application interval, and the maximum allowable extent of contract between the pesticide (with particular reference to herbicide spray drift) and trees. For ground sprays, unless the pesticide is broadcast over the entire orchard floor, data must indicate the application technique (band, spot, shielded, or directed spray application) and the size of the treated ground area around the tree trunk. For foliar sprays, the data must include the volume of finished spray applied per unit of land area, concentration of product in the spray solution, and the extent of foliage coverage (such as volume of finished spray per tree or application to the point of runoff).

(iv) *Use on lawns and turf.* Evaluation of effects of pesticides on representative species or cultivars of desirable lawn and turf plants should include such factors as color, density, percent cover, growth rate, rooting, and tillering. Data must address use on newly seeded lawns by demonstrating safety to representative species and cultivars of desirable lawn plants claimed, with appropriate seeding-to-application intervals. Data must address use of an appropriate application-to-reseeding interval for each desirable lawn species and variety claimed. Interactions between herbicide application and lawn cultural practices (such as raking, mowing, mowing height, watering, and fertilizing) must be evaluated for possible adverse effects on desirable lawn species. In situations where fertilizer and a pesticide are applied serially and both types of products may contact the emerged crop foliage (such as in turf or lawns), the interval between application of the pesticide and the fertilizer must be reported, as well as any resultant phytotoxic effect, stunting, or discoloration, and recovery time for the injured desirable species.

(v) *Use around ornamentals.* Phytotoxicity data in support of use on or around an ornamental or crop species must include an evaluation of the sensitivity of representative cultivars of that species. Test data must identify the method of application as to directed spray and/or topical applications. Growth stage of the ornamentals and the transplant-to-application interval (when applicable) must be indicated in the test data. Information must be submitted on specialized nursery cultural practices employed in tests, such as use of artificial soils, mulches, containerized stock, and other pesticides.

(vi) *Use in forest development.* The effects of the pesticide on desirable plant species commonly present in forest development, in addition to the desirable forest trees, must be indicated in the report with any detrimental or adverse effects that the pesticide may cause. Special attention must be given to pesticidal effects on noncompetitive ground cover species that aid in the land management practices such as erosion control. Small plot testing techniques may be used to determine the effect of pesticides on ground cover plants. Large plot testing (for example, quadrat or line interception method) should be used for pesticide evaluation in larger standing vegetation. (A recommended reference is: Phillips, E. A. 1959. Methods of Vegetation Study. Hold, Rinehart, and Winston, Inc.: New York, N.Y. 107 pp.)

(3) *Application methodology.* All methods of pesticide application not prohibited by the label [see § 2(ee) of the Act] shall be evaluated and reported. Specific detail as to descriptions of equipment design, adjustment, and operation must be provided in test reports involving aerial applications and applications using conventional farm equipment (such as tillage or planting equipment), irrigation systems, mechanical incorporation, directed sprays, subsurface placement, or band rather than broadcast distribution.

(i) *Aerial application.* Guidance and the data requirements for testing aerial applications are provided in § 163.126–1.

(ii) *Irrigation system application.* (A) For irrigation system applications, multiple plots within a treated field must be examined and the results reported from crop phytotoxicity (expressable as yield quantity and quality of harvestable commodity) as an indication of pesticide hazard. Data from such plots must be reported for each individual plot and not simply averaged together. It is important that, in addition to the standard requirements for conventional applications, submitted data must include soil texture, percent soil organic matter, relative soil moisture content (dry, medium, or wet) at application, acre-inches of water applied, and precipitation quantities within one week after application.

(B) For overhead sprinkler irrigation systems, plots must be located at several nozzle positions along the length of the lateral. Plots must be placed at both extreme ends of the lateral as well as in areas where the sprinkler patterns overlap. The concentration of active ingredient at several nozzles along the lateral must also be determined and reported. Comparison studies should be made between plots treated

conventionally with ground application equipment and irrigated with untreated water, and plots in the same field treated through the irrigation system.

(C) For surface irrigation systems, the following data are required. Concentrations of active incredients in water must be determined for the study plots where the treated water enters the field, and at the lower end of the field or where the water exits. When furrow irrigation is used, data must indicate the spatial relationship between crop rows and furrows. If the pest control in furrow irrigation applications is intended only for the furrow itself and not the bed between the furrows, the data must so indicate.

(iii) *Directed sprays.* When sprays are directed toward or away from certain portions of the soil or plants, data must indicate nozzle arrangements, nozzle orientations, the extent of spray contact with soil or plants, and application height.

(iv) *Subsurface soil applications.* When pesticides are applied directly beneath the soil surface (injected through shanks or spray blades, gravity-fed, or incorporated), test reports must include information on the application equipment. For example, for injection equipment, the following must be specified: application device spacing, depth or operation, injection pressure, speed of operation, volume of liquid or gas applied per unit area or linear row distance, and the injection device-to-row spacing orientation.

(v) *Other applications.* When a pesticide is applied to an aquatic system other than an irrigation system, the following application information must be included:

(A) Target site where the pesticide was applied (for example, to weed foliage, to surface of water, to bottom of water body, into water, to ditchbank, or to shoreline);

(B) Description of the equipment used to apply the pesticide (for example, ground-spraying device, pumping device, boat, blower, helicopter, or fixed-wing aircraft):

(C) Description of any water level changes used in conjunction with the pesticide application, such as drawdown operation or drainage of conveyance system, including the extent of water level change, the time of the change in relation to the pesticide application, and the duration of the change in water level; and

(D) The timing of the application in relation to the calendar date and the stage of growth of the target and nontarget organisms.

(4) *Cultural practices.* Cultural practices for a given use pattern or application method vary with production areas and frequently from grower to grower within an area. The effects of cultural practices on the product's possible detrimental effects must, therefore, be addressed.

(i) *Irrigation.* Irrigation and watering practices must be studied as a variable if the product is to be used in irrigated areas or greenhouses, respectively. The influence of different irrigation practices must be studied in the use area. Refer to § 163.120(c)(3)(ii) of this subpart concerning information required for irrigation practices. Irrigation data must include a description of equipment and techniques used in water application, the number and timing of irrigations, and quantity of water in acre-inches (hectare-centimeters) applied at each irrigation. Also, a description is required of the chronological relationship between irrigation applications and application of the pesticide, such as herbicide, plant regulator, desiccant, or defoliant. Where flood irrigation is utilized (such as in rice production), depth, duration, and any "flushing" must be described for each test. When irrigation is used to activate a pesticide in the absence of precipitation, the minimum and maximum application-to-irrigation interval (producing the desired efficacy level) must be reported. Since crop safety is often influenced by pesticide placement in the soil profile, and irrigation may directly affect such placement, label-recommended or allowed irrigation practices must be supported by crop safety data (phytotoxicity and yield). When irrigation practices result in loss of pesticide-contaminated water (as in runoff or drainage) from the target area, data must be submitted addressing effects of such water on nontarget plants.

(ii) *Mowing.* Mowing operations may have a direct effect on detrimental effects from pesticides intended for use on lawns, turf, golf courses, median strips, pastures, rangeland, and hay and forage crops. Mowing just prior to or just after a pesticide application may, by mechanically injuring desirable plant or by decreasing growth rates, increase injury to desirable plants (especially young shoots). Mowing just prior to application may be a requirement for plant regulators intended to maintain the neat appearance of grassy areas by retarding grass growth. In situations where mowing is routinely a part of cultural practices, or may influence detrimental effects, such practices must be reported in test results.

(5) *Target area plant responses.* The detrimental effects on crops, commodities (produce), or any other desirable plant species or commodity within the target area must be evaluated and reported. The following are some of the characteristics that should be addressed:

(i) *Stand.* Crop stand counts, reported as percentage of untreated control crop stands, must be submitted to support pesticides applied prior to crop emergence.

(ii) *Vigor.* Crop vigor (or stunt) ratings or measurements (plant height, weight, diameter, or length) in treated areas must be compared to plants in check plots in which commercially acceptable levels of pest control are maintained. Vigor ratings must be reported at the point of maximum stunting. If stunting is observed, it is important that subsequent evaluations be made to document the degree of recovery.

(iii) *Planting depths.* A range of planting depths within the range recommended for the crop must be included in preliminary studies with preplant and preemergence (to crop) applications. Date obtained from these trials must reflect any effects of varying planting depths on the incidence of crop injury that might be encountered under commercial use conditions. In subsequent trials, commercial planting equipment at recommended depth settings must be used. If in preliminary studies the planting depth is found to be a critical variable, crop emergence data must be taken from all trials.

(iv) *Loading.* The effect of pesticides on lodging of target area crops such as soybean, wheat, corn, sorghum, rice, or sugarcane must be indicated. Observed percent of treated plants affected and the severity or approximate degree of angle of lodging in treated plots must be compared to that in weed-free check plots.

(v) *Phytotoxicity.* Evaluations of visible symptoms of pesticide injury (such as discoloration, malformations, desiccation, defoliation, or death) to crop plants must be at least visually assessed and reported. These symptoms must be compared to results in untreated pest-free check plants. Evaluations must be performed at the time injury is first observed and at periodic intervals thereafter to document the degree of recovery.

(vi) *Development.* Effects of pesticides on plant development (such as delayed emergence, prolonged vegetative growth, delayed or decreased flowering or fruit set, or delayed maturation) must be indicated in test results. If such effects are outgrown by or before the usual harvest date, such recovery must be reported.

(vii) *Yields.* Effects of pesticides on yields must be reported. Yield data can confirm that there are no detrimental effects on the desirable target area plants due to the pesticide application. Yield data may also be used to evaluate benefits derived from the application. When yields are evaluated in relation to crop safety or phytotoxicity, yields from treated plots should be compared to yields from untreated plots. Comparisons of treated and untreated (control) plot yields, when expressed as weight of seed (grain and dry beans) or hay, must be based upon equivalent moisture contents (percent moisture) acceptable for commodity storage. In the case of weed control, yields from weedy check plots may be reduced as a result of weed competition and may mask crop injury due to herbicide application. Therefore, herbicide yield comparisons should be drawn from the treated plots and untreated pest-free plots. When any adverse effects indicated in paragraphs (c)(5) (i) through (vi) of this section occur, the ultimate indication of their impact can usually be evaluated at harvest.

(viii) *Crop and commodity (produce) quality.* In some cases, pesticides may not affect yields, but may affect the quality of the crop or commodity (produce) and its value. Crop and produce quality must be reported based on comparison with check plants. Flavor and acceptance studies are required for crop plants or commodities intended for direct consumption by humans and animals. Quality determinations will vary widely with crops or the uses of end products. As an example, fruit finish is important for fresh market citrus, but may be of little consequence in citrus for processing where rinds are discarded. The use of an official grading system such as USDA's is appropriate for many fruit, vegetable, and agronomic crops. A study of the quality of a fiber crop must indicate trash content and fiber length, strength, uniformity, color, condition, and diameter. For bulb, corn, and tuber crop treatments involving ornamentals, evaluations must continue for two growing cycles to determine effects on flowering. A quality study of a seed crop must indicate seedling vigor and percent germination. In cases where crops are produced for commodities (such as sugar, oil, or drugs) other than raw vegetable matter, both quantity and quality of the finished product must be evaluated. If crop or commodity quality is a factor in determining value, an optional method of indicating quality is by indicating dollar value per unit quantity of both treated and check crop or commodity. This approach is often advantageous since the grower's main concern is the monetary return for the crop. This system also does not require extensive background information on grading systems, and quality evaluations.

(6) *Subsequent planting.* The effects of pesticides on desirable plants subsequently planted in the area of application must be evaluated and reported. Subsequent planting may include emergency replanting of crops or trees within the target area where crop failure may have occurred and where the planting of rotational crops (including cover crops) takes place after the harvesting of the crop present during the pesticide application.

(i) *Emergency replanting.* If pesticide labeling states that crops may be safely replanted after an initial crop failure, the submitted data must support: the crops suitable for replanting; pesticide application-to-replanting intervals; additional pesticide applications recommended or allowed; recommended soil tillage; and soil and meteorological conditions under which replanting is or is not recommended. For example, when the original pesticide was applied in bands, as in the case of herbicides, replanting may be recommended to take place only between the treated bands.

(ii) *Rotational crops (including cover crops).* If detrimental effects are observed, results of studies evaluating severity and duration of effects on the injured rotational crops must be submitted. To determine the duration of phytotoxic effects, susceptible rotational crops must be planted at varying time intervals after pesticide application. Such studies may be combined with field studies designed to evaluate soil residues. [See § 163.62–11(b) of Subpart D.]

Tier 1 Testing

§ 163.122–1 Seed germination/seedling emergence and vegetative vigor (Tier 1).

(a) *When required.* Data on the toxic effects of a pesticide on seed germination or seedling emergence and vegetative vigor are required to support the registration of each formulated product intended for outdoor pesticide application, and each manufacturing-use product which legally could be used to make such formulated products.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, the seed germination or seedling emergence and vegetative vigor studies shall meet the following standards:

(1) *Test substance.* The technical or purer grade of the active ingredient shall be tested.

(2) *Species.* The following species shall be tested:

Lycopersicon esculentum (tomato)
Cucumis sativus (cucumber)
Lactuca sativa (lettuce)
Glycine max (soybean) (inoculated with *Rhizobium japonicum* for vegetative vigor study)
Brassica oleracea (cabbage)
Avena sativa (oat)
Lolium perenne (perennial ryegrass)
Allium cepa (common onion)
Daucus carota (carrot)
Zea mays (corn)

(3) *Dose levels.* One concentration level equal to 3 times the maximum label rate shall be tested. The phrase "3 times the maximum label rate" means 3 times the amount of active ingredient in the recommended quantity of carrier such as water to be used per land area. For purposes of calculating the dose level in the seed germination/seedling emergence study, 1 pound of active ingredient per acre is considered to be equal to 10 ppmw in the solution which is applied to seeds.

(4) *Number of plants.* At least 3 replicates, each with 5 plants, shall be tested per dose level for the vegetative vigor tests. At least 3 replicates, each with 10 seeds, shall be tested per dose level for the seed germination study.

(5) *Site.* The seed germination/seedling emergence studies shall be conducted under controlled conditions in growth chambers. The vegetative vigor test may be performed in a growth chamber, greenhouse, or in small field plots.

(6) *Duration.* (i) Seed germination/seedling emergence shall be observed weekly, or more frequently, for at least 2 weeks. See the Appendix, Item (1) for details of this study.

(ii) The effect on vegetative vigor shall be observed weekly, or more frequently, for at least 2 weeks. If abnormal symptoms occur, the observations shall be continued until the plant dies or fully recovers. See the Appendix, Item (2) for details of this study.

(7) *Protocols.* The protocols for these tests outlining the acceptable environmental conditions, procedures, and some pertinent references are found in the Appendix, Items (1) and (2).

(c) *Reporting.* In addition to the information required in § 163.120–4(b), the test report shall include the following information.

(i) The actual number of seeds tested and the number germinated or emerged per dosage level for each replicate;

(ii) Descriptions of the appearance and the growth and development (height and weight) of the seeds and emergent plants, indicating any abnormalities and expressions of phytotoxicity; and

(iii) Tabulation of the results indicating the percentage effect level for each species as compared to untreated control plants.

(d) *Tier progression.* (i) If a detrimental effect or response on plant growth and development for any plant species for the 3X concentration is 10 percent or greater with respect to the control, testing at tier 2 is required. See § 163.123–1.

