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BOOK 1:
Pages
9019-9400

BOOK 2:
Pages
9401-9554

federal register

Book 1 of 2 Books
Wednesday, January 28, 1981

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Highlights

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

9462 **Environmental Protection** EPA publishes final rule which limits concentration or mass of certain pollutants which may be introduced into publicly owned treatment works by operations in Electroplating Point Source Category; effective 3-16-81 (Part III of this issue)

9404 **Environmental Protection** EPA establishes mechanisms and procedures for enforcing national pretreatment standards controlling the introduction of wastes from non-domestic sources into publicly owned treatment works; effective 3-16-81 (Part II of this issue)

9098 **Telephone** FCC amends accounting rules to permit telephone companies subject to its jurisdiction to employ unit summation or equal life group procedure in computing depreciation; effective 7-1-81

9133 **Telephone** FCC proposes to determine whether the American Telephone and Telegraph Company should provide wideband circuits to other communications companies and to the public; comments by 3-2-81; reply comments by 4-3-81

CONTINUED INSIDE

Highlights

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

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

9084 **Government Contractors** Labor/FCCPO defers effective date until 4–29–81 on rule regarding affirmative action requirements; effective 1–28–81

9064 **Foreign Relations** Justice/Commerce/Sec'y seeks public comments on effectiveness of the Department of Justice's Foreign Corrupt Practices Act Review Procedure in reducing uncertainty as to meaning of antibribery provisions of the Foreign Corrupt Practices Act; comments by 2–16–81

9492 **Employee Benefit Plans** PBGC publishes regulation regarding valuing benefits in terminating non-multiemployer pension plans; final rule effective 3–1–81; interim rule effective 3–1–81; comments by 3–30–81 (Part VI of this issue)

9480 **Employee Benefit Plans** PBGC publishes regulation prescribing allocation of assets in non-multiemployer plans; effective 3–1–81 (Part V of this issue)

9520 **Employee Benefit Plans** PBGC publishes regulation regarding employer liability for single employer plan terminations; effective 3–1–81 (Part VII of this issue)

9043 **Pipelines** DOE/FERC transfers to Title 18 those regulations in Title 49 applicable to the Commission's oil pipeline jurisdiction; effective 12–19–80

9162 **Radiation Protection** DOE publishes record of decision regarding Waste Isolation Pilot Plant

9029 **Safety** DOE/FERC adopts final rule governing Safety of Water Power projects and project works; effective 3–1–81

9063 **Privacy Act Document** Justice

9338 **Sunshine Act Meetings**

Separate Parts of This Issue

9404 **Part II, EPA**
9462 **Part III, EPA**
9476 **Part IV, EPA**
9480 **Part V, PBGC**
9492 **Part VI, PBGC**
9520 **Part VII, PBGC**
9532 **Part VIII, PBGC**
9545 **Part IX, PBGC**
9548 **Part X, OMB**

Contents

Federal Register
Vol. 46, No. 18
Wednesday, January 28, 1981

Agency for International Development
NOTICES
Meetings:
9261 Research Advisory Committee

Agriculture Department
See also Federal Crop Insurance Corporation; Forest Service.
NOTICES
9148 National wild and scenic rivers system; draft revised guidelines for eligibility, classification and management of river areas; inquiry

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
9061 California

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
9265 Ciba-Geigy Corp.

Army Department
RULES
9084 Panama Canal Zone, employment and compensation; Federal agencies operating in the area
NOTICES
9161 Permit regulations (Section 404); dredged and fill discharge program

Arts and Humanities, National Foundation
NOTICES
Meetings:
9270 Arts National Council
9269 Humanities Panel
9270 Museum Panel
9270 Visual Arts Panel

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
9159 Alaska
9159 Texas

Commerce Department
See Economic Development Administration; International Trade Administration; National Oceanic and Atmospheric Admistration; National Technical Information Service; Patent and Trademark Office.

Commodity Futures Trading Commission
NOTICES
9338 Meetings; Sunshine Act

Defense Department
See also Army Department.
RULES
9083 Defense Audiovisual Agency; expansion of authority
NOTICES
9161 Transportation; Federal radionavigation plan; availability

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
9269 Voorhies, Herbert Webster, M.D.
Schedules of controlled substances; production quotas:
9267 Cocaine; transfer from Schedule II to Schedule III; petition denial

Economic Development Administration
RULES
9025 Grant rates based on municipal statistical information and certain requirements, etc.; miscellaneous technical amendments

Economic Regulatory Administration
NOTICES
Remedial orders:
9164 Sheffield's Highland Texaco et al.

Education Department
NOTICES
Meetings:
9162 Adult Education National Advisory Council

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Environmental statements; availability, etc.:
9162 Waste Isolation Pilot Plant (WIPP) Project, Delaware Basin, N. Mex.; safe disposal of radioactive wastes

Environmental Protection Agency
RULES
Water pollution; effluent guidelines for point source categories:
9462 Electroplating
9404 Pretreatment standards, general; new and existing industrial users of POTWs
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
9130 Appliances; industrial surface coating; volatile organic compounds; emissions limit; correction
9131 Appliances, large; industrial surface coating; priority list; correction
Air pollution control; new motor vehicles and engines:
9132 Carbon monoxide emission standards, light-duty vehicles; 1981 and 1982 model years; applications for waiver of effective date; hearing cancellation

9131 Nitrogen oxides (NO_x) emission standards, light-duty diesel vehicles; 1982 model year; waiver application hearing cancellation

Air quality implementations; approval and promulgation, etc.:

9124 Prevention of significant deterioration (PSD) and emission offset; new source review requirements

Air quality implementation plans; approval and promulgation; various States, etc.:

9127 Ohio

9128 Pennsylvania

Waste management, solid:

9132 Cement and concrete containing fly ash; Federal procurement guidelines; reopening of comment period

NOTICES

Air quality; prevention of significant deterioration (PSD):

9200, 9201 Nonapplicability (2 documents)

9201 Permit approvals

Environmental statements; availability, etc.:

9200 Hudson River PCB Reclamation Demonstration Project; dredging

Water pollution control:

9476 Electroplating pretreatment standards; Ford Motor Co.; petition denial

Equal Employment Opportunity Commission

NOTICES

9338 Meetings; Sunshine Act

Federal Communications Commission

RULES

Common carrier services:

9098 Telephone companies; use of unit summation or equal life group procedure in computing depreciation

Radio stations; table of assignments:

9110 Oregon

PROPOSED RULES

Common carrier services:

9133 AT&T; wideband circuits to communications companies and the public

9138 Telephone company-cable television cross-ownership rules; exemption for rural areas

Radio services, special:

9143 Emergency radio service; additional systems on a secondary basis

Radio stations; table of assignments:

9141 Kansas

Television stations; table of assignments:

9145 Florida

NOTICES

Common carriers:

9204 Telephone companies; uniform system of accounts, Class A and B; depreciation rates for telephone plant

Hearings, etc.:

9202 Contemporary Television Broadcasting Inc., et al.

9338, 9340 Meetings; Sunshine Act (2 documents)

Federal Contract Compliance Programs Office

RULES

9084 Affirmative action requirements for government contractors; deferral of effective date

Federal Crop Insurance Corporation

RULES

Crop insurance; various commodities:

9019 Peas

Federal Deposit Insurance Corporation

NOTICES

9340 Meetings; Sunshine Act

Federal Emergency Management Agency

RULES

Flood insurance; special hazard areas; map corrections:

9085 Arkansas

9085, 9086, 9090, 9091, 9095 California (5 documents)

9086, 9093 Colorado (2 documents)

9087, 9089, 9094, 9095 Florida (5 documents)

9091 Missouri

9093 Montana

9089 Nevada

9092 New Jersey

9091 New York

9088 Ohio

9096, 9097 Pennsylvania (2 documents)

9087, 9088, 9090, 9096, 9098 Texas (5 documents)

9097 Virginia

9084 Floodplain management and wetlands protection; individual rating of structures in coastal high hazard areas; extension of implementation date

Federal Energy Regulatory Commission

RULES

Electric utilities:

9027 Preliminary permits and licenses; clarification

9029 Water power projects and project works; safety requirements; consolidation of orders, regulations, and practices

9043 Oil pipelines, interstate; transfer of regulations

NOTICES

Hearings, etc.:

9164 Alternative Energy Associates

9165 Amendt Oil Co.

9165, 9166 Boundary Gas, Inc. (2 documents)

9167 Central Illinois Light Co.

9168 Colorado Interstate Gas Co.

9168 Columbia Gas Transmission Corp.

9169 Commodities Exchange Center, Inc.

9170 Duke Power Co.

9170 Gulf States Utilities Co.

9171 Kansas Power & Light Co.

9167 McCoy, Byron O.

9171 MCOR Oil & Gas Corp. et al.

9176 Meese, William

9171 Midwestern Gas Transmission Co.

9170 Nesbitt, James C.
9169 Newcomb, David R.
9172 Northern Natural Gas Co. (2 documents)
9173 Panhandle Eastern Pipe Line Co. et al. (2 documents)
9169 Rose, Donald E.
9170 Spell, Harry W.
9174 Tejas Gas Corp.
9174 Tennessee Gas Pipeline Co.
9175 Transcontinental Gas Pipe Line Corp. (2 documents)
9175, 9176 United Gas Pipe Line Co. (2 documents)
9176 Utah Power & Light Co.
9340 Meetings; Sunshine Act (2 documents)
Natural Gas Policy Act of 1978:
9177, 9182 Jurisdictional agency determinations (2 documents)

Federal Maritime Commission
RULES
9098 Reparation awards; interest rate; interpretive rule repealed
NOTICES
9205 Agreements filed, etc.
Energy and environmental statements; availability, etc.:
9206 Independent ocean freight forwarders, licensing; modifications
9206 Sacraments-Yolo Port District and Cargill, Inc.; master lease
9340 Meetings; Sunshine Act (3 documents)
Organization, functions, and authority delegations:
9206 Tariffs Bureau, Director; redelegation of authorities

Federal Reserve System
NOTICES
Applications, etc.:
9206 Bankstock Two, Inc.
9207 Northwest Bancorporation
9207, 9208 Peoples Ban Corp. (2 documents)
Bank holding companies; proposed de novo nonbank activities:
9207 Old Stone Corp. et al.

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
9330 Ranger Insurance Co.

Forest Service
NOTICES
Environmental statements; availability, etc.:
9148 Willamette National Forest, Oreg.

General Accounting Office
NOTICES
9208 Regulatory reports review; proposals, approvals, violations, etc. (FTC, NRC)
9209 Regulatory reports review; proposals, approvals, violations, etc. (NRC)

General Services Administration
NOTICES
Public utilities; hearings, etc.; proposed intervention:
9209 California Public Utilities Commission
Public utilities:
9209 District of Columbia Public Service Commission

Geological Survey
NOTICES
9210 Phosphate production on western public lands; computation of royalties

Health and Human Services Department
See Human Development Services Office.

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
9196 Cases filed
9197 Decisions and orders

Heritage Conservation and Recreation Service
PROPOSED RULES
9121 Archaeological Resources Protection Act of 1979; implementation; correction
NOTICES
9148 National Wild and Scenic Rivers System; draft revised guidelines for eligibility, classification and management of river areas; inquiry

Human Development Services Office
NOTICES
Meetings:
9210 Child Abuse and Neglect Advisory Board

Immigration and Naturalization Service
PROPOSED RULES
9119 Administrative decisions; discretionary criteria; withdrawn

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
9211 Mount Tolman open pit copper-molybdenum mine, Wash.
9211 Ute Mountain Ute Indian Reservation proposed strip coal mine, Colo.

Interior Department
See Geological Survey; Heritage Conservation and Recreation Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Development Cooperation Agency
See also Agency for International Development
NOTICES
Authority delegations:
9261 Agency for International Development, Administrator, et al.; order of succession

International Trade Administration
Antidumping:
9159 Viscose rayon staple fiber from Italy

International Trade Commission
NOTICES
9265 Generalized System of Preferences; eligible articles list
Import investigations:
9261 Adjustable window shades and components

9264 Chlorofluorohydrocarbon drycleaning process, machines and components
9264 Menthol from China
9262 Modular pushbutton switches and components
9263 Steel rod treating apparatus and components

Interstate Commerce Commission
RULES
Accounts, uniform system, and reports:
9114 Motor, rail, and water carriers, etc.; reduction of accounting and reporting requirements
Railroad consolidation procedures; acquisition, control, mergers, etc.:
9111 Policy statement
Tariffs and schedules:
9116 Section 5b applications; public notice and rates established by independent action requirements; applicability to motor carrier and rail rate bureaus
NOTICES
Agreements under sections 5a and b, applications for approval, etc.:
9218 Western railroads et al.
Motor carriers:
9222–9259 Permanent authority applications (7 documents)
9220 Temporary authority applications
Railroad services abandonment:
9220 Chicago & North Western Transportation Co.

Justice Department
See also Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service.
RULES
9064 Foreign Corrupt Practices Act; review procedure; effectiveness in reducing uncertainty as to meaning of antibribery provisions; inquiry
9063 Privacy Act; implementation

Labor Department
See Federal Contract Compliance Programs Office.

Land Management Bureau
NOTICES
Airport leases:
9217 New Mexico
Authority delegations:
9216 Colorado District Managers; right-of-way grants
Coal leases, exploration licenses, etc.:
9215 Wyoming
Environmental statements; availability, etc.:
9211 Southern Appalachian Coal Production Region, Ala.
Exchange of public lands for private land:
9216 Montana
Management framework plans, review and supplement; etc.:
9216 Oregon
Resource management plans:
9214 John Day Resource Area, Oreg.

Management and Budget Office
NOTICES
State and local government; grants, contracts, etc.:
9548 Cost principles (A–87); redesignation and reissuance of FMC Circular 74–4

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
9117 Foreign fishing; Northwest Atlantic mackerel allocation
NOTICES
Marine mammal permit applications, etc.:
9160 National Museum of Natural History

National Park Service
NOTICES
Environmental statements; availability, etc.:
9218 Lassen Volcanic National Park, proposed general management plan, Calif.
Meetings:
9218 Gateway National Recreation Area Advisory Commission

National Science Foundation
NOTICES
Senior Executive Service:
9270 Bonus awards schedule

National Technical Information Service
NOTICES
9160 Inventions, Government-owned; availability for licensing

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
9119 Public Citizen Litigation Group; liability insurance requirements
NOTICES
Applications, etc.:
9271, 9305 Boston Edison Co. (2 documents)
9306, 9308 Carolina Power & Light Co. (2 documents)
9272, 9273, 9309, 9311 Commonwealth Edison Co. (4 documents)
9274, 9275, 9312, 9314 Commonwealth Edison Co. et al. (4 documents)
9277 Connecticut Light & Power et al.
9278 Consumers Power Co.
9278 Florida Power & Light Co.
9279, 9280 Georgia Power Co. et al. (2 documents)
9282 Iowa Electric Light & Power Co. et al.
9283 Jersey Central Power & Light Co.
9315 Maine Yankee Atomic Power Co.
9285, 9286 Nebraska Public Power District (2 documents)
9287, 9288 Niagara Mohawk Power Corp. (2 documents)
9290, 9291 Northern State Power Co. (2 documents)
9279, 9292 Nuclear Engineering Co., Inc. (2 documents)
9316 Pacific Gas & Electric Co.
9293–9297 Philadelphia Electric Co. et al. (4 documents)

9298, 9317 Power Authority of State of New York (2 documents)
9299–9302, 9318–9324 Tennessee Valley Authority (6 documents)
9302, 9322 Vermont Yankee Nuclear Power Corp. (2 documents)
Meetings:
9305 Reactor Safeguards Advisory Committee
Reports; availability, etc.:
9304 Nuclear power plant simulators

Occupational Safety and Health Review Commission
NOTICES
9341 Meetings; Sunshine Act

Patent and Trademark Office
PROPOSED RULES
Patent cases:
9121 Continuation-in-part application oath or declaration; additional requirements

Pension Benefit Guaranty Corporation
RULES
9480 Allocation of assets in non-multiemployer plans
9520 Employer liability for single employer plan terminations
9492 Plan benefits valuation; non-multiemployer plans; final and interim rule, with request for comments
9532 Plan sufficiency determinations and terminations
NOTICES
Employee benefit plans:
9545 Employer liability for plan terminations; payment procedure

Postal Rate Commission
NOTICES
9341 Meetings; Sunshine Act

Revenue Sharing Office
NOTICES
Entitlement period allocations:
9330 Data improvement program

Securities and Exchange Commission
NOTICES
Hearings, etc.:
9325 American Federation of Labor & Congress of Industrial Organizations Mortgage Investment Trust
9326 Heart of America Growth Fund, Inc.
9327 Kidde, Walter Overseas Finance NV
9328 Parsons Corp. et al.
9328 Treasury Trust
Self-regulatory organizations; proposed rule changes:
9324, 9329 Chicago Board Options Exchange, Inc. (2 documents)
Self-regulatory organizations; unlisted trading privileges
9326 Cincinnati Stock Exchange
9327 Midwest Stock Exchange, Inc.

Small Business Administration
NOTICES
Disaster areas:
9330 South Dakota

State Department
NOTICES
Meetings:
9330 International Telegraph and Telephone Consultative Committee

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submissions; various States:
9065 Wyoming

Textile Agreements Implementation Committee
NOTICES
Import controls:
9160 Down-filled apparel from Taiwan

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Fiscal Service; Revenue Sharing Office.
NOTICES
Authority delegations:
9336 Secretary et al.; supervision of Bureaus and Offices and order of succession

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
9159 Alaska Advisory Committee, Juneau, Alaska, 2–9–81
9159 Texas Advisory Committee, San Antonio, Tex., 2–20 and 2–21–81

EDUCATION DEPARTMENT
9162 Adult Education National Advisory Council, various locations, 2–16 through 2–19–81

ENVIRONMENTAL PROTECTION AGENCY
9200 Hudson River PCB Reclamation Demonstration Project, Environmental Impact Statement, Hudson Falls, N.Y., 2–9 and 2–27–81

HEALTH AND HUMAN SERVICES DEPARTMENT
Human Development Services Office—
9210 Child Abuse and Neglect Advisory Board, Washington, D.C., 1–30–81

INTERIOR DEPARTMENT
National Park Service—
9218 Gateway National Recreation Area, Gateway Advisory Commission, New York, N.Y., 2–10–81

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
Agency for International Development—
9261 A.I.D. Research Advisory Committee, Washington, D.C., 3–3 and 3–4–81

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
9269 Humanities Panel, Washington, D.C., 2–6–81 and various March dates
9270 Museum Panel (Wider Availability of Museums), Washington, D.C., 2–12–81

9270 National Council on the Arts, Washington, D.C., 2–13, 2–14 and 2–15–81

9270 Visual Arts Panel (Exhibitions, Surveys, and Visual Artists Publications, Washington, D.C., 2–10, 2–11, 2–16, 2–17, and 2–18–81

NUCLEAR REGULATORY COMMISSION

9293 Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), Des Plaines, Ill., 2–13–81

9305 Reactor Safeguards Advisory Committee, Advanced Reactors Subcommittee, Des Plaines, Ill., 2–12 and 2–13–81

STATE DEPARTMENT

9330 U.S. Organization for the International Telegraph and Telephone Consultative Committee, Study Group D, Washington, D.C., 2–12–81

HEARING

JUSTICE DEPARTMENT

9269 Drug Enforcement Administration—Herbert Webster Voorhies, M.D., 2–2–81

CANCELLED HEARINGS

ENVIRONMENTAL PROTECTION AGENCY

9132 Applications for waiver of effective date of carbon monoxide emission standards for light-duty motor vehicles, 2–2–81

9131 Applications for waiver of effective date of oxides of nitrogen emission standards for diesel light-duty motor vehicles, 2–2–81

List of Public Laws

This is the first continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S.J. Res. 16 / Pub. L. 97–1 Designating January 29, 1981, as "A Day of Thanksgiving To Honor Our Safely Returned Hostages" (Jan. 26, 1981; 95 Stat. 3) Price $1.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
416 ... 9019

8 CFR
Proposed Rules:
103 ... 9119
108 ... 9119
205 ... 9119
211 ... 9119
212 ... 9119
214 ... 9119
223 ... 9119
235 ... 9119
243 ... 9119
245 ... 9119
248 ... 9119
249 ... 9119
250 ... 9119
252 ... 9119
254 ... 9119
256 ... 9119
271 ... 9119
336 ... 9119

10 CFR
Proposed Rules:
140 ... 9119

13 CFR
302 ... 9025
303 ... 9025
305 ... 9025
309 ... 9025

18 CFR
4 ... 9027
12 ... 9029
131 ... 9027
351 ... 9043
352 ... 9043
356 ... 9043
357 ... 9043
360 ... 9043
361 ... 9043
362 ... 9043

27 CFR
9 ... 9061

28 CFR
16 ... 9063
50 ... 9064

29 CFR
2608 ... 9480
2610 ... 9492
2613 ... 9520
2615 ... 9532

30 CFR
950 ... 9065

32 CFR
205 ... 9083

35 CFR
253 ... 9084

36 CFR
Proposed Rules:
1215 ... 9121

37 CFR
Proposed Rules:
1 ... 9121
3 ... 9121

40 CFR
125 ... 9404
403 ... 9404
413 ... 9462
Proposed Rules:
51 ... 9124
52 (3 documents) ... 9124–9128
60 (2 documents) ... 9130, 9131
86 (2 documents) ... 9131, 9132
249 ... 9132

41 CFR
60–1 ... 9084
60–2 ... 9084
60–4 ... 9084
60–20 ... 9084
60–30 ... 9084
60–50 ... 9084
60–60 ... 9084
60–260 ... 9084
60–741 ... 9084

44 CFR
9 ... 9084
70 (27 documents) ... 9085–9091

46 CFR
530 ... 9098

47 CFR
31 ... 9098
73 ... 9110
Proposed Rules:
Ch. I ... 9133
63 ... 9138
73 (2 documents) ... 9141, 9145
90 ... 9143

49 CFR
1111 ... 9111
1204 ... 9114
1205 ... 9114
1208 ... 9114
1209 ... 9114
1210 ... 9114
1240 ... 9114
1241 ... 9114
1248 ... 9114
1249 ... 9114
1250 ... 9114
1251 ... 9114
1260 ... 9114
1261 ... 9114
1331 ... 9116

50 CFR
611 ... 9117

Rules and Regulations

Federal Register
Vol. 46, No. 18
Wednesday, January 28, 1981

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 416

Pea Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule prescribes procedures for insuring peas effective for the 1981 crop year. This rule is a revision of the previous regulations for insuring peas to include several changes and to reissue the regulations in a shorter, clearer, 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: January 28, 1981.

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 as "not significant."

The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the **Federal Register** on Tuesday, September 30, 1980 (45 FR 64588–64594), prescribing procedures for insuring peas 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 that the Pea Crop Insurance Regulations (7 CFR Part 416) be revised and reissued effective with the 1981 and succeeding crop years.

In addition to shortening and simplifying the regulations to make them easier to read and understand, the Revised 7 CFR Part 416 provides (1) for a premium adjustment table that affords up to a 50 percent premium discount for good insuring experience and premium increases for unfavorable insuring experience in place of the present premium discount system, (2) that any premium not paid by the termination for indebtedness date will be increased by a 9 percent charge, with 9 percent simple interest applying to any unpaid balance at the end of each subsequent 12-month period thereafter, (3) that the termination date for nonpayment of premium will be March 31 (changed from April 15 in Minnesota and Wisconsin, March 15 in Oregon, and April 1 in all other States), (4) for three coverage level options in each county, (5) that the actuarial table will provide the level of insurance which will be applicable to contracts unless a different level is elected by the insureds, and (6) for additional price elections per pound for green peas in certain instances to compensate for variations in contract prices.

All previous regulations applicable to insuring peas as found in 7 CFR Part 416 will remain in effect for Federal Crop Insurance Corporation pea insurance policies issued for crop years 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.

Upon reviewing these regulations, FCIC has determined that 7 CFR 416.3, Public Notice of Indemnities Paid, should be deleted. The provisions of this subsection required the Corporation to annually post in each county in each courthouse a listing of indemnities paid in the county. The Federal Crop Insurance Act of 1980 (Pub. L. 365, September 26, 1980) no longer contains this provision; therefore, 7 CFR 416.3 is hereby deleted and reserved.

In addition, there is hereby added to the final rule an Appendix B, which lists the counties where pea crop insurance is available in accordance with the provisions of 7 CFR 416.1, which states in part that before insurance is offered in any county, there shall be published in Appendix B to this part the names of the counties where pea crop insurance shall be offered. Amendment No. 1 to the Pea Crop Insurance Regulations, published in the **Federal Register** on Thursday, December 13, 1979 (44 FR 72089), amending Appendix B for the 1979 and Succeeding crop years, is hereby superseded.

With the exception of the deletion and reservation of 7 CFR 416.3 and 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 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 416 for need, currency, clarity and effectiveness must be completed prior to the sunset date of September 30, 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 Pea Crop Insurance Regulations (7 CFR Part 416) for the 1981 and Succeeding Crop Years. The regulations contained in 7 CFR Part 416 and published in the **Federal Register** at 44 FR 25397 (Tuesday, May 1, 1979) remain in effect for FCIC pea policies issued prior to 1981. The Pea Crop Insurance Regulations (7 CFR Part 416), which are hereby revised and reissued, shall remain in effect until amended or superseded and read as follows:

PART 416—PEA CROP INSURANCE

Subpart—Regulations for the 1981 and Succeeding Crop Years

Sec.