(ii) If less than a 10 percent detrimental effect or response is noted, no additional testing at higher tiers is ordinarily required. The Agency, after review of the data, may require certain additional tests to determine a more definite nondiscernible effect level.

§ 163.122–2 Growth and reproduction of aquatic plants (Tier 1).

(a) *When required.* Data on the toxic effects of a pesticide on growth and reproduction of aquatic plants are required to support the registration of each formulated product intended for outdoor pesticide application, and each manufacturing-use product which legally could be used to make such formulated products.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, studies of the growth and reproduction of aquatic plants shall meet the following standards:

(1) *Test substance.* The technical or purer grade of the active ingredient shall be tested.

(2) *Species.* The following species shall be tested:

Lemna gibba (duckweed)

Selenastrum capricornutum (freshwater green alga)

Skeletonema costatum (marine diatom)

A freshwater diatom (unspecified species)

Anabaena flos-aquae (blue-green alga)

(3) *Dose levels.* The quantity of test substance to be tested shall be equivalent to a 3-fold (or 3X) concentration of the maximum label rate as though it were directly applied to the surface of a 15-cm or 6-inch water column. The phrase "3-fold concentration of the maximum label rate" means 3 times the formulation or active ingredient content in the recommended quantity of carrier such as water to be used per aquatic area or volume.

(4) *Number of plants.* At least 3 replicates, each with 5 vascular aquatic plants (*Lemna gibba*) (stage: 3 fronds per plant) shall be tested per dose level. The recommended quantities of algal plant material to be used are provided in the recommended references of the protocols provided in the Appendix, Items (4), (5), (6), and (7).

(5) *Site.* All studies provided for in this section shall be conducted under controlled conditions in growth chambers.

(6) *Duration.* (i) *Lemna* studies shall be conducted for at least 14 days with daily observations. If abnormal symptoms occur, the observations shall be continued until the plants recover or die.

(ii) Algal studies shall be conducted for at least 5 days with daily observations. If abnormal symptoms occur, the observations shall be continued until the plants recover or die.

(7) *Protocols.* The protocols for these tests outlining the acceptable environmental conditions and procedures and some pertinent references are found in the Appendix, Items (3) through (7).

(c) *Reporting.* In addition to the information required by § 163.120–4(b)(1) through (5), and (8), of this subpart, the test report shall include the following:

(1) *Lemna.* (i) The percent of flowering or its inhibition; and

(ii) The increase in growth expressed as the number of original plants and fronds and the additional plants and fronds produced;

(2) Algae. (i) The gram dry weight;

(ii) The cell count per ml; and

(3) Tabulation of the results indicating the percentage effect level versus time as compared to the control.

(d) *Tier progression.* (1) If a detrimental effect or response on plant growth and development for any plant species for the 3X concentration is 50 percent or greater with respect to the controls, testing at tier 2 is required. See § 163.123–2.

(2) If less than a 50 percent detrimental effect or response is noted, no additional testing at higher rates is required. The Agency, after review of the data, may require certain additional tests to determine a more definite nondiscernible effect level.

§ 163.122–3 Mutagenicity effects (Tier 1).

(a) *When required.* (1) Data on the mutagenic effect of a pesticide on plants are required to support the registration of each formulated product which:

(i) Is intended for outdoor application, and

(ii) Contains any ingredient producing a mutagenic effect in tests conducted according to §§ 163.84–1 through –4 of Subpart F.

(2) These data are also required to support the registration of each manufacturing-use product which legally could be used to make such formulated products.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, the mutagenic effects studies shall meet the following test standards:

(1) *Test substance.* The technical or purer grade of the active ingredient shall be tested.

(2) *Species.* The following species shall be tested: *Tradescantia reflexa.*

(3) *Dose levels.* (i) At least 5 dosage levels shall be tested. The doses shall include a toxic concentration, a subtoxic concentration, and a concentration that does not induce any toxicity.

(ii) The dosage levels shall be of geometric progression of no more than 2-fold. For example, the test concentration series may be: 1, 2, 4, 8, 16, and 32 ppm (a 2-fold progression).

(4) *Number of plants.* At least 3 replicates, each with 5 plants, shall be tested per dose level for the mutagenic effects test.

(5) *Duration.* The mutagenic effects test shall extend for 10 days with daily observations.

(6) *Site.* This study shall be conducted in the laboratory under controlled conditions.

(7) *Protocols.* The protocols for these tests outlining the acceptable environmental conditions and procedures and some pertinent references are found in the Appendix, Item (8).

(c) *Reporting.* In addition to the information required by § 163.120–4(b)(1) through (4), the test report shall include the following information:

(i) The number of pink cells (mutagenically-affected) in the strings of otherwise blue (normal) staminal hair cells; and

(ii) Tabulation of the results indicating the percentage effect level versus time as compared to the control. The test report shall include the determination of the 10, 50, and 90% detrimental effect levels, and the 95% confidence limits for each.

(d) *Tier progression.* (i) If any of the dosage levels employed in this test produces a mutagenic incidence exceeding the EC10 for the mutagenicity test, testing at the tier 3 level is required. See § 163.124–3 which expands the number of plants to be tested.

(ii) If less than 10 percent effect is noted in this test, no additional testing at a higher tier is ordinarily required. The Agency, after review of the data, may require certain additional tests to determine a more definite non-discernible effect level.

Tier 2 Testing

§ 163.123–1 Seed germination/seedling emergence and vegetative vigor (Tier 2).

(a) *When required.* Data on the toxicity effects of a pesticide on seed germination or seedling emergence and vegetative vigor are required at the tier 2 level to support the registration of each formulated product intended for outdoor application, and each manufacturing-use product which legally could be used to make such formulated products, if the results of the tier 1 tests required by § 163.121–1 have indicated an adverse effect on growth and development greater than 10 percent on plant species.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, the test standards for this section shall be the same as those contained in the tier 1 studies [§ 163.122–1(b)] with the following modifications:

(1) At least 5 dosage levels shall be tested;

(2) The doses shall include a toxic, subtoxic, and a concentration that does not induce any toxicity;

(3) The highest dosage levels shall be less than the 3-fold dose level tested in § 163.122–1(b)(3); and

(4) The dosage levels shall be of geometric progressions of no more than 2-fold. For example, the test concentration series may be: 0.1, 0.2, 0.4, 0.8, and 1.6 kg/ha (a 2-fold progression).

(c) *Reporting.* In addition to those items required in § 163.122–1(c), the test shall include determination of the 10, 50, and 90 percent detrimental effect levels and the 95 percent confidence limits for each.

(d) *Tier progression.* (1) Testing at the tier 3 level is required if the calculated expected exposure concentration (the maximum recommended rate or concentration) is greater than the EC10 for any terrestrial plant species tested. (Tier 3 testing increases the number of species to be tested.) See § 163.124–1.

(2) Testing at the tier 4 level may be required if, in addition to the criterion described in paragraph (d)(1) of this section:

(i) The geographical use is potentially widespread (two or more regions); testing according to § 163.125–1 is then required. The area of testing shall be expanded to include all of those geographical regions defined in § 163.125–1(b) where the product is expected to be used. This requirement and that of testing under § 163.124–1 may be met by performing combined testing.

(ii) The applications include varying periods or seasons of application; testing according to § 163.125–2 is then required. The more susceptible plant life stages that correspond to those encountered during field application shall be evaluated.

(iii) The material is readily sorbed on soil solids; testing according to § 163.125–4 is then required, to assess the effect of the pesticide on the growth of aquatic plants. Employ sediment, particle, and solution concentrations that may be expected under natural conditions.

(3) If there is a marked reduction in growth of soybean (§ 163.123–1) and *Anabaena* (§ 163.123–2), as compared to other species tested in tier 2, then testing must be undertaken to assess the effect of the pesticide on the ability of certain organisms to fix nitrogen, as described in § 163.125–3. [See also § 163.62–8(f)(3) of Subpart D for related nitrogen fixation studies.]

§ 163.123–2 Growth and reproduction of aquatic plants (Tier 2).

(a) *When required.* Data on the toxic effects of a pesticide on growth and reproduction of aquatic plants are required to support the registration of each formulated product intended for outdoor pesticide application, and each manufacturing-use product which legally could be used to make such formulated products, if the results of the tier 1 tests required by § 163.122–2 have indicated an adverse effect on growth and reproduction of any aquatic plant greater than 50 percent.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, the test standards for this section shall be the same as those contained in the tier 1 studies [§ 163.122–2(b)] with the following modifications:

(1) At least 5 dosage levels shall be tested;

(2) The dose levels shall include a toxic, subtoxic, and a concentration that does not induce any toxicity;

(3) The highest dosage level shall be less than the 3-fold concentration tested in § 163.122–2(b)(3); and

(4) The dosage levels shall be of geometric progression of no more than 2-fold. For example, the test concentration series may be: 0.1, 0.2, 0.4, 0.8, and 1.6 kg/ha/15 cm (a 2-fold progression).

(c) *Reporting.* In addition to the information required by § 163.122–2(c), the test report shall include the determination of the 10, 50, and 90 percent detrimental effect levels and the 95 percent confidence limits for each.

(d) Tier progression. (1) Testing at the tier 3 level is required if:

(i) The calculated expected exposure quantity [the maximum recommended quantity where 1 kg/ha (0.892 lb/A)=0.655 ppm in 15 cm (6") of water] is greater than the EC50 for any one aquatic plant species tested; and

(ii) The pesticide is expected to be applied to a fresh water, estuarine, or marine aquatic system by either direct application or direct discharge of treated water, or the pesticide is to be used within a forest system. (A forest system is considered equivalent to an aquatic system, since it ordinarily contains brooks, streams, and rivers. See § 163.62–6 (b), (c), and (d) of Subpart D for full explanation of pesticide aquatic use patterns.) See § 163.124–2 (tier 3) where the number of species to be tested has been expanded. In addition to this criterion:

(2) Testing at the tier 4 level may be required if, in addition to the criterion described in paragraph (d)(1) of this section:

(i) The geographical use is potentially widespread (two or more regions); then testing according to § 163.125–1 is required. The area of testing shall be expanded to include all of those geographical regions defined in § 163.125–1(b) where the product is expected to be used. This requirement and those under § 163.124–2 may be met by performing combined testing.

(ii) The applications include varying periods or seasons of application; then testing according to § 163.125–2 is required. Potentially susceptible plant life stages which correspond to those encountered during field application shall be evaluated.

(iii) The material is readily sorbed on soil solids; then testing according to § 163.125–4 is required, to assess the effect of the pesticide on the growth of aquatic plants. Employ sediment, particle, and solution concentrations that may be found under natural conditions.

(3) If there is a marked reduction in growth of soybean (§ 163.123–1) and *Anabaena* (§ 163.123–2) as compared to other species tested in tier 2, then testing must be undertaken to assess the effect of the pesticide on the ability of certain organisms to fix nitrogen, as described in § 163.125–3. [See also § 163.62–8(f)(3) of Subpart D for related nitrogen fixation studies.]

Tier 3 Testing

§ 163.124–1 Terrestrial field testing (Tier 3).

(a) *When required.* (1) Data on the toxic effects of the active ingredient (in the form of a typical formulation) on seed germination, vegetative vigor, and reporduction patential of an expanded number of terrestrial plants are required to support the registration of each

formulated end-use product intended for outdoor application, when the calculated exposure quantity (the maximum recommended quantity) is equal to or greater than the EC10 for any terrestrial plant species as found in the tier 2 tests (§ 163.123–1).

(2) Data as indicated in paragraph (a)(1) of this section are also required to support the registration of each manufacturing-use product which legally could be used to make formulated end-use products that are intended for outdoor application.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3, the test standards for this section shall be the same as those contained in § 163.122–1(b) of this subpart, with the following modifications:

(1) *Test substance.* The test substance shall be a typical formulated end-use product representative of a major formulation category (e.g., wettable powder, emulsifiable concentrate, granular product) and containing the active ingredient of the applicant's product.

(i) If the applicant's product is an end-use product, the test substance shall be a product whose formulation is typical of the formulation category to which the product belongs.

(ii) If the applicant's product is a manufacturing-use product which legally could be used to make an end-use product with outdoor uses, the test substance shall be a product representative of the major formulation category which includes that end-use product. (If the end-use products with outdoor uses that could be made from the manufacturing-use product belong to two or more major formulation categories, a separate study must be performed for each such category.)

(2) *Dose levels.* The dose levels tested shall be the same as those employed in the tier 2 test [§ 163.123–1(b)(1)].

(3) *Species.* (i) Representatives of the following plant groups are to be tested, subject to the limitations of paragraph (iii) below:

(A) *Dicotyledonae* (dicots), representatives of three families;

(B) *Monocotyledonae* (monocots), representatives of three families;

(C) Vascular *Cryptogamae* (ferns and allies), representatives of two families;

(D) *Bryophyta* (mosses and liverworts), one representative; and

(E) *Gymnospermae* (conifers), one representative.

(ii) Plant species used for testing tiers 1 and 2 cannot be used to satsify the test requirements of this section.

(iii) If any of the plant groups are not likely to be exposed to the pesticide under normal conditions of use, testing of such groups is not required. Justification for elimination of a test species or group must be included in the test report.

(4) *Test conditions.* (i) Plants may be grown in either natural soil or similar substrate maintaining approximately the same edaphic conditions as found in the natural habitat. These conditions must be reported.

(ii) The light quality and quantity must be similar to that in the natural environment.

(iii) Other test conditions such as relative humidity and temperature must be similar to those of the natural habitat of the plants.

(c) *Reporting.* In addition to the information required in §§ 163.120–4 and 163.122–1(c) of this subpart, the test report shall include the determination of the 10, 50, and 90 percent detrimental effect levels and the 95 percent confidence limits for each.

§ 163.124–2 Aquatic field testing (Tier 3).

(a) *When required.* (1) Data on the toxic effects of the active ingredient (in the form of a typical formulation) on growth and reproduction of an expanded number of aquatic plants are required to support the registration of each formulated end-use product intended for outdoor pesticide application, when:

(i) The calculated expected exposure is equal to or greater than the EC10 for any one aquatic plant species tested in tier 2 tests (§ 163.123–2); and

(ii) The pesticide is expected to be applied to a fresh water, estuarine, or marine aquatic system by either direct application or direct discharge of treated water, or the pesticide is to be used within a forest system. [See § 163.62–6(b), and (d) of Subpart D for descriptions of these aquatic uses.]

(2) Data as indicated in paragraph (a)(1) of this section are also requred to support the registration of each manufacturing-use product which legally could be used to make such a formulated product.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3 of this subpart, the test standards for this section shall be the same as those in § 163.122–2(b), with the following modifications:

(1) *Test substance.* The test substance shall be a typical formulated end-use product representative of a major formulation category (e.g., emulsifiable concentrate, granular product, wettable powder) and containing the active ingredient of the applicant's product.

(i) If the applicant's product is a manufacturing-use product which legally could be used to make an end-use product with outdoor uses, the test substance shall be a product representative of the major formulation category which includes that end-use product. (If the end-use products with outdoor uses that could be made from the manufacturing-use product belong to two or more major formulation categories, a separate study must be performed for each such category.)