416.1 Availability of pea insurance.
416.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

Sec.
416.3 [Reserved]
416.4 Creditors.
416.5 Good faith reliance on misrepresentation.
416.6 The contract.
416.7 The application and policy.

Appendix A (Additional Terms and Conditions).

Appendix B (Counties Designated for Pea Crop Insurance).

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as Amended (7 U.S.C. 1506, 1516).

§ 416.1 Availability of pea insurance.

Insurance shall be offered under the provisions of this subpart on peas 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 pea insurance will be offered.

§ 416.2 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 peas 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.

§ 416.3 [Reserved]

§ 416.4 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.

§ 416.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pea 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.

§ 416.6 The contract.

(a) 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 pea 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.

§ 416.7 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 pea 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 or 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 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a pea contract issued under such prior regulations, without the filing of a new application.

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

U.S. Department of Agriculture, Federal Crop Insurance Corporation, Application for 19— and Succeeding Crop Years, PEA, Crop Insurance Contract

(Contract No.) _____
(Identification No.) _____
(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 peas planted 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, except that for green peas, if the price election exceeds the processor contract price for the applicable tenderometer reading or sieve size shown on the actuarial table the applicable election will be the highest election available that does not exceed the processor contract price. 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 pct Share)

Location/farm No.	Guarantee per acre [1]	Premium per acre [2]	Practice	(A)

[1] Your guarantee will be on a unit basis (acres × per acre guarantee × share).
[2] 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 pea 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 farm headquarters:
_____
Phone _____

Pea 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 adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring 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) *green pea* acreage not being timely harvested unless the Corporation determines that, because of unusual weather conditions, a substantial percentage of such acreage in an area was ready for harvest at the same time, (2) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) 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 *green* or *dry peas* which are planted for harvest as peas and which are grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to peas on insurable acreage, as shown on the actuarial 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 not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) of *green peas* not grown under a processor contract or excluded from such contract for the crop year pursuant to the terms thereof, (2) which was planted to peas the previous two crop years, (3) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (4) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (5) which is destroyed and after such destruction, it was practical to replant to peas of the same type of *green peas* or the same varietal group of *dry peas* as shown on the actuarial table and such acreage was not replanted, (6) initially planted after the date on file in the office for the county which has been established by the Corporation, as being too late to initially plant and expect a normal crop to be produced, (7) of volunteer peas, (8) planted to a type or variety of peas not established as adapted to the area or shown as noninsurable on the actuarial table, (9) planted with another crop, or (10) planted for the development or production of hybrid seed or for experimental purposes.

(c) An instrument in the form of a "lease" under which the insured grower retains control of the acreage on which the insured peas are grown and which provides for delivery of the peas under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a processor contract under which the insured has the share in the peas.

3. *Responsibility of insured to report acreage and share.* The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of peas planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. *Production guarantees, coverage levels, and prices for computing indemnities.* (a) 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 actuarial table. Where the actuarial table shows a guarantee for both *green* and *dry peas* the applicable guarantee for any acreage shall be determined by the type of *green peas* or varietal group of *dry peas* shown on the acreage report.

(b) If any acreage shown on the acreage report as *green peas* is harvested as *dry peas*, the guarantee for such acreage shall be reduced 40 percent.

(c) The production guarantee per acre shall be reduced by 20 percent for any unharvested acreage.

5. *Annual Premium.* (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

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

(c) The premium shall be adjusted separately for *green peas* and for *dry peas* as shown in the following table:

Percent 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

Percent 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	105	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.)

(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 at the time the peas are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, vining, or removal of the peas from the field, (c) total destruction of the insured pea crop, or (d) September 15 of the calendar year in which peas are normally harvested: *Provided, however,* That if any acreage of *green peas* is not timely harvested, insurance shall be deemed to have ceased when the acreage should have been harvested, as determined by the Corporation.

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.

(b) Notice shall be given promptly if (1) during the period before harvest, the peas on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or (2) the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to peas of the same type or varietal group. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (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 earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire pea 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) In addition to the notices required in subsections (b) and (c) of this section, if an indemnity is to be claimed on any unit of *green peas*, notice shall be given (1) no later than 48 hours after harvesting of the peas has been discontinued on a unit, before all the acreage is harvested, or (2) before harvest would normally start if any acreage on a unit is not to be harvested.

(e) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed, shall be left intact until inspected by the Corporation.

(f) 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 peas 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 peas on the unit by the applicable production

guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of peas to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying 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.

(1) The pounds of the production to be counted for *green peas* shall be determined as follows: for harvested production, the dollar value received from the processor shall be divided by the processor contract price per pound for the tenderometer reading or sieve size shown on the actuarial table or if the Corporation determines that any acreage of *green peas* was not timely harvested, the production to count will be the greater of the appraised production with no adjustment for quality or the processor payment divided by the processor price per pound for the applicable tenderometer reading or sieve size shown on the actuarial table.

(2) The pounds of the production to be counted for mature *dry peas* which do not grade No. 3 or better, or lentils which do not grade No. 2 or better (determined in accordance with United States Standards for *dry peas* and lentils) because of poor quality due to insurable causes occurring within the insurance period, shall be reduced by (i) dividing the value per pound of the damaged peas, as determined by the Corporation, by the price per pound for the same variety of *dry peas* grading No. 3 (No. 2 for lentils) and (ii) multiplying the result thus obtained by the pounds of such peas. The applicable price of No. 3 *dry peas* (No. 2 lentils) shall be the market price for such peas on the earlier of: the day the loss is adjusted or the day the damaged peas were sold.

(3) Appraised production to be counted shall include: (i) the greater of the appraised production or 40 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before pea harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding crop(s) maturing for harvest in the following calendar year, (ii) any appraisals by the Corporation for potential production on harvested acreage, for uninsured causes, and for poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of 20 percent of the production guarantee for all other unharvested acreage.

(d) 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 (1) is not put to another use before harvest of peas becomes general in the county, (2) is harvested, or (3) 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 liability for premiums or waiving any right, including the right to collect any unpaid premium if, at any time, the insured has concealed or misrepresented any material fact of 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 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 form is executed, the transferee shall have the same rights and responsibilities 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 peas 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 or 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.—All states.

Cancellation Date.—Dec. 31.

Termination date for Indebtedness.—Mar. 31.

(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 7 of 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 pea 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, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding pea insurance in the county.

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

(c) "Crop year" means the period within which the pea crop is normally grown and shall be designated by the calendar year in which the pea crop is normally harvested.

(d) "Harvest" as to any *green pea* acreage means the vining or combining and acceptance by the processor of the peas from such acreage. "Vining" or "combining" means separating the peas from the pods. "Harvest"as to any *dry pea* acreage means combining peas which are or could be marketed as *dry peas.*

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

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

(g) "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.

(h) "Peas" means either (1) canning and freezing peas (herein called *green peas*) grown under a contract executed with a processor by the time the acreage to be insured is reported or (2) all spring-planted smooth green and yellow, and wrinkled varieties of dry peas and lentils (herein called *dry peas*).

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

(j) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured pea crop at the time of planting 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.

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

(l) "Unit" means all insurable acreage of any one of the types of *green peas* or varietal groups of *dry peas* as shown on the actuarial table in the county on the date of planting 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 pea 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 a bona fide share.

2. Acreage insured.

(a) The Corporation reserves the right to limit the insured acreage of peas to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of peas.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share 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. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out of good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. 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.

5. 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 pea 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 the peas are planted 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.

6. 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.

7. 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 that 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.

8. 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.

9. 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.

10. 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 Pea Crop Insurance—7 CFR 416

In accordance with the provisions of 7 CFR 416.1, the following counties are designated for pea crop insurance:

Idaho

Benewah	Lewis
Cassia	Lincoln
Franklin	Minidoka
Jerome	Nez Perce
Kootenai	Twin Falls
Latah	

Minnesota

Blue Earth	Nicollet
Brown	Olmsted
Dakota	Redwood
Dodge	Renville
Faribault	Rice
Freeborn	Scott
Goodhue	Sibley
Kandiyohi	Steele
Le Sueur	Wabasha
McLeod	Waseca
Martin	Watonwan
Meeker	Winona
Mower	

Oregon

Umatilla	Union

Utah

Box Elder	Salt Lake
Cache	Weber
Davis	

Washington

Adams	Spokane
Columbia	Walla Walla
Franklin	Whitman
Grant	

Wisconsin

Adams	Dane
Brown	Dodge
Calumet	Door
Columbia	Fond du Lac

Green Lake	St. Croix
Jefferson	Sauk
Kewaunee	Sheboygan
Manitowoc	Trempealeau
Marinette	Walworth
Outagamie	Washington
Ozaukee	Waushara
Portage	Winnebago
Rock	

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 and 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.

Dated: January 19, 1981.

Roland Wentzel,

Acting Manager.

[FR Doc. 81–3259 Filed 1–27–81; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 302, 303, 305, and 309

Miscellaneous Technical Amendments

AGENCY: Economic Development Administration, Department of Commerce (EDA).

ACTION: Final rule.

SUMMARY: This rule amends six regulations to make minor technical changes to clarify certain requirements. EDA is amending a seventh regulation, 13 CFR 305.5, to allow certain qualified municipalities located in designated areas to become eligible to recive maximum grant rates on the basis of municipal statistical information. EDA is making this change to § 305.5 to improve the targeting of resources to areas of greatest need and to facilitate administration.

DATES: Effective date: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Otto B. Bird, Office of Chief Counsel, (202) 377–5441.

SUPPLEMENTARY INFORMATION: EDA published amendments to several of its regulations on October 9, 1980 (45 FR 67062). While the text of the regulations was published correctly, the preamble of that publication contained several errors. One of those errors was that the "Action" line listed the rule as a final rule when EDA intended the rule to be interim. EDA corrected the October 9 publication in a rule published in the **Federal Register** on October 27, 1980 (45 FR 70847). This document publishes the interim rule as corrected by the October 27 publication in final form without change. As explained in the "Supplementary Information" section to the October 9 publication, EDA is amending these regulations for the following reasons:

1. 13 CFR 302.41. EDA is amending this rule to change the timing for conducting the annual review of area eligibility. Under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121) (henceforth, "Act"), EDA is authorized to extend assistance to applicants located in distressed areas of the Nation. As set forth in 13 CFR Part 302, EDA designates areas on the basis of various indicia of economic distress. 42 U.S.C. 3162 requires EDA to review the designation status of areas annually. Currently, § 302.41 provides that EDA will conduct the annual review during the month of the anniversary of the area's designation or qualification for designation. This rule amends § 302.41 to provide that EDA will conduct the review during the calendar quarter containing the anniversary of the designation or notification of qualification. For example, under the amended rule, areas designated in January, February and March will be reviewed annually during the first calendar quarter of the year, and results will be put into effect in April. EDA is making this change for administrative reasons. By reviewing area eligibility on a quarterly basis, EDA will be able to concentrate the workload from 12 reviews to 4 reviews each year. In addition, the new annual review schedule will coincide with the delivery of statistics from the Department of Labor.

2. 13 CFR 303.4–1. On August 21, 1980, EDA published regulations regarding the organization of economic development districts (45 FR 55696). Paragraph (d)(3) of § 303.4–1 requires district organizations to provide for representation of private citizens. Districts designated or authorized before June 6, 1979 were given one year following the date of publication of the final rule to comply with the private citizen representation requirement. This regulation is unchanged except to substitute "August 21, 1981" for "one year from the date that this regulation is published as a final rule."

3. 13 CFR 305.5. EDA establishes maximum grant rates for public works projects according to the relative need of the designated area in which the projects are located. These maximum rates are set forth in § 305.5(b)(3) of Title 13 of the Code of Federal Regulations.

This rule adds a new subsection (f) to § 305.5. This paragraph applies to certain municipalities of over 25,000 population which are located in areas which have already been designated as redevelopment areas under title IV of the Act (42 U.S.C. 3161 *et seq.*) and 13 CFR Part 302. If these municipalities can qualify for designation under title IV on their own merits, this new paragraph would allow them to be eligible for the maximum grant rate under § 305.5(b) for which they would be eligible if they had been designated independently. They would be eligible for this rate notwithstanding their location in a designated redevelopment area which is eligible for a lower maximum grant rate. For example, if City "A", a city with 100,000 population, qualified for designation as a redevelopment area on the basis of substantial unemployment under section 401(a)(8) of the Act and 13 CFR 302.11, but was located in an area currently designated, this new paragraph would enable City "A" to be eligible for the maximum grant rate which it would have received if it were designated on its own. Thus, if City "A" met the criteria of § 305.5(b)(3)(vi) (its median annual family income was $3,743 or below, or its average unemployment rate for the preceding 24 months was 12 percent or higher), City "A" would be eligible for a maximum grant rate of 80% under § 305.5(b)(3)(vi), even if the designated area in which it was located was eligible for a maximum grant rate of only 70 percent under § 305.5(b)(3)(vii).

EDA currently does not have separate maximum grant rates for projects located in statistically qualified municipalities of over 25,000 population which are part of a designated area. By setting forth separate maximum grant rates for these municipalities, EDA will avoid needless duplication of designation actions by allowing such municipalities the primary benefit of independent designation without requiring actual designation. In addition, since such municipalities remain within the existing designated areas, this change will allow for a unified planning process between the statistically qualified municipality and the redevelopment area in which the municipality is situated.

4. 13 CFR 305.8. § 305.8 sets forth provisions regarding the funding of construction cost increases. Provided the Federal share of the project remains the same (e.g., 80% of project costs), this regulation allows EDA to increase the amount of a grant when the cost of the

project has increased because of increases in costs based on the original designs and specifications. Since most projects funded by EDA do not have final plans and specifications at the time the grant is awarded, some grantees have been confused whether § 305.8 applies when the costs of their projects at the time of bid opening exceed the initial cost estimates provided prior to the time of grant approval. This rule revises paragraphs (b)(1) and (2) of this section to clarify that this regulation also applies to cost overruns when final plans and specifications were not ready at the time of grant approval, provided that the project retains the original intent and purpose and otherwise meets the requirements of § 305.8.

5. 13 CFR 305.95 and 309.28. These regulations currently set forth certain requirements regarding procurement standards for grantees. EDA published these regulations to set forth the requirements of Office of Management and Budget (OMB) Circular No. A–102, Attachment O and OMB Circular No. A–110, Attachment O. Since § 305.95 was published, OMB has revised Attachment O of Circular No. A–102 (August 15, 1979, 44 FR 47874). As a result, § 305.95 is now out of date. In order to avoid unnecessary duplication, this rule amends these regulations to note that grantees must follow the procurement standards set forth in those circulars.

6. 13 CFR 309.4. This regulation sets forth various restrictions concerning the funding of projects involving gas and electric facilities. This section implements the requirements of 42 U.S.C. 3214(e). The final sentence of 42 U.S.C. 3214(e) prohibits EDA from expending more than $7,000,000 annually under titles I and II of the Act for such projects. Subsection (c) of § 309.4 sets forth this limitation but omits the reference to titles I and II. This rule amends § 309.4(c) to note explicitly that the $7,000,000 limitation applies to projects funded under the authority of titles I and II.

Executive Order 12044 Determinations. EDA reviewed this rule with respect to the requirements of Executive Order 12044 before publishing the rule in interim form and determined that this rule does not constitute a "significant" action under the criteria of that Order. In order to provide the public with the opportunity to participate, EDA published the amendments in interim form and invited interested persons and organizations to comment on the regulations. EDA did not receive any significant comments and is publishing the rule in final without change.

Accordingly, EDA amends §§ 302.41, 303.4–1, 305.5, 305.8, 305.95, 309.4 and 309.28 as follows:

PART 302—DESIGNATION OF AREAS

1. 13 CFR 302.41 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 302.41 Review of area eligibility and termination of designation.

* * * * *

(b) *Annual review of previously qualified areas and of previously designated areas.* The Assistant Secretary shall conduct an annual review of area eligibility for areas currently designated and for areas previously qualified but not designated. The Assistant Secretary shall conduct this review during the calendar quarter in which the anniversary of the area's designation occurs or in which the anniversary of the notification to an area of its qualification for designation occurs. This review will be made to determine:

(1) * * *

(2) * * *

* * * * *

PART 303—ECONOMIC DEVELOPMENT DISTRICTS

2. 13 CFR 303.4–1, as published on August 21, 1980 (45 FR 55701), is amended by revising paragraph (d)(3) to read as follows:

§ 303.4–1 District organizations.

* * * * *

(d) *Representation requirements.*

* * *

(3) There is at least one-fifth of its membership who are private citizens who are neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government. All districts which have been authorized or designated before June 6, 1979, must comply with this provision no later than August 21, 1981.

(i) * * *

(ii) * * *

* * * * *

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

3. 13 CFR 305.5 is amended by adding a new paragraph (f) to read as follows:

§ 305.5 Supplementary grant rates.

* * * * *

(f) Where municipalities over 25,000 population qualify for designation under title IV of the Act and Part 302 of this chapter, but are located in areas already designated thereunder, such municipalities are eligible for the maximum grant under paragraph (b)(3) of this section as if they were designated independent of the existing redevelopment area. In determining the maximum grant rate for such municipalities, EDA will use the appropriate statistical information for the municipality involved, provided that consideration of such information will work to the municipality's advantage.

4. 13 CFR 305.8 is amended by revising paragraphs (b) (1) and (2) to read as follows:

§ 305.8 Grants for construction cost increases.

* * * * *

(b) * * *

(1) The project is being or will be constructed in accord with the original designs and specifications or in accord with final plans and specifications which reflect the original intent and purpose;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications (or based on final plans and specifications reflecting the original intent and purpose); and

* * * * *

5. 13 CFR 305.95 is revised to read as follows:

§ 305.95 Procurement standards.

Grantees shall procure supplies, equipment, construction and other services in accorance with the procurement standards set forth in Attachment O of Office of Management and Budget Circular No. A–102 (State and local governments) or No. A–110 (nonprofit organizations), as appropriate.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

6. 13 CFR 309.4 is amended by revising paragraph (c) to read as follows:

§ 309.4 Electric and gas facilities.

* * * * *

(c) Not more than seven million dollars of the funds appropriated to carry out titles I and II of the Act may be expended annually for projects described in paragraphs (a)(2) and (b)(2) of this section.

7. 13 CFR 309.28 is amended to read as follows:

§ 309.28 Grantee procurement standards.

Grantees shall procure supplies, equipment, construction and other

services in accord with the procurement standards set forth in Attachment O of Office of Management and Budget (OMB) Circular No. A–110 (nonprofit organizations) or Attachment O of OMB Circular No. A–102 (State and local governments), as appropriate.

(Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211), Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended))

Dated: January 22, 1981.

H. W. Williams,

Acting Assistant Secretary for Economic Development.

[FR Doc. 81–3155 Filed 1–27–81; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 131

[Docket No. RM81–11; Order No. 123]

Procedures and Corrected Revision to Regulation Governing Preliminary Permits and Licenses

January 21, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission adopts procedural and correctional revisions to the regulations governing preliminary permits and licenses. The revisions are designed to clarify and correct the Commission's regulations in order to eliminate confusion relating to the status of competing applications, the data requirements of an application, and certain perceived inconsistencies in the regulations.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT:

Ronald Corso, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–376–9171.

Phillip Leber, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–357–5514

James Hoecker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426, 202–357–9342

The Federal Energy Regulatory Commission (Commission) establishes certain procedural and correctional revisions to the regulations governing preliminary permits and licenses. The rule amends §§ 4.31, 4.33, 4.51, 4.81, 4.92, 131.3, and 131.4 and is effective 30 days after publication.

I. Background

The Commission has recently completed several revisions of its regulations to simplify and expedite hydropower licensing.[1] In conjunction with these rulemakings, several procedural and correctional changes are necessary to clarify and correct the Commission's regulations governing preliminary permits and licenses.

The revisions in this rulemaking have three primary objectives: (1) To eliminate confusion relating to the status of competing applications for preliminary permit; (2) to clarify the data requirements contained in certain regulations; and (3) to eliminate perceived inconsistencies in the regulations.

II. Section by Section Summary of the Revisions

Section 4.31(b)

The Commission has determined that fourteen copies, rather than the currently required ten copies, of each preliminary permit and license application are necessary to enable adequate and timely review of the proposed project plans by staff.

Section 4.31(d)

There has been a substantial amount of confusion relating to the difference in the treatment accorded "deficient" and "patently deficient" applications. The language of the existing regulations does not clearly explain the intent of the rule as written and presently administered. Some applicants have read this section and assumed incorrectly that, if a rejected application is corrected within 45 days, the corrected application will be deemed accepted for filing on the original filing date, and that the application will be considered pending during the 45-day period. This revision states that the acceptance date of any rejected application will be the date of resubmittal. The substantive requirement upon which these revisions are based may be found in §§ 1.14 and 4.33(d)(2).

Sections 4.33(b)(1) and 4.81(a)(3)

These revisions require the applicant to provide its telephone number in addition to its name and business address.

Section 4.33(d)(2)

Applicants have questioned the nature of the requirement to show how the plans of a competing application are as well adapted or better adapted than is the initial application to develop, conserve, and utilize the water resources of the region. This revision explains that it is appropriate, but not mandatory, to support the statement with a technical analysis. Technical analysis will assist the Commission in making decisions regarding competing applications, and this revision makes it clear that the Commission will accept such information as part of the application.

Sections 4.51(a)(6) and 4.81(a)(6)

These revisions add the requirement that the applicant furnish the name and address of the owner of water power facilities, and if the dam is Federally owned or operated, the applicant must provide the name of the agency involved. This information will facilitate the Commission's giving adequate notice to dam owners of pending preliminary permit or license applications filed by non-owners.

Section 4.51(f)(6)(ii)

The existing regulations erroneously cited the Federal Power Commission Reports as "CFR". This revision corrects the citation to read "F.P.C.".

Section 4.51(g)

The present Exhibit F for all major projects requires a number of voluminous technical reports that are required for staff review of the proposed project only. This section is revised to require that the technical information used as a basis for the design of the project be compiled into one report and submitted at the time the design drawings are submitted to the Commission for review. Only five copies of this report, rather than the standard

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[1] *See* Commission Order No. 11, "Regulations Governing Applications for Short-Form License (Minor)" (Docket No. RM78–9), issued September 5, 1978, 43 FR 40215, September 11, 1978; Order No. 54, "Regulations Prescribing General Provisions for Preliminary Permit and License Applications; and Regulations Governing Applications for Amendments to and Cancellation of Permits" (Docket No. RM79–23), issued October 22, 1979, 44 FR 61328, October 25, 1979; Order No. 59, "Regulations Governing Applications for License for Major Projects—Existing Dams" (Docket No. RM79–36), issued December 16, 1979, 45 FR 75383, December 20, 1979; Order No. 76, "Exemption of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act" (Docket No. RM79–35), issued April 18, 1980, 45 FR 28085, April 28, 1980; and Order No. 106, "Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less" (Docket No. RM80–65), issued November 7, 1980, 45 FR 76115, November 18, 1980.

fourteen copies, must be included as part of the application.

Section 4.81(b)(4)

The current Exhibit 1 requires that the applicant provide an estimate of the energy output and installed capacity of the proposed project. Many applicants do not state these data with specificity. This revision clarifies the requirements of Exhibit 1 by specifying that information must be provided detailing the average annual energy production, installed capacity, hydraulic head, and data concerning any turbines and generators proposed by the applicant.

Section 4.81(d)(3)

This subparagraph clarifies the existing requirement for general information on the proposed market for the project's output. Either the identity of the proposed purchaser(s) and the anticipated revenues must be provided, or, if the applicant proposes to use the power, the size of the system, peak demand and annual energy requirements, and the number of customers served by the applicant's proposed project must be supplied.

Section 4.81(e)(3)(i)

Many applications for preliminary permit are deficient because the project map does not show all project features within the proposed project boundary. Furthermore, in those cases where a Federal dam is involved, many applicants are unclear about the need to show the Federal project in relation to other non-Federal project features. This revision clarifies the requirements by specifying certain elements that must be included within the project boundary, and by indicating that only the power plant is required to be shown within the project boundary when the project is at an existing Federal dam.

Section 4.92(c)(5)(iv)

This change clarifies the applicant's responsibilities in the pre-application consultation process. The applicant is required to consult with appropriate resource agencies and submit documentation or a summary of the consultation process with its application for exemption. The applicant must allow at least 30 days for each agency consulted to respond.

Section 131.3

Section 131.3, which prescribes the form for certification of organization, is revoked. Through numerous previous rulemakings, all references to this section have been eliminated.

Section 131.4

Section 131.4, which prescribes the form for certification of exhibits, is revoked. Through numerous previous rulemakings, all references to this section have been eliminated.

III. Notice and Effective Date

The Commission finds that a general notice of proposed rulemaking need not be published in the **Federal Register** because the rule is clarifying and corrective and is basically one of agency procedure and practice.[3]

(Federal Power Act, as amended, (16 U.S.C. 792–828c); Public Utility Regulatory Policies Act of 1978, (16 U.S.C. 2601–2645); and the Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142 (1978)).