(2) *Dose levels.* The dose levels tested shall be the same as those specified in the tier 2 aquatic test standards [§ 163.123–2(b)(1)].

(3) *Species.* (i) Aquatic plant representatives of the following plant groups are to be tested:

(A) *Dicotyledonae* (dicots), one representative;

(B) *Monocotyledonae* (monocots), representatives of three families;

(C) Vascular *Cryptogamae* (ferns and allies), representatives of three families;

(D) Algae (including *Cyanophyta*), a representative of each Division; and

(E) *Bryophyta,* one representative.

(ii) Plant species used for testing tiers 1 and 2 cannot be used to satisfy the test requirements of this section.

(4) *Environmental conditions.* (i) Plants may be grown in either native soil, water, or other substrate of similar nature to that of the indigenous area or under other conditions similar to the natural habitat. The edaphic conditions must be reported.

(ii) Reduction of light intensity by natural or constructed light shade may be necessary to simulate the reduced light intensities found with certain plant communities such as deeply submerged sites or shaded waters.

(iii) Other natural conditions must also be maintained where plants are removed from their natural habitat. Soil, water, and air temperatures should approximate those of the natural habitat. For estuarine and marine habitats, the following conditions should, to the extent possible, simulate the natural environment: tidal action, wave action, water turbidity, flow rates, depth, salinity, and degree of exposure.

(iv) Tests must be performed either in enclosed, controlled areas of a lake, pond, or swamp, or in large water cultures such as aquaria or plastic wash tubs. Tests are not to be performed in dynamic or flowing water where the release of the chemical cannot be contained or its escape prevented.

(v) The performance of the field studies shall be conducted using acceptable protocols as may be found in the following recommended reference: Truelove, B., 1977, Research Methods in Weed Science, Southern Weed Science Society, Auburn Printing Inc., Auburn,

AL; *or* by a protocol with prior approval of the Agency.

(c) *Reporting.* In addition to the information required by §§ 163.120–4 and 163.122–2(c) of this subpart, the test report shall include the determination of the 10, 50, and 90 percent detrimental effect levels and the 95 percent confidence limits for each.

§ 163.124–3 Mutagenicity tests (Tier 3).

(a) *When required.* Data on the mutagenic effects of a pesticide on an expanded number of plant species are required to support the registration of each formulated product intended for outdoor pesticide application, and each manufacturing-use product which legally could be used to make such formulated products, when the tier 1 test (§ 163.122–3) indicates incidence of mutagenic effects on plants exceeding 10 percent.

(b) *Test standards.* In addition to the general test standards set forth in § 163.120–3 of this subpart, the test standards for this section shall be the same as those in § 163.122–3(b), with the following modification as to species:

Glycine max (soybean)
Vicia faba (broad bean)
Allium cepa (common onion)
Zea mays (corn).

(c) *Reporting.* The reporting requirements shall be the same as those specified for the tier 1 mutagenicity tests [§ 163.122–3(c)] of this subpart.

Tier 4 Testing

§ 163.125–1 Widespread geographical uses (Tier 4).

(a) *When required.* Data on the toxic effects of the active ingredient (in the form of a typical formulation) on growth and development of plants in those regions where the product is expected to be used are required to support the registration of each formulated end-use product intended for outdoor terrestrial or aquatic pesticide applications, and each manufacturing-use product which legally could be use to make such formulated products, when:

(1) The calculated expected exposure quantity is greater than the EC10 for plants as determined in the tier 2 tests (§ 163.123–1 or 163.123–2); and

(2) The product use is expected to be widespread (two or more regions).

(b) *Test standards.* In addition to the test general standards set forth in § 163.120–3, the test standards for this section shall be the same as those in § 163.124–1(b) (for terrestrial plants) and § 163.124–2(b) (for aquatic plants) depending on target area, with the following modifications:

(1) The following United States geographical areas must be considered: northeastern temperate deciduous, southeastern temperate deciduous, northern grassland (prairie), southern grassland (prairie), northwestern (and Alaskan) conifer forest and high desert, southwestern chapparal Mediterranean and low desert, and Hawaiian and Caribbean tropical forest. Where important species diversity and phsiographic differences occur within a region of intended application, the regional testing may be inadequate, and testing at a more specific region or biome level will be required.

(2) Those areas where tests are to be conducted are those where the product would be expected to be used.

(c) *Reporting.* The test reports shall provide the information required in §§ 163.124–1(c) and 163.124–2(c).

§ 163.125–2 Widespread seasonal use (Tier 4).

(a) *When required.* Data on the toxic effects of the active ingredient (in the form of a typical formulation) on plant growth and development under different environmental conditions are required to support the registration of each formulated end-use product intended for outdoor terrestrial and aquatic pesticide application, and each manufacturing-use product which legally could be used to make such a formulated product, when:

(1) The calculated expected exposure quantity is greater than the EC10 for plants as determined in the tier 2 tests (§§ 163.123–1 and 163.123–2); and

(2) The applications are expected to include varying periods or seasons of application.

(b) *Test standards.* The test standards for this section shall be identical to those in § 163.124–1(b) for terrestrial plants and in § 163.124–2(b) for aquatic plants with the following modification: the test substance is to be applied over the period of time or season according to the proposed label instructions.

(c) *Reporting.* The test reports shall provide the information required in §§ 163.124–1(c) and 163.124–2(c). The report shall contain an evaluation of the pesticide effects over a period of time and with the repeated applications.

§ 163.125–3 Nitrogen fixation potential (Tier 4).

(a) *When required.* Data on the effect of a pesticide on nitrogen fixation potential are required to support the registration of each formulated product intended for outdoor pesticide use, and each manufacturing-use product which legally could be used to make such formulated products, if there is a marked reduction in growth of soybean (§ 163.123–1) and *Anabaena* (§ 163.123–2), as compared to other species tested in tier 2. [See also § 163.62–8(f)(3) of Subpart D for related nitrogen fixation data requirements.]

(b) *Test standards.* The test standards for this section shall be identical to those for tier 1 and 2 studies [§§ 163.122–1(b), 163.123–1(b), 163.122–2(b), and 163.123–2(b)] with the following modifications:

(1) *Species.* The following species shall be used:

Trifolium repens (white clover)
Glycine max (soybean)
Azolla spp. (waterfern)
Azotobacter vinelandii
Anabaena flos-aquae

(2) *Protocol.* (i) The acetylene reduction method is to be used to measure the nitrogen fixation potential.

(ii) The individual protocols for the legumes, *Azolla*, *Azotobacter*, and *Anabaena* are provided in the Appendix, Item (9).

(c) *Reporting.* The test report shall include the test data and the determination of the 10, 50, and 90 percent (I10, I50, and I90) detrimental effect levels on nitrogen fixation potential and the associated 95 percent confidence limits for each species. The data shall be expressed as moles of ethylene produced per gram of fresh or dry weight per time period.

§ 163.125–4 Readily sorbed materials (Tier 4).

(a) *When required.* Data on the effects of sorbed pesticides on aquatic plant life are required to support the registration of each formulated product intended for outdoor pesticide application, and each manufacturing-use product which legally could be used to make such formulated products, when the pesticide is readily sorbed to materials such as soils and organic matter that are likely to be carried into aquatic systems. Extent of sorption is determined in the absorption/desorption studies of § 163.62–9(d) of Subpart D.

(b) *Test standards.* In addition to those test standards required in § 163.123–2(b), the following standards shall be met:

(1) *Protocol.* An aquatic ecosystem approach may be used to assess the effect of sorbed pesticide materials. The pesticide at the appropriate concentrations should be mixed with the substrate and allowed to stand for 24 hours before filling the tanks or trays. Filling must be performed in a manner as to minimize substrate turbulence. The concentration in the soil and the filtered water should then be determined. Where turbulent conditions are desired in order to stimualte mixing or turbulent conditions in aquatic systems, the turbulence should be uniform and the

amount of suspended particulate matter and its pesticide content determined.

(c) *Reporting.* In addition to the information required by § 163.123–2(c), the following data are required:

(1) The concentration of the pesticide in the sediment and water after equilibrium is attained;

(2) The concentration of the pesticide in the suspended particles during the turbulent conditions; and

(3) The concentration of the pesticide within the plants at the termination of the study.

Special Testing

§ 163.126–1 Spray drift: General requirements.

(a) *When required.* (1) Data on the toxic or hazard effects and extent of the potential drift of a pesticide are required to support the registration of each formulated product expected to be applied by aerial application spray methods (fixed-wing and helicopter), by air carrier (mist blower) method, or by other ground spray application methods. Such ground spray application methods may include, but are not limited to, overhead sprinkler irrigation devices, roadside and railroad right-of-way sprayers, and tractor-mounted booms.

(2) (i) The requirement to submit test data established by § 163.126–2 (Plant activity spectrum) may be satisfied by the submittal of published or unpublished information on plant spectrum studies such as are required in §§ 163.123–1 and –2 of this subpart.

(ii) The requirement to submit test data established by §§ 163.126–3 (Droplet size spectrum) and 163.126–4 (Field evaluation) may be satisfied by the submittal of published or unpublished information regarding spray drift patterns that would be expected to be similar to those for the formulated product when used according to commonly-recognized practice. Such submitted information must be accompanied by a statement of reasons why the registration applicant considers that the characteristics of his product are similar or identical to those of the desginated formulation described in the published information.

(3) If the applicant chooses not to furnish published and unpublished information as provided by paragraphs (a)(2)(i) and (ii) of this section, he may use the requirements of this section as guidance for studies he may wish to conduct to support his product if it may, for example, have superior or different characteristics regarding spray drift patterns and resultant phototoxicity than published or unpublished test data would demonstrate.

(b) *Data requirements.* The drift hazard of a peticide applied either by aircraft or ground equipment shall be determined in three stages. The initial stage (see § 163.126–2) involves the determination of possible pesticidal effects on plant growth activity that may be produced through direct foliar spraying and through exposure to pesticide-contaminated (spiked) soil. The second stage (see § 163.126–3) involves determination of droplet size spectrums to indicate which of the conventionally-used nozzle types, orifice sizes and cores, operating conditions, adjuvants, formulations, and discharge orientations would produce the greatest probable drift potential (for example, greatest volume of droplets less than 100 microns in diameter). The final stage (see § 163.126–4) involves field studies using commercial equipment to determine the extent of spray drift (concentration vs. distance) from swath displacement under "worst case" equipment and environmental (e.g., inversion) conditions. Data required by §§ 163.126–3 and –4 (Droplet size spectrum, and Spray drift evaluation) will be submitted only when the maximum label dosage produces a 10 percent detrimental effect or greater on the most sensitive plant(s) as tested in accordance with § 163.126–2. Determination of the spray droplet size spectrum (§ 163.126–3) may be performed before undertaking or during the aerial spray drift field study evaluation using commercial equipment (§ 163.126–4).

(c) *Additional data.* Submission of data from §§ 163.126–2, –3, and –4 will allow evaluation of the effect of swath displacement to nontarget plants. If, upon submission of data on activity levels as described in § 163.126–2, there are no effects of the pesticide on nontarget plants, additional data on spray drift may not be necessary with respect to nontarget plant hazard. If the addition of new crops, new uses, or new methods of application to the labeling of a registered product is planned by the registrant, additional testing as described in §§ 163.126–3 and –4 of this subpart may be required.

§ 163.126–2 Spray drift: Plant activity spectrum studies.

(a) *When required.* Data on the toxic effects of a pesticide on vegetative vigor are required to support the registration of each formulated product expected to be applied by aerial application spray methods, by air carrier (mist blower) methods, or by other ground spray application methods. Data may be supplied through either of the following alternative means:

(1) Where the effects on vegetative vigor have been determined according to the tier 1 and 2 terrestrial plant tests (§§ 163.122–1 and 163.123–1) using the specific formulation [or formulations similar to that of the proposed formulated product (e.g., a 4EC can be substituted for a 6EC, etc.)], data employing the formulation(s) may be submitted; or

(2) Data from screening tests performed by the registrant using the specific formulation (or formulations similar to that of the proposed formulated product) may be submitted in place of the studies as noted in this section. The Agency will reserve the right to require testing as provided by this section if the submitted data do not prove to be adequate to answer the question(s) concerning a pesticide's phytotoxic nature.

(b) *Test standards.* In addition to those test standards set forth in § 163.120–3, the following test standards shall be substituted for the appropriate portions of the tier 2 vegetative vigor test [§ 163.122–1(b)]:

(1) *Test substance.* The formulated product shall be tested. Similar formulations of a particular type may be substituted in the study (such as a 4EC for a 6EC formulation).

(2) *Plant species.* (1) Plant species evaluated must include those species or representatives of the families listed in § 163.121–1(b)(2) and any other plant species or family representatives of known high susceptibility to the product. Any additional plant species selected must be representative of those species found in the geographical area(s) of the United States where the product is expected to be used.

(ii) Culture of bioassay plants must be described both prior to and subsequent to exposure. Plants may be greenhouse-, growth chamber-, or field-grown.

(iii) Stages of nontarget plant growth at application must encompass those stages encountered under actual use situations.

(c) *Reporting.* The information required in §§ 163.120–4(b) and 163.123–1(c) shall be reported. The applicant must report product activity on sensitive nontarget plants that may be affected through direct foliar contact by spray, and through exposure to pesticide-contaminated soils. The latter exposure represents those situations where plants are grown in soil contaminated with pesticides that have drifted or have been irrigated with water that has been contaminated with the pesticide.

(d) *Test progression.* If the product is to be applied by aerial, air carrier (mist blower), or other ground spray application methods, and the

detrimental effect is greater than 10% for any of the species as compared to the untreated controls, then the droplet size distribution shall be determined (see § 163.126–3) and the product shall be evaluated according to § 163.126–4, employing commercial application equipment.

§ 163.126–3 Spray drift: Droplet size spectrum studies.

(a) *When required.* (1) Data on the droplet size spectrum are required to support the registration of each formulated product expected to be applied by aerial, air carrier mist blower, and by other ground spray application equipment when the detrimental effect level of those desirable plants anticipated to be present exceeds 10 percent as determined by plant activity spectrum tests of § 163.126–2.

(2) In lieu of the wind tunnel study required by this section, droplet size distribution may be determined under field conditions during the spray drift evaluation test as provided in § 163.126–4.

(b) *Test standards.* In addition to those test standards set forth in § 163.120–3, the following standards shall be met:

(1) *Equipment.* The label-recommended or commonly-used nozzles and associated parts, nozzle pressures, and nozzle discharge orientation that would produce droplets that would be most conducive to spray drift shall be tested.

(2) *Meteorological conditions.* (i) For wind tunnel studies, the following conditions shall be tested:

(A) The product shall be tested at various temperature levels from 10 to 30°C.

(B) The air flow (velocity) in the wind tunnel will be adjusted to relate to the type of equipment used [e.g., 130 to 225 kmph (80 to 140 mph) for fixed-winged aircraft and air carriers, 65 to 110 kmph (40 to 70 mph) for helicopter, and 5 to 40 kmph (3 to 25 mph) for ground applications other than air carriers (mist blowers)].

(ii) For field determination studies, the meteorological conditions shall be those most conducive to spray drift (high temperature and low relative humidity).

(3) *Collection devices.* The collection devices shall be either remote sensing laser-powered particle spectrometers, collection cards (flat horizontal or vertical surfaces), or other devices by which droplet size distribution can be determined.

(c) *Reporting.* In addition to those reporting requirements set forth in § 163.120–4, the following data are required:

(1) The nozzle type, orifice size, and core identification;

(2) The nozzle pressure and flow rate;

(3) The nozzle discharge orientation to the airstream;

(4) Air velocity past the nozzle;

(5) Descriptions of techniques and size determination devices;

(6) Particle size distribution vs. cumulative percent volume and droplet number (an attempt should be made to determine the droplet size distribution as the droplets leave the nozzle);

(7) Product formulation, dilution, mixtures, adjuvants, and their physical properties (surface tension, viscosity, density, vapor pressure, etc); and

(8) Air temperature and relative humidity (not required for wind tunnel studies where droplets at the nozzle are measured).

§ 163.126–4 Spray drift: Field evaluation.

(a) *When requried.* (1) Data on the extent of the potential drift of a pesticide are required to support the registration of each formulated product expected to be applied by aerial, air carrier, (mist blower), or other ground spray application methods when the detrimental effect level of those desirable plants anticipated to be present exceeds 10 percent as determined by the plant activity spectrum tests of § 163.126–2.

(2) Experimental use permits will usually be required for conduct of these field evaluations.

(b) *Test standards.* In addition to the test standards set forth in § 163.120–3, the following test standards shall be met:

(1) *Test substance*—(i) *Products with single active ingredients.* The formulated product shall be tested. Use of dyes or other indicators with the pesticide are acceptable only if these materials do not interfere with chemical analysis or bioresponse, do not alter chemical or physical properties of the diluted spray, do deposit in direct proportion to concentrations of active ingredients, and do remain stable until analysis.

(ii) *Tank mixes and package mixes.* Drift data requirements for each package mix, and for each tank mix allowed in labeling are identical to those requirements for any single pesticide applied alone; that is, the plant activity spectrum, droplet spectrum, and swath displacement must be evaluated. Alternatively, the swath displacement data for the mixture may not be required if the mixture activity spectrum, droplet size spectrum, and physical data are sufficiently similar to such data characterizing the mixture's most phytotoxic component for which acceptable swath displacement data have been submitted.

(2) *Dosage levels.* Maximum label-recommended pesticide dosages must be evaluated in all spray drift field evaluations.

(3) *Location.* The evaluation should preferably be performed in a field having foliage or crop cover conditions similar to actual use conditions. The site should be typical in geography, topography, and meterology of those sites within intended use patterns and seasonally similar in relation to the test plants. Open fields (not runways) will be acceptable only for evaluation of pesticides to be applied directly to soil or just emerging plants. If it is felt that barren fields should be used to test where vegetation would exist according to the label recommendations, the justification must be submitted to indicate the reason for this test modification.

(4) *Collection surfaces.* Collection surfaces for fallout sampling must be located within the target area and at least one swath width upwind and downwind at known distances outside the target area to a minimum of 1000 feet for aerial and air carrier application and 500 feet for other ground applications. The surfaces may be either inanimate or biological. Collection surfaces must be located in a straight line parallel to a stable wind direction and as close as possible to the perpendicular of the direction of travel for the application equipment. At each collection station, collection surfaces must be located at the soil surface or, if vegetation is present, at a level which corresponds to the height of the surrounding canopy. The downwind and upwind line of collection stations must extend at least to the point where quantities of pesticide collected are less than the no-effect level of the most sensitive plant species evaluated in § 163.126–2(b). Air samplers, such as a high volume type (20–50 ft^3/min), must be placed at a 2- or 3-meter height at least three downwind collection stations (for example, at 200, 600, and 1000 feet downwind) to sample airborne particles of the chemical. While lateral distances between collection stations are left to the discretion of the applicant, it is important that a sufficient number of collectón stations be established to present a definitive uninterrupted picture of deposits across the treated swath as well as outside the target area. Location of collection stations is particularly critical in areas where deposition rates are expected to

change rapidly over a small lateral distance.

(5) *Protocols.* (i) Spray drift evaluation data from one or more applications to a single swath line will be acceptable. When plant bioassays are used in the swath displacement test, only single applications over the swath test area may be performed. The length of the treated swath must be such that a line of continuation of the spray cloud would pass above the most distant downwind collection devices, taking into account the probability that wind direction may not coincide perfectly with the line of collection points. Normally the spray line should equal the sampling line length.

(ii) At least one study must be conducted using equipment, equipment adjustment and operation, procedures, and conditions most conducive to drift as would be allowed in labeling, and as determined in part from droplet spectrum tests. As an example, evaluate the spray drift using the following parameters that would be permitted in normal application practices: maximum recommended nozzle height, nozzle pressure, crosswind velocity, temperature gradient at 3 and 10 m, ground speed of the equipment, pesticide dosage, and airstream shear force (nozzle discharge orientation to air stream); minimum recommended nozzle orifice diameter, spray volume and relative humidity; and using cores any other devices to increase droplet dispersion or produce sheets, fans, or cones.

(c) *Reporting.* In addition to data reporting information required by § 163.120–4, the following information must be submitted:

(1) A diagram of the plot indicating north, swath width, and orientation, and location and spacing of the collection stations;

(2) Temperature at two levels, wind velocity and direction, variations in velocity and direction during the application, relative humidity, atmospheric pressure, and air stability. The latter is expressed as Barad's stability ratio:

$$\frac{T_{10}\ \text{meters} - T_3\ \text{meters}}{(\text{ave. wind vel.})^2} \times 10^5$$

Temperture and wind velocity shall be determined at the 3 and 10 meter height for aerial and air carrier applications and for all other ground applications;

(3) Dosage of active ingredients or acid equivalent per hectare (or acre). The concentration of the final diluted spray mixture (in the spray tank) must be sampled, chemically analyzed, and reported;

(4) Physical property data, including droplet size, viscosity, density, vapor pressure, visco-elasticity, and surface tension;

(5) Spray volume (liters per hectare or gallons per acre) and carrier(s). The maximum and minimum carrier volumes recommended on the label must be reported;

(6) Adjuvant identification and dilution used;

(7) The ground speed of application equipment, the number of swaths sprayed during exposure of collecting surfaces, and swath width;

(8) A description of the spray equipment, including nozzle type, orifice, size, core, nozzle pressure, nozzle spacing and arrangement, and nozzle discharge orientation. Nozzle discharge orientation shall be designated in degrees related to the direction of travel of the spray equipment. Zero degrees indicates a horizontal nozzle discharge pointing rearward (opposite to the equipment direction of travel), 90° indicates a vertical nozzle discharge pointing downward, and 180° indicates a horizontal nozzle discharge pointing forward (with the equipment direction of travel);

(9) The minimum and maximum nozzle-to-target height;

(10) The quantity of active ingredient(s) or acid equivalent collected or detected at each sampling point in terms of kilograms per hectare (pounds per acre); and

(11) Where droplet size distribution is determined during the field evaluation, refer to § 163.126–3(c) for the reporting requirements.

Appendix A to Subpart J

Test Protocols. The following test protocols have been developed to provide guidance in the performance of pesticide plant hazard evaluation testing:

(1) *Seed germination.* Surface-sterilized seeds are germinated in Petri dishes between sheets of sterile filter paper moistened with the chemical; or the surface-sterilized seeds are germinated in washed quartz sand that has been sprayed or otherwise treated with a known quantity of the chemical.

Use at least ten seeds per dish. The seeds are incubated for up to 14 days. The seeds are observed weekly (or more frequently), and seed germination is reported as the number of emerged or germinated seeds.

The methods of Horowitz (1966), Kratky and Warren (1971), or Rubinstein et al. (1975) may be used in this assessment.

Recommended References

Horowitz, M. 1966. A rapid bioassay for PEBC and its application in volatilization and absorption studies. *Weed Res.* 6:22–36.

Kratky, B.A., and G.F. Warren. 1971. The use of three simple, rapid bioasays on forty-two herbicides. *Weed Res.* 11:257–262.

Rubenstein, R., E. Cuirle, and H. Cole. 1975. Test methods for assessing the effects of chemicals on plants. EPA Report 560/5–75–008. NTIS PB 248–298.

(2) *Vegetative vigor-foliar spray.* The foliar spray can be applied by any commonly acceptable method using laboratory-, greenhouse-, or field-grown plants. The plants are to be sprayed during their most susceptible growth or reproductive stage as determined by prior testing. For vegetative vigor testing, the plant may be 0 to 4 weeks post-emergent (7–9 weeks for *Rhizobium*-inoculated soybeans). Types of sprays and methods of foliar applications may be found in the references below. Detrimental effects are to be reported as phytotoxicity, abnormal changes in growth and development, and/or abnormal changes in plant morphology.

Recommended References

Rubinstein, R., E. Cuirle, and H. Cole. 1975. Test methods for assessing the effects of chemicals on plants. EPA report 560/5–75–008. NTIS PB 248–298.

Truelove, B., (ed). 1977. Research methods in weed science. Southern Weed Science Society. Auburn Printing Inc., Auburn, AL. 221 pp.

(3) *Lemna gibba: Growth conditions.* The following are acceptable culture conditions for the growth and maintenance of *Lemna gibba* G3.

Species: *Lemna gibba* G3.
Environmental Conditions:
Light Intensity: 10 klux (10 k lum n /sq. meter)
Light Quality: warm white fluorescent
Photoperiod: continuous light
Thermoperiod: continuous 25° C
Culture Conditions:
Liquid culture
Nutrients: M type Hoagland's medium *without* EDTA or sucrose (Hillman, 1961 a & b); pH 5.0± 0.1 after autoclaving.

The vessel-to-medium ratio shall be 5 to 2. Maintain the *Lemna* stock under axenic conditions. The tests may be performed under non-axenic conditions as long as non-organic mediums are used.

Recommended References

Hillman, W.S. 1961a. Experimental control of flowering in *Lemna* III. A relationship between medium composition and the opposite photoperiodic responses of *L. perpusyilla* 6746 and *L. gibba* G3. *Amer. J. Bot.* 48:413–419.

Hillman, W.S. 1961b. The *Lemnaceae*, or duckweeds. *Bot. Rev.* 27:221–287.

(4) *Selenastrum capricornutum: Growth conditions.* The following are acceptable culture conditions for the growth and maintenance of *Selenastrum capricornutum.*

Species: *Selenastrum capricornutum* Printz.
Source: EPA Corvallis Laboratory, Corvallis, OR 97330.

Environmental conditions:
Light Intensity: 400 ft-c (4300 lumens/sq. meter)
Light Quality: cool white fluorescent
Photoperiod: continuous light
Thermoperiod: continuous 24 ± 2°C
Culture conditions:
Liquid culture
Nutrients: U.S. EPA (1978) medium
pH 7.5

Recommended References

Environmental Protection Agency, National Eutrophication Research Program, 1971. Algal Assay Procedure: Bottle Test (AAP:BT), National Environmental Research Center, Corvallis, OR 97330.
Miller, W.E., J.C. Greene, and T. Shiroyama. 1978. The *Selenastrum Capricornutum* Printz algal assay bottle test. U.S. Environmental Protection Agency, Corvallis, OR 97330 (EPA 600/9–78–018).

(5) *Skeletonema costatum: Growth coinditions.* The following are acceptable culture conditions for the growth for the growth and maintenance of *Skeletonema costatum.*

Species: *Skeletonema costatum.*

Environmental conditions:
Light Intensity: 6–6.5 klux (6–6.5 k lumens/sq. meter)
Light Quality: cool white fluorescent
Photoperiod: continuous light
Thermoperiod: 18° C continuous
Culture conditions:
Liquid culture
Nutrients: U.S. EPA (1974) medium
pH 8

Recommended References

U.S. Eutrophication and Lake Restoration Branch National Environmental Research Center-Corvallis. 1974. Marine Algal Assay Procedure: Bottle Test.
U.S. Environmental Protection Agency. 1978. Bioassy procedures for the ocean disposal permit program. U.S. EPA Laboratory, Gulf Breeze, FL 32561 (EPA–600/9–78–010).

(6) *A Freshwater Diatom Growth conditions.* The following are acceptable culture conditions for the growth and maintenance of *Navicula seminulum* or other selected freshwater diatom.

Species: (To be selected).

Environmental conditions:
Light Intensity: 400 ft-c (4300 lumens/sq. meter)
Light Quality: cool white fluorescent
Photoperiod: continuous light
Thermoperiod: continuous 24 ± 2° C.
Culture conditions:
Liquid culture
Nutrients: U.S. EPA (1971) medium
pH 7.5

Recommended Reference

Environmental Protection Agency, National Eutrophication Research Program. 1971. Algal Assay Procedure: Bottle Test (AAP:BT). National Environmental Research Center, Corvallis, OR 97330.

(7) *Anabaena flos-aquae: Growth conditions.* The following are acceptable culture conditions for the growth and maintenance of *Anabaena flos-aquae.*

Species: *Anabaena flos-aquae* (Lyngb.) DeBrebisson.

Source: EPA Corvallis Laboratory, Corvallis, OR 97330.

Environmental conditions:
Light Intensity: 200 ft-c (2150 lumens/sq. meter)
Light Quality: cool white fluorescent
Photoperiod: continuous light
Thermoperiod: continuous 24 ± 2° C
Culture conditions:
Liquid culture
Nutrients: U.S. EPA (1978) medium
pH 7.5 (not greater than 8.5)

Recommended References

Environmental Protection Agency, National Eutrophication Research Program. 1971. Algal Assay Procedure: Bottle Test. (AAP:BT). National Environmental Research Center, Corvallis, OR 97330.
Miller, W. E., J. C. Greene, and T. Shiroyama. 1978. The *Selenastrum capricornutum* Printz algal assay bottle test. U.S. Environmental Protection Agency, Corvallis, OR 97330 (EPA 600/9–78–018).

(8) *Mutagenicity study procedures. Tradescantia reflexa* will be used as the tier 1 test species. The growth conditions are provided herein. The protocol to test for mutagenicity effects are given in Sawamura (1964), Sawamura and Jackson (1968) and Wada (1952).

Species: *Tradescantia reflexa* (tetraploid species).

Environmental conditions:
Light Intensity: 20 klux (20 k lumens/sq. meter)
Light Quality: incandescent and cool white fluorescent
Photoperiod: 16 hrs/8 hrs D/N
Thermoperiod: 24°C/18°C D/N
Relative Humidity: 60–70%
Culture conditions:
Soil (Sawamura, 1964 and Wada, 1952)
pH 6.0 (5.0–7.0)
For mutagenicity effects testing, ensure that the variety and ploidy levels are those specified in the references. Growth conditions and test protocols are provided in Sawamura (1964), Sawamura and Jackson (1968), and Wada (1962). Other protocols and plant species may be used with prior approval of the Agency.

Recommended References

Sawamura, S. 1964. Cytological studies on the effects of herbicides on plan cells *in vivo.* I. Hormonic herbicides. *Cytologia* 29:86–102.
Sawamura, S., and W. T. Jackson. 1968. Cytological studies *in vivo* of piclorам, pyriclor, trifluralin, 2,3,6–TBA, 2,3,5, 6–TBA and nitralin. *Cytologia* 33:545–554.
Wada, B. 1952. Effects of chemicals on mitosis studied in *Tradescantia* cells *in vivo.* I. p-Acetyl aminotropollene. *Cytologia* 17:14–34.