In consideration of the foregoing, the Commission amends Parts 4 and 131 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective on or before Febuary 27, 1981.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSE, PERMITS, EXEMPTION AND DETERMINATION, PROJECT COSTS

1. Section 4.31 is amended by revising the first sentence in paragraph (b) and paragraph (d) to read as follows:

§ 4.31 Acceptance for filing or rejection.

* * * * *

(b) Each applicant for a preliminary permit or license must submit to the Secretary for filing an original and fourteen copies of the application. * * *

* * * * *

(d) If the Commission finds that an application for a preliminary permit or license does not conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will consider the application either deficient or patently deficient.

(1) *Deficient applications.* (i) An application that, in the judgment of the Director of the Office of Electric Power Regulation, does not conform to the requirements of paragraphs (a) and (b) of this section may be considered deficient. Applicants of deficient applications will be afforded additional time to correct deficiencies, not to exceed 45 days from the date of notification in the case of an application for preliminary permit, or 90 days from the date of notification in the case of an application for license. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an original and fourteen copies of the specified materials or information to the Secretary within the time specified in the notification of deficiency.

(ii) Upon submission of a conforming application, action will be taken in accordance with paragraph (c) of this section.

(iii) If the resubmitted application is found not to conform to the requirements of paragraphs (a) and (b) of this section, it will be rejected. Procedures for rejected applications are specified in subparagraph (2) of this paragraph.

(2) *Patently deficient applications.* (i) An application that, in the judgment of the Director of the Office of Electric Power Regulation, patently fails to meet the substantive requirements of paragraphs (a) and (b) of this section will be rejected as patently deficient, with a specification of deficiencies that render the application patently deficient. Competing applications that do not conform to the requirements of § 4.33(d) will be considered patently deficient.

(ii) Any application that is rejected may be resubmitted if the deficiencies are corrected. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining the disposition of competing applications under § 4.33. The cover page of the resubmitted application must prominently display the FERC project number, the word "REVISED", and the date of the revision.

* * * * *

2. Section 4.33 is amended by revising paragraph (b)(1) to read as follows:

§ 4.33 Filing and disposition of conflicting applications. [Amended]

* * * * *

(b) * * *

(1) The exact name, business address, and telephone number of the prospective applicant; and

* * * * *

3. Section 4.33(d)(2) is revised to read as follows:

* * * * *

(d) Any application must:

(1) * * *

(2) Include a detailed and complete statement of how the plans reflected in the competing application are as well adapted or better adapted than are the plans reflected in the initial application to develop, conserve, and utilize in the public interest the water resources of the region. The statement may be

[3] *See* 5 U.S.C. 553(b)(3)(A) [Administrative Procedures Act].

supported by any technical analysis that the competing applicant deems appropriate to support its proposed plan of development; and

* * * * *

4. Section 4.51 is amended in paragraph (a) by adding a new subparagraph (6), to read as follows:

§ 4.51 Contents of application. [Amended]

* * * * *

(a) * * *

(6) The applicant must provide the name and address of the owner of any existing project facilities. If the dam is federally owned or operated, provide the name of the agency.

* * * * *

5. Section 4.51 is amended in clause (f)(6)(ii) by removing the term "(*see*, eg., 44 CFR Part 1491, *et seq.*)", and by inserting in lieu thereof the term "(*see, e.g.*, 44 F.P.C. 1496, *et seq.*)".

6. Section 4.51 is amended by revising paragraph (g) to read as follows:

§ 4.51 Contents of application.

* * * * *

(g) *Exhibit F* consists of general design drawings of the principal project works described under paragraph (b) of this section (Exhibit A) and supporting information used to demonstrate that existing project structures are safe and adequate to fulfill their stated functions.

(1) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

(i) Plans (overhead view);

(ii) Elevations (front view); and

(iii) Sections (side view).

(2) *Supporting design report.* The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing structures are safe and adequate to fulfill their stated functions, and must submit such infomation in a separate report at the time the application is filed. The report must include:

(i) A description of the physical condition or state of maintenance and repair of any existing and proposed structures or equipment; and

(ii) Information relating to composition and competency of foundations and other structures, gradation of filter and riprap material, design strength and ultimate strength of concrete and steel, stress and stability analysis, spillway rating curves, water levels, and other appropriate data.

(3) The applicant must submit five copies of the supporting design report as described in subparagraph (2) of this paragraph (rather than the fourteen copies required under § 4.31(b) of the Commission's regulations) at the time general design drawings are submitted to the Commission for review.

* * * * *

7. Section 4.81 is amended in paragraph (a) by revising subparagraph (3) and by adding a new subparagraph (6), to read as follows:

§ 4.81 Contents of application.

(a) * * *

(3) The exact name, business address, and telephone number of the applicant are:

---

* * * * *

(6) If there is any existing dam or other project facility, the applicant must provide the name and address of the owner of the dam and facility. If the dam is Federally owned or operated, provide the name of the agency.

* * * * *

8. Section 4.81 is amended by revising paragraphs (b)(4), (d)(3), and (e)(3)(i) to read as follows:

§ 4.81 Contents of application.

* * * * *

(b) * * *

(4) The total estimated average annual energy production and installed capacity (provide only one energy and capacity value), the hydraulic head for estimating capacity and energy output, and the estimated number, rated capacity, and, where applicable, the age and condition, of any turbines and generators, whether existing or proposed, that would be part of the project works;

* * * * *

(d) * * *

(3) A description of the proposed market for the power generated at the project, including:

(i) The indentity of the proposed purchaser(s) of the power, and any information that is available concerning the revenues to be derived from the sale of the power; or

(ii) If the applicant proposes to utilize the power output, the size of the applicant's power system, system peak demand and annual energy requirements, and the number of customers served by the applicant.

(e) * * *

(3) A proposed boundary for the project, enclosing:

(i) All principal project features identified under paragraph (b) of this section, including but not limited to any dam, reservoir, water conveyance facilities, powerplant, transmission lines, and other appurtenances, unless the project is located at a Federal dam, in which case the Federal dam and impoundment must be shown but may not be included within the project boundary;

* * * * *

§ 4.92 [Amended]

9. Section 4.92(c)(5)(iv) is amended by removing the words "timely documentation of the consultation process", and by adding in lieu thereof the words "documentation of the consultation process within a reasonable time, in no case less than 30 days after such documentation is requested".

PART 131—FORMS

§§ 131.3 and 131.4 [Revoked and removed]

10. Section 131.3 is revoked and removed.

11. Section 131.4 is revoked and removed.

[FR Doc. 81-3145 Filed 1-27-81; 8:45 am]
BILLING CODE 6450-85-M

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18 CFR Part 12

[Docket No. RM80-31; Order No. 122]

Water Power Projects and Project Works Safety

Issued: January 21, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby adopts a Final Rule Governing the Safety of Water Power Projects and Project Works. The rule consolidates the Commission's orders, regulations, and practices relating to project safety under Part 12 of the Commission's rules. The rulemaking applies to all water power projects and project works licensed or required to be licensed under Part I of the Federal Power Act. The rule may also be made applicable to some projects exempted from licensing, pursuant to Subparts J or K of the Commission's rules by means of conditions of exemption.

EFFECTIVE DATE: March 1, 1981.

FOR FURTHER INFORMATION CONTACT:

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Order No. 122—Final Rule

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes. Regulations Governing Safety of Water Power Projects and Project Works.

The Federal Energy Regulatory Commission (Commission) gives notice that it adopts a final rulemaking governing the safety of all water power projects and project works [1] licensed or required to be licensed under Part I of the Federal Power Act (Act). The rules may also be made applicable to some projects exempted from licensing, pursuant to Subparts J or K of the Commission's rules, by means of conditions of exemption. The rulemaking consolidates the Commission's orders, regulations, and practices relating to project safety under Part 12 of the Commission's rules.

I. Background

The Federal Energy Regulatory Commission licenses water power projects that are developed by non-Federal entities including individuals, private entities, states, municipalities, electric cooperatives, and others. At the end of 1979, the Commission had under its jurisdiction 1,144 dams of all sizes and hazard classifications, including those for which applications for license were pending.

Under section 10(c) of the Act, the licensee of any water power project within the jurisdiction of the Commission must conform to any rules that the Commission "may from time to time prescribe for the protection of life, health, and property." [2] In addressing its responsibility under section 10(c) of the Act the Commission has developed procedures to ensure quality in design, construction, operation, and maintenance of water power projects.

The Commission staff reviews designs before the construction of licensed projects. During the construction of a project, the regional offices conduct periodic inspections, usually monthly. Furthermore, the Commission often requires, in the terms and conditions of a license for an unconstructed project, that the licensee appoint a board of independent consultants subject to the Commission's approval. The board acts in an advisory capacity during the construction of the project. Once a water power project becomes operational, members of the Commission staff conduct an annual review of the project's operating history and compliance with licensing conditions, and inspect the project works.

The Commission also requires for all licensed projects, and any project for which a license application is pending or has been found to be required the implementation, and modification when appropriate, of an emergency action plan. The plan must be designed to provide an early warning to upstream and downstream inhabitants, property owners, recreational users and public safety agencies in case of an impending or actual sudden release of water caused by an accident to or failure of any project structure.

On December 27, 1965, the Commission's predecessor agency, the Federal Power Commission (FPC), provided in Order No. 315 [3] for complete safety inspections of licensed water power project works by independent consultants at five-year intervals, or more frequently if necessary. The existing Part 12 regulations under FPC Order No. 315 are applicable only to those licensed projects that have a dam exceeding 35 feet in height above the streambed or a gross storage capacity of more than 2,000 acre-feet. The inspection provisions established by Order No. 315 were designed to supplement the staff's inspection of all project works with detailed periodic safety inspections supervised by an independent consultant.

Dam failures in the 1970's, notably the failure of Teton Dam (U.S. Department of the Interior, Water and Power Resources Service), and the Taccoa Falls Dam in Georgia, demonstrated a need to review Federal and non-Federal dam safety practices and procedures. Pursuant to President Carter's directive on April 23, 1977, Federal review was initiated by several Federal agencies to ensure the structural integrity of project works and to establish well-conceived plans to protect life and property if an emergency should occur as a result of a dam failure or accident causing a sudden release of water.[4]

The Commission had already begun extensive review of its project safety policies and procedures at the time of the Walter Bouldin Dam failure on February 10, 1975 (FERC Project No. 2146). Dam safety inspections were a standard part of the Commission's program at the time. However, during the period of review the Commission determined that it was advisable to consolidate the various regulations, orders, and practices relating to project safety in the Commission's regulations.

On June 16, 1980, the Commission issued a Notice of Proposed Rulemaking (NOPR) [5] in this docket which consolidated under Part 12 those portions of the current project safety program that were initiated by case-specific Commission orders and revised the existing project safety inspection regulations. The Commission received 75 written comments on the NOPR and has considered all comments in the formulation of the final rule.

II. Section-By-Section Analysis

Subpart A—General Provisions.

The rulemaking revokes the existing dam inspection procedures in Part 12 of the Commission's rules and replaces them with new practices and procedures that encompass safety inspections by independent consultants and other aspects of the Commission's project safety program not previously included in Part 12.

§ 12.1 Applicability.

Paragraph (a) provides that this part applies to water power projects licensed under Part I of the Federal Power Act (Act), and to any unlicensed constructed project for which the Commission has determined that an application for license must be filed.

Contrary to the positions of some commenters, the Commission has adequate authority under Section 4(g) of

[1] The terms "project" and "project works" have the same meaning as defined in section 3(11) and section 3(12) of the Federal Power Act.

[2] 16 U.S.C. 803(c) (1976).

[3] Inspection of project works with respect to safety of structures, 18 CFR Part 12 (1980).

[4] According to the President's directive, the Chairman of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) was to preside over the preparation of Federal dam safety guidelines. The Director of the Office of Science and Technology Policy (OSTP) would then establish a committee of experts to review the proposed procedures and policies. Three significant documents have been produced through the inter-agency review of dam safety practices initiated by the President in 1977. In November 1977, FCCSET issued a report entitled Improving Federal Dam Safety, followed by the Federal Dam Safety Report of the OSTP Independent Review Panel in December 1978. FCCSET published its Federal Guidelines for Dam Safety on June 25, 1979. Finally, the President requested that each department and agency report to the Director of the Federal Emergency Management Agency (FEMA) concerning the progress made toward implementing the guidelines. The Chairman of the FERC transmitted the Commission staff's report to FEMA on February 1, 1980. The FERC report showed substantial prior compliance with the guidelines.

[5] 45 FR 41608 (June 19, 1980).

the Act to make its safety regulations apply to unlicensed constructed projects that it has determined must be licensed.

In light of the Commission's rulemaking allowing certain hydro facilities of 5 megawatts or less capacity to gain exemption from licensing (among other things),[6] the Commission has amended paragraph (a) by adding a new subparagraph (3). Subparagraph (a)(3) includes such facilities within the Applicability section, to the extent that conditions of exemption subject a project to the provisions of these rules.

Furthermore, the Commission has clarified, by adding a new paragraph (b), the applicability of this section to projects located at federal dams. The rule does not apply to federal dams themselves, but does apply to hydroelectric facilities licensed by the Commission that are located at federal dams.

§ 12.2 Rules of construction.

Paragraph (a) indicates that the provisions of this rule normally apply rather than any similar term or condition of a license. In the NOPR the Commission proposed requiring that the licensee comply with the stricter of two similar provisions located in a license and this part.

Several commenters suggested that the Commission delete that provision. Under Section 10(c) of the Act, the Commission clearly has authority to impose conditions in its safety regulations stricter than those required in a license. For greater certainty, some commenters suggested that this provision be revised to require that the licensee always comply with the provisions of a license unless the provisions in this rule would significantly contribute to the safe operation and condition of the project. The Commission has revised the rule to provide more certainty. In the interests of unformity, however, it is preferable that all projects conform to the provisions of these regulations unless terms of a particular project's license would better protect life, health, or property. The Commission has revised paragraph (a) accordingly.

Paragraph (b) provides for advisory rulings by the Director of the Office of Electric Power Regulation with regard to the requirements of paragraph (a) above.

§ 12.3 Definitions.

This section contains definitions applicable to this part of the Commission's rules. Paragraph (a) provides that for purposes of this part terms defined in section 3 of the Federal Power Act have the same meaning as they have under the Act.

Subparagraph (1) defines an "applicant" to mean any person, state, or municipality that has applied for a license for an unlicensed, constructed project and any owner of an unlicensed, constructed project for which the Commission has determined that an application for license must be filed. The Commission has added "state or municipality" to the definition of applicant to clarify the applicability of this rule to such entities.

Several commenters questioned the basis for the Commission's jurisdiction over unlicensed, constructed projects for which the Commission has determined that an application for license must be filed. As noted above, the Commission's jurisdiction in this case is derived from section 4(g) of the Act. Therefore, the Commission has not changed the definition of "applicant," which includes owners of certain unlicensed, constructed projects. A definition of "owner" has been added in subparagraph (2) to provide clarification to the definition of "applicant."

Subparagraph (3) of the proposed rule defined "authorized Commission representative" as the Director of the Office of Electric Power Regulation, the Director of the Division of Hydropower Licensing, the Regional Engineer, any person specifically authorized by one of those officials to act in his or her stead, or any other member of the Commission staff whom the Commission may designate. In response to comments noting that licensees should be assured that enforcement will be by experienced officials appointed by the Commission, the Commission has amended the definition by deleting the phrase "any person specifically authorized by one of these officials to act in his or her stead."

In the proposed rule, subparagraph (4) defined "condition affecting the safety or adequacy of a project or project works" to mean any condition, event, or action at the project which might compromise the safety, stability, or integrity of any project work with respect to its continuing ability to protect life, health, or property or to protect the water resources of the region for navigation, water power development, or other beneficial public uses including recreation, or otherwise adversely affect life, health, or property. The definition provided several examples of conditions that might affect the safety of a water power project or the project works.

Several commenters suggested that section 10(c) of the Act does not authorize the Commission to prescribe regulations encompassing non-safety related factors. Section 10(c) of the Act requires a licensee to "conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property." In the final rule, the Commission has deleted all references to the "adequacy" of a project or project works in response to comments about ambiguity of the term in context. In addition, the Commission further revised the definition to clarify that these conditions are safety-related.

A number of commenters also objected to the "might compromise" standard in this definition. The proposed substitution of a "would compromise" standard would leave too much room for argument over potentially critical safety matters. These rules retain the proposed language so that even if the licensee has some doubt, in cases where it is possible that safety is endangered, reporting will be required and other steps may be taken as advisable.

In response to the comments, several modifications have been made to the non-exclusive list of examples of conditions that affect the safety of a project or projects works. Section 12.3(b)(4)(ii) has been clarified and § 12.3(b)(4)(v) has been divided, thus creating a new subsection (vi), for clarification purposes.

Subparagraph (5) defines "constructed project" to mean any project with an existing dam.

Subparagraph (6) defines "dam" to mean any structure for impounding or diverting water.

Subparagraph (7) defines "development" to mean that part of a project comprising an impoundment and its associated dams, forbays, water conveyance facilities, a power plant, and other appurtenant facilities. A project may be comprised of one or more developments.

Several commenters suggested that the term "modification" as used in the proposed rule was ambiguous and should be defined. The Commission has added a new subparagraph (8) which defines "modification" to mean any activity, including repair or reconstruction, that in any way changes the physical state of any project work or any other physical feature of the project from the state reflected in the plans, drawings, or other documents filed with the Commission.

Subparagraph (9) defines "project emergency" to mean an impending or actual sudden release of water at the project caused by natural disaster, accident, or failure of project works.

Subparagraph (10) defines "Regional Engineer" as the person in charge of the Commission's regional office for the

[6] 45 FR 76115 (November 18, 1980).

region (Atlanta, Chicago, Fort Worth, New York, or San Francisco) where a particular project is located.

§ 12.4 Staff administrative responsibility and supervisory authority.

Paragraph (a) explains that the chief administrator of the Commission's project safety program is the Director of the Office of Electric Power Regulation (OEPR). The Director OEPR reports directly to the Chairman of the Federal Energy Regulatory Commission.

Paragraph (b) sets forth with specificity the authority of the Regional Engineer or other authorized Commission representative to inspect and supervise the construction, operation, maintenance, use, or modification of any project works. Commenters questioned the breadth of the supervisory authority under this section. The Commission believes that standard articles placed in new licenses have given the Regional Engineer even broader general supervisory powers over the construction, operation, and maintenance of a project.

In order to clarify the intent of these regulations, however, the Commission has amended paragraph (b) to specify that the supervision and inspection authority granted under this paragraph relates to project safety. The Regional Engineer or any other Commission representative is authorized to test or inspect any project works or to require the licensee to do so; to require a licensee to submit certain reports or information; to require a licensee to modify emergency action plans or any plan for corrective measures; to take any preventative or corrective measures; and to prescribe a time for performing these actions.

Commenters questioned the part of the regulations that explains that an order or directive or a Regional Engineer or other authorized representative is immediately effective and remains in effect until stayed. The Commission believes that this part reflects the usual provisions for the effective dates of orders [7] and stays [8] and the fact that the Commission's representative is acting in the Commission's stead.

The time when an order is effective, however, should not be confused with the time when a licensee might be required to take a particular action, which would be specified in the order. Moreover, the importance of the Regional Engineer's orders being immediately effective to carry out the purposes of section 10(c) of the Act is clear. In safety emergencies it would be impracticable to hold action in abeyance while the merits of the situation were presented for Commission deliberation. The Regional Engineer, with much more intimate day-to-day knowledge and experience on a project must be in a position to require prompt remedial action.

In response to the comments received, the Commission has modified the provisions of paragraph (c) to provide additional clarification. The new provisions specifies that either the Regional Engineer or other authorized Commission represetative who issued an order or directive under this section, or the Commission, may rescind or amend that order or directive, in addition to staying its effect for a particular period. The rules also make clear that any orders or directives by the Regional Engineer or other authorized Commission representative pursuant to § 12.4(b) or Subparts B through E of Part 12 are subject to appeal under the provisions of § 1.7(d) of the Commission's rules.

§ 12.5 Responsibilities of licensee or applicant.

Section 12.5 sets forth the general standard that a licensee or applicant must use sound and prudent engineering practices in designing, constructing, operating, maintaining, using, or modifying a water power project or project works. As noted in the NOPR, it is primarily the licensee's responsibility to protect life, health, and property.

Subpart B—Reports and Records

§ 12.10 Reporting safety-related incidents.

Paragraph (a) requires an applicant or licensee to report to the Commission orally and in writing any condition affecting the safety of the water power project or the project works. This paragraph specifies the information that the Regional Engineer may require.

Paragraph (b) requires the applicant or licensee to report any deaths or serious injuries that occur at, or are attributable to, the water power project. This report must be made promptly after the applicant or licensee becomes aware of the incident.

§ 12.11 Reporting modifications of the project or project works.

Paragraph (a) requires the reporting of project modifications to the Regional Engineer. Many commenters suggested that the requirement that "any modification" be reported was vague. The Commission believes that the new definition of "modification" added to § 12.3 will clarify this provision. Furthermore, the time for reporting non-emergency modifications established in paragraph (b) has been increased from 15 to 60 days before the work begins.

§ 12.12 Maintenance of records.

Paragraph (a) specifies the kinds of records that must be maintained by the applicant or licensee and the appropriate locations to maintain both permanent original project records and copies of such records. A provision is included in paragraph (c) to provide for the transfer of permanent project records to a successor licensee or the government if ownership of the project changes.

The Commission has also clarified that where project records are not available and could not reasonably have been acquired when the licensee acquired the project, they need not be reconstructed.

Many commenters suggested that copies of all permanent projects records are not needed at the project site, so long as originals are securely maintained at a central location. The Commission adopts this suggestion and has amended paragraph (b)(2) accordingly so that not all permanent records must be maintained at the project site. If the licensee or applicant maintains permanent project records at a central location other than the project site, they must only maintain at the project site the basic design drawings, instrumentation data, and operational history that are necessary for the safe and efficient operation of the project.

Furthermore, the Commission has added a new subparagraph (3) that allows the licensee or applicant to maintain microfilm or microfiche of records if the appropriate viewing equipment is available subject to the provisions of Part 125 of the reguations.

§ 12.13 Verification form.

Section 12.13 has been added to the final rule as an example of the verification which is required under several sections of the rule.

Subpart C—Emergency Action Plans

§ 12.20 General requirements.

This subpart constitutes a major element of the Commission's project safety procedures. Paragraph (a) requires an applicant or licensee to file three copies of an emergency action plan with the Regional Engineer. The plan must make provision for measures to be taken during a project emergency, including failure of the dam.

Paragraph (b) requires emergency action plans to be developed by an applicant or licensee in coordination

[7] *See* 18 CFR 1.13(c) (1980).

[8] *See* Section 313(a) of the Act.

with Federal, state, and local agencies. The plan must be designed to provide early warning to upstream and downstream inhabitants, property owners, operators of water-related facilities, recreational users, and other persons in the vicinity who might be affected by a project emergency.

§ 12.21 Exemptions.

As proposed, paragraph (a) allowed the Director of the Office of Electric Power Regulation or the Regional Engineer to grant an exemption from the general requirements stated above if the applicant or licensee could demonstrate that "no project emergency would endanger life, health or property." In response to several comments, the Commission has amended paragraph (a). In order to obtain exemption from the requirements of filing an emergency action plan, an applicant or licensee must demonstrate that "no reasonably foreseeable project emergency would endanger life, health, or property." Upon such a showing the Regional Engineer may grant exemption from the filing requirement.

Paragraph (b) prohibits exemptions from the requirements of § 12.22(c) for a radiological response plan.

Paragraph (c) provides that an exemption from the requirement of this subpart is not perpetual, and the applicant or licensee is charged with the responsibility of reviewing conditions upstream and downstream from the project to ascertain whether an emergency action plan would be advisable. The Commission believes that an annual review is appropriate as a minimum, given the potential for harm involved.

Paragraph (d) provides that an exemption may be revoked if conditions change significantly.

§ 12.22 Contents of an emergency action plan.

Paragraph (a) prescribes the contents of an emergency action plan. The plan must be filed in accordance with the Guidelines For Preparation of Emergency Action Plans established by the Director of OEPR and set forth in the Appendix. The plan must take into account the time of day, in particular the occurrence of a project emergency during hours of darkness.

In response to several comments, the Commission has reorganized the general requirements of the emergency action plan. The Commission believes that the actual plan which is posted or given to operating personnel to instruct them on procedures during an emergency should be as brief and simple as possible. Training plans and the studies and other information supporting a particular plan are important appendices to be filed with the Regional Engineer, but are inappropriate to the body of the plan itself.

Accordingly, in paragraph (a) the Commission requires three ingredients within the body of the plan itself. The body of the plan must include: Emergency action instructions to key project personnel; detailed plans for notifying affected persons and appropriate Federal, state and local agencies, and procedures for controlling the flow of water. Study summaries and training plans are to be included in the emergency action plan appendices submitted to the Regional Engineer.

Paragraph (c) requires the applicant or licensee to file a radiological response plan if an operator of a project powerhouse or water storage and release control facilities would be located within ten miles of a nuclear power plant reactor. The plan must provide for emergency procedures in the event of an accident or incident at the nuclear power plant reactor that results in the release of radioactivity into the air or water. The objective of the plan is to provide for the possibility of short-term abandonment of the project works, effective control of stream flows, and contingency arrangements for continuing, curtailing, or ceasing power generation. A project which is otherwise exempted from the requirement to file an emergency action plan must still file a radiological response plan.