(9) *Nitrogen fixation study procedures*—(i) *General.* When required, the effect of the pesticide on nitrogen fixation shall be determined by the acetylene reduction method. The following test conditions are common to all of the species to be tested.

(A) The chemical to be tested should be applied to the experimental medium for a period of time before and then to the incubation medium during the enzyme assay.

(B) Acetylene reduction will be allowed to occur for the required incubation time (30 to 60 min) under the environmental conditions in which the plant is grown. The acetylene partial pressure (PC_2H_2) will be 0.1 atm (10%).

(C) After the required incubation time, a sample of the vapor phase is obtained and either stored or assayed directly.

(D) Assays for ethylene content (acetylene reduction end-product) will be performed using a gas chromatograph equipped with a hydrogen ion flame ionization detector (F.I.D.). The gases will be separated on a column 3.2 mm wide (OD) 2 m long containing 80/120 mesh Parapak N or similar packing material. The standard curves for the ethylene standard must be provided with the retention times. Oven and injection temperatures and carrier gas used are at the discretion of the reseacher but must be reported.

(ii) *Protocols.* The following protocols are provided for guidance in the growth and maintenance of the species to be used for testing nitrogen fixation potential.

(A) *Legumes. Glycine max* is inoculated with *Rhizobium japonicum. Trifolium repens* is inoculated with *Rhizobium trifolii.* The general growth conditions and methods for determination of nitrogen fixation potential are provided below. Apply *Rhizobium* in a peat slurry to the seed. Use 7- to 9-week-old seedling for assays. Measure nitrogen fixation potential using nodules attached to roots. Note the number, size, and fresh weight of the nodules.

Environmental Conditions:
Light Intensity: 20–30 klux (20–30 k lumens/sq. meter)
Light Quality: fluorescent and incandescent
Photoperiod: 16 hrs/8 hrs D/N
Thermoperiod: 30/20°C D/N
Relative Humidity: 60%
Culture Conditions:
Sand/Nutrient culture
Nutrients: *Trifolium*—Crone's nitrogen-free medium.
Glycine—Sloger's nitrogen-free medium.
pH: 6–7 (not less than 5.2)

Recommended References

Allen, N. O. 1957. Experiments in soil bacteriology. pp. 93–94. Burgess Publ. Co., Minneapolis.
Masterson, C. L., and P. M. Murphy. 1976. Application of the acetylene reduction technique to the study of nitrogen fixation by white clover in the field. Pp. 299–316 *in* Symbiotic Nitrogen Fixation in Plants. P. S. Nutman (ed.). (IBP Vol. 7) Cambridge University Press, Cambridge, U.K.
Sloger, C. 1969. Symbiotic effectiveness and N_2 fixation in nodulated soybean. *Plant Physiol.* 44:1666–1668.

(B) *Azolla-Anabaena azollae.* Three species of *Azolla* occur in the continental United States: *A. caroliniana, A. mexicana,* and *A. filiculoides.* The growth, maintenance, and determination of nitrogen fixation potential by the symbiosis are found in the following references.

Recommended References

(i) *A. caroliniana.*

Peters, G. A., and B. C. Mayne. 1974. The *Azolla, Anabaena azollae* relationship II. *Plant Physiol.* 53:820–824.

Peters, G. A. 1975. Studies on the *Azolla-Anabaena azollae* symbiosis. Pp. 592–610 *in* Proc. Internat. Symp. on Nitrogen Fixation. W. E. Newton and C. J. Nyman, eds. Washington State Univ. Press: Pullman, WA.

(ii) *A. mexicana.*

Holst, R. W., and J. H. Yopp. 1979. Environmental regulation of nitrogenase and nitrate reductase as systems of nitrogen assimilation the *Azolla mexicana-Anabaena azollae* symbiosis. *Aquatic Bot.* 7:369–384.

Holst, R. W., and J. H. Yopp. 1979. Studies of the *Azolla-Anabaena* symbiosis using *Azolla mexicana.* I. Growth in nature and laboratory. *Amer. Fern J.* 69:17–25.

(iii) *A. filiculoides.*

[No specific references are available. Refer to the publications in (i) and (ii) (above)], and

Moore, A. W. 1969. *Azolla:* biology and agronomic significance. *Bot. Rev.* 35:17–34.

(C) *Anabaena.* Either *A. flos-aquae* or *A. cylindrica* may be used. The growth conditions for *A. flos-aquae* are given in paragraph (7) of this Appendix. Those for *A. cylindrica* are given in Hattori (1962). In both cases, the alga must be grown on a nitrogen-free medium. Nitrogen fixation determination must be performed utilizing intact filaments and cells. The technique of Stewart et al. (1971) shall be used and the samples assayed without termination of the reaction with trichloracetic acid.

Recommended References

Hattori, A. 1962. Light-induced reduction of nitrate, nitrite, and hydroxylamine in a blue-green alga, *Anobaena cylindrica. Plant Cell Physiol.* 3:355–369.

Stewart, W. D. P., T. Mague, G. P. Fitzgerald, and R. H. Burris. 1971. Nitrogenase activity in Wisconsin lakes of differing degrees of eutrophication. *New Phytol.* 70:497–509.

(D) *Azotobacter vinelandii. Azotobacteri vinelandii* can be grown on a modified Burke's medium supplemented with 1 μg Mo/liter as $Na_2MoO_4.2H_2O$ (Burns et al. 1971). Nitrogen fixation potential is determined using either the method of Balandreau and Dommergues (1973) or that used for *Anabaena* as provided in section (C) above.

Recommended References

Burns, R. C., W. H. Fuchsman, and R. W. F. Hardy. 1971. Nitrogenase from vanadium-grown *Azotobacter:* Isolation, characteristics, and mechanistic implications. *Biochem. Biophys. Res. Comm.* 42:353–358.

Balandreau, J., and Y. Dommergues. 1973. Assaying nitrogenase (C_2H_2) activity in the field. *Bull. Ecol. Res. Comm.* 17:247–254. (Now: Ecol. Bull. Sweden Nat. Res. Council).

[FR Doc. 80-34113 Filed 10-31-80; 8:45 am]

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federal register

Monday
November 3, 1980

Part VII

Environmental Protection Agency

Nuclear Regulatory Commission

Regulation of Radionuclide Emissions From Sources and Facilities Licensed by NRC; Memorandum of Understanding

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[RH-FRL-1653-3]

Regulation of Radionuclide Emissions; Memorandum of Understanding

AGENCIES: Environmental Protection Agency, Nuclear Regulatory Commission.

ACTION: Notice of a Memorandum of Understanding.

SUMMARY: The Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) have entered into a Memorandum of Understanding as required by section 122(c)(2) of the Clean Air Act, as amended in 1977, with respect to the regulation of radionuclide emissions into air from sources and facilities licensed by NRC. This Memorandum defines in general terms the respective roles of the two agencies and establishes a framework of cooperation for avoiding unnecessary duplication of effort and for conserving resources in establishing, implementing, and enforcing standards for airborne radionuclide emissions from sources and facilities licensed by NRC. This Memorandum may be revised in the future as EPA develops Clean Air Act radionuclide standards applicable to NRC licensees.

ADDRESSES: Docket No. A-79-11, containing material relevant to this action, is located in the U.S. Environmental Protection Agency, Central Docket Section, Waterside Mall, West Tower Lobby, Gallery One, 401 M Street, SW, Washington, DC. The Docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Paul J. Magno, Office of Radiation Programs (ANR-460), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (703) 557-7380, or John W. N. Hickey, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-5966.

SUPPLEMENTARY INFORMATION: Under various statutes both EPA and NRC have the authority to regulate radioactive emissions of source material, byproduct material, and special nuclear material into the air. Under the Atomic Energy Act of 1954 and Title II of the Energy Reorganization Act of 1974, NRC is authorized to license and regulate the manufacture, production, receipt, acquisition, possession, ownership, use, and transfer of source material, byproduct material, and special nuclear material.[1] Under the Clean Air Act, as amended in 1977, EPA was also given the authority to regulate air emissions of source material, byproduct material, and special nuclear material.[2]

Section 122(a) of the Clean Air Act, as amended in 1977, directed the Administrator of EPA to determine whether emissions of radioactive pollutants (including source material, byproduct material, and special nuclear material) into ambient air will cause or contribute to air pollution which may reasonably be anticipated to endanger public health. If the Administrator made an affirmative finding, he was required to list radioactive pollutants as substances to be regulated under the Clean Air Act.

On December 27, 1979, the Administrator of EPA made an affirmative finding and listed "radionuclides" as hazardous air pollutants under Section 112 of the Clean Air Act (44 FR 76738, December 27, 1979). The term "hazardous air pollutant," as defined by Section 112, means an air pollutant to which no ambient air quality standard is applicable and which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. After listing radionuclides as hazardous air pollutants under Section 112 of the Clean Air Act, the Administrator must promulgate regulations establishing standards for these pollutants, and where applicable, all sources and facilities emitting these pollutants, including NRC-licensed sources and facilities, must comply with these standards.

NRC-licensed sources and facilities include nuclear power plant operations and other activities in the nuclear fuel cycle, research and development laboratories, universities, research and test reactors, hospitals, radiopharmaceutical facilities, industrial users and various miscellaneous users of source material, byproduct material, and special nuclear material. Radionuclide air emissions from these licensed sources and facilities are already limited or controlled by a number of existing regulations and standards, including:

1. 10 CFR Part 20, "Standards for Protection Against Radiation," which among other things specifies limits for radionuclide releases into air from all NRC licensees and includes the provision that these releases should be "as low as reasonably achievable" (ALARA);

2. Appendix I of 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," which specifies numerical design objectives to insure that radionuclide releases from light water nuclear power reactors are kept "as low as reasonably achievable" (this regulation is implemented by NRC through technical specifications on individual licensees which specify release limits); and

3. 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," which establishes generally applicable standards for radionuclide emissions from uranium fuel cycle facilities.[3]

Recognizing the overlapping jurisdictional authorities resulting from the Clean Air Act Amendments of 1977, Congress, under Section 122(c)(2) of the Clean Air Act, as amended in 1977, directed EPA and NRC, no later than six months after EPA lists any source material, byproduct material, or special nuclear material as a substance to be regulated under the Act, to enter into an interagency agreement with respect to those sources or facilities which are under NRC's jurisdiction. The Act states that this agreement shall minimize duplication of effort and conserve resources in establishing, implementing, and enforcing Clean Air Act radionuclide standards for sources or facilities licensed by NRC.

EPA and NRC have entered into such an agreement. Under this agreement EPA shall promulgate standards for airborne radionuclide emissions under its Clean Air Act authority and NRC shall have the primary role in implementing and enforcing these standards where applicable for sources and facilities licensed by NRC. EPA shall inform NRC of proposed actions

[1] Source material, byproduct material, and special nuclear material are radioactive materials as defined in the Atomic Energy Act of 1954 as amended.

[2] Under the Atomic Energy Act of 1954 and Reorganization Plan No. 3 of 1970, EPA also is authorized to establish generally applicable environmental standards for protection of the general environment from radioactive materials. These standards, which apply outside the boundaries of NRC-licensed facilities, are implemented by NRC through its licensing authority.

[3] This standard was issued by EPA under the Atomic Energy Act authority to establish generally applicable environmental radiation standards. Uranium fuel cycle facilities subject to 40 CFR 190 and regulated by NRC, include uranium mills, uranium conversion plants, uranium fuel fabrication plants, light-water-cooled nuclear power plants using uranium fuel, and spent uranium fuel reprocessing plants, as defined in 40 CFR 190 (42 F.R. 2858, January 13, 1977).

for the development of Clean Air Act radionuclide standards for sources and facilities licensed by NRC and shall consult regularly with NRC during the standards development process. NRC shall assist EPA in standards development by: (a) providing information and recommendations, (b) participating in studies, and (c) reviewing and commenting on proposed standards.

As EPA standards are developed for NRC-licensed sources and facilities, EPA and NRC will work together in developing mutually acceptable procedures for implementing and enforcing these standards. These efforts are expected to lead to a revision of this agreement defining the specific roles of each agency in implementing and enforcing these standards. This revision should be completed before EPA proposes its first standards applicable to NRC-licensed sources and facilities.

The text of the Memorandum of Understanding is set forth below.

Memorandum of Understanding Between EPA and NRC Concerning the Clean Air Act, as Amended in 1977

In accordance with Section 122(c)(2) of the Clean Air Act, as amended in 1977, to minimize duplication of effort and conserve resources in the regulation of radionuclide emissions to air from sources or facilities licensed by NRC, EPA and NRC agree to the following:

I. Establishment of Standards

1. EPA shall promulgate standards for airborne radionuclide emissions under its Clean Air Act authority.

2. EPA shall inform NRC of proposed actions for the development of Clean Air Act radionuclide standards for sources and facilities licensed by NRC and shall consult regularly with NRC during standards development.

3. NRC shall assist EPA in standards development by:

a. Providing EPA with available data and information on NRC-licensed sources and facilities as needed, including information on radionuclide air emissions, the environmental impact of these emissions, and control technology for reducing these emissions;

b. Participating with EPA in carrying out any necessary special studies at NRC-licensed sources and facilities; and

c. Providing recommendations and reviewing and commenting on EPA's proposed standards.

II. Implementation and Enforcement of Standards

1. NRC, using its own regulatory program and statutory and regulatory authorities, shall have the primary role in implementing and enforcing EPA's Clean Air Act radionuclide standards for sources and facilities licensed by NRC.

2. During the development of Clean Air Act radionuclide standards for NRC-licensed sources and facilities, EPA and NRC shall work together to establish mutually acceptable procedures for implementing and enforcing these standards. These procedures will be consistent with the provisions of the Clean Air Act and will allow both EPA and NRC to fulfill their statutory responsibilities with a minimum of duplication of effort. These procedures and the specific roles of each agency in carrying out these procedures will be defined in a revision to this agreement which should be completed before EPA proposes its first standards applicable to sources and facilities licensed by NRC.

III. Effective Date, Revision, and Termination

This Memorandum shall be effective immediately, and shall continue in effect until revised by mutual agreement, unless terminated by either party upon 120 days notice in writing.

Dated: October 17, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation, U.S. Environmental Protection Agency.

Dated: October 24, 1980.

William J. Dircks,

Executive Director for Operations, U.S. Nuclear Regulatory Commission.

[FR Doc. 80-34108 Filed 10-31-80; 8:45 am]

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federal register

Monday
November 3, 1980

Part VIII

Environmental Protection Agency

State and Local Assistance; Grants for Construction of Treatment Works

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH FRL 1643-7]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking amends the regulations governing the cost-effectiveness analysis of Facility Plans prepared under grants for construction of treatment works under Title II of the Clean Water Act. The revisions replace the present 4% cost escalation factor for natural gas with tables of regional escalation rates over 10 and 20 year time periods for fossil fuels and electricity. The revisions also require grantee consideration of State energy plan provisions. These changes affect only 40 CFR 35 Subpart E, Appendix A, paragraph 6d.

DATES: Proposed effective date: The amendments are effective for Step 1 grants awarded 60 days after the publication date for the final rule. Earlier use by the grantee, is optional.

COMMENT DATE: Comments on this notice of proposed rulemaking must be submitted by January 2, 1981.

ADDRESS: Comments (in duplicate if possible) should be addressed to Central Docket Section (A-104), Docket Number: G-80-4, Environmental Protection Agency, 401 M Street SW, Washington, DC, 20460. Comments previously received on the proposed rules may be inspected at: Central Docket Section, Environmental Protection Agency, West Tower Lobby—Gallery 1, 401 M Street SW, Washington, DC, between 8 a.m. and 4:00 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Wen Huang, Facility Requirements Division (WH-595), Environmental Protection Agency, 401 M Street SW, Washington DC, 20460, 202/426-4445.

SUPPLEMENTARY INFORMATION:

1. Background

Executive Order 12185, Conservation of Petroleum and Natural Gas, signed by the President on December 17, 1979, and published December 19, 1979, at 44 FR 75093 mandates that each Federal agency identify its financial assistance programs most likely to offer opportunitites for significant conservation of petroleum and natural gas.

It further directs that a list of these programs be published for public comment so that the public may provide suggestions for rules that would encourage energy conservation. This list was published in the **Federal Register** of February 7, 1980, at 45 FR 8534. It included several EPA programs including the Construction Grants Program (Section 201 of the Clean Water Act of 1977), which provides financial assistance to municipalities for the construction of publicly-owned treatment works (POTWS).

After examining program requirements, EPA determined in a notice of proposed rulemaking, published in the **Federal Register** of May 7, 1980 at 45 FR 30376, that a regulatory change is necessary to implement E.O. 12185, for the Construction Grants Program. EPA determined further that the proposed change should provide a cost-escalation schedule for pricing energy (petroleum, natural gas, and electricity) in calculating the most cost-effective wastewater treatment system or component part. The notice also stated that EPA, after it completed its review of the Department of Energy's schedule of energy prices, would publish in the **Federal Register** for public comments the proposed regional escalation factors for the cost-effectiveness analysis, and a proposed requirement that facility planning take into account applicable provisions of State energy plans.

2. Present and Proposed Uses of Energy Escalation Factors in Cost-Effectiveness Analysis

The Cost-Effectiveness Analysis Guidelines represent EPA's policies and procedures for determining the most cost-effective wastewater treatment system or component part. The guidelines apply to the planning of all wastewater treatment projects for which Federal grant assistance is being sought. The guidelines are published as Appendix A of the Construction Grants Regulations (40 CFR 35, Subpart E).

The Agency's cost-effectiveness analysis procedures presently call for use of constant dollar values to represent the worth of goods and services required for a project over time. This constant dollar approach, rather than implying no future inflation, assumes that the costs of all resources involved in treatment works construction and operation, will increase at about the same rate on a long-term basis. As exceptions, however, certain cost escalation allowances are provided for land natural gas, recognizing that the real values of these items are likely to increase faster over time than those of other goods and services required for construction and operation of wastewater treatment facilities.

The Department of Energy's Information Administration (EIA) has projected future price increases for certain energy inputs for wastewater treatment and other purposes relative to the general projected inflation rate. Accordingly, the Agency proposes to revise the guidelines to require escalation of these energy prices (difference between total projected energy costs and the general inflation rate) over the 20-year planning period for wastewater treatment works. This would encourage selection of facilities requiring less energy.

3. Coordination with State Energy Plans

Facility planning should take into account applicable provisions of existing State energy plans. Accordingly, the Agency proposes to revise the cost-effectiveness guidelines to require that grantees consider such State energy plans in future facility planning.

4. Comments Received to Date

The one comment we have received to date on the proposed revisions supports the escalation of energy prices in the analysis of alternative wastewater management systems; however, the comment suggests that EPA carefully review the factors before incorporating them into regulation. EPA has reviewed the EIA projections very carefully for use by the program, and although EPA recognizes that long-term projections entail uncertainty the projections seem reasonable at this time. The factors, and the effect of their use, are subject to review and possible update each year.

Paragraph 6d of Appendix A to Subpart E of 40 CFR 35 is proposed to be revised as follows:

Appendix A—Cost-Effectiveness Analysis Guidelines

* * * * *

d. *Prices.* (1) The applicant shall calculate the various components of costs on the basis of market prices prevailing at the time of the cost-effectiveness analysis. The analysis shall not allow for inflation of wages and prices, except those for land, as described in paragraph 6h(1) and for energy. This stipulation is based on the implied assumption that prices, other than the exceptions, for resources involved in treatment works construction and operation, will tend to change over time by approximately the same percentage. Changes in the general level of prices will not affect the results of the cost-effectiveness analysis. Energy prices shall be escalated at a

compound rate for the appropriate fuel, region and time period as shown on the tables below unless the Regional Administrator determines that the grantee has justified use of a greater or lesser percentage based on the regional differentials between historical energy price escalation and construction cost escalation. Land prices shall be appreciated as provided in paragraph 6h(1). Both historical data and future projections support the energy and land price escalations relative to wastewater treatment. Price escalation rates may be updated periodically in accordance with Agency guidelines.

(2) Grantees must consider the applicable provisions of existing state energy plans during facility planning.

Example

Town A, N.J. decided to build an 8 MGD activated sludge process plant. The following data are provided:

Capital Cost	$18,000,000.
Electricity	$200,000/yr.
Gas (Natural Gas)	$150,000/yr. (mainly for sludge incineration).
Other O&M Cost	$700,000/yr.
Interest rate	7%.
Planning period	20 yrs. (1980-2000).

All the costs are at average 1980 price levels.

The procedure for present-worth analysis follows:

1. From Tables 1 and 2, the energy cost escalation factors for electricity and natural gas for the period of 1980–2000 were developed for Town A, N.J. from Region II data. The results are presented in Figures 1 and 2.

2. Present Worth Analysis:

Capital Cost.....$18,000,000
Salvage Value (assumed)..... 0
Other O&M Costs: $700,000 × 10.594(PWF) [1].....7,415,800

Electricity: From Figure 1, if 1980 price is 1.00, that of 1990 is 1.14 and that of 2000 is 1.19. The present worth can be calculated as follows:

$200,000 × 10.594(PWF) [1], + $200,000 × 0.014 × 27.716(PWFGS) [2], + $200,000 × 0.14 × 5.386(MPWF) [3], + $200,000 × 0.005 × 14.089(MPWFGS) [4].....$2,361,300

Natural Gas: From Figure 2, if price for 1980 is 1.00, that for 1990 is 1.35 and that for 2000 is 1.36. The present worth can be calculated as follows:

$150,000 × 10.594(PWF), + $150,000 × 0.035 × 27.716(PWFGS), + $150,000 × 0.35 × 5.386(MPWF), + $150,000 × 0.001 × 14.089(MPWFGS).....$2,019,500

Total Present Worth Value.... 29,796,000

[1] PWF = Present Worth Factor.

[2] PWFGS = Present Worth Factor of a Gradient Series.

[3] MPWF = Modified Present Worth Factor = PWF/(1 + i)^m.

[4] MPWFGS = Modified Present Worth Factor of a Gradient Series = PWFGS/(1 = i)^m.

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TABLE 1

ENERGY COST ESCALATION FACTORS IN PERCENT FOR THE TEN-YEAR PERIOD 1980 - 1990 BASED ON 1980 ENERGY PRICES AND 1980 COST BASE

	REGION I	REGION II	REGION III	REGION IV	REGION V	REGION VI	REGION VII	REGION VIII	REGION IX	REGION X	NATIONAL AVERAGE
Electricity	19	14	24	33	28	33	13	0	23	75	28
Distilled Oil	34	34	34	34	35	35	35	34	36	48	34
Residual Oil	33	33	33	35	34	35	35	34	36	38	34
Natural Gas Liquid	41	41	40	69	40	41	41	40	41	41	41
Natural Gas	33	35	62	80	68	68	115	61	38	38	66
Coal	26	27	29	29	28	27	29	19	26	0	28

Sources used for compilation of this table:

1. DOE: EIA "Short-Term Energy Outlook" May 1980
2. DOE: EIA "Annual Report to Congress" DOE/EIA - 0173 (79-3), May 1979
3. DOE: EIA "Preliminary 1985, 1990, and 1995 Energy Forecasts for the Annual Report to Congress, 1979" Service Report SR/IA/80-01 April 1980

TABLE 2

ENERGY COST ESCALATION FACTORS IN PERCENT FOR THE TEN-YEAR PERIOD 1990 - 2000
BASED on 1980 ENERGY PRICES AND 1980 COST BASE[1]

	REGION I	REGION II	REGION III	REGION IV	REGION V	REGION VI	REGION VII	REGION VIII	REGION IX	REGION X	
Electricity	0	5	9	15	6	7	10	0	0	28	6
Distilled Oil	22	21	21	21	22	23	22	21	22	24	21
Residual Oil	19	19	19	19	21	20	20	20	20	20	20
Natural Gas Liquid	20	20	18	22	18	20	18	18	20	20	20
Natural Gas	4	1	3	2	3	5	4	5	3	3	3
Coal	11	11	1	9	10	8	9	7	11	0	9

[1] Factors are to be added to those for 1980-1990 (Table 1) in calculting total Energy Cost Increase for 1990-2000 above the 1980 cost level.

Sources used for compilation of this table:

1. DOE: EIA "Short-Term Energy Outlook" May 1980
2. DOE: EIA "Annual Report to Congress". DOE/EIA - 0173 (79/3), May 1979
3. DOE: EIA "Preliminary 1985, 1990, and 1995 Energy Forecasts for the Annual Report to Congress, 1979" Service Report SR/IA/80-01 April 1980

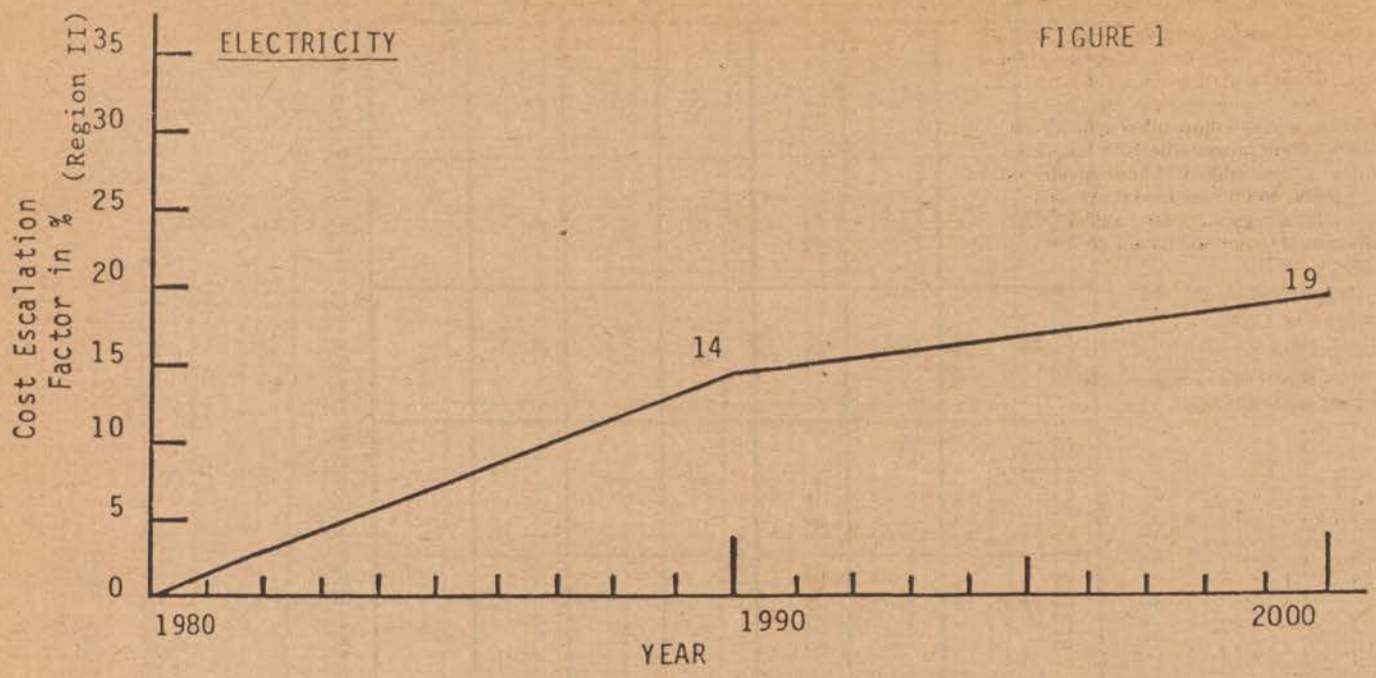

FIGURE 1

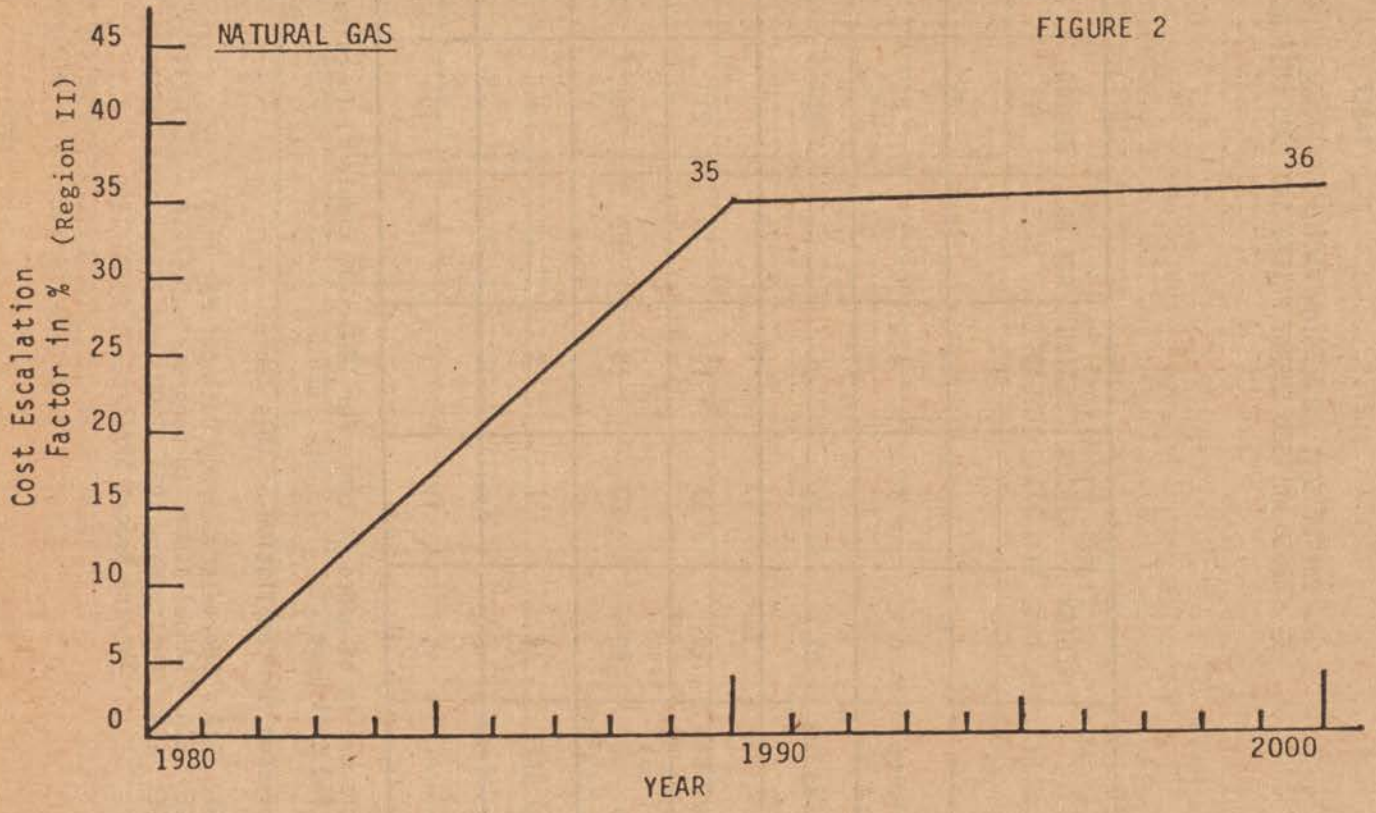

FIGURE 2

BILLING CODE 6560-29-C

Regulation Development Procedures

Note.—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 the latter as "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 28, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-34114 Filed 10-31-80; 8:45 am]

BILLING CODE 6560-29-M

federal register

Monday
November 3, 1980

Part IX

Small Business Administration

Final Consumer Program

SMALL BUSINESS ADMINISTRATION

Office of the Administrator

Final Consumer Program

AGENCY: U.S. Small Business Administration.