§ 12.23 Time for filing emergency action plan.

This section prescribes the deadlines for filing the emergency action plans for all projects. In response to comments regarding paragraph (a), unconstructed projects, the Commission has increased the time for filing an emergency action plan from 30 days to 60 days before the initial filling of the project reservoir. Furthermore, the filing of an emergency action plan is required 60 days prior to commencement of construction where a temporary construction impoundment would be created if an accident or failure of the impounding structure would endanger public health and safety. For example, the construction of a temporary or permanent cofferdam or a large sediment control structure may require the filing of an emergency action plan with regard to these structures prior to their construction. A plan filed with regard to such construction may require modificiation before the initial filling of the project reservoir begins, in order to provide for adequate protection under the changed circumstances.

Paragraph (b) and (c) provide the time of filing emergency action plans for unlicensed constructed projects and licensed constructed projects respectively.

A new subparagraph (d) has been added that allows the Regional Engineer, for good cause shown, to grant an extension of time for filing all or any part of an emergency action plan.

§ 12.24 Review and updating of plans.

In light of several comments, the Commission has modified this section by adding a new paragraph (a) that requires continual updating of the plan to reflect changes in personnel, telephone call numbers, and other similar information in the plan. The intent is to ensure that, in time of an emergency, project personnel are not confronted with stale information regarding who is responsible for what, whom to notify, and how to notify them.

Paragraph (b) requires that emergency action plans must be comprehensively reviewed by the applicant or licensee at least once a year and updated to ensure adequate protection for life, health, or property affected by the project. Moreover, the applicant or licensee is required to review the adequacy of the plan in light of any significant changes upstream or downstream of an impoundment and to promptly file with the Regional Engineer any modifications of the plan which result from such changes.

§ 12.25 Posting and readiness.

Paragraph (a) requires a licensee or applicant to post the current emergency action plan. The posting must be in a prominent location so that it is readily accessible to the applicant's or licensee's operating personnel who are responsible for taking emergency action.

Paragraph (b) continues to require the licensee or applicant to test the readiness of key licensee or applicant personnel for an emergency situation. The Commission has retained the requirement that the applicant or licensee conduct a test, and not merely a review, of key personnel. The Commission anticipates that such a test would include a drill simulating actual emergency conditions.

Subpart D—Inspection by Independent Consultants

This subpart is a revision of the Part 12 requirements in the existing regulations. While this subpart continues to prescribe initial inspections and subsequent five-year inspections by independent consultants, it will require inspection of a larger number of project developments.

§ 12.30 Applicability

Paragraph (a) indicates that this subpart applies to any licensed project development that has a dam: that is more than 32.8 feet (10 meters) in height above streambed; or that impounds an impoundment with a gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters); or that has a high hazard potential. Formerly, inspections by independent consultants were performed only on those dams more than thirty-five feet in height or impounding more than 2,000 acre-feet of water. The revised inspection requirements add to this category of dams any dam with a high hazard potential, as defined in § 12.31(b), that the Regional Engineer determines requires an inspection. This requirement recognizes that the need for stringent measures to protect life, health, or property may depend on the location and other characteristics of a project development relative to certain geographic, demographic and economic features of the vicinity.

§ 12.31 Definitions

This section supplies additional definitions for this subpart. Many of the commentors objected to the requirement in the proposed rule that an independent consultant not have had substantial responsibility for the design, construction, or maintenance of the project under inspection for 10 years, except as an independent consultant. The Commission has carefully weighed the competing consideration in this matter. The Commission has concluded that the possibility that the proposed rule might unduly restrict the availability of competent independent consultants appears, at this time, to outweigh the potential for conflicts of interest or other difficulties that might flow from removing the restriction.

The definition of "independent consultant" has, therefore, been modified in paragraph (a) and means a person that is not, and has not been within two years of being retained to perform an inspection under this subpart, an employee or agent of the licensee or its affiliates. In addition, an independent consultant must be a licensed professional engineer and must have at least 10 years of experience and expertise in dam design and construction, and in the investigation of the safety of existing dams. The Commission notes that the requirement that an independent consultant have 10 years of experience does not preclude other consultants with less experience from working on an inspection under the direction and supervision of an independent consultant. Qualification requirements for an independent consultant are subject to approval by the Director of the Office of Electric Power Regulation prior to the initiation of an inspection under § 12.31. Paragraph (e) establishes that the Director of the Office of Electric Power Regulation also has the authority to waive the 10-year requirement in subparagraph (a)(2) for good cause.

The proposed rule defined "dam that has a high hazard potential" as any dam whose failure, in the judgment of the Regional Engineer, the Commission, or its authorized representative, might present a significant risk of endangering human life or causing significant property damage, or which meets the criteria for high hazard potential as defined by the Corps of Engineers in 33 CFR Part 222, Table 2. The Commission has retained the definition as initially proposed except in the final rule the reference to Table 2 of 33 CFR Part 222 has been deleted. The Corps' criteria for high hazard potential are to be determined by an examination of 33 CFR Part 222 generally and not solely with reference to Table 2.

Paragraph (c) defines "height above streambed" and paragraph (d) defines "gross storage capacity."

§ 12.32 General requirements.

This section provides the general requirement that the project works of each development within the scope of this subpart must be inspected by a qualified independent consultant in order to identify any actual or potential deficiencies in the project or its works. Several commenters were confused as to whether a consulting firm could perform the inspection. In fact the Commission would presume that this would be the case in most instances, and only requires that the inspection be done under the direction and supervision of an independent consultant. Accordingly, the Commission has revised the rules to clarify that an independent consultant who is a member of a consulting firm may perform the inspection.

§ 12.33 Exemption.

Section 12.33 provides for exemption from the requirements of this subpart.

§ 12.34 Approval of consultant.

This provision has been added to provide for review and approval of the independent consultant by the Director of the Office of Electric Power Regulation before the inspection begins.

§ 12.35 Specific inspection requirements.

Section 12.35 prescribes the scope of the periodic inspections by an independent consultant. Paragraph (a) and (b) provide that the inspection must include a review of all relevant reports, a physical field inspection, and an evaluation of certain project features.

As initially proposed, paragraph (c) required the independent consultant to use any special equipment, instrumentation, or personnel as may prudently be necessary. Several commenters indicated that such requirements are not generally employed in a periodic safety inspection. Moreover, it was pointed out that any such requirement that may prudently be necessary will be employed by the independent consultant in the exercise of his professional judgment. The Commission believes that the inclusion of this requirement was either unnecessary or redundant. Accordingly, paragraph (c) has been deleted from the final rule.

§ 12.36 Emergency corrective measures.

Section 12.36 requires that, if the independent consultant discovers any condition that may necessitate emergency corrective measures, the consultant must report such a condition to the licensee. The licensee must then notify the Regional Engineer. The notification to the Regional Engineer is to be made pursuant to the provisions of §12.10(a).

§ 12.37 Report of the independent consultant.

Paragraph (a) contains the general requirement that, following the inspection of a project development by an independent consultant, a report of the inspection must be made to the licensee. The licensee must then file three copies of that report with the Regional Engineer.

Paragraph (b) explains what general information must be included in the initial report that an independent consultant must prepare and file pursuant to an inspection under this subpart. Subparagraph (2) permits incorporation by reference of materials found in certain earlier inspection reports.

Paragraph (c) sets forth the kinds of data and information that must be provided in all reports, the general nature of the analyses to be performed, and an outline of the nature of the recommendations a consultant must make. If any consultant involved in the project inspection dissents from the

major recommendations of report, the dissenting views must be included in the report. Furthermore, any changes in information required under this section occurring after it has been initially reported must be included in subsequent reports.

As initially proposed, subparagraph (c)(1) required the report to contain monitoring information that includes specified time-versus-reading graphs. In response to several comments, the Commission has modified this provision to make it clear that reports need only include monitoring information from instrumentation which is already in place; it does not require installation of instruments not otherwise installed or required to be installed.

Furthermore, the Commission has added a new subparagraph (c)(3) under which the report may include an appropriate reference to previous reports in lieu of the required evaluation if conditions and assumptions have not changed since the last report. In the appropriate circumstances, this provision will help the independent consultant avoid needless duplication of information and analyses.

In response to comments that the required list of participants was too broad, the Commission has also modified subparagraph (c)(5). In the proposed rule, it was required that the report identify "all persons who participated" in the project inspection or the report preparation. The final rule makes clear that only a list of professional personnel and the independent consultants is required.

§ 12.38 Time for inspections and reports.

Section 12.38 provides the timing of the periodic inspections by an independent consultant. Paragraph (a) requires that the project works of any development must undergo inspections at five-year intervals dating from the initial inspection.

Paragraph (b) specifies when a project development must be initially inspected. The timing of the initial inspection depends on the type of project. The first category of projects includes any development that has a dam that is more than 32.8 feet (10 meters) in height above streambed, or that impounds a reservoir with a gross storage capacity of more than 2,000 acre feet. The facility must be inspected not later than two years after the date of issuance of an order licensing the development, if it was constructed before the date of issuance of the order.

For any development that was constructed after the date of issuance of the order licensing or amending a license to include the development, the initial inspection under this subpart must be completed and the report on it filed not later than five years from the date of the first commercial operation or the date on which the reservoir first reaches its normal maximum surface elevation, whichever occurs first.

For any other development, the initial inspection must be completed and the report on it filed by a date specified by the Regional Engineer. The initial inspection must be made within two years following the date that the Regional Engineer notifies the licensee that an inspection and report is required.

Subparagraph (b)(4) provides that a Part 12 inspection made before the effective date of this regulation may be considered an initial inspection. However, the first report filed under this rule for a development must contain the information and analysis required by § 12.37(b).

§ 12.39 Taking corrective measures after the report.

Section 12.39 explains the plan and schedule of corrective measures the applicant or licensee must file and implement under the supervision of the Regional Engineer. After reviewing several comments, the Commission believes that 30 days was not a sufficient time within which to prepare a plan and has increased the time to 60 days.

Subpart E—Other Responsibilities of Applicant or Licensee

This subpart explains several responsibilities that every applicant or licensee has regarding the operation and maintenance of a project development.

§ 12.40 Quality control program.

Section 12.40 requires that a quality control program be maintained during any construction, repair, or modification of the project works or while taking any corrective measures. The Commission has modified the proposed rule to make clear in the final rule that the applicant or licensee must maintain a quality control program as may be required by the Regional Engineer. The Regional Engineer may decide not to require such a program for relatively minor work. Such a program must meet any requirements or standards set by the Regional Engineer and must be commensurate with the scope of the work being undertaken.

The proposed rule provided that quality control inspections must be conducted by the licensee, the design engineer, or an independent firm accountable to the licensee, and must not be performed by a construction contractor or firm accountable to the construction contractor. Some commenters, including licensees, supported this provision, while construction contractors opposed it. Construction contractors argue that they have interests in quality construction work that lead them to establish their own quality control programs and the proposed provisions would prohibit that. This point is well taken, and the rule has been modified to make clear that a construction contractor is not precluded from performing its own quality control inspections for its own purposes. Experience shows, however, that construction contractors may also have conflicting interests that may lead to neglect of the quality of work. Because of the potential for conflict of interest, it is important to provide for independent quality control inspections to ensure that the work has been performed at least up to the standards in the plans and specifications. Therefore, the final rule preserves such a requirement.

Under the final rule, if the licensee's or applicant's own personnel are performing the work, the licensee or applicant must provide for separation of authority between construction personnel and quality control personnel.

§ 12.41 Monitoring instruments.

Section 12.41 requires that an applicant or licensee make provisions for instruments to monitor the performance of the project works whenever conditions are found during design, construction, or operation of the project that might affect the safety of the project or the project works.

§ 12.42 Warning and safety devices.

Under § 12.42, warning and safety devices must be installed that, in the judgment of the Regional Engineer, are reasonably necessary to protect the public. This section requires an applicant or licensee to install, operate, and maintain safety and warning devices that "may reasonably be necessary or desirable." Many commenters objected that this standard was too broad. The final rule is unchanged. The Commission's primary concern is with the safety of the project and project works and the protection of public health and safety. The Commission and its authorized representatives do not intend to impose unreasonable burdens upon an applicant or licensee. But when matters of safety are at issue, it is better to err on the side of caution and not be stymied simply because of the difficulty of proving that a particular precaution is "necessary". If there is reasonable doubt

about the need for a safety precaution, but not about its desirability, it should be taken.

§ 12.43 Power and communication lines and gas pipelines.

Under § 12.43, the Commission requires a licensee to keep power and communication lines and gas pipelines from obstructing navigation or otherwise endangering the public. The Commission has added a paragraph (c) that authorizes the Regional Engineer to require a licensee or applicant to provide warning signs, giving the clearances for power or communication lines.

§ 12.44 Testing spillway gates.

Section 12.44 requires at least annual operation of spillway gates and load-testing of the standby emergency power for spillway gate operation at regular intervals.

§ 12.45 Inspections by the public.

Section 12.45 of the proposed rule required an applicant or a licensee to post a Public Notice at all major points of public access in the vicinity of the project dams or dikes, in order to obtain the assistance of the public in the protection of life, health, and safety.

Several commenters suggested omitting that proposed section. The commenters recommended that the Commission require the posting of a public notice on a limited basis to assess the effectiveness of such a program. Rather than impose a uniform requirement at this time, the Commission has omitted § 12.45 and will undertake an informal program of testing public notices at various representative projects, as suggested.

III. EFFECTIVE DATE

These rules are effective on March 1, 1981.

(Federal Power Act, as amended, 16 U.S.C. 792–828c: Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order No. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission revises Part 12, Subchapter B, of Chapter 1, Title 18, Code of Federal Regulations, as set forth below, effective March 1, 1981.

By the Commission.

Lois D. Cashell,

Acting Secretary.

1. Part 12 is revised in the title, Table of Contents, and text to read as follows:

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

Subpart A—General Provisions

Sec.

12.1 Applicability.
12.2 Rules of construction.
12.3 Definitions.
12.4 Staff administrative responsibility and supervisory authority.
12.5 Responsibilities of licensee or applicant.

Subpart B—Reports and Records

12.10 Reporting safety-related incidents.
12.11 Reporting modifications of the project or project works.
12.12 Maintenance of records.
12.13 Verification form.

Subpart C—Emergency Action Plans

12.20 General requirements.
12.21 Exemptions.
12.22 Contents of emergency action plan.
12.23 Time for filing emergency action plan.
12.24 Review and updating of plans.
12.25 Posting and readiness.

Subpart D—Inspection by Independent Consultant

12.30 Applicability.
12.31 Definitions.
12.32 General inspection requirement.
12.33 Exemption.
12.34 Approval of independent consultant.
12.35 Specific inspection requirements.
12.36 Emergency corrective measures.
12.37 Report of the independent consultant.
12.38 Time for inspections and reports.
12.39 Taking corrective measures after the report.

Subpart E—Other Responsibilities of Applicant or Licensee

12.40 Quality control programs.
12.41 Monitoring instruments.
12.42 Warning and safety devices.
12.43 Power and communication lines and gas pipelines.
12.44 Testing spillway gates.

Authority: Federal Power Act, as amended, 16 U.S.C. 792–828c: Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order No. 12009, 3 CFR 142 (1978).

Subpart A—General Provisions

§ 12.1 Applicability.

(a) Except as otherwise provided in this part or ordered by the Commission or its authorized representative, the provisions of this part apply to:

(1) Any project licensed under Part I of the Federal Power Act;

(2) Any unlicensed constructed project for which the Commission has determined that an application for license must be filed under Part I of the Act; and

(3) Any project exempted from licensing under Part I of the Federal Power Act, pursuant to Subparts J or K of Part 4 of this chapter, to the extent that the Commission has conditioned the exemption on compliance with any particular provisions of this part.

(b) The provisions of this part apply to a project that uses a Government dam only with respect to those project works, lands, and waters specifically licensed by the Commission.

§ 12.2 Rules of construction.

(a) If any term, condition, article, or other provision in a project license is similar to any provision of this part, the licensee must comply with the relevant provision of this part, unless the Commission or the Director of the Office of Electric Power Regulation determines that compliance with the relevant provision of the license will better protect life, health, or property.

(b) A licensee may request from the Director of the Office of Electric Power Regulation a ruling on the applicability to its actions of any provision of its license that is similar to a provision of this part. A ruling by the Director may be appealed under § 1.7 of this chapter.

§ 12.3 Definitions.

(a) *General rule.* For purposes of this part, terms defined in section 3 of the Federal Power Act, 16 U.S.C. 796, have the same meaning as they have under the Act.

(b) *Definitions.* The following definitions apply for the purposes of this part:

(1) "Applicant" means any person, state, or municipality that has applied for a license for an unlicensed, constructed project and any owner of an unlicensed, constructed project for which the Commission has determined that an application for license must be filed.

(2) "Owner" means any person, state, or municipality, or combination thereof, that has a real property interests in a water power project sufficient to operate and maintain the project works.

(3) "Authorized Commission representative" means the Director of the Office of Electric Power Regulation, the Director of the Division of Hydropower Licensing, the Regional Engineer, or any other member of the Commission staff who the Commission may specifically designate.

(4) "Condition affecting the safety of a project or project works" means any condition, event, or action at the project which might compromise the safety, stability, or integrity of any project work or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or which might otherwise adversely affect life, health, or property. Conditions affecting the safety of a

project or project works include, but are not limited to:

(i) Unscheduled rapid draw-down of impounded water;

(ii) Failure of any facility that controls the release or storage of impounded water, such as a gate or a valve;

(iii) Failure or unusual movement, subsidence, or settlement of any part of a project work;

(iv) Unusual concrete deterioration or cracking, including development of new cracks or the lengthening or widening of existing cracks;

(v) Piping, slides, or settlements of materials in any dam, abutment, dike, or embankment;

(vi) Significant slides or settlements of materials in areas adjacent to reservoirs;

(vii) Significant damage to slope protection;

(viii) Unusual instrumentation readings;

(ix) New seepage or leakage or significant gradual increase in pre-existing seepage or leakage;

(x) Sinkholes;

(xi) Significant instances of vandalism or sabotage;

(xii) Natural disasters, such as floods, earthquakes, or volcanic activity;

(xiii) Any other signs of instability of any project work.

(5) "Constructed project" means any project with an existing dam.

(6) "Dam" means any structure for impounding or diverting water.

(7) "Development" means that part of a project comprising an impoundment and its associated dams, forebays, water conveyance facilities, power plants, and other appurtenant facilities. A project may comprise one or more developments.

(8) "Modification" means any activity, including repair or reconstruction, that in any way changes the physical features of the project from the state reflected in the plans or drawings or other documents filed with the Commission.

(9) "Project emergency" means an impending or actual sudden release of water at the project caused by natural disaster, accident, or failure of project works.

(10) "Regional Engineer" means the person in charge of the Commission's regional office for the region (Atlanta, Chicago, Fort Worth, New York, or San Francisco) where a particular project is located.

(11) "Act" means the Federal Power Act.

12.4 Staff administrative responsibility and supervisory authority.

(a) *Administrative responsibility.* The Director of the Office of Electric Power Regulation is responsible for administering the Commission's project safety program and reports directly to the Chairman of the Federal Energy Regulatory Commission.

(b) *Supervisory authority of the Regional Engineer or other authorized representative.* (1) Any water power project and the construction, operation, maintenance, use, repair, or modification of any project works are subject to the inspection and the supervision of the Regional Engineer or any other authorized Commission representative for the purpose of:

(i) Achieving or protecting the safety, stability, and integrity of the project works or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or

(ii) Otherwise protecting life, health, or property.

(2) For the purposes set forth in paragraph (b)(1) of this section, a Regional Engineer or other authorized Commission representative may:

(i) Test or inspect any water power project or project works or require that the applicant or licensee perform such tests or inspections or install monitoring instruments;

(ii) Require an applicant or a licensee to submit reports or information, regarding:

(A) The design, construction, operation, maintenance, use, repair, or modification of a water power project or project works; and

(B) Any condition affecting the safety of a project or project works or any death or injury that occurs at, or might be attributable to, the water power project;

(iii) Require an applicant or a licensee to modify:

(A) Any emergency action plan filed under Subpart C of this part; or

(B) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to § 12.37 or any other inspection report;

(iv) Require an applicant or licensee to take any other action with respect to the design, construction, operation, maintenance, repair, use, or modification of the project or its works that is, in the judgment of the Regional Engineer or other authorized Commission representative, necessary or desirable.

(v) Establish the time for an applicant or licensee to provide a schedule for or to perform any actions specified in this paragraph.

(c) *Appeal, stay, rescission, or amendment of order or directive.*

(1) Any order or directive issued under this section or under the provisions of subparts B through E of this part by a Regional Engineer or other authorized Commission representative may be appealed to the Commission under § 1.7 of this chapter.

(2) Any order or directive issued under this section by a Regional Engineer or other authorized Commission representative is immediately effective and remains in effect until:

(i) The Regional Engineer or other authorized Commission representative who issued the order or directive rescinds or amends that order or directive or stays its effect; or

(ii) The Commission stays the effect of the order or directive, or amends or rescinds the order or directive on appeal.

(3) An appeal or motion for rescission, amendment, or stay of any order or directive issued under this section must contain a full explanation of why granting the appeal or the request for rescission or amendment of the order or directive, or for stay for the period requested, will not endanger life, health, or property.

§ 12.5 Responsibilities of licensee or applicant.

A licensee or applicant must use sound and prudent engineering practices in any action relating to the design, construction, operation, maintenance, use, repair, or modification of a water power project or project works.

Subpart B—Reports and Records

§ 12.10 Reporting safety-related incidents.

(a) *Conditions affecting the safety of a project or its works.* (1) *Oral reports.* An applicant or licensee must report by telephone to the Regional Engineer any condition affecting the safety of a project or projects works, as defined in § 12.3(b)(4). The initial oral report must be made as soon as practicable after that condition is discovered, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency action procedure.

(2) *Written reports.* Following the initial oral report required in paragraph (a)(1), the applicant or licensee must submit to the Regional Engineer a written report on the condition affecting the safety of the project or project works verified in accordance with § 12.13. The written report must be submitted within the time specified by the Regional

Engineer and must contain any information the Regional Engineer directs, including:

(i) The causes of the condition;

(ii) A description of any unusual occurrences or operating circumstances preceding the condition;

(iii) An account of any measure taken to prevent worsening of the condition;

(iv) A detailed description of any damage to project works and the status of any repair;

(v) A detailed description of any personal injuries;

(vi) A detailed description of the nature and extent of any private property damages; and

(vii) Any other relevant information requested by the Regional Engineer.

(3) The level of detail required in any written report must be commensurate with the severity and complexity of the condition.

(b) *Deaths or serious injuries.* (1) Promptly after becoming aware of any drowning or other accident resulting in death or serious injury that occurs at the project, the applicant or licensee must report that drowning or other accident to the Regional Engineer in writing, including a description of the cause and location of the accident.

(2) The written report of any death or serious injury considered or alleged to be project related must also describe any remedial actions taken or proposed to avoid or reduce the chance of similar occurrences in the future and be verified in accordance with § 12.13.

(3) Accidents that are not project-related may be reported by providing a copy of a clipping from a newspaper article, if available.

(4) For the purposes of this paragraph, "project-related" includes any deaths or serious injuries involving a dam, spillway, intake, or power line, or which take place at or immediately above or below a dam.

§ 12.11 Reporting modifications of the project or project works.

(a) *Reporting requirement.* Regardless of whether a particular modification is permitted without specific prior Commission approval, an applicant or licensee must report any modification of the project or project works to the Regional Engineer in writing, verified in accordance with § 12.13, at the time specified in paragraph (b) of this section.

(b) *Time of reporting.* (1) Any modification that is an emergency measure taken in response to a condition affecting the safety of the project or project works must be submitted with the report of that condition required by § 12.10(a)(2).

(2) In all other instances, the modification must be reported at least 60 days before work on the modification begins.

§ 12.12 Maintenance of records.

(a) *Kinds of records.* (1) *General rule.* Except as provided in paragraph (a)(2) of this section, the applicant or licensee must maintain as permanent project records in addition to those required in Part 125 of this chapter, the following information:

(i) Engineering and geological data relating to design, construction, maintenance, repair, or modification of the project, including design memoranda and drawings, laboratory and other testing reports, geologic data (such as maps, sections, or logs of exploratory borings or trenches, foundation treatment, and excavation), plans and specifications, inspection and quality control reports, "as built" construction drawings, designers' operating criteria, photographs, and any other data necessary to demonstrate that construction, maintenance, repair, or modification of the project has been performed in accordance with plans and specifications;

(ii) Instrumentation observations and data collected during construction, operation, or maintenance of the project, including continuously maintained tabular records and graphs illustrating the data collected pursuant to § 12.41; and

(iii) The operational and maintenance history of the project, including:

(A) The dates, times, nature, and causes of any complete or partial unscheduled shut-down, suspension of project operations, or reservoir filling restrictions related to the safety of the project or project works; and

(B) Any reports of project modifications, conditions affecting the safety of the project or project works, or deaths or serious injuries at the project.

(2) *Exception.* The applicant or licensee is not required to maintain as permanent project records any information specified in paragraph (a)(1) of this section that was or reasonably would have been prepared before the applicant or licensee acquired control of the project and that the applicant or the licensee never acquired or reasonably could have acquired.