ACTION: Final response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs."

SUMMARY: The purpose of this document is to give notice of the Final Consumer Program of the Small Business Administration. As part of the Program, a senior level official has been appointed as Consumer Affairs Officer.

EFFECTIVE DATE: December 3, 1980.

FOR FURTHER INFORMATION CONTACT: Paul A. Pumpian, Consumer Affairs Officer, U.S. Small Business Administration, 1441 L Street NW., Room 602F, Washington, D.C. 20415, (202) 653-6448.

Preamble

In response to Executive Order 12160, the Small Business Administration (SBA) published its Proposed Consumer Program in the Federal Register on February 6, 1980. This Proposed Program has now been revised on the basis of public comments received, SBA staff reviews and the evaluation of the Program by the staff of the White House Office of Consumer Affairs.

Review and Evaluation Process

The following steps have been taken by SBA subsequent to publication of the Proposed Program on February 6, 1980:

- The Associate Administrator for Management Assistance, the Assistant Administrator for Personnel Management and the Assistant Administrator for Public Communications were asked to comment on the evaluation of the Proposed Program by the White House Consumer Affairs Staff.
- SBA's Consumer representative participated with other Federal Consumer Affairs representatives in an open meeting sponsored by the White House Consumer Affairs Office on the Consumer Executive Order and Federal Department Consumer Plans.
- The SBA Consumer representative encouraged comments on the SBA Proposed Program from individuals and organizations through direct personal contacts.

Summary of Comments

We received seven (7) responses to SBA's request for comments of which three (3) were from consumers and four (4) from consumer/public interest organizations.

Three of the organization comments received were general in nature, commenting on the Executive Order rather than the SBA plan. It appears from the comments that they were also submitted to other Federal agencies which published plans.

One consumer organization submitted several comments on Executive Order 12160 and followed up with specific comments on the SBA Proposed Program.

These comments were considered in detail and used in SBA's revsion process which resulted in the plan now being published for comment.

Introduction

The Small Business Administration by statute and Executive Memoranda is charged with the responsibility of representing, advocating and furthering the interests of small business. Since the activities of many small businesses assisted by SBA impact directly upon consumers, SBA can discharge an important educational and counseling role in helping to keep small business men and women informed about rights conferred on consumers by existing and proposed legislation.

The three key elements of SBA's Consumer Affairs Program designed to achieve these educational and counseling objectives are:

1. Training SBA personnel on the rights and concerns of consumers.
2. Placing a greater emphasis on consumer rights and concerns in educational materials (essentially publications) distributed to small businesses under SBA's Management Assistance Program and in the curricula of SBA-sponsored Small Business Development Centers and Small Business Institutes.
3. Soliciting the advice and opinion of the White House Consumer Affairs council and various private organizations representing consumers on exactly what information and guidance should be included in SBA's educational and guidance programs.

Consumer Affairs Perspective

SBA will add a Consumer Affairs Office to work with existing organizational elements and staff to promote the consumer affairs perspective. For the present fiscal year this Office will be staffed by a Consumer Affairs Officer, As the activity of the Office increases, additional professional staff and needed support staff will be provided (it is contemplated that the first such addition will be provided for in the next budget cycle).

Training of SBA personnel on consumer affairs will proceed under the Assistant Administrator for Personnel Management. The education and counseling for business men and women will proceed under the Associate Administrator for Management Assistance. Communications between SBA and non-governmental organizations representing consumers will be the responsibility of the Assistant Administrator for Public Communications. Responsibility for liaison with the Federal Consumer Affairs Council will be discharged by the SBA Consumer Affairs Officer.

Additionally, the Consumer Affairs Officer will be responsible for coordinating SBA's "Consumer Awareness" programs and representing the Consumer's point of view at SBA's Advisory Committee meetings.

Close cooperation on consumer affairs between the above Associate and Assistant Administrators is assured by their membership on the SBA Management Board. The Management Board meets bi-weekly, and is presided over by the Administrator. The Board is SBA's principal instrument for the development and review of all Agency rules, policies, and programs. When closer coordination between the Office of the Administrator and the Associate/Assistant Administrators is required on a particular issue or action, the Special Assistant for Programs and Policy Analysis in the Office of the Administrator will provide assistance.

Additionally, the Consumer Affairs Officer will work with the above Associate and Assistant Administrators assisting the Assistant Administrator for Personnel Management in integrating appropriate information/materials relating to the Consumer Affairs Program into its training curricula, assisting the Associate Administrator for Management Assistance in developing publication, seminars, presentations (oral, video, etc.) for small business persons and assisting the Assistant Administrator for Public Communications on communications with non-governmental consumer organizations.

The Consumer Affairs Officer will serve as the Chairman of the SBA Consumer Council which shall be composed of the Advisory Council Staff Director and the principal deputies to each of the above named Associate and Assistant Administrators.

The Council shall consider matters presented to it by the SBA Consumer Affairs Officer. The matters considered to impact on the consumer shall be

presented to the Administrator through the Special Assistant for Programs and Policy Analysis in the Office of the Administrator.

The Consumer Affairs Officer will be apprised of all policy decisions of the Management Board and all contemplated proposals prior to publication in the **Federal Register** for a determination of the existence of a potential adverse consumer impact. Should the Consumer Affairs Officer determine that such an adverse consumer impact exists, he/she shall convene a meeting of the SBA Consumer Council and report the recommendations of the Council to the Administrator.

Consumer Participation

SBA has not had extensive consumer participation in the development and review of its rules, policies and programs. However, consumer participation is invited by SBA's compliance with the Administrative Procedure Act requirements for public participation in rulemaking; and, Executive Order 12044 which requires, among other things, that agencies shall give the public an early and meaningful opportunity to participate in the development of regulations.

In accordance with the APA rulemaking provisions (5 U.S.C. 553), most SBA rulemaking actions involve the publication of a proposed rule in the **Federal Register** and an invitation to the public to participate through the submission of written data, views, or arguments on the proposal.

Steps which SBA will take to assure that consumers have early and meaningful opportunities to participate in the development and review of all Agency rules, policies and programs include:

1. Timely notice of proposed rules by utilizing the **Federal Register**, specialized publications likely to be read by those affected, direct notification of interested parties, and the media.
2. The use of hearings.
3. Communications through State and local government officials and agencies.
4. Use of Advisory committees.

When matters of potential impact to the consumer are being considered by the SBA, public notice of such consideration shall be submitted to the various national consumer groups on the day such notice is published in the **Federal Register**. The determination of the existence of a potential adverse consumer impact shall be the responsibility of the SBA Consumer Council.

Additionally, SBA's Advisory Councils will assist in providing a Consumer Perspective. SBA sponsors a number of Advisory Councils the membership of which represents the small business community, the banking industry, the academic world and the media. The National Advisory Council has approximately 1,600 private citizens who serve voluntarily as members of the various District Councils. The Council members represent the views of the public-at-large and have in the past also represented consumer views. To strengthen the consumer voice on the councils, we currently have as members persons who are active consumer advocates, members of consumer groups, organizations and associations.

Interested citizens may contact SBA District Directors for the names of Advisory Council Chairpersons or members for the purpose of making their views known and to offer their services.

Information Materials

SBA currently has a considerable range of publications on all its programs. SBA provides, free of charge, a long list of pamphlets and brochures on the Agency's Management Assistance Program. In addition, the Agency makes available dozens of handbooks and brochures on various aspects of small business organization, management and financing. These materials are available at all SBA offices and are distributed at hundreds of training and informational seminars conducted around the country each year. In addition, many informational materials are made available free of charge to persons wanting to start a small business (including consumers and consumer groups) and to small businesses interested in expanding or obtaining counseling. Write U.S. Small Business Administration, P.O. Box 15434, Fort Worth, Texas 76119; call toll free 800–433–7212 (Texas only call 800–792–8901).

The Office of Public Communications distributes press releases and other informational materials to about 2,500 newspapers, magazines, radio and TV outlets, trade associations, consumer organizations and civic organizations. Interested consumers or consumer organizations who would like to receive press releases should write directly to the Office of Public Communications, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

Education and Training

Through its Office of Management Assistance, SBA provides small business men and women a wide range of educational and counseling services through a network of Small Business Development Centers, Small Business Institutes and management assistance personnel located in SBA district offices. This assistance includes management counseling, contract and financial assistance, including counseling on how products and services can be improved thereby improving customer relations which, among other things, are aimed at minimizing customer/consumer complaints. In a very real sense, SBA has been and continues to protect the consumer by the nature of its services to the small business community.

SBA provides a variety of training in fields such as Marketing, Financial Analysis, Procurement, Construction Contracting, Interpersonal Skills, Program Orientation, Supervisory/Management, etc. to its employees in preparing them to administer these services to the small business client. SBA technical personnel charged with the responsibility of administering the major Agency programs (management, financial and procurement assistance) receive training on a continuing basis, from entry to senior levels, so that state-of-the-art skills are maintained in providing these services.

One major objective of all of SBA's training programs is to raise the level of awareness and sensitivity of the needs of small business and explore methods of providing even more effective services to our clients, thereby having a positive effect on the consumer.

Several approaches will be taken to further educate and make our staff more aware of consumer issues and problems. Some of the approaches we are considering are as follows:

1. We plan to integrate instruction/materials on consumer affairs into our current training curriculum. The Office of Personnel Management has proposed that a Governmentwide Task Analysis be conducted to determine the specific tasks involved that relate to the Consumer Affairs Program among agencies. When this research is completed, we will determine just what kinds of instruction/materials should be integrated into our training curriculum. We project that this training will get underway in FY–1981.

2. We will conduct two one-day workshops with appropriate managers and staff in SBA who will be involved in the Consumer Affairs Program. These workshops will focus on educating our managers about the Program, what we in SBA can do to further educate both the SBA employee and the small business person in consumer matters and strategies for carrying out this training.

3. The Consumer Affairs Officer will review informational materials currently

available to determine the presence (or absence) of the consumer viewpoint on matters amenable to such a viewpoint. Where needed, the Consumer Affairs Officer will propose revisions to reflect the consumer viewpoint to the SBA Consumer Council and will report the Council's views to the Administrator.

The Consumer Affairs Officer will be consulted during the revision of all existing publications and the preparation of new publications.

The Consumer Affairs Officer will prepare materials for use in seminars, lectures, etc. for small business persons sponsored by the Small Business Administration setting forth for the small business person Federal laws (and an explanation thereof) which protect consumer rights (e.g., The Truth In Lending Act, The Equal Credit Opportunity Act, The Fair Credit Billing Act, The Magnuson-Moss Warranty Act).

Complaint Handling

Complaints from consumers will be handled by the Consumer Affairs Officer, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, telephone: (202) 653–6448. The Consumer Affairs Officer has established a system for monitoring the handling of consumer complaints which includes, but is not limited to, logging in the complaint indicating the date received, identifying the complaining consumer by name and address, the subject of the complaint and the name of the person (within SBA) or agency to whom the complaint is forwarded. The Consumer Affairs Officer will acknowledge receipt of the complaint in writing, will advise the complaining consumer of the identity of the person or Agency to whom the complaint has been forwarded and will monitor the handling of the complaint. In addition, the Consumer Affairs Officer will prepare monthly reports for the Office of the Administrator on the nature of consumer complaints received.

Additionally, the Consumer Affairs Officer will supervise the installation of a similar consumer complaint monitoring system in each SBA regional and district office requiring periodic reports to be submitted to the Office of the Administrator thru the Consumer Affairs Officer.

When consumer complaints raise issues which relate to Agency rules, policies or programs, these issues will be put on the agenda of the SBA Management Board, thereby assuring the timely consideration of such complaints in the development and review of Agency rules, policies, and programs.

Dated: September 4, 1980.

William H. Mauk, Jr.,

Acting Administrator.

The White House,
Washington, D.C. October 10, 1980.

Hon. A. Vernon Weaver,
Administrator, Small Business, Washington, D.C.

Dear Mr. Weaver: As Chairperson of the Consumer Affairs Council and on behalf of President Carter, I am pleased to approve conditionally the Small Business Administration's consumer program established under Executive Order 12160. The SBA consumer program will play a vital role in assuring that consumer interests are an integral part of agency decisionmaking within the Federal government.

In his role as the SBA Consumer Affairs Officer, Mr. Paul Pumpian will have the opportunity to make an important contribution to the promotion of understanding between consumers and small business men and women. The inclusion of a consumer awareness component in the SBA management assistance program should make a substantial contribution to reaching this goal.

I also appreciate the fact that Mr. Pumpian will participate in the SBA decisionmaking process, will be able to review agency decisions for potential adverse consumer impact, and will head an SBA Consumer Council. As Chairman of this Council, it is essential that Mr. Pumpian be able to maintain a clear and open line of communication with you and other top-level managers within the agency. It is also necessary that the agency take whatever steps are required to assure that the consumer perspective continues to be represented on its advisory councils.

The SBA consumer program is a new effort for the agency, and like any new enterprise, its real benefits will not be evident until it has been implemented and its results evaluated. For this reason, my approval of the program is conditioned upon the successful operation of the program during the next year and the degree to which consumer concerns are commnunicated directly to you as the head of the agency. After a one-year trial period, we will review the agency's program to determine whether it is meeting the objectives of the Order; if so, full approval will be given. During this time we will be eager to see how the plan is carried out and how the consumer perspective is blended into all agency policy decisions and program operations. In order to achieve this goal, it will be necessary that any review of potential consumer impact occur early in the decision process and that periodic reviews be made of the level of staffing afforded to the program.

My staff has contacted Mr. Pumpian in regard to some minor alterations in the wording of the program prior to final publication in the **Federal Register.** In the meantime, thank you for doing your part in this effort. I am confident that implementing this Executive Order will make an important contribution to consumer welfare in the United States.

Sincerely,

Esther Peterson,

Special Assistant to the President for Consumer Affairs.