(b) *Location of records.* (1) *Original records.* The applicant or licensee must maintain the originals of all permanent project records at a central location, such as the project site or the main business office of the applicant or licensee, secure from damage from any conceivable failure of the project works and convenient for inspection. The applicant or licensee must keep the Regional Engineer advised of the location of the permanent project records.

(2) *Record copies.* If the originals of the permanent project records are maintained at a central location other than the project site, the applicant or licensee must maintain at the project site copies of at least the project Exhibit G or L (design drawings), instrumentation data, and operational history that are necessary to the safe and efficient operation of the project.

(3) In accordance with the provisions of Part 125 of this chapter, the applicant or licensee may maintain original records, or record copies at the project site, in microform, if appropriate equipment is readily available to view the records.

(c) *Transfer of records.* If the project is taken over by the United States at the end of a license term or the Commission issues a new license to a different licensee, the prior licensee must transfer the originals of all permanent project records to the custody of the administering Federal agency or department or to the new licensee.

§ 12.13 Verification form.

If a document submitted in accordance with the provisions of this part must be verified, the form of verification attached to the document must be the following:

State of [ ],
County of [ ], ss:

The undersigned, being first duly sworn, states that [he, she] has read the above document and knows the contents of it, and that all of the statements contained in that document are true and correct, to the best of [his, her] knowledge and belief.

[Name of person signing]

Sworn to and subscribed before me this [day] of [month], [year].

[Seal]

[Signature of notary public or other state or local official authorized by law to notarize documents.]

Subpart C—Emergency Action Plans

§ 12.20 General requirements.

(a) Unless provided with a written exemption pursuant to § 12.21, every applicant or licensee must develop and file with the Regional Engineer three copies of an emergency action plan and appendices, verified in accordance with § 12.13.

(b) The emergency action plan must be:

(1) Developed in consultation and cooperation with appropriate Federal,

state, and local agencies responsible for public health and safety; and

(2) Designed to provide early warning to upstream and downstream inhabitants, property owners, operators of water-related facilities, recreational users, and other persons in the vicinity who might be affected by a project emergency as defined in § 12.3(b)(9).

§ 12.21 Exemptions.

(a) *Grant of exemption.* Except as provided in paragraph (b), if an applicant or licensee satisfactorily demonstrates that no reasonably foreseeable project emergency would endanger life, health, or property, the Regional Engineer may exempt the applicant or licensee from filing an emergency action plan.

(b) *No exemption.* A licensee or applicant may not be exempted from the requirements of § 12.22(c) for a radiological response plan.

(c) *Conditions of exemptions.* (1) An applicant or licensee who receives an exemption from filing an emergency action plan has the continuing responsibility to review circumstances upstream and downstream from the project to determine if, as a result of changed circumstances, a project emergency might endanger life, health, or property.

(2) Promptly after the applicant or licensee learns that, as a result of any change in circumstances, a project emergency might endanger life, health, or property, the applicant or licensee must inform the Regional Engineer of that changed condition without unduly delaying the preparation and implementation of the emergency action plan.

(3) Comprehensive review of the necessity for an emergency action plan must be conducted at least once each year.

(d) *Revocation of exemption.* (1) The Regional Engineer may revoke an exemption granted under this section if it is determined that, as a result of any change in circumstances, a project emergency might endanger life, health, or property.

(2) If an exemption is revoked, the applicant or licensee must file an emergency action plan within the time specified by the Regional Engineer.

§ 12.22 Contents of emergency action plan.

(a) *Contents.* (1) *The plan itself.* An emergency action plan must conform with the guidelines established, and from time to time revised, by the Director of the Office of Electric Power Regulation, (available from the Division of Hydropower Licensing or the Regional Engineer), to provide:

(i) Instructions to project operators and attendants and other responsible personnel about the actions they are to take during a project emergency;

(ii) Detailed plans for notifying potentially affected persons, appropriate Federal, state, and local agencies, including public safety and law enforcement bodies, and medical units; and

(iii) Procedures for controlling the flow of water, including actions to reduce in-flows to reservoirs, such as limiting outflows from upstream dams or control structures, and actions to reduce downstream flows, such as increasing or decreasing outflows from downstream dams or control structures, on the waterway on which the project is located or its tributaries.

(2) *Appendix to the plan.* Each copy of the emergency action plan submitted to the Regional Engineer must be accompanied by an appendix conforming with the guidelines established by the Director of the Office of Electric Power Regulation that contains:

(i) Plans for training project operators, attendants, and other responsible personnel to respond properly during a project emergency, including instructions on the procedures to be followed throughout a project emergency and the manner in which the licensee will periodically review the knowledge and understanding that these personnel have of those procedures;

(ii) A summary of the study used for determining the upstream and downstream areas that may be affected by sudden release of water, including a summary of all criteria and assumptions used in the study and, if required by the Regional Engineer, inundation maps; and

(iii) Documentation of consultations with Federal, state, and local agencies, including public safety and law enforcement bodies, and medical units.

(b) *Special factors.* The applicant or licensee must take into account in its emergency action plan the time of day, particularly hours of darkness, in establishing the proper actions and procedures for use during a project emergency.

(c) *Additional requirements for projects near nuclear power plants.* (1) *Radiological response plan.* If the personnel operating any powerhouse or any spillway control facilities, such as gates or valves, of a project would be located within ten miles of a nuclear power plant reactor, the applicant or licensee must file, separately or as a supplement to any required emergency action plan, a radiological response plan that provides for emergency procedures to be taken if an accident or other incident results in the release of radioactive materials from the nuclear power plant reactor.

(2) A radiological response plan must:

(i) To the maximum extent practicable, include sufficient procedural safeguards to ensure that, during or following an accident or other incident involving the nearby nuclear power plant reactor, the project may be safely operated and, if evacuation is necessary, the project may be left unattended without danger to the safety of any project dam or to life, health, or safety upstream or downstream from the project; and

(ii) Explain the provisions, developed after consultation with the direct purchasers of project power, for cessation, curtailment, or continuation of generation of electric power at the project during or following an accident or other incident involving the nearby nuclear power plant reactor.

(3) *Time of filing radiological response plan.*

(i) For a constructed project with an otherwise acceptable emergency action plan on file, any radiological response plan required must be filed:

(A) If an operating license for the nuclear power plant has been issued on or before March 1, 1981, not later than three months from March 1, 1981; or

(B) In all other instances, not later than three months after the date an operating license for the nuclear power plant is issued.

(ii) For any project not described in § 12.22(c)(3)(i), any radiological response plan required must be filed contemporaneously with the emergency action plan or, if the project has been exempted from filing an emergency action plan, at the time the emergency action plan would otherwise have been required to be filed pursuant to § 12.23.

§ 12.23 Time for filing emergency action plan.

(a) *Unconstructed project.* (1) Except as set forth in paragraph (a)(2), the emergency action plan for an unconstructed project must be filed no later than 60 days before the initial filling of the project reservoir begins.

(2) *Temporary impoundment during construction.* (i) For any unconstructed project, if a temporary impoundment would be created during construction, such as through construction of temporary or permanent cofferdams or large sediment control structures, and an accident to or failure of the impounding structures might endanger construction workers or otherwise

endanger public health or safety, a temporary construction emergency action plan must be filed no later than 60 days before construction begins.

(ii) No later than 60 days before the initial filling of a project reservoir begins at a project for which a temporary emergency action plan has been filed the applicant or licensee must file modifications to that plan or a new plan, taking into account the differences in circumstances between the construction and post-construction periods.

(b) *Unlicensed constructed project.* (1) If the Commission has determined on or before March 1, 1981 that a license is required for an unlicensed constructed project, the emergency action plan for that project must be filed no later than:

(i) Six months after March 1, 1981; or

(ii) Any earlier date specified by the Commission or its authorized representative.

(2) Except as set forth in paragraph (b)(1), the emergency action plan for an unlicensed constructed project must be filed no later than the earliest of:

(i) Six months after the date that a license application is filed;

(ii) Six months after the date that the Commission issues an order determining that licensing is required; or

(iii) A date specified by the Commission or its authorized representative.

(c) *Licensed constructed project.* If a licensed constructed project does not have an acceptable emergency action plan on file on March 1, 1981 the emergency action plan must be filed no later than:

(1) Six months after March 1, 1981; or

(2) Any earlier date specified by the Commission or its authorized representative.

(d) For good cause shown, the Regional Engineer may grant an extension of time for filing all or any part of an emergency action plan.

§ 12.24 Review and updating of plans.

(a) The emergency action plan must be continually updated to reflect any changes in the names or titles of project operators and attendants and other personnel with specified responsibilities for actions in an emergency and any changes in names of persons to call, telephone numbers, radio call signals, or other information critical to providing notification to affected persons, Federal, state, and local agencies, and medical units.

(b) An applicant or licensee has continuing responsibility to review the adequacy of the emergency action plan in light of any significant changes in upstream or downstream circumstances which might affect water flows or the location or extent of the areas, persons, or property that might be harmed in a project emergency.

(c) Promptly after an applicant or licensee learns of any change in circumstances described in paragraph (b), the applicant or licensee must:

(1) Inform the Regional Engineer of that change in circumstances;

(2) Consult and cooperate with appropriate Federal, state, and local agencies responsible for public health and safety to determine any advisable revisions to the emergency action plan; and

(3) File with the Regional Engineer three copies of any revisions to the appropriate studies, maps, plans, procedures, or other information in the emergency action plan itself or its appendices that have changed as a result of that consultation.

(d) An applicant or licensee must conduct a comprehensive review of the adequacy of the emergency action plan at least once each year.

§ 12.25 Posting and readiness.

(a) A copy of the current emergency action plan itself must be posted in a prominent location readily accessible to the licensee's or applicant's operating personnel who are responsible for controlling water flows and for notifying public health and safety agencies and affected persons.

(b) Each licensee or applicant must annually test the state of training and readiness of key licensee or applicant personnel responsible for responding properly during a project emergency to ensure that they know and understand the procedures to be followed throughout a project emergency.

Subpart D—Inspection by Independent Consultant

§ 12.30 Applicability.

This subpart applies to any licensed project development that has a dam:

(a) That is more than 32.8 feet (10 meters) in height above streambed, as defined in § 12.31(c);

(b) That impounds an impoundment with a gross storage capacity of more than 2,000 acre-feet (2.5 million cubic meters); or

(c) That has a high hazard potential and is determined by the Regional Engineer or other authorized Commission representative to require inspection by an independent consultant under this subpart.

§ 12.31 Definitions.

For purposes of this subpart:

(a) "Independent consultant" means any person who:

(1) Is a licensed professional engineer;

(2) Has at least 10 years experience and expertise in dam design and construction and in the investigation of the safety of existing dams; and

(3) Is not, and has not been within two years before being retained to perform an inspection under this subpart, an employee of the licensee or its affiliates or an agent acting on behalf of the licensee or its affiliates.

(b) "Dam that has a high hazard potential" means any dam whose failure, in the judgment of the Commission or its authorized representative, might endanger human life or cause significant property damage, or which meets the criteria for high hazard potential as defined by the Corps of Engineers in 33 CFR Part 222.

(c) "Height above streambed" means:

(1) For a dam with a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream toe of the dam to the maximum water storage elevation possible without any discharge from the spillway. The maximum water storage elevation is:

(i) For gated spillways, the elevation of the tops of the gates;

(ii) For ungated spillways, the elevation of the spillway crest or the top of any flashboards, whichever is higher;

(2) For a dam without a spillway, the vertical distance from the lowest elevation of the natural streambed at the downstream tow of the dam to the lowest point on the crest of the dam.

(d) "Gross storage capacity" means the maximum possible volume of water impounded by a dam with zero spill, that is, without the discharge of water over the dam or a spillway.

(e) The Director of the Office of Electric Power Regulation may, for good cause shown, grant a waiver of the 10 year requirement in paragraph (a)(2) of this section. Any petition for waiver under this paragraph must be filed in accordance with § 1.7(b) of this chapter.

§ 12.32 General inspection requirement.

In accordance with the procedures in § 12.35, the project works of each development to which this subpart applies, excluding transmission and transformation facilities and generating equipment, must be periodically inspected and evaluated by or under the responsibility and direction of at least one independent consultant, who may be a member of a consulting firm, to identify any actual or potential deficiencies, whether in the condition of those project works or in the quality or adequacy of project maintenance, surveillance, or methods of operation, that might endanger public safety.

§ 12.33 Exemption.

(a) Upon written request from the licensee, the Director of the Office of Electric Power Regulation may grant an exemption from the requirements of this subpart in extraordinary circumstances that clearly establish good cause for exemption.

(b) Good cause for exemption may include the finding that the development in question has no dam except dams that meet the criteria for low hazard potential as defined by the Corps of Engineers in 33 CFR Part 222.

§ 12.34 Approval of independent consultant.

At least 60 days before the initiation of an inspection under this subpart, the licensee must submit to the Director of the Office of Electric Power Regulation for approval, with a copy to the Regional Engineer, a detailed resume that (a) describes the experience of the independent consultant; and, (b) shows that the consultant is an independent consultant as defined in § 12.31(a).

§ 12.35 Specific inspection requirements.

(a) *Scope of inspection.* The inspection by the independent consultant shall include:

(1) Due consideration of all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants;

(2) Physical field inspection of the project works and review and assessment of all relevant data concerning:

(i) Settlement;

(ii) Movement;

(iii) Erosion;

(iv) Seepage;

(v) Leakage;

(vi) Cracking;

(vii) Deterioration;

(viii) Seismicity;

(xi) Internal stress and hydrostatic pressures in project structures or their foundations or abutments;

(x) The functioning of foundation drains and relief wells;

(xi) The stability of critical slopes adjacent to a reservoir or project works; and

(xii) Regional and site geological conditions; and

(3) Specific evaluation of:

(i) The adequacy of spillways;

(ii) The effects of overtopping of nonoverflow structures;

(iii) The structural adequacy and stability of structures under all credible loading conditions;

(iv) The relevant hydrological data accumulated since the project was constructed or last inspected under this subpart;

(v) The history of the performance of the project works through analysis of data from monitoring instruments; and

(vi) The quality and adequacy of maintenance, surveillance, and methods of project operations for the protection of public safety.

(b) *Evaluation of spillway adequacy.* The adequacy of any spillway must be evaluated by considering hazard potential which would result from failure of the project works during flood flows.

(1) If structural failure would present a hazard to human life or cause significant property damage, the independent consultant must evaluate the ability of project works to withstand the loading or overtopping which may occur from a flood up to the probable maximum flood or the capacity of spillways to prevent the reservoir from rising to an elevation that would endanger the project works.

(2) If structural failure would not present a hazard to human life of cause significant property damage, spillway adequacy may be evaluated by means of a design flood of lesser magnitude than the probable maximum flood, if the report of the independent consultant pursuant to § 12.37 provides a detailed explanation of the bases for the finding that structural failure would not present a hazard to human life or cause significant property damage.

§ 12.36 Emergency corrective measures.

If, in the course of an inspection, an independent consultant discovers any condition for which emergency corrective measures are advisable, the independent consultant must immediately notify the licensee and the licensee must report that condition to the Regional Engineer pursuant to § 12.10(a) of this part.

§ 12.37 Report of the independent consultant.

(a) *General requirement.* Following inspection of a project development as required under this subpart, the independent consultant must prepare a report and the licensee must file three copies of that report with the Regional Engineer. The report must conform to the provisions of this section and be satisfactory to the authorized Commission representative.

(b) *General information in the initial report.* (1) The initial report filed under this subpart for any project development must contain:

(i) A description of the project development;

(ii) A map of the region indicating the location of the project development;

(iii) Plans, elevations, and sections of the principal project works;

(iv) A summary of the design assumptions, design analyses, spillway design flood, and the factors of safety used to evaluate the structural adequacy and stability of the project works; and

(v) A summary of the geological conditions that may affect the safety of the project works.

(2) To the extent that the information and analyses required in paragraph (b)(1) of this section, are contained in a report of an independent consultant prepared and filed in compliance with Commission regulations in effect before March 1, 1981 the information and analyses may be incorporated by specific reference into the first report prepared and filed under this subpart.

(c) *Information required for all reports.* Any report of an independent consultant filed under this subpart must contain the information specified in this paragraph.

(1) *Monitoring information.* The report must contain monitoring information that includes time-versus-reading graphs depicting data compiled from any existing critical or representative monitoring instruments that measure the behavior, movement, deflection, or loading of project works or from which the stability, performance, or functioning of the structures may be determined.

(i) Any monitoring data plotted on graphs must be presented in a manner that will facilitate identification and analysis of trends. The data may be summarized to facilitate graphical representation.

(ii) Plan and sectional drawings of project structures sufficient to show the location of all critical or representative existing monitoring instruments must be included. If these drawings have been included in a previous report prepared and filed by an independent consultant, they may be incorporated by specific reference to that earlier report.

(2) *Analyses.* The report must:

(i) Analyze the safety of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspections, assessments, and evaluations described in § 12.35;

(ii) Identify any changes in the information and analyses required by paragraph (b) of this section that have occurred since the last report by an independent consultant under this subpart and analyze the implications of those changes; and

(iii) Analyze the adequacy of existing monitoring instruments, periodic

observation programs, and other methods of monitoring project works and conditions effecting the safety of the project or project works with respect to the development.

(3) *Incorporation by reference.* To the extent that conditions, assumptions, and available information have not changed since the last previous report by an independent consultant under this subpart, the analyses required under paragraphs (c)(2)(i) and (ii) of this section may be incorporated by specific reference to the last previous report.

(4) *Recommendations.* Based on the independent consultant's field observations and evaluations of the project works and the maintenance, surveillance, and methods of operation of the development, the report must contain the independent consultant's recommendations on:

(i) Any corrective measures necessary for the structures or for the maintance or surveillance procedures or methods of operation of the project works;

(ii) A reasonable time to carry out each corrective measure; and

(iii) Any new or additional monitoring instruments, periodic observations, or other methods of monitoring project works or conditions that may be required.

(5) *Dissenting views.* If the inspection and report were conducted and prepared by more than one independent consultant, the report must clearly indicate any dissenting views concerning the analyses or recommendations of the report that might be held by any individual consultant.

(6) *List of participants.* The report must identify all professional personnel who have participated in the inspection of the project or in preparation of the report and the independent consultant who directed those activities.

(7) *Statement of independence.* The independent consultant must declare that all conclusions and recommendations in the report are made independently of the licensee, its employees, and its representatives.

(8) *Signature.* The report must be signed by each independent consultant responsible for the report.

§ 12.38 Time for inspections and reports.

(a) *General rule.* After the initial inspection and report under this subpart for a project development, a new inspection under this subpart must be completed and the report on it filed not later than five years from the date the last report on an inspection was to be filed under this subpart.

(b) *Initial inspection and report.* (1) For any development that has a dam that is more than 32.8 feet (10 meters) in height above streambed or impounds an impoundment with a gross storage capacity of more than 2,000 acre feet (2.5 million cubic meters), which development was constructed before the date of issuance of the order licensing or amending a license to include that development, the initial inspection under this subpart must be completed and the report on it filed not later than two years after the date of issuance of the order licensing the development or amending the license to include the development.

(2) For any development that was constructed after the date of issuance of the order licensing or amending a license to include the development, the initial inspection under this subpart must be completed and the report on it filed not later than five years from the date of first commercial operation, or the date on which the impoundment first reaches its normal maximum surface elevation, whichever occurs first.

(3) For any development not set forth in either subparagraph (b)(1) or (b)(2), the initial inspection under this subpart must be completed and the report on it filed by a date specified by the Regional Engineer. The filing date must not be more than two years after the date of notification that an inspection and report under this subpart are required.

(4) The last independent consultant's inspection and report made for a development before March 1, 1981 in compliance with the Commission's rules then in effect is deemed to fulfill the requirements for an initial inspection and report under this subpart for that development, except that the first report filed under this subpart for that development after March 1, 1981 must contain the information and analyses required by § 12.37(b).

(c) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing an independent consultant's report under this subpart.

§ 12.39 Taking corrective measures after the report.

(a) *Corrective plan and schedule.* (1) Not later than 60 days after the report of the independent consultant is filed with the Regional Engineer, the licensee must submit to the Regional Engineer three copies of a plan and schedule for designing and carrying out any corrective measures that the licensee proposes.

(2) The plan and schedule may include any proposal, including taking no action, that the licensee considers a preferable alternative to any corrective measure recommended in the report of the independent consultant. Any proposed alternative must be accompanied by the licensee's complete justification and detailed analysis and evaluation in support of that alternative.

(b) *Carrying out the plan.* The licensee must complete all corrective measures in accordance with the plan and schedule submitted to, and approved or modified by, the Regional Engineer.

(c) *Extension of time.* For good cause shown, the Regional Engineer may extend the time for filing the plan and schedule required by this section.

Subpart E—Other Responsibilities or Applicant or Licensee

§ 12.40 Quality control programs.

(a) *General rule.* During any construction, repair, or modification of project works, including any corrective measures taken pursuant to § 12.39 of this part, the applicant or licensee must maintain any quality control program that may be required by the Regional Engineer, commensurate with the scope of the work and meeting any requirements or standards set by the Regional Engineer. If a quality control program is required, the construction, repair, or modification may not begin until the Regional Engineer has approved the program.

(b) If the construction, repair, or modification work is performed by a construction contractor, quality control inspection must be performed by the licensee, the design engineer, or an independent firm, other than the construction contractor, directly accountable to the licensee. This paragraph is not intended to prohibit additional quality control inspections by the construction contractor, or a firm accountable to the construction contractor, for the construction contractor's purposes.

(c) If the construction, repair, or modification of project works is performed by the applicant's or licensee's own personnel, the applicant or licensee must provide for separation of authority within its organization to make certain that the personnel responsible for quality control inspection are, to the satisfaction of the Regional Engineer or other authorized Commission representative, independent from the personnel who are responsible for the construction, repair or modification.

§ 12.41 Monitoring instruments.

(a) In designing a project, a licensee must make adequate provision for installing and maintaining appropriate monitoring instrumentation whenever any physical condition that might affect the stability of a project structure has

been discovered or is anticipated. The instrumentation must be satisfactory to the Regional Engineer and may include, for example, instruments to monitor movement of joints, foundation or embankment deformation, seismic effects, hydrostatic pore pressures, structural cracking, or internal stresses on the structure.

(b) If an applicant or licensee discovers any condition affecting the safety of the project or project works during the course of construction or operation, the applicant or licensee must install and maintain any monitoring devices and instruments that may be required by the Regional Engineer or other authorized Commission representative to monitor that condition.

§ 12.42 Warning and safety devices.

To the satisfaction of, and within a time specified by, the Regional Engineer, an applicant or licensee must install, operate, and maintain any signs, lights, sirens, barriers, or other safety devices that may reasonably be necessary or desirable to warn the public of fluctuations in flow from the project or otherwise to protect the public in the use of project lands and waters.

§ 12.43 Power and communication lines and gas pipelines.

(a) A licensee must take all reasonable precautions, and comply with all reasonable specifications that may be provided by the Regional Engineer, to ensure that any power or communication line or gas pipeline that is located over, under, or in project waters does not obstruct navigation for recreational or commercial purposes or otherwise endanger public safety.

(b) Clearances between any power or communication line constructed after March 1, 1981 and any vessels using project waters must be at least sufficient to conform to any applicable requirements of the National Electrical Safety Code in effect at the time the power or communication line is constructed.

(c) The Regional Engineer may require a licensee or applicant to provide signs at or near power or communication lines to advise the public of the clearances for any power or communication lines located over, under, or in project waters.

§ 12.44 Testing spillway gates.

(a) *General requirement.* An applicant or licensee must make adequate provision, to the satisfaction of the Regional Engineer or other authorized Commission representative, to ensure that all spillway gates are operable at all times, particularly during adverse weather conditions.

(b) *Annual test.* (1) At least once each year, each spillway gate at a project must be operated to spill water, either during regular project operation or on a test basis.

(2) If an applicant or licensee does not operate each spillway gate on a test basis during the periodic inspection by the Commission staff, the applicant or licensee must submit to the Regional Engineer at least once each year a written statement, verified in accordance with § 12.13, that each spillway has been operated at least once during the twelve months preceding the inspection.

(c) *Load-test of standby power.* (1) An applicant or licensee must load-test the standby emergency power for spillway gate operation at regular intervals, but not less than once during each year, and submit to the Regional Engineer, at least once each year, a written statement, verified in accordance with § 12.13, describing the intervals at which the standby emergency power was load-tested during the year preceding the inspection.

(2) The Commission staff may direct that a spillway gate be operated using standby emergency power during the periodic inspection.

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18 CFR Parts 351, 352, 356, 357, 360, 361, and 362

[Docket No. RM81-8; Order No. 119]

Regulation of Interstate Oil Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: By this rule the Federal Energy Regulatory Commission transfers to Title 18 those regulations in Title 49, Parts 1200 to 1299, applicable to the Commission's oil pipeline jurisdiction. These rules, representing a portion of the oil pipeline rules, were delegated to the Federal Energy Regulatory Commission at the time of the Department of Energy Organization Act and have been utilized by the Commission to carry out its legislative mandate.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT:
William Topping, Office of the General Counsel, 825 North Capitol Street, NE, Washington, D.C. 20426 (202) 357-8583
or
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SUPPLEMENTARY INFORMATION:

Order Redesignating and Duplicating Certain Oil Pipeline Regulations

Issued: December 19, 1980.

A. Background.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or to the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission (ICC) to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 13, 1977). Section 705(a) of the DOE Act provides that rules and regulations relating to functions transferred to the FERC shall continue in effect until modified by the FERC. The regulations relating to FERC's jurisdiction over oil pipelines are presently contained in Title 49 of the Code of Federal Regulations (CFR). The FERC has ordered that rules and regulations in Title 49, which relate to the FERC's jurisdiction over oil pipelines, should remain in effect until modified by the FERC.[1] The FERC has also recognized that the oil pipeline regulations appearing in Title 49 of the Code of Federal Regulations should eventually be transferred from Title 49 to Title 18 of the Code of Federal Regulations.[2]

B. Transfer to Title 18.

This rulemaking will transfer to Title 18 those regulations in Title 49, Parts 1200 to 1299, applicable to FERC's oil pipeline jurisdiction.[3] Parts 1204, 1220, 1260, 1261, 1262, and a portion of Parts 1241 and 1200[4] will be transferred to Title 18, or duplicated to contain the language that existed at the time the DOE Act took effect and any FERC modifications.[5]

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[1] Order No. 1, *Interim Regulations for the Operations of the Federal Energy Regulatory Commission*, "Order Providing for the Continuation of Functions Vested in, or Delegated to, the Federal Energy Regulatory Commission," 42 FR 55, 450 (1977).

[2] Order No. 62, *Uniform System of Accounts for Pipeline Companies and Attendant Reporting Forms*, "Order Amending Title of Account 670 of the Uniform System of Accounts for Pipeline Companies and Related Provisions and Forms," Docket No. RM80-4, p.2 (issued December 6, 1979).

[3] Transfer to Title 18 of regulations applicable to oil pipelines which are contained in Title 49, Parts 1000 to 1199 and Parts 1300 to End will be addressed at a future time.

[4] Sections 1200.1, 1241.1 1241.61 and 1241.62.

[5] The Interstate Commerce Commission, contemporaneously with this rulemaking, is eliminating Part 1204, a portion of Part 1241, Parts

The republished regulations contain technical modifications required because of the transfer of jurisdiction to the FERC or required because of the republication in Title 18 (*e.g.* cross references to redesignated sections). Additionally, because the ICC has modified §§ 1241.61 and 1241.62 since the transfer of oil pipeline jurisdiction to the FERC, this order recreates §§ 1241.61 and 1241.62 in total to read as those sections read at the time the DOE Act took effect.

As noted above, the Commission intends eventually to publish all regulations affecting its jurisdiction over oil pipelines in Title 18. This procedure, which the present rulemaking begins: (1) Will eliminate potential confusion between FERC's use and amendment of these regulations for pipelines subject to FERC's jurisdiction and the ICC's use and amendment of these regulations for pipelines subject to ICC's jurisdiction; (2) will aid administrative efficiency by combining all FERC regulations into one title, Title 18; and (3) will be consistent with the FERC's legislative mandate to continue rules and regulations relating to functions transferred to the FERC until modified by the FERC.

C. Effective Date.

Since this rule concerns a matter of agency practice and procedure and does not amend any substantive rules, notice and public procedure thereon is unnecessary pursuant to 5 U.S.C. 553(b). Therefore, the FERC finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective immediately.

(Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*) E.O. 12009, 42 FR 46267, Interstate Commerce Act, *as amended*, (49 U.S.C. 1 *et seq.*))

In consideration of the foregoing, Part I, Chapter I of Title 18 of the Code of Federal Regulations is amended and Subchapters Q, R, and S are issued as final regulations as set forth below, effective December 19, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Chapter I is amended in the table of contents by adding in the appropriate alphabetical and numerical order new subchapters and parts to read as follows:

SUBCHAPTER Q—ACCOUNTS UNDER THE INTERSTATE COMMERCE ACT

351 Financial statements released by carrier
352 Uniform systems of accounts prescribed for oil pipeline companies subject to the provisions of the Interstate Commerce Act.

SUBCHAPTER R—APPROVED FORMS, INTERSTATE COMMERCE ACT

356 Preservation of records
357 Annual special or periodic reports; carriers subject to Part I of the Interstate Commerce Act.

SUBCHAPTER S—VALUATION, INTERSTATE COMMERCE ACT

360 Reporting of data for initial pipeline valuations
361 Regulations governing the reporting of property changes, pipeline carriers.
362 Uniform system of records and reports of property changes; common carriers subject to Part I of the Interstate Commerce Act.

2. Chapter I is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q—ACCOUNTS UNDER THE INTERSTATE COMMERCE ACT

3. Chapter I is amended by adding Part 351 to Subchapter Q to read as follows:

PART 351—FINANCIAL STATEMENTS RELEASED BY CARRIERS

§ 351.1 Financial statements released by carriers.

Carriers desiring to do so may prepare and publish financial statements in reports to stockholders and others, except in reports to this Commission, based on generally accepted accounting principles for which there is authoritative support, provided that any variance from this Commission's prescribed accounting rules contained in such statements is clearly disclosed in footnotes to the statements.

(Department of Energy Organization Act, (42 U.S.C. 7101 et seq.) E. O. 12009, 42 FR 46267, Interstate Commerce Act, as amended, (49 U.S.C. 1 et seq))

PART 352 [ADDED]

4. Chapter I is amended by transferring and redesignating 49 CFR Part 1204 as 18 CFR Part 352 and revising the part title to read as follows:

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

PART 352 [AMENDED]

5. Part 352 is amended in the definition of "Commission" by removing the phrase "Interstate Commerce Commission" and adding in lieu thereof "Federal Energy Regulatory Commission" and in the general instructions (1–2)(c) by removing the phrase "Part 1220" and adding in lieu thereof "Part 356".

SUBCHAPTER R [ADDED]

6. Chapter I is amended by adding Subchapter R to read as follows:

SUBCHAPTER R—APPROVED FORMS, INTERSTATE COMMERCE ACT

PART 356 [ADDED]

7. Chapter I is amended by adding Part 356 to Subchapter R to read as follows:

PART 356—PRESERVATION OF RECORDS

Sec.

356.1 Applicability.
356.2 Purpose.
356.3 Designation of supervisory official.
356.4 Availability of records.
356.5 Protection and storage of records.
356.6 Preservation of records.
356.7 Destruction of records.
356.8 Photographic copies.
356.9 Companies going out of business.
356.10 Waiver of requirements of these regulations.
356.11 Schedule of records and periods of retention.

Authority: Department of Energy Organization Act, (42 U.S.C. 7101, et seq.), E.O. 12009, 42 FR 46267, Interstate Commerce Act, as amended, (49 U.S.C. 1, et seq).

§ 356.1 Applicability.

Before destroying any operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, reports, or documents the pipeline companies and persons subject to the provisions of the Interstate Commerce Act shall comply with the regulations in this part. This part applies to the preservation of accounts, records, and memoranda of traffic associations, demurrage and car service bureaus, weighing and inspection bureaus, and other joint activities maintained by or on behalf of companies listed in the above paragraph of this subpart.

§ 356.2 Purpose.

The regulations in this part prescribe the minimum length of time records shall be preserved, after which they may be destroyed. Mention of a record imposes no requirement that such a record be maintained if the information recorded is not requested by provisions of the Interstate Commerce Act or this Commission, or if its purpose is otherwise being adequately served. The provisions of this part shall not be

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1260 and 1261 from Title 49 and, consistent with this rulemaking, the ICC is redesignating these Parts to the applicable Title 18 Parts. Because the ICC is continuing to use § 1200.1, Part 1220, 1241.1 and Part 1262 for regulating common carriers subject to it jurisdiction, these Parts are being duplicated in Title 18 for our purposes.

construed as excusing compliance with the lawful requirements of any other governmental body, Federal or State, prescribing longer retention periods for any category of records.

§ 356.3 Designation of supervisory official.

(a) Each company subject to the provision of this part shall appoint an officer or other responsible employee to supervise the preservation and authorized destruction of records. Such appointment shall be by formal corporate act of the Board of Directors or its executive committee or, if the company is not incorporated, by formal designation of the owners.

(1) Designation may be made by title only, rather than by name and title, and thus obviate the necessity for a new resolution or order each time a successor is appointed.

(b) If the property of the company is in the hands of a trustee, executor, administrator, or assignee, the officer or other responsible employee supervising the preservation and destruction of records shall be designated by such trustee, executor, administrator, or assignee.

(c) Authority to supervise the destruction of company records maintained by an association, joint bureau, etc. may be delegated to the manager or other chief officer.

(d) A company, at its option, may by a formal act of appointment delegate to a bank, trust company, or similar institution having custody of its records in the normal course of business, the authority to destroy such records upon compliance with the requirements of regulations in this part.

(e) Copies of the resolution or orders of appointment need not be filed with the Commission but shall be available for inspection by the Commission's duly authorized representatives.

§ 356.4 Availability of records.

At each office where records are kept or stored, such records as are herein required to be preserved shall be so arranged and filed so that they may be readily identified and made available to representatives of the Commission.

§ 356.5 Protection and storage of records.

The company shall protect records subject to the regulations in this part from fires, floods, and other hazards and safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of ventilation.

§ 356.6 Preservation of records.

(a) All records listed in § 356.11 may be preserved in either hard-copy paperstock or nonerasable microfilm (see § 356.8). However, a paperstock or microfilm record need not be created to satisfy the requirements of this part if the particular records are initially prepared on nonerasable media such as punched cards, magnetic tapes and disks. The records maintained in nonreadable media and the underlying data used in their preparation shall be preserved for the periods prescribed in § 356.11. In no case shall a paperstock or microfilm record be destroyed after transfer to nonreadable media before expiration of the prescribed periods of retention without Commission approval (see § 356.7).

(b) Each nonreadable form of media shall be accompanied by a statement clearly indicating the type of data included in the media and certifying that the information contained therein is complete and accurate. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner as will render them readily accessible, and the company shall have facilities available to locate, identify and reproduce the records on paper similar in size to the orginal without loss of clarity.

§ 356.7 Destruction of records.

(a) *General authority.* Records described in these regulations may be destroyed after having been preserved for the prescribed periods.

(b) *Special authority.* Special authority is required before records described in these regulations may be destroyed prior to the end of the prescribed retention periods. Applications for special authority must describe in detail the nature and purpose of the records in question and the reasons continued retention is no longer considered necessary (see § 356.10).

(c) *Method of destruction* These regulations require that records be preserved for specified periods. Upon expiration of these periods, records may be destroyed in any manner if the company so elects. Precaution should be taken, however, to shred or otherwise destroy the legibility of any records, the content of which is forbidden by law to be divulged to unauthorized persons.

(d) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed retention periods, a statement shall be prepared listing, as accurately as possible, the records destroyed or lost and describing the circumstances under which they were destroyed or lost. The statement shall be certified by an officer of the carrier and filed with the officer having supervision over preservation of records. A copy of the statement shall also be filed with the Secretary's Office of this Commission within ninety (90) days from the discovery of the premature destruction or loss.

§ 356.8 Photographic copies.

(a) Any record may be transferred to nonerasable microfilm (including microfiche, computer output microfilm, and aperture cards) at any time. Records so maintained on microfilm shall satisfy the mimimum requirements listed in paragraphs (b) through (f) of this section.

(b) The microfilm used shall be of a quality that can be easily read and that reproduction in paperstock can be similar in size of an original without loss of clarity of detail during the periods the records are required to be retained in § 356.11.

(c) Microfilm records shall be indexed and retained in such a manner as will render them readily accessible, and the company shall have facilities available to locate, identify and read the microfilm and reproduce in paper form.

(d) Any significant characteristic, feature, or other attribute which microfilm will not preserve shall be clearly indicated at the beginning of each roll of film or series of microfilm records if applicable to all records on the roll or series, or on the individual record, as appropriate.

(e) The printed side of printed forms need not be microfilmed for each record if nothing has been added to the printed matter common to all such forms, but an identified specimen of the form shall be on the film for reference.

(f) Each roll of film or series of microfilm records shall include a microfilm of a certificate stating that the photographs are direct and facsimile reproductions of the original records and they have been made in accordance with prescribed regulations. Such a certificate shall be executed by a person having personal knowledge of the facts covered therein. Where the microfilm is computer output microfilm the certificate shall state that the information is complete and accurate.

§ 356.9 Companies going out of business.

The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all transactions are completed. When a company is merged with another company under jurisdiction of the Commission, the successor company shall preserve

records of the merged company in accordance with these regulations.

§ 356.10 Waiver of requirements of these regulations.

A waiver from any provision of these regulations may be made by the Commission upon its own initiative or upon submission of a written request by the company. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

§ 356.11 Schedule of records and periods of retention.

The following schedule shows periods that designated records shall be preserved. The descriptions specified under the various general headings are for convenient reference and identification, and are intended to apply to the items named regardless of where records are filed and regardless of departmental organization. Records other than those listed below may be destroyed at the option of the company: *Provided,* Such records used in place of those listed are preserved for the periods prescribed for the records used for substantially similar purposes.

Schedule of Records and Periods of Retention

Item	Category of records	Retention period
	A. CORPORATE AND GENERAL	
1	Incorporation and reorganization:	
	(a) Charter or certificate of incorporation and amendments	Permanently.
	(b) Legal documents related to mergers, consolidations, reorganization, receiverships and similar actions which affect the identity or organization of the company.	Do.
2	Minutes of Directors' Executive Committees', Stockholders', and other corporate meetings.	Do.
3	Corporate elections:	
	(a) Proxies of holders of voting securities	2 years.
	(b) Lists of holders of voting securities represented at meetings	Do.
	(c) Ballots cast and tabulations of votes	Do.
	(d) Judges' reports of election results	Do.
	(e) Qualification oaths of judges of election	Optional
	(f) Qualification oaths of directors	Do.
4	Titles, franchises and authorities:	
	(a) Certificates of public convenience and necessity issued by regulating bodies	Until expiration or cancellation.
	(b) Operating authorizations and exemptions to operate issued by regulating bodies.	Do.
	(c) Copies of formal orders of regulatory bodies served upon the company	1 year after expiration or cancellation.
	(d) Deeds, charters, and other title papers	3 years after disposition of property.
	(e) Patents and patents records	1 year after expiration.
5	Annual reports or statements to stockholders, file copies of	10 years.
6	Contracts and agreements:	
	(a) Contracts and related papers for transactions which are subject to the provisions of the Clayton Anitrust Act (15 USC 20).	10 years after expiration, provided there is no pending litigation involved, and provided the company notifies the Commission of its intended action 2 weeks prior to date the records are to be destroyed.
	(b) Service contracts, such as for operational management, accounting, financial or legal service, and agreements with agents.	3 years after expiration or termination.
	(c) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in (a) above.	Do.
	(d) Contracts for the purchase or sale of material and supplies except as provided in (a) above.	1 year after expiration or termination.
	(e) Shipping contracts for transportation of caretakers of freight	Do.
	(f) Contracts with employees and employee bargaining groups	Do.
	(g) Contracts, leases and agreements, not specifically provided for in this section	3 years after expiration or termination.
7	Accountant's, auditor's, and inspector's reports:	
	(a) Certifications and reports of examinations and audits conducted by public and certified public accountants.	3 years.
	(b) Reports of examinations and audits conducted by internal auditors, time inspectors, weight inspectors, and others.	Do.
	B. TREASURY	
1	Capital stock records:	
	(a) Captial stock ledger	6 years.
	(b) Capital stock certificates, records of or stubs of. Note: If the information shown or the stubs is recorded in item 1(a), the stubs are required to be retained 3 years.	
	(c) Stock transfer register	Do.
	(d) Memoranda and bills of sale or transfer of capital stock	2 years.
	(e) Capital stock subscription notices and requests for allotments	1 year.
	(f) Cancelled capital stock certificates	Optional.
2	Long-term debt records:	
	(a) Bond indentures, underwriting, mortgage, and other long-term credit agreements.	6 years after redemption.
	(b) Registered bond and debenture ledgers	Do.
	(c) Stubs or similar records of bonds or other long-term debt issued. Note: If the information shown on the stubs is recorded in item 2(b), the stubs are required to be retained 3 years.	Do.

Item	Category of records	Retention period
	(d) Funded debt subscription notices and requests for allotment	1 year.
	(e) Records of interest paid and unpaid	2 years.
	(f) Data pertaining to or supporting transfer of bonds or other long-term debt issued.	Do.
	(g) Cancelled and unissued bonds, mortgages, notes or other long-terms debt issued.	Optional.
3	Filings with an authorization by regulatory agencies:	
	(a) Authorizations from regulatory bodies for issuance of securities including applications, reports and supporting papers.	20 years or until all securities covered are retired whichever is shorter.
	(b) Copies of registration statements and other data filed with the Securities and Exchange Commission and supporting papers in connection with offerings of securities for sale to the public or the listing of securities on an exchange.	6 years.
4	Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent	3 years after the securities are sold, redeemed or otherwise disposed of.
5	Retired securities: stock certificates, bonds, notes, interest coupons, receiver's and trustee's certificates, and temporary certificates taken up and cancelled	Optional.
6	Records of Funds and Deposits:	
	(a) Statements and summaries of balances on hand and with depositaries	3 years.
	(b) Depositaries statements of funds received, disbursed, and transferred	Do.
	(c) Authorities and statements for transfers between depositaries	Do.
	(d) Records of outstanding vouchers, checks, drafts, etc., issued and not presented.	Do.
	(e) Bank deposit books, stubs, ledgers, or records of checks	Do.
	(f) Supporting data for postings of miscellaneous receipts and payments of funds	Do.
	(g) Cash remittance reports of superintendents, agents and others	Do.
	(h) Records of verifications of treasurer's cash, or securities	2 years.
	(i) Copies of deposit slips	Do.
	(j) Periodical statements of working cash balances	Optional.
	(k) Lists of vouchers, drafts, and checks showing mailing dates	Do.
7	Records of foreign exchange or commercial paper purchased	3 years.
	C. FINANCIAL AND ACCOUNTING	
1	Ledgers:	
	(a) General and subsidiary ledgers with indexes thereto (except for rate-making organizations).	50 years.
	(b) General and subsidiary ledgers with indexes thereto (ratemaking organizations only).	10 years.
	(c) Balance sheets and trial balance sheets of general and subsidiary ledgers	5 years.
2	Journals:	
	(a) General journals (except for ratemaking organizations)	50 years.
	(b) General journals (ratemaking organizations only)	10 years.
	(c) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	6 years.
	(d) Schedules of recurring or standard journal entries with entry identifications	(1)
3	Cash books:	
	(a) General cash books	10 years.
	(b) Subsidiary cash books	6 years.
4	Vouchers:	
	(a) Voucher registers or equivalent	6 years.
	(b) Paid and cancelled vouchers, expenditure authorizations, detailed distribution sheets and other supporting data including original bills and invoices, except as otherwise provided herein.	Do.
	(c) Vouchers indexes	3 years.
	(d) Paid drafts, paid checks, and receipts for cash paid out	6 yeas.
5	Accounts receivable:	
	(a) Record or register of accounts receivable, indexes thereto, and summaries of distribution.	3 years after settlement.
	(b) Bills issued for collection and supporting data	Do.
	(c) Reports and statements showing age and status of receivables	1 year.
	(d) Authorizations for writing off receivables	Do.
6	Records of accounting codes and instructions	6 years after discontinuance.
	D. PROPERTY AND EQUIPMENT	
	NOTE—All accounts, records, and memoranda necessary for making a complete analysis of the cost or value of property shall be retained for the periods shown. If any of the records elsewhere provided for in this schedule are of this character, they shall be retained for the periods shown below, regardless of any lesser retention period assigned	
1	Property records:	
	(a) Records which maintain complete information on cost or other value of all real and personal property or equipment.	3 years after disposition of property.
	(b) Records of additions and betterments made to property and equipment	Do.
	(c) Records pertaining to retirements and replacements of property and equipment.	Do.
	(d) Records pertaining to depreciation:	
	(1) When group method and depreciation rates are prescribed by the Commission.	10 years.
	(2) Other	3 years after disposition of property.
	(e) Records of equipment number changes	Do.
	(f) Records of motor and engine changes	Do.
	(g) Records of equipment lightweighed and stenciled	Do.
	(h) Files of detailed authorizations for expenditures, work or job orders showing estimated costs of additions and betterments, extensions, replacements, major repairs and dismantlements, approved by proper officials, together with all supporting data.	3 years.
	(i) Periodical inventories of property and equipment	3 years after prior inventory.
	(j) Estimates, detail records, and other data for proposed expenditures pertaining to projects not put into execution.	Optional.
2	Engineering records:	
	(a) Plans, specifications, estimates of work, engineering studies, construction bids, and similar data pertaining to property changes actually made.	3 years after disposition of property.
	(b) Plans, specifications, estimates of work, engineering studies, experimental work, and similar data pertaining to projects not executed.	Optional.

Item	Category of records	Retention period
	E. PERSONNEL AND PAYROLL	
1	Personal records:	
	(a) Applications for employment, reports and certificates of physical examinations, service records, efficiency tests, qualification records, employees' rosters and other similar employee records.	1 year after termination of service.
	(b) Records of Employees' relief hospital, welfare and pension insurance and savings, and workmen's compensation accident reports.	1 year.
	(c) Applications for employment and replies thereto not resulting in employment of applicant.	Optional.
	(d) Files and records containing assignments, attachments, and garnishments of employees' salaries or wages, notice of suits, releases and correspondence incident thereto.	1 year.
2	Payroll records:	
	(a) Registers, abstracts, or summaries showing earnings, deductions and amounts paid to each employee by pay periods.	3 years.
	(b) Records showing the detailed distribution of salaries and wages to various accounts.	Do.
	(c) Receipted payrolls, endorsed pay checks or drafts, receipts, time tickets, certificates issued for wages, discharged tickets, and other evidences of payment for services rendered by employees.	Do.
	(d) Records of annuities of pensions paid to retired employees and records of death benefits paid to beneficiaries of deceased employees.	Do.
	(e) Time books, time cards, time sheets and summaries thereof, time slips, predetermined working schedules, overtime tickets, delayed time tickets, work orders, job tickets, check rolls and other records and papers pertaining to service of officers and employees.	Do.
	(f) Records, reports, and memoranda concerning deductions from payrolls	Optional.
	(g) Applications and authorities for changes in payrolls	Do.
	(h) Cancelled pay checks or drafts drawn in favor of employees in payment of wages for which receipt is shown on payrolls or other records retained.	Do.
	(i) Comparative, analytical, or other statistical statements of pay	Do.
	(j) Receipts for payrolls and pay checks forwarded to agents and others for distribution to employees.	Do.
	F. INSURANCE AND CLAIMS	
1	Insurance records:	
	(a) Schedules of insurance against fire, storm, and other hazards and record of premium payments.	3 years.
	(b) Records of losses and recoveries from insurance companies and supporting papers.	3 years after settlement.
	(c) Records and files of fidelity bonds of employees and others responsible for funds.	1 year after expiration of coverage.
	(d) Records and files of indemnity bonds incident to transportation and other charges.	Do.
	(e) Insurance policies	Optional after expiration of coverage.
	(f) Inspectors' reports of conditions of insured property	Optional when superseded.
	(g) Schedules of risks covered by self-insurance	2 years.
	(h) Reports to insurers of accidents or losses, and all correspondence and memoranda in connection therewith.	Do.
	(i) Letter and telegraphic reports of damages by fire, collision, etc.	Do.
	(j) Reports of minor losses not covered by insurance or less than the minimum amount collectable.	Do.
2	Claims records:	
	(a) Claim registers, card or book indexes, and other records which record personal injury, fire and other claims *against* the company, together with all supporting data.	3 years after settlement.
	(b) Claim registers, card or book indexes, and other records which record overcharge, damages, and other claims filed by the company *against others*, together with all supporting data.	Do.
	(c) Records giving the details of authorities issued to agents, carriers, and others for participation in freight claims.	3 years.
	(d) Reports, statements and other data pertaining to personal injuries or damage to property when not necessary to support claims or vouchers.	Do.
	(e) Reports, statements, tracers, and other data pertaining to unclaimed, over, short, damaged, and refused freight, when not necessary to support claims or vouchers.	1 year.
	(f) Authorities for disposal of unclaimed, damaged, and refused freight	3 years.
	G. TAXES	
1	Copies of returns and schedules filed with taxing authorities, supporting work papers, records of appeals, tax bills and receipts for payments. (See Item C-4(b) for vouchers evidencing disbursements):	
	(a) Income tax returns	3 years after settlement.
	(b) Property tax returns	Do.
	(c) Sales and use taxes	3 years.
	(d) Other taxes	3 years after settlement.
	(e) Agreements between affiliated companies as to allocation of consolidated income taxes.	Do.
	(f) Schedule of allocation of consolidated Federal income taxes among affiliated companies.	Do.
2	Summaries of taxes paid	Optional.
3	Filing with taxing authorities to qualify employee benefit plans	3 years after settlement of tax return or discontinuance of plan, whichever is later.
4	Information returns and reports to taxing authorities	3 years, or for the period of any extensions granted for audits.
	H. PURCHASES AND STORES	
1	Material ledgers:	
	(a) Records of material and supplies on hand	2 years.
	(b) Balance sheets of material and supplies on hand at division storehouses, shops, and other places.	Do.
2	Inventories:	
	(a) General inventories of material and supplies on hand, with record of adjustments between accounts required to bring stores records into agreement with physical inventories.	Do.