[FR Doc. 80-34229 Filed 10-31-80; 8:45 am]

BILLING CODE 8025-01-M

Reader Aids

Federal Register
Vol. 45, No. 214
Monday, November 3, 1980

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Public Inspection Desk	633-6930
Scheduling of documents	523-3187

Laws

Indexes	523-5232
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the Presidents	523-5235
Weekly Compilation of Presidential Documents	523-5235

Privacy Act Compilation	523-3517
United States Government Manual	523-5230

SERVICES

Agency services	523-3408
Automation	523-3408
Dial-a-Reg	
Chicago, Ill.	312-663-0884
Los Angeles, Calif.	213-688-6694
Washington, D.C.	202-523-5022
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public briefings: "The Federal Register—What It Is and How To Use It"	523-5235
Public Inspection Desk	633-6930
Regulations Writing Seminar	523-5240
Special Projects	523-4534
Subscription orders and problems (GPO)	783-3238
TTY for the deaf	523-5239

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

72617-72994 3

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.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1980

This table is for use in computing dates certain in connection with documents which are published in the Federal Register subject to advance notice requirements or which impose time limits on public response.

Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for Federal Register scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

All January and February dates are in 1981.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
November 3	November 18	December 3	December 18	January 2	February 2
November 4	November 19	December 4	December 19	January 5	February 2
November 5	November 20	December 5	December 22	January 5	February 3
November 6	November 21	December 8	December 22	January 5	February 4
November 7	November 24	December 8	December 22	January 6	February 5
November 10	November 25	December 10	December 26	January 9	February 9
November 12	November 28	December 12	December 29	January 12	February 10
November 13	November 28	December 15	December 29	January 12	February 11
November 14	December 1	December 15	December 29	January 13	February 12
November 17	December 2	December 17	January 2	January 16	February 17
November 18	December 3	December 18	January 2	January 19	February 17
November 19	December 4	December 19	January 5	January 19	February 17
November 20	December 5	December 22	January 5	January 19	February 18
November 21	December 8	December 22	January 5	January 21	February 19
November 24	December 9	December 24	January 8	January 23	February 23
November 25	December 10	December 26	January 9	January 26	February 23
November 26	December 11	December 26	January 12	January 26	February 24
November 28	December 15	December 29	January 12	January 27	February 26

CFR CHECKLIST; 1979/1980 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1979/1980. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $450 domestic, $115 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1980):

Title	Price
1	$4.50
2 [Reserved]	
3	7.50
4	6.50
5	8.00
6	3.75
7 Parts:	
0-52	8.50
53-209	7.00
210-299	7.00
300-399	5.50
400-699	6.50
700-899	7.00
900-944	7.00
945-980	5.50
981-999	5.50
1000-1059	7.00
1060-1119	7.00
1120-1199	6.00
1200-1499	7.00
1500-1899	6.50
1900-2799	8.50
2852	8.50
2853-end	6.00
8	5.50
9 Parts:	
1-199	7.00
200-end	6.50
10 Parts:	
0-199	7.50
200-499	8.50
500-end	7.50
11 (Rev. 4/1/80)	4.75
12 Parts:	
1-199	6.00
200-299	9.00
300-end	11.00
13	7.00
14 Parts:	
1-59	8.50
60-199	8.50
200-1199	8.00
1200-end	6.00
15	9.00
16 Parts:	
0-149	7.00
150-999	6.00
1000-end	6.50

CFR Unit (Rev. as of Apr. 1, 1980):

17 Parts:	
0-239	7.50
240-end	7.50
18 Parts:	
1-149	7.50
20 Parts:	
01-399	5.50
400-499	7.50
500-end	7.50
21 Parts:	
01-99	6.00
100-169	7.00
170-199	6.00
200-299	4.50
300-499	8.00
500-599	7.50
600-799	5.00
800-1299	5.50
1300-end	4.50
22	8.00
23	7.00
24 Parts:	
0-499	11.00
500-1699	9.00
1700-end	6.00
25	8.00
26 Parts:	
1 (§§ 1.0-1.169)	8.50
1 (§§ 1.170-1.300)	6.50
1 (§§ 1.301-1.400)	6.00
1 (§§ 1.401-1.500)	7.00
1 (§§ 1.501-1.640)	6.50
1 (§§ 1.641-1.850)	7.50
1 (§§ 1.851-1.1200)	8.00
2-29	7.50
30-39	6.50
40-299	7.50
300-499	6.00
500-599	6.50
600-end	5.00
27 Parts:	
1-199	6.50
200-end	7.50

CFR Unit (Rev. as of July 1, 1980):

29 Parts:	
1911-1919	5.50
31 Parts:	
0-199	6.00
200-end	7.50
32 Parts:	
1-39 (Supplement)	6.00
34	6.00
37	6.00
40 Parts:	
0-51	7.50
52	9.00
81-99	8.50
100-399	13.00
400-424	7.50
425-end	7.50
41 Chapters:	
9 (Supplement)	3.00
18 (Vol. I)	7.50
18 (Vol. II)	9.00
18 (Vol. III)	7.50
CFR Index	8.50

CFR Unit (Rev. as of Oct. 1, 1979):

42 Parts:	
1-399	8.00
400-end	8.00
43 Parts:	
1-999	5.50
1000-end	9.00
44	5.50
45 Parts:	
1-99	6.50
100-149	7.00
150-199	7.00
200-499	5.00
500-1199	7.00
1200-end	6.50
46 Parts:	
1-29	4.25
30-40	4.50
41-69	6.50
70-89	4.75
90-109	4.75
110-139	4.25
140-155	5.50
156-165	5.50
166-199	5.25
200-end	8.50
47 Parts:	
0-19	6.50
20-69	8.00
70-79	7.00
80-end	8.00
48 [Reserved]	
49 Parts:	
1-99	4.75
100-177	7.00
178-199	7.00
200-399	7.00
400-999	7.00
1000-1199	7.00
1200-1299	9.00
1300-end	6.00
50	8.00

AGENCY ABBREVIATIONS
Used in Highlights and Reminders

(This List Will Be Published Monthly in First Issue of Month.)

USDA Agriculture Department

AMS Agricultural Marketing Service
APHIS Animal and Plant Health Inspection Service
ASCS Agricultural Stabilization and Conservation Service
CCC Commodity Credit Corporation
CEA Commodity Exchange Authority
EMS Export Marketing Service
EOA Energy Office, Agriculture Department
EQOA Environmental Quality Office, Agriculture Department
ESCS Economics, Statistics, and Cooperatives Service
FmHA Farmers Home Administration
FAS Foreign Agricultural Service
FCIC Federal Crop Insurance Corporation
FGIS Federal Grain Inspection Service
FNS Food and Nutrition Service
FS Forest Service
FSQS Food Safety and Quality Service
IGO Inspector General Office
RDS Rural Development Service
REA Rural Electrification Administration
RTB Rural Telephone Bank
SCS Soil Conservation Service
SEA Science and Education Administration
TOA Transportation Office, Agriculture Department

COMMERCE Commerce Department

BEA Bureau of Economic Analysis
Census Census Bureau
EDA Economic Development Administration
FSPSO Federal Statistical Policy and Standards Office
FTZB Foreign-Trade Zones Board
ITA International Trade Administration
MA Maritime Administration
MBDA Minority Business Development Agency
NBS National Bureau of Standards
NOAA National Oceanic and Atmospheric Administration
NSA National Shipping Authority
NTIA National Telecommunications and Information Administration
NTIS National Technical Information Service
PTO Patent and Trademark Office
USTS United States Travel Service

DOD Defense Department

AF Air Force Department
Army Army Department
DCAA Defense Contract Audit Agency
DIA Defense Intelligence Agency
DIS Defense Investigative Service
DLA Defense Logistics Agency
DMA Defense Mapping Agency
DNA Defense Nuclear Agency
EC Engineers Corps
Navy Navy Department

ED Education Department

CROED Civil Rights Office, Education Department
MSI Museum Services Institute
NIE National Institute of Education

DOE Energy Department

APA Alaska Power Administration
BPA Bonneville Power Administration
EIA Energy Information Administration
ERA Economic Regulatory Administration
ERO Energy Research Office
ETO Energy Technology Office
FERC Federal Energy Regulatory Commission
OHA Hearings and Appeals Office, Energy Department
SEPA Southeastern Power Administration
SOLAR Conservation and Solar Energy Office
SWPA Southwestern Power Administration
WAPA Western Area Power Administration

HHS—Health and Human Services Department

ADAMHA Alcohol, Drug Abuse, and Mental Health Administration
CDC Centers for Disease Control
ESNC Educational Statistics National Center
FDA Food and Drug Administration
HCFA Health Care Financing Administration
HDSO Human Development Services Office
HRA Health Resources Administration
HSA Health Services Administration
NIH National Institutes of Health
NIOSH National Institute of Occupational Safety and Health
PHS Public Health Service
RRO Refugee Resettlement Office
RSA Rehabilitation Services Administration
SSA Social Security Administration

HUD Housing and Urban Development Department

CARF Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD Community Planning and Development, Office of Assistant Secretary
EQO/HUD Environmental Quality Office, Housing and Urban Development Department
FHC Federal Housing Commissioner, Office of Assistant Secretary for Housing
FHEO Fair Housing and Equal Opportunity, Office of Assistant Secretary
GNMA Government National Mortgage Association
ILSRO Interstate Land Sales Registration Office
NCA New Communities Administration
NCDC New Community Development Corporation
NVACP Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR Interior Department

BIA Bureau of Indian Affairs
BLM Bureau of Land Management
FWS Fish and Wildlife Service
GS Geological Survey
HCRS Heritage Conservation and Recreation Service
Mines Mines Bureau
NPS National Park Service
OHA Office of Hearings and Appeals, Interior Department
SMO Surface Mining Office
WPRS Water and Power Resource Service

JUSTICE Justice Department

DEA Drug Enforcement Administration
BJS Bureau of Justice Statistics
INS Immigration and Naturalization Service
LEAA Law Enforcement Assistance Administration
NIC National Institute of Corrections
NIJ National Institute of Justice
OJARS Justice Assistance, Research and Statistics Office
PARCOM Parole Commission

LABOR Labor Department

BLS Bureau of Labor Statistics
BRB Benefits Review Board
ESA Employment Standards Administration

ETA Employment and Training Administration
FCCPO Federal Contract Compliance Programs Office
LMSEO Labor Management Standards Enforcement Office
MSHA Mine Safety and Health Administration
OSHA Occupational Safety and Health Administration
P&WBP Pension and Welfare Benefit Programs
W&H Wage and Hour Division

STATE State Department

FSGB Foreign Service Grievance Board

DOT Transportation Department

CG Coast Guard
FAA Federal Aviation Administration
FHWA Federal Highway Administration
FRA Federal Railroad Administration
MTB Materials Transportation Bureau
NHTSA National Highway Traffic Safety Administration
OHMR Office of Hazardous Materials Regulations
OPSR Office of Pipeline Safety Regulations
RSPA Research and Special Programs Administration
SLSDC Saint Lawrence Seaway Development Corporation
UMTA Urban Mass Transportation Administration

TREASURY Treasury Department

ATF Alcohol, Tobacco and Firearms Bureau
Customs Customs Service
Comptroller Comptroller of the Currency
ESO Economic Stabilization Office (temporary)
FS Fiscal Service
IRS Internal Revenue Service
Mint Mint Bureau
PDB Public Debt Bureau
RSO Revenue Sharing Office
SS Secret Service

Independent Agencies

AC Aging, Federal Council
ANGTS Alaska Natural Gas Transportation System, Office of Federal Inspector
ATBCB Architectural and Transportation Barriers Compliance Board
CAB Civil Aeronautics Board
CASB Cost Accounting Standards Board
CEQ Council on Environmental Quality
CFTC Commodity Futures Trading Commission
CITA Textile Agreements Implementation Committee
CPSC Consumer Product Safety Commission
CRC Civil Rights Commission
CSA Community Services Administration
CWPS Wage and Price Stability Council
EEOC Equal Employment Opportunity Commission
EPA Environmental Protection Agency
ESC Endangered Species Committee
ESSA Endangered Species Scientific Authority
EXIMBANK Export-Import Bank of the U.S.
FCA Farm Credit Administration
FCC Federal Communications Commission
FCSC Foreign Claims Settlement Commission
FDIC Federal Deposit Insurance Corporation
FEC Federal Election Commission
FEMA Federal Emergency Management Agency
FEMA/USFA United States Fire Administration
FFIEC Federal Financial Institutions Examination Council
FHLBB Federal Home Loan Bank Board
FHLMC Federal Home Loan Mortgage Corporation
FLRA Federal Labor Relations Authority
FMC Federal Maritime Commission
FRS Federal Reserve System
FTC Federal Trade Commission
GAO General Accounting Office
GPO Government Printing Office
GSA General Services Administration
GSA/ADTS Automated Data and Telecommunications Service
GSA/FPRS Federal Property Resources Service
GSA/FSS Federal Supply Service
GSA/NARS National Archives and Records Services
GSA/OFR Office of the Federal Register
GSA/PBS Public Buildings Service
GSA/TPUS Transportation and Public Utilities Service
ICA International Communication Agency
ICC Interstate Commerce Commission
ICP Interim Compliance Panel (Coal Mine Health and Safety)
IDCA International Development Cooperation Agency
IDCA/AID Agency for International Development
ITC International Trade Commission
IRLG Interagency Regulatory Liaison Group
LSC Legal Services Corporation
MB Metric Board
MSPB Merit System Protection Board
MWSC Minimum Wage Study Commission
NACEO National Advisory Council on Economic Opportunity
NASA National Aeronautics and Space Administration
NCCB National Consumer Cooperative Bank
NCH National Council for the Handicapped
NCUA National Credit Union Administration
NFAH National Foundation for the Arts and the Humanities
NLRB National Labor Relations Board
NRC Nuclear Regulatory Commission
NSF National Science Foundation
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OMB/FPPO Federal Procurement Policy Office
OPIC Overseas Private Investment Corporation
OPM Office of Personnel Management
OPM/FPRAC Federal Prevailing Rate Advisory Committee
OSTP Office of Science and Technology Policy
PADC Pennsylvania Avenue Development Corporation
PBGC Pension Benefit Guaranty Corporation
PRC Postal Rate Commission
PS Postal Service
ROAP Reorganization Office of Assistant to President
RRB Railroad Retirement Board
SBA Small Business Administration
SEC Securities and Exchange Commission
SFC Synthetic Fuels Corporation
Trade Trade Representative, Office of United States
TVA Tennessee Valley Authority
VA Veterans Administration
WRC Water Resources Council

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

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

Environmental Protection Agency

65594 10–3–80 / Noise emission standards; truck-mounted solid waste compactors; technical amendments

65942 10–3–80 / Water pollution control; ocean discharge criteria

FEDERAL COMMUNICATIONS COMMISSION

51564 8–4–80 / Provisions for stations operating in the Amateur-Satellite Service

FEDERAL RESERVE SYSTEM

53452 8–12–80 / Loan valve for Mutual Fund Shares

LABOR DEPARTMENT

Federal Contract Compliance Programs Office—

65976 10–3–80 / Construction contractors; affirmative action requirements; coverage clarification

Occupational Safety and Health Administration—

65916 10–3–80 / Inspections and investigations; obtaining warrants on an ex parte basis and prior to attempting entry

NUCLEAR REGULATORY COMMISSION

55402 8–19–80 / Emergency planning

PERSONNEL MANAGEMENT OFFICE

65493 10–3–80 / Part time direct hire program; restrictions on movement to full-time status

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing October 24, 1980