Item	Category of records	Retention period
	(b) Stock cards, inventory cards, and other detailed records pertaining to the taking of inventories if abstracted into records covered by item 2(a) above.	Optional.
	(c) Minor inventories of materials and supplies on hand if not reflected in adjustments of accounts.	Do.
3	Purchases and sales:	
	(a) Copies of orders for the purchase of material and supplies	2 years.
	(b) Advices from individuals and companies acknowledging receipt of orders for material and supplies and notices of shipment.	Optional.
	(c) Invoices for material and supplies purchased whether attached to vouchers or filed separately. (See item C-4(b)).	6 years.
	(d) Reports of scrap on hand	2 years.
	(e) Authorities for the sale of scrap and other material and supplies	Do.
4	Material and supplies received and issued:	
	(a) Records and reports of material and supplies received and issued	Do.
	(b) Records of inspecting and testing material and supplies	Optional.
	(c) Records, memoranda, and authorities supporting writeoffs of surplus, obsolete, and scrap material and supplies.	2 years.
	(d) Price records of material and supplies issued	Do.
	I. SHIPPING AND AGENCY DOCUMENTS	
1	Bills of lading and releases:	
	(a) Consignors' shipping orders, consignors' shipping tickets, and copies of bills of lading, freight bills from other carriers and other similar documents furnished the carrier for movement of freight.	3 years.
	(b) Shippers' order-notify bills of lading taken up and cancelled	Do.
2	Freight waybills:	
	(a) Local waybills	Do.
	(b) Interline waybills received from and made to other carriers	Do.
	(c) Company freight waybills	Do.
	(d) Express waybills	Do.
3	Freight bills and settlements:	
	(a) Paid copy of freight bill retained to support receipt of freight charges	
	(1) Bus express freight bills provided no claim has been filed	1 year.
	(2) All other freight bills	3 years.
	(b) Paid copy of freight bill retained to support payment of freight charges to other carriers.	
	(1) Bus express freight bills provided no claim has been filed	1 year.
	(2) All other freight bills	3 years.
	(c) Records of unsettled freight bills and supporting papers	1 year after disposition.
	(d) Records and reports of correction notices	3 years.
4	Other freight records:	
	(a) Records of freight received, forwarded, and delivered	Do.
	(b) Notice to consignees of arrival of freight; tender of delivery	2 years.
5	Agency records (to include conductors, pursers, stewards, and others):	
	(a) Cash books	3 years.
	(b) Remittance records, bank deposit slips, and supporting papers	Do.
	(c) Balance sheets and supporting papers	2 years.
	(d) Statements of corrections in agents accounts	Do.
	(d) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, refunds, adjustments, etc.	Do.
	J. TRANSPORTATION	
1	Records and reports of tickets issued, redeemed and destroyed, and ticket stock on hand.	2 years.
2	Records and reports of baggage checks issued, sold, and on hand	Do.
3	Used and cancelled tickets, cash fare slips, baggage checks, reports of which have been audited.	Optional.
4	Passes, roduced fare, and tickets:	
	(a) Copies of orders in printing houses for pass stock	Do.
	(b) Records of pass stock received, distributed, and destroyed	2 years.
	(c) Records and reports of passes and tickets, issued free or at reduced rates, and of such tickets requested from other carriers.	Do.
	(d) Records of passes received from other carriers	Do.
	(e) Reports of trip passes and free or reduced-rate passenger-fare tickets issued and collected.	Do.
	(f) Reports of annual or term passes honored	Optional.
	(g) Void, unused or unissued passes	Do.
5	Mail service:	
	(a) Records and reports of mail service, mail failures and detentions, fines, deductions, and irregularities.	2 years.
	(b) Records and reports of mail pouches received and distributed	1 year.
6	Dispatchers' sheets, registers, and other record pertaining to movement of transportation equipment.	3 years.
7	Import and export records including bonded freight and steamship engagements	2 years.
8	Records, reports, orders and tickets pertaining to weighing of freight	3 years.
9	Records of loading and unloading of transportation equipment	2 years.
10	Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence.	Do.
11	Records pertaining to transportation of household goods:	
	(a) Estimate of charges	3 years.
	(b) Order for service	Do.
	(c) Vehicle-load manifest	Do.
	(d) Descriptive inventory	Do.
12	Records and reports pertaining to operation of marine and floating equipment:	
	(a) Ship's log	3 years.
	(b) Ship's articles	Do.
	(c) Passenger and room list	Do.
	(d) Floatmen's barge, lighter, and scow captains' reports, demurrage records, towing reports and checks sheets.	2 years.
	Car distribution and movement—railroads only:	
	(a) Records of car allotment and distribution	Do.
	(b) Records of cars ordered, furnished and loaded	Do.
	(c) Records showing dates and numbers of trains, initials and numbers of cars, movement of cars, and mileage of cars and trains.	Do.
	(d) Reports of cars interchanged with connecting lines	Do.
	(e) Reports of unfilled car orders	1 year.

Item	Category of records	Retention period
	(f) Per diem and mileage reports made and received, including reclaims and discrepancy and adjustment reports.	2 years.
	(g) Demurrage and storage records	Do.
	Oil and other products stocks and movements—pipelines only:	
	(a) Records of receipts, deliveries, pumpings, stocks, and over and short	3 years.
	(b) Run tickets showing quantities by tank measurement of meter readings of oil and other products received into and delivered from company's lines.	Do.
	(c) Reports or records of runs, allowables, and legal stocks by leases	Do.
	(d) Statements of oil and oil products consumed as fuel including quantity value, and where consumed.	Do.
	(e) Statement of oil and other products lost by line breaks and leaks including quantity, value, and location of breaks and leaks.	Do.
	(f) Reports of power furnished by producers: monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	Do.
	(g) Records of producers' property identifying ownership and location of producers' tanks or wells to which carriers' lines are connected.	3 years after disconnection.
	(h) Tank gage tables for all tanks used in carrier operation	3 years after disconnection or restrapping.
	(i) Division or other periodical inventory reports of oil and other products on hand	3 years.
	(j) Division orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	3 years after discontinuance.
	(k) Directions received by the carrier for the transfer of division order interests from one interest owners to another.	Do.
	(l) Transfer orders for the transfer of ownership of oil or other products in carrier's custody.	3 years.
	K. TARIFFS AND RATES	
1	Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of persons or property.	3 years after expiration or cancellation.
2	All other copies of tariffs, classifications, division sheets, and circular referred to in Item 1 above.	Do.
3	Authorities and supporting papers for transportation of property or passengers free or at reduced rates.	3 years.
4	Copies of concurrences and powers of attorney filed with the Federal Energy Regulatory Commission; and other regulating bodies.	2 years after expiration or cancellation.
5	Correspondence and working papers in connection with the making of rates and compliance of tariffs, classifications, division sheets, and circulars affecting the transportation of persons or property.	2 years after cancellation of tariff.
6	Contracts and minimum rate schedules of contract motor carriers	3 years after expiration or cancellation.
	L. REPORTS AND STATISTICS	
1	Reports to Federal Energy Regulatory Commission and other regulatory bodies	
	(a) Annual financial, operating and statistical reports, file copies of, and supporting data.	10 years.
	(b) Periodical reports of operating revenues, expenses, and income, file copies of, and supporting data.	3 years.
	(c) Reports detailing use of proceeds from issuance or sale of company securities, file copy of, and supporting data.	Do.
	(d) Valuation inventory reports and records together with related notes, maps, and sketches; underlying engineering, land, and accounting reports, pricing schedules, summary or collection sheets; yearly reports of changes and other miscellaneous data, all relating to the valuation of the company's property by the Federal Energy Regulatory Commission or other regulatory body.	3 years after disposition of the property.
2	Periodical reports of accidents, inspections, tests, hours of service, repairs, freight car locations, etc.	3 years.
3	Periodical statistical statements of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise.	Do.
4	Miscellaneous statistical reports, statements and summaries, not otherwise provided for herein, used for administrative purposes only and *not* entering the accounts of the company.	Optional.
5	All other financial, operating and statistical statements or reports with supporting data.	3 years.
	M. MISCELLANEOUS	
1	Index of records (see 356.4)	Until superseded.
2	Statement listing records prematurely destroyed or lost (see 356.7(d)	Same period prescribed for listed records.
3	Instruction booklets, circulars, organization handbooks, bulletins, instructions to agents, conductors, drivers, and other employees, and other matters pertaining to the operation of the company.	3 years after expiration or cancellation.
4	Correspondence relating to subject matter covered by other items in this schedule	Same period prescribed for related record.
5	Tabulating cards, tapes, and other media used in the compilation of statistics and other data when the results are transcribed to other records covered in this schedule.	Optional after summaries have been made.
6	Duplicate copies of accounts, records, and memoranda listed in this schedule, if all information on such duplicates is contained on the originals or other copies retained, and if such duplicates are not specifically provided for in this schedule.	Optional.
7	Complaints, related correspondence, and other records associated with adequacy of service, equipment, and facilities for freight and passenger operations.	2 years.

[1] Until superseded.

PART 357 [ADDED]

8. Chapter I is amended by adding Part 357 to Subchapter R to read as follows:

PART 357— ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

Sec.
357.1 Common carriers.
357.2 Annual reports of carriers by pipeline.
357.3 Carriers by pipeline: quarterly revenue and volume of traffic.

Authority: Department of Energy Organization Act (42 U.S.C. 7101, et seq.), E.O. 12009, 42 FR 46267, Interstate Commerce Act, as amended (49 U.S.C. 1, et seq).

§ 357.1 Common carriers.

All common carriers by pipeline subject to the provisions of Part I of Interstate Commerce Act, as amended, are hereby required hereinafter to file in the office of the Commission on or before the 31st day of March in each year, reports covering the period of 12 months ending with the 31st day of December preceding said date, giving the particulars heretofore called for in the annual reports required by the Commission of said carriers.

§ 357.2 Annual reports of carriers by pipeline.

Commencing with the year ended December 31, 1968, and for subsequent years thereafter, until further order, all carriers by pipelines subject to the provisions of section 20, Part I of the Interstate Commerce Act, are required to file annual reports in acordance with Annual Report Form P (Carriers by Pipeline). Such report shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 on or before March 31 of the year following the year to which it relates.

§ 357.3 Carriers by pipeline; quarterly revenue and volume of traffic.

(a) Each and every pipeline company subject to the provisions of section 20 of the Interstate Commerce Act, if it has had annual operating revenues of more than $500,000 for the three consecutive calendar years prior to the period for which the report hereinafter mentioned is rendered, shall make a report every three months of its total transportation revenue and total number of barrels of oil originated and received from connections, in accordance with the appropriate quarterly form.

(b) Each said quarterly report shall be filed in duplicate with the Oil Pipeline Board, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, within 30 days after the close of the period to which it relates.

SUBCHAPTER S [ADDED]

9. Chapter I is amended by adding Subchapter S and a note to read as follows:

SUBCHAPTER S—VALUATION, INTERSTATE COMMERCE ACT

Note.—Forms prescribed in Parts 360 through 362 are available upon request from the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426.

PART 360 [ADDED]

10. Chapter I is amended by transferring and redesignating 49 CFR Part 1260 as 18 CFR Part 360 and adding Part 360 to Subchapter S to read as follows:

PART 360—REPORTING OF DATA FOR INITIAL PIPELINE VALUATION

Redesignation of Sections

Title 49 sections	Title 18 sections
1260.0	360.1
1260.1	360.2
1260.2	360.3
1260.3	360.4
1260.4	360.5
1260.5	360.6
1260.6	360.7
1260.7	360.8
1260.8	360.9
1260.9	360.10
1260.10	360.11
1260.11	360.12
1260.100	360.100
1260.101	360.101
1260.102	360.102
1260.103	360.103
1260.104	360.104
1260.105	360.105
1260.106	360.106
1260.107	360.107
1260.108	360.108
1260.109	360.109
1260.110	360.110
1260.111	360.111
1260.112	360.112

§ 360.4 [Amended]

11. Section 360.4 is amended by removing "§ 1260.1" and adding in lieu thereof "§ 360.2".

§ 360.7 [Amended]

12. Section 360.7 is amended by removing "§ 1260.100" and adding in lieu thereof "§ 360.100" and by removing "§ 1260.101" and adding in lieu thereof "§ 360.101".

§ 360.8 [Amended]

13. Section 360.8 is amended by removing "§ 1260.102" and adding in lieu thereof "§ 360.102".

§ 360.10 [Amended]

14. Section 360.10 is amended by removing reference to "Bureau of Accounts" and adding in lieu thereof "Valuation Branch, Office of Pipeline and Producer Regulation".

§ 360.100 [Amended]

15. Section 360.100 is amended in paragraph (f)(11) by removing "§ 1260.6" and adding in lieu thereof "§ 360.7".

§ 360.101 [Amended]

16. Section 360.101 is amended in paragraph (b)(7) by removing "§ 1260.105(b)(6)" and adding in lieu thereof "§ 360.105(b)(6)".

§ 360.103 [Amended]

17. Section 360.103 is amended in paragraph (a)(1) by removing "§ 1260.1" and adding in lieu thereof "§ 360.2".

§ 360.104 [Amended]

18. Section 360.104 is amended in paragraph (a)(1) by removing "§ 1260.1" and adding in lieu thereof "§ 360.2"; and in paragraph (b)(14) by removing "§ 1260.6" and adding in lieu thereof "§ 360.7".

§ 360.105 [Amended]

19. Section 360.105 is amended in paragraph (a)(10) by removing "§ 1260.100" and adding in lieu thereof "§ 360.100"; and in paragraph (d) by removing "§ 1260.106" and adding in lieu thereof "§ 360.106" and by removing "§ 1360.107" and adding in lieu thereof "§ 360.107".

§ 360.108 [Amended]

20. Section 360.108 is amended in paragraph (a)(3) by removing "§ 1260.106" and adding in lieu thereof "§ 360.106".

21. Adding between §§ 360.12 and 360.100 the heading "PREPARATION OF DATA".

22. Chapter I is amended by transferring and redesignating 49 CFR Part 1261 as 18 CFR Part 361 and adding Part 361 to Subchapter S to read as follows:

PART 361—REGULATIONS GOVERNING THE REPORTING OF PROPERTY CHANGES, PIPELINE CARRIERS

Redesignation of Sections

Title 49 sections	Title 18 sections
1261.0	361.1
1261.1	361.2
1261.2	361.3
1261.3	361.4
1261.4	361.5
1261.5	361.6
1261.6	361.7
1261.7	361.8
1261.8	361.9
1261.9	361.10
1261.10	361.11
1261.11	361.12
1261.12	361.13
1261.13	361.14
1261.14	361.15
1261.15	361.16
1261.16	361.17
1261.17	361.18
1261.18	361.19
1261.100	361.100
1261.101	361.101
1261.102	361.102
1261.103	361.103
1261.200	361.200
1261.201	361.201
1261.202	361.202
1261.203	361.203
1261.204	361.204
1261.205	361.205
1261.300	361.300

§ 361.1 [Amended]

23. Section 361.1 is amended by removing the phrase "Part 1262" and adding in lieu thereof "Part 362" and by removing "§ 1262.23" and adding in lieu thereof "§ 362.21".

§ 361.2 [Amended]

24. Section 361.2 is amended by deleting "§ 1261.300" and inserting in lieu thereof "§ 361.300".

§ 361.3 [Amended]

25. Section 361.3 is amended by removing the phrase "§§ 1261.100 to 1261.103 and §§ 1261.200 to 1261.205" and adding in lieu thereof "§§ 361.100 to 361.103, and §§ 361.200 to 361.205".

§ 361.8 [Amended]

26. Section 361.8 is amended in paragraph (f) by removing "§ 1261.103(d) and (e)" and adding in lieu thereof "§ 361.103(d) and (e)".

§ 361.16 [Amended]

27. Section 361.16 is amended by removing reference to "Bureau of Accounts" and adding in lieu thereof "Valuation Branch, Office of Pipeline and Producer Regulation".

§ 361.100 [Amended]

28. Section 361.100 is amended in paragraph (c) by removing "§ 1261.100(a)" and adding in lieu thereof "§ 361.100(a)" and in paragraph (i) by removing the phrase "See §§ 1261.201 to 1261.205" and adding in lieu thereof "See §§ 361.201 to 361.205".

§ 361.101 [Amended]

29. Section 361.101 is amended in paragraph (b) by removing "§ 1261.100(h)" and adding in lieu thereof "§ 361.100(h)"; in paragraph (f) by removing "§ 1261.7" and adding in lieu thereof "§ 361.8"; and in paragraph (g) by removing the phrase "§§ 1261.201 to 1261.205" and adding in lieu thereof "§ 361.201 to 361.205".

§ 361.102 [Amended]

30. Section 361.102 is amended in paragraph (b)(6) by removing the phrase "in accordance with § 1261.7(a), (b), and (c); § 1261.201(b)(2) and (3); § 1261.202(b)(1); § 1261.203(b)(1); and § 1261.205(a)" and adding in lieu thereof "in accordance with § 361.8(a), (b), and (c); § 361.201(b)(2) and (3); § 361.202(b)(1); § 361.202(b)(1); § 361.203(b); and § 361.205(a)".

§ 361.103 [Amended]

31. Section 361.103 is amended in paragraph (f) by removing the phrase "See §§ 1261.201 to 1261.205" and adding in lieu thereof "See §§ 361.201 to 361.205".

§ 361.200 [Amended]

32. Section 361.200 is amended in paragraph (d) by removing the phrase "as directed in §§ 1261.201 to 1261.205" and adding in lieu thereof "as directed in §§ 361.201 to 361.205".

§ 361.201 [Amended]

33. Section 361.201 is amended in paragraph (a)(4) by removing "§ 1261.103" and adding in lieu thereof "§ 361.103" and in paragraph (b)(4) by removing "§ 1261.103" and adding in lieu thereof "§ 361.103".

§ 361.203 [Amended]

34. Section 361.203 is amended in paragraph (a) by removing "§ 1261.202(a)(1)" and adding in lieu thereof "§ 361.202(a)(1)" and in paragraph (b) by removing "§ 1261.202(b)(1)" and adding in lieu thereof "§ 361.202(b)(1)".

§ 361.204 [Amended]

35. Section 361.204 is amended in paragraph (d) by removing "§ 156.7(a), (b), and (c)" and adding in lieu thereof "§ 361.8(a), (b), and (c)".

§ 361.205 [Amended]

36. Section 361.205 is amended by removing "§ 1261.204(a), (b), and (c)" and adding in lieu thereof "§ 361.204 (a), (b), and (c)".

PART 362 [ADDED]

37. Chapter I is amended by adding Part 362 to Subchapter S to read as follows:

PART 362—UNIFORM SYSTEM OF RECORDS AND REPORTS OF PROPERTY CHANGES

Regulations and Instructions

Sec.

362.1 Uniform system for recording and reporting changes in physical property.

362.4 Reports to be prepared.
362.5 Effective date of records; sources of entries.
362.6 Classification of property changes.
362.7 Recording of quantities.
362.8 Reporting changes participated in by other carriers.
362.9 Data required for newly built roads, branch lines contructed or extensions of existing lines.
362.10 Aids, gifts, grants and donations.
362.11 Property acquired through purchase, merger or consolidation.
362.12 Reporting cost of property sold and cost of property acquired.
362.13 Units, quantities and descriptions; statement.
362.14 Reports to be attested.
362.15 Authorities for expenditures.
362.16 Detailed estimate sheet.
362.17 Register of authorities for expenditures.
362.18 Completion reports.
362.19 Record of property changes.
362.20 Statement of property units added and retired and their costs.
362.21 Records and reports prescribed applicable to all carriers.

Forms and Reports

362.101 Form of report.
362.102 Property added.
362.103 Cost of property added.
362.104 Property retired.
362.105 Retirement quantities.
362.106 Costs applicable to property retired other than land.
362.107 Land for transportation purposes.
362.108 Costs applicable to land retired.
362.109 Property transferred from carrier use to noncarrier classification and vice versa.
362.110 Jointly owned or jointly constructed property.
362.111 Changes made in or to property of other common carriers.
362.112 Changes in use of property.
362.113 Reconciliation with investment accounts.
362.114 Roads acquired through purchase, merger, consolidation, or reorganization.
362.115 Reconstruction of road acquired through purchase, merger, consolidation, or reorganization.
362.116 General expenditures (Accounts 71 to 77, inclusive).
362.117 Other changes.
362.118 Subschedules.
362.119 Division of road accounts.
362.120 Mass property.
362.121 Structural property.
362.122 Manner of reporting changes in mass property.
362.123 Manner of reporting changes in structured property.
362.124 Structural property additions and betterments.
362.125 Structural property; major renewals.
362.126 Valuation sections.
362.127 Mileage changes.
362.128 Separations of sheets or subschedules.
362.129 Modifications of items and units.
362.130 Inventory groups.
362.131 Equipment acquired.
362.132 Additions and betterments to and retirements of units.
362.133 Schedule M.
362.200 List of units for use of carriers in the preparation of Completion Reports and the Record of Property Changes.
362.300 List of forms.

Authority: Sec. 12, 24 Stat. 383, 37 Stat. 701; 49 U.S.C. 12, 19a.

Note.—In §§ 362.0 to 362.300 the numbers to the right of the decimal point corresponds with the respective section numbers in regulations and instructions to govern the recording and reporting of all extensions and improvements or other physical property of every common carrier. Valuation Order 3, second revised issue. Interstate Commerce Commission, effective January 1, 1919.

Cross Reference: For uniform system of records and reports of property changes, pipe line carriers, see Part 361 of this chapter.

Regulations and Instructions

§ 362.2 Uniform system for recording and reporting changes in physical property.

(a) The regulations and instructions to govern the recording and reporting of changes in physical property of every common carrier subject to the provisions of the act to regulate commerce, which are set out in printed form to be hereafter known as Second Revised Issue are hereby prescribed for the use of the aforesaid carriers in the keeping of their records and in the preparation of reports of changes in physical property required by the Commission to be filed with it in accordance with section 19a of the Interstate Commerce Act; each and every such carrier and each and every receiver or operating trustee of any such carrier is hereby required to keep its records and to prepare and furnish to the Commission reports of changes in physical property in conformity therewith.

(b) Each and every carrier of the class hereinbefore described and referred to, and each and every receiver or operating trustee of any such carrier, whose property has been inventoried as of June 30, 1916, or as of June 30 of any previous year, shall be, and is hereby required to file with the Commission on forms like B. V. Form No. 589, as soon as the same can be prepared, showing separately for each valuation section within each State, Territory, and the District of Columbia, annual reports for the years ending June 30 of each year, up to and including the year ending June 30, 1917, and separately a report for the 6 months ending December 31, 1917. Those carriers whose property was inventoried as of June 30, 1917, shall file reports for the 6 months ending December 31, 1917. Thereafter the reports shall be made annually for the year ending December 31. Beginning with the year ending December 31, 1919, the reports shall be made within 60 days from the close of the year. Each and

every such carrier, and each and every receiver, or operating trustee of such carrier, be and is hereby required, within 90 days from the date prescribed by the Commission, to file on B. V. Forms No. 588 a statement of the property added since the inventory or since the date of any such previous list, and its cost, and a statement of the property retired or released since the inventory or since the date of any such previous list, and its cost, to December 31, 1927, or to such other date or dates as may be indicated, in accordance with the list of property units attached to Revised Supplement No. 4, to Valuation Order No. 3, Second Revised Issue (§ 362.200), and the detailed instructions relating to the preparation of Forms No. 588.

(c) [Reserved]

(d) Other reports shall be prepared and filed as called for by the instructions: *Provided,* That each and every carrier of the class described and referred to in this part and each and every receiver or operating trustee of any such carrier, shall be, and is hereby, required to keep, subsequent to December 31, 1918, the system of records provided in this part, in the manner prescribed in this part, so that reports on the forms and in accordance with the regulations and instructions provided in this part and prescribed can be prepared therefrom.

(e) Each and every carrier of the class described and referred to in this part, and each and every receiver or operating trustee of any such carrier, whose property has been inventoried as of June 30, 1918, or as of June 30 of any previous year, shall be, and is hereby, required, as rapidly as the work can be accomplished, to make up in accordance with "Exhibit E" (§ 362.300) a record of property changes occurring between the date of inventory and December 31, 1918; the record to be made separately for each year ending June 30, up to and including the year ending June 30, 1917. The period from June 30, 1917, to December 31, 1917, should be shown separately. The period from December 31, 1917, to December 31, 1918, should be for the year for all carriers affected, except carriers whose property has been inventoried as of June 30, 1918. The last-named carriers shall prepare the record for the 6 months ending December 31, 1918. Thereafter the record shall be made up for the year ending December 31.

Note.—The date for filing B. V. Form 588 and B.V. Form 589 reports, required by § 362.1 were modified by orders of Apr. 7, 1941, and July 8, 1941; 6 FR 1915, 3478. The order of July 8, 1941, reads in part:

"Carriers are given to October 1, 1941, instead of June 30, 1941, in which to file B. V. Form 589 reports covering such periods, including 1940, for which they have not filed the B. V. Form 588 reports. For years subsequent to 1940 the returns upon B. V. Form 589 will be due on June 1 of the succeeding year provided returns upon B. V. Form 588 will not be filed by December 31. Reports upon B. V. Form 588 for 1941 and for any prior year not covered by such reports shall be filed by December 31, 1942, instead of by June 1, 1942, and beginning with the year 1942. B. V. Form 588 shall be filed annually by December 31, of the following year."

(7) Record of Property Changes, "Exhibit E."

(b) The forms of the records numbered (1) to (6), inclusive, here prescribed, are shown by the exhibit lettered "A" to "D" (§ 362.300). These forms indicate the minimum information required for the Commission's purposes. Any or all of the records above specified may be varied as to the order and arrangement of the data required to be shown, and additional data may be shown at the option of the carrier, provided the minimum information required by these forms and instructions is shown upon the modified forms which carriers elect to use. The seventh record, styled Record of Property Changes, sample sheet of which is marked Exhibit "E" (§ 362.300) and made a part of the instructions in this part, may be varied to suit the convenience of carriers: *Provided,* The minimum information required by this form and instructions is shown upon the modified form which carriers elect to use: *And provided further,* That such modified form, Exhibit "E" (§ 362.300), shall not be adopted by the carrier until and unless approved by the Commission. With respect to size of forms, Numbers (1) to (7), inclusive, may be varied to suit the convenience of the carriers.

§ 362.4 Reports to be prepared.

(a) The reports to be prepared by carriers from these records and filed with the Commission are here listed:

Statements compiled as of June 30 and December 31 of each year, listing the Roadway Completion Reports that have been prepared during the six months ending upon those dates, B. V. Form No. 586.

Statements compiled as of June 30 and December 31 of each year, listing the Equipment Completion Reports that have been prepared during the six months ending upon those dates, B. V. Form No. 587.

Statements of property units added and retired and their costs, to be prepared and filed at such times as the Commission may from time to time direct after the property is inventoried or after the date as of which any such previous lists are prepared and filed B. V. Form No. 588.

Annual statements of charges and credits to the investment account for property brought into, or retired from, operation, to be prepared as of December 31 of each year, B. V. Form No. 589.

(b) The forms and dimensions of these reports shall be as prescribed and indicated by the samples shown hereafter.

§ 362.5 Effective date of records; sources of entries.

(a) Carriers shall establish and begin using as of January 1, 1919, that part of the system here prescribed, which is embraced in the records marked exhibits "A" to "D" (§ 362.300).

(b) The Record of Property Changes, marked exhibit "E," (§ 362.300) shall be established, and the entries in it shall begin, as of July 1 next succeeding the date fixed by the Commission for the inventory of the property. The entries for the period prior to January 1, 1919, shall be taken from the available records. The source or sources from which the entries have been transcribed shall be shown with particularity for each entry.

§ 362.6 Classification of property changes.

The property changes recorded in the records here prescribed shall be classified in conformity with the accounting regulations prescribed by the Commission.

Cross Reference: For record of property changes, see § 362.19.

§ 362.7 Recording of quantities.

The actual quantities only of material and property installed during the course of a property change shall be recorded in the records here prescribed. If payments to contractors or others in settlement of losses or claims have been based upon other than the actual quantities installed, the amounts paid shall be entered in the appropriate accounts in the records here prescribed, but the constructive quantities upon which such payments have been computed shall be excluded from these records.

§ 362.8 Reporting changes participated in by other carriers.

Where one carrier assumes the cost of a change upon another carrier's property, or where one or more carriers participate with the owner in the cost of a change in the latter's property, the full detail of the property units involved and their costs shall be recorded in but one set of records and they shall be the records of the carrier to which the property in which the change has been

made was originally inventoried by the Commission.

§ 362.9 Data required for newly built roads, branch lines constructed, or extensions of existing lines.

(a) There shall be filed with the Commission such maps, profiles, plans, diagrams, or other data for newly built roads as will show the nature and extent of their property and its location. Upon request of the Commission, such roads shall also file an inventory of their property. The valuation section references to be given such newly built roads shall be assigned under advice of the Commission.

(b) Maps, profiles, plans, diagrams, or other data relating to branch lines built, or to extensions of existing lines shall be filed with the Commission. Valuation section references which shall be a continuation in consecutive, numerical order of those previously assigned to the other owned property within the State shall be given to such branch lines and extensions.

(c) When so directed, carriers shall file with the Commission such maps, profiles, plans, diagrams, or other data relating to betterments, improvements, conversions, or retirements of property, as will show the general character and extent of those changes.

§ 362.10 Aids, gifts, grants, and donations.

The nature, amount, extent, and value of any aid, gift, grant of right of way, or donation made by the Government of the United States or by any State, county, or municipal government or by individuals, associations, or corporations, to any common carrier in connection with property changes in its property shall be recorded in the records, prescribed in this part of the carrier that was the recipient of such aid.

§ 362.11 Property acquired through purchase, merger or consolidation.

(a) If a common carrier, by purchase, or through merger or consolidation, acquires part or all of the physical property of another common carrier, the vendor shall issue an Authority for Expenditure and prepare a Completion Report to record its release of the property. The vendee shall issue an Authority for Expenditure and prepare a Completion Report to record its acquisition of the property.

(b) If the transaction involves all of the property devoted to common carrier purposes by the vendor, and that property has been inventoried by the Commission, or if the part transferred consists of one or more valuation sections in entirety, the entries under the heading "Property Retired" in the vendor's Completion Report shall consist of a list of the valuation sections that comprise the property released, arranged by States and with the valuation section termini shown. A copy of the Record of Property Changes recording the changes that have been made in the property during the interval between the date it was inventoried and the date it is transferred to the vendee, shall be prepared by the vendor and given to the vendee at the time the transfer is effected. The record thus secured by the vendee shall be perpetuated and used to record the changes which it makes in the property subsequent to its acquisition. As reference the vendee shall use its own valuation section number or numbers and also refer to the previous owner and its valuation section number or numbers. The vendee shall list in its Completion Report, under the heading "Property Units Added," the valuation sections that comprise the property acquired; the list shall be so arranged, described, and referenced as to correspond with the vendor's list. If new valuation section references are assigned by the vendee to the property acquired, they also shall be shown.

(c) If all, or part, of the property transferred consists of a portion only of a valuation section, an inventory of the portion transferred that is less than a valuation section shall be taken and the Completion Reports of both the vendor and vendee shall enumerate the property units and quantities determined in that inventory, and their costs whenever possible.

(d) If a common carrier acquires railway property from individuals, firms, corporations, or others, that were not common carriers, the vendee shall inventory the property acquired and shall embody the inventory in the appropriate Completion Report.

§ 362.12 Reporting cost of property sold and cost of property acquired.

The Completion Report of the vendor shall show the cost to the vendor of the property released. The Completion Report of the vendee shall show the cost to the vendee of the property acquired. If, in accordance with prescribed accounting regulations, the vendee is required to record the purchase price of property acquired, such cost shall be distributed equitably among the primary accounts applicable to such property.

§ 362.13 Units, quantities and descriptions, statement.

The unit designations, the quantities and descriptions recorded in the Completion Reports and in the Record of Property Changes shall be stated so far as possible in the terms of the inventory taken by this Commission.

§ 362.14 Reports to be attested.

The reports here prescribed to be filed with the Commission shall be attested under oath by the official under whose direction they were prepared.

§ 362.15 Authorities for expenditures.

(a) Carriers shall issue an Authority for Expenditure for each change in their property. In so far as possible these Authorities shall be issued in advance of making the property changes. Those covering involuntary retirements of property, or changes effected under stress of emergency, may be issued as and when the changes are made.

(b) The Authorities issued for roadway and structural changes shall not overlap valuation section limits. Each Authority issued shall describe the change authorized and its location. A blanket Authority may be issued for minor changes upon a valuation section and for such changes as affect an entire valuation section. Changes in the form of additions, improvements, or retirements, made in connection with a general maintenance program upon a valuation section, may also be authorized under blanket Authority.

(c) Roadway changes shall be authorized separately from equipment changes, except when a railway property, in whole or in part, is acquired in which is included the acquisition of equipment.

(d) The Authorities that are issued for equipment changes shall be drawn separately for the classes indicated by the Commission's classification of investment in road and equipment.

(e) In case the Authorities for Expenditure are issued by other than the company that owns the property in which the change is to be made, the pertinent facts of the circumstance shall be stated. Before issuance each Authority shall be referenced by a registered number with the name of the State and the number of the valuation section suffixed. Those issued for changes in equipment shall bear merely the suffix "Eq."

(f) A form of Authority for Expenditure is shown by the exhibit marked "A." (§ 362.300)

§ 362.16 Detailed estimate sheet.

Whenever it is desired to make an extended statement of the estimated cost of any property change, a detailed estimate sheet to supplement the Authority for Expenditure shall be used. A suggested form for this purpose is marked exhibit "A–1." (§ 362.300)

§ 362.17 Register of authorities for expenditures.

Each carrier shall establish a register in which to record in consecutive, numerical order with the appropriate State and valuation section references, the Authorities for Expenditures issued. The registered number, with the State and valuation section references suffixed (or in the case of equipment merely the suffix "Eq.") shall become the identifying reference of the change authorized and shall thereafter be so used. A suggested form of Register is marked exhibit "B," (§ 362.300) which is shown hereafter.

§ 362.18 Completion reports.

(a) As each change affecting roadway property is turned over to, or retired from, operation, and as common carrier property is transferred from one owner to another, a Completion Report shall be prepared to record the details of each such change. As illustrative of desirable forms for this purpose, reference is made to the exhibits contained in this part marked "C" and "C–1" (§ 362.300). Each Roadway Completion Report shall show:

Reference to the authority for expenditure.
The significant facts of ownership and operation.
The location of the property change.
A description of the property change.
By whom the costs involved are borne.
An enumeration by primary accounts of units added.
Aggregate cost but not cost per unit unless work was done by contract at a price per unit, in which case unit contract price shall be given. Aggregate cost of property added and retired shall be distributed by constituent parts or items of property under each primary account.
Cost of effecting property retirements shall be distributed by primary accounts.
Descriptive detail of the property units retired and their costs, and of any valuation sections, in whole or in part, released and their costs.
Classification of the property changes and of the costs involved, among the appropriate accounts.

(b) For changes in equipment, completion reports that will show by classes the minimum information indicated by the exhibit contained in this part marked "D" (§ 362.300) shall be prepared as of June 30 and December 31, of each year, beginning June 30, 1919. These reports shall show:

Reference to the authority for expenditure.
The significant facts of ownership and operation.
The number, name, or other designation of the unit or series of units to which the change is applicable.
Description of the equipment to which the change is applicable.
Number of units affected by the change.
Description of the change.
Date of change.
Cost of change.
Distribution to the appropriate accounts of the cost of the change.

(c) If completion reports are prepared by other than the carrier that owns the property in which the change has been made, the pertinent facts of the circumstance shall be stated.

(d) Where roadway or structural changes are effected under contract and paid for in a lump sum, a list of the units involved in the change, if not obtainable otherwise, shall be secured by an inventory of the property change. The amount paid under the contract shall be distributed to the accounts to which the property is classified in the inventory.

(e) If portions of an authorized change are turned over to operation before completion of the project as a whole, "Progressive" completion reports, referenced as such and numbered, shall be prepared to record the portions of the change that have been brought into operation. The report that records the conclusion of the authorized change shall be designated as the "final" completion report.

(f) From the completion reports described, transcripts shall be made to the record of property changes, as hereinafter indicated.

(g) Completion reports covering property changes that were in progress on the date of valuation, portions of which changes had been turned over to operation and included in the inventory of this Commission, shall be divided into two parts—the first part to show the property turned over to operation and inventoried as of the date of valuation and its costs, the second part to show the property units subsequently installed and their costs. The quantities and costs included in the second part only shall be transcribed to the Record of Property Changes.

§ 362.19 Record of property changes.

(a) As of July 1 next succeeding the date fixed by the Commission for inventory of the property, carriers shall establish for each valuation section a Record of Property Changes, the form of which is shown by the exhibit contained in this part marked "E" (§ 362.300) to which shall be transcribed from the Completion Reports, a record of the changes which affect the property embraced in each valuation section. The record shall be established according to owners of the property in which the change is made and shall be arranged by those primary accounts of the classification prescribed by this Commission for investment in road and equipment that are applicable to each valuation section.

(b) For equipment, the Record of Property Changes shall be established according to owners of the property in which the change is made and in conformity with those primary accounts of the aforementioned classification which are applicable to that class of property. Equipment shall be grouped according to the regional assignment to which it is allocated.

(c) Each transcript to the record shall show reference to the appropriate Authority for Expenditure. In the case of installations of property, the date that such property was turned over to operation shall be shown. In the case of retirement of property, the date that such property was withdrawn from the service shall be shown. The amounts transcribed as the cost of property installed shall be those only that affect the investment in road and equipment. Those costs in the completion Report that are distributed to other than the investment in road and equipment shall be omitted from the Record of Property Changes. The costs inserted for additional property or improvements shall be stated separately from the cost of property that has been retired. Under the appropriate headings descriptive of property units, there shall be shown separately the units added and the units retired. The entries for retired units shall be in red or otherwise clearly indicated.

(d) The headings inserted in the Record of Property Changes descriptive of property units, shall be stated so far as possible in the terms of the Commission's inventory of the property. As new types of property units are introduced, appropriate descriptive headings shall be inserted.

(e) In aggregating the items entered in the Record of Property Changes the total inserted under each primary account shall be so arranged as to show separately the property additions and their costs, from the property retirements and their costs, for the period for which the total is being stated. Nowhere in the record shall use be made of net figures or amounts in recording property changes.

(f) The Record of Property Changes shall contain no entries for the inventoried portions of property changes that were under way on the date fixed by this Commission as of which the property was to be valued.

Cross Reference: For classification of property changes, see § 362.6.

§ 362.20 Statement of property units added and retired and their costs.

Upon forms like the one marked "B. V. Form No. 588," (§ 362.300) carriers shall

prepare and file with this Commission, when directed, statements that shall show for each valuation section and for equipment: (a) A list of property added since the inventory or since the date of any such previous list and its cost; (b) a list of property retired or released since the inventory or since the date of any such previous list and its cost. The property listed shall be stated in the terms of the inventory and shall be so arranged and classified as to correspond with the inventory. Provision shall be made under each account for inserting descriptions of any new types of property or units that may have been introduced since the inventory. The entries to be inserted in the columns headed "Property Added" and "Property Retired" shall be taken from the Record of Property Changes and shall correspond with the data there recorded. The amounts representing the costs inserted under the heading "Property Added" shall be those only that affect the investment in road and equipment.

Cross References: For property added, see § 362.102. For property retired, see § 362.104. For retirement quantities and costs applicable to property retired other than land, see §§ 362.105, 362.106. For costs applicable to land retired, see § 362.108.

§ 362.21 Records and reports prescribed applicable to all carriers.

The forms of the records and reports prescribed in this part are those applicable to steam roads only, and the instructions governing the use of those records and reports have been expressed in terms that are likewise applicable to steam roads only. Nevertheless, the records and reports prescribed and the instructions governng them, after suitable modification to adapt them to the varying terminology and arrangement of the accounting classifications prescribed by the Commission, shall apply with equal force to all common carriers that are subject to the act to regulate commerce.

Forms and Reports

§ 362.101 Form of report.

Upon forms like B.V. Form 588 Revised (§ 362.300), size 11 by 17 inches the carrier shall file with the Commission, statements that will show for each valuation section and for equipment: (a) A list of property added since the inventory or since the date of any such previous list and its cost.

(b) A list of property retired or released since the inventory or since the date of any such previous list and its cost.

Note: Effective with forms prepared and filed to report property changes made during the year 1957, the requirements for filing forms B.V. 588–R in duplicate was canceled, the original only being required to be filed as above.

§ 362.102 Property added.

Property added shall be reported, together with its cost, separately from property retired and shall be reported by actual "in place" quantities in terms of the units shown in the "List of Units to be used in connection with valuation order No. 3. Second Revised Issue," with descriptive detail to conform with that therein prescribed, or as modified by § 362.129 of the instructions in this part.

Cross Reference: For statement of property units added and retired and their costs, see § 362.21.

§ 362.103 Cost of property added.

(a) The amounts reported as the cost of property added shall be only those that affect the investment in road and equipment except as hereafter provided with respect to lands, miscellaneous physical property, and cost of road acquired through purchase, merger, consolidation or reorganization, and reconstruction of road so acquired.

(b) The cost reported need be only the total cost of each structure as defined in § 362.121, the total cost for each mass account as defined in § 362.120 of the instructions, or as prescribed by the subchedules.

(c) Except that when changes are reported under the unit designation "lot," the cost applicable to such unit shall be also reported.

(d) The costs to be reported for betterments shall be computed in accordance with the rules in the effective accounting regulations. With respect to costs to be reported for track changes in connection with betterments applied, the costs to be reported for account 9, Rails, shall be the cost of the excess in weight of heavier rails laid in replacement of lighter rails; for account 10, Other track material, the excess cost of heavier or improved track material; and for account 11, Ballast, the excess cost of improved ballast. (Added by order of April 17, 1976.)

(e) A supplemental Form No. 588–R shall be filed for account 9, Rails, account 10, Other track material, and account 11, Ballast, bringing the property costs, as shown in the valuation records of the Commission, into conformity with the costs recorded in the books of account pursuant to revised Instruction 2–19 of the accounting regulations. Carriers which recorded costs as shown in valuation records in their books of account at time of reorganizations shall file a supplemental Form 588–R for the period subsequent to the reorganization.

Cross Reference: For statement of property units added and retired and their costs, see § 362.20. For subschedules, see § 362.118.

§ 362.104 Property retired.

Property retired shall be reported separately from property added, and shall also be reported in terms of the units shown in the "List of Units" (§ 362.200(c)) previously referred to, with descriptive details to conform with those therein prescribed, except however, property included in the basic valuation reports and subsequently retired may be stated in terms of the units shown therein. The retirement of a complete structure individualized in the basic reports need be described only to the extent necessary to permit ready identification of such structure in the basic reports.

§ 362.105 Retirement quantities.

(a) In reporting retirements of property which was included in the final valuation reports of the Commission the quantities thereof shall agree with the quantities included in the final Engineering Report. If loss and waste is included in the reported quantities, a note to that effect shall be made.

(b) In reporting retirements of property which was not included in the final valuation reports of the Commission, but subsequently included in the records and reports prepared in compliance with valuation order No. 3, the quantities shall conform with the record covering the installation of such property.

§ 362.106 Costs applicable to property retired other than land.

(a) The costs to be reported applicable to property retired other than land shall be:

(1) In column 12, the cost of reproduction new for property included in the basic valuation report, for equipment report also the original cost in column 11.

(2) In column 11, the cost included in the records and reports prescribed by valuation order No.3 for property installed since date of basic valuation.

(b) [Reserved]

(c) In determining the cost of property retired from service when it is impracticable because of the relatively large number and small size of units of any kind to determine the specific cost thereof, average costs may be used.

(d) When changes are reported under the unit designation "lot," the cost applicable to such unit shall be also reported.

§ 362.107 Land for transportation purposes.

(a) Changes in lands owned or used for the purposes of a common carrier including acquisitions of lands or rights and lands retired, sold, or otherwise transferred, shall be reported on B. V. Form No. 588, subschedule "L," (§ 361.300) attached hereto and made a part hereof. This subschedule shall be filed in duplicate with one copy carbon backed. In the preparation of subschedule "L" there shall be shown in column 15 under the caption "Remarks" for lands acquired a statement of the specific use to which such lands have been put and for lands retired or transferred from carrier use the disposition thereof, such as sales, transfers to noncarrier, reversions, etc. Such lands shall be designated by the map number and parcel number shown therefor in the basic Land Report if included therein.

(b) Assessments for public improvements applicable to lands owned or used for common-carrier purposes shall be reported on subschedule "L" in total for each valuation section and by years.

(c) Incidental land cost need not be reported in detail; only the lump-sum cost applicable to each parcel need be shown.

§ 362.108 Costs applicable to land retired.

The costs to be reported under the heading "Property Retired" for items of land shall be, the cost at the date of dedication to public use, and separately, the amount entered in the investment account to record therein the retirement.

§ 362.109 Property transferred from carrier use to noncarrier classification and vice versa.

In reporting changes in carrier property, transfers from noncarrier to carrier use shall be considered additions and transfers from carrier use to noncarrier classification shall be considered retirements and conversely when reporting for noncarrier property.

§ 362.110 Jointly owned or jointly constructed property.

Changes in jointly owned or jointly constructed property shall be reported separately from other property. The total quantities and total costs shall be reported. The total cost shall be shown in the description column and a statement of the names of the owning or participating companies, individuals or political subdivisions with the amounts or proportions owned and contributed by each. The cost to be entered under the heading "Property Added" shall be the portion of the total cost borne by the company for which the report is made plus the cost of property relinquished and retired from service as a direct result of the arrangement less the salvage recovered therefrom, and less the depreciation accrued on the property. The net amount is part of the total cost of the property to the carrier.

§ 362.111 Changes made in or to property of other common carriers.

Where one carrier assumes the cost of a change upon another carrier's property or where one or more carriers participate with the owner in the cost of a change in the latter's property, the full details of the property units involved and their cost shall be reported separately from other property changes and the facts as to ownership and use shall be stated.

§ 362.112 Changes in use of property.

(a) Changes in use of carrier property, through leases from or to common carriers, shall be reported in sufficient particularity to permit identification of the property by ownership and physical characteristics in the basic valuation report or other valuation records.

(b) Changes in the use of property through leases from individuals, firms, corporations, or others not common carriers that are in effect at the date of the report shall be appropriately reported.

§ 362.113 Reconciliation with investment accounts.

The carrier shall prepare and file with reports on B. V. Form 588 (§ 362.300) a general analysis of the difference between the charges and credits in Columns 5, 11, and 12 of that form and the increases or decreases in the investment account during the reporting period. The detail of items forming such difference shall be grouped under appropriate descriptive headings according to the nature of the difference.

§ 362.114 Roads acquired through purchase, merger, consolidation, or reorganization.

(a) Pursuant to sections 10 and 11 of order No. 3 (§§ 362.11, 362.12) the changes made in the property during the interval between the date it was inventoried to the former owner and the date transferred to the vendee shall be reported separately from the changes made in such property subsequent to its acquisition. In addition to such changes there shall be reported separately a statement of the property acquired together with the money outlay for constructing and improving such property, which statement shall include the amounts representing the difference between the cost of acquisition and such money outlay in the convenience account styled "Difference between the price paid for property acquired and the money outlay for construction and improvement of that property," and also a statement describing the manner in which the money outlays were ascertained and the basis of distribution among the primary accounts that are applicable to the property.

(b) If the property has been acquired from individuals, firms, corporations or others that were not common carriers the statement shall show in addition to the foregoing the manner in which an inventory of the property was determined.

§ 362.115 Reconstruction of road acquired through purchase, merger, consolidation, or reorganization.

(a) Property changes incident to reconstruction of road acquired shall be reported separately from all other property changes. The units installed and their costs and the units retired and their costs shall be allocated on such report to the primary accounts applicable to the property and under each such account they shall be subdivided to show:

(1) Property added in replacement of like property and the retirements in connection therewith.

(2) Property added in betterment of existing property together with retirements in connection therewith.

(b) With the exception of the foregoing subdivision, the reporting of the units and cost for the property added and property retired shall conform to the general rules set forth in this part for other additions and retirements.

Cross Reference: For rules concurring additions and betterments to and retirements of units, see § 362.132.

§ 362.116 General expenditures (accounts 71 to 77, inclusive).

When items of general expenditures have been included in a particular road and equipment account as a part of the cost of any specific property such amount shall be separately stated under each primary account on the form and indication shall be given as to the general nature of the items.

§ 362.117 Other changes.

The foregoing rules in this part relate to the manner of reporting property changes, the cost of which affects the investment in road and equipment account. The rules relating to the manner of reporting changes in miscellaneous physical property are shown in the special instructions in § 362.21 of this chapter. If there have been other changes which affect the

condition and value of the property, such changes shall be reported separately, with their costs, from those the cost of which affects the investment in road and equipment account, but in conformity with the general rules given in this part and an explanation made of the accounting performed in connection with such changes.

§ 362.118 Subschedules.

Subschedules are provided by the instructions in this part for reporting changes in land equipment and miscellaneous physical property. Other subschedules may be used for reporting the foregoing and other classes of property provided that they are first approved by the Commission as to form and method of preparation. When subschedules are used, total charges and credits for each primary account shall be shown upon B. V. Form No. 588 (§ 362.300) with appropriate reference to the subschedules. Subschedules shall be filed in duplicate with one copy carbon backed.

§ 362.119 Division of road accounts.

For the purpose of conveniently indicating the treatment to be accorded different classes of property General Account I, Road (except land), will be considered as containing two distinct classes of property; namely, "mass property" and "structural property." By mass property is meant property of like kind and characteristics, the quantities of which may be considered collectively and reported as a single item. By structural property is meant property which from its nature must be individualized and reported separately from property of like kind and characteristics.

§ 362.120 Mass property.

This class of property shall be construed generally to include the following:

(a) All items in Account 3, Grading.

(b) All items in Account 6, Bridges, trestles, and culverts and Account 7, Elevated structures, except as required to be individualized and with respect to which instructions are contained in the "List of Units" under this account.

(c) All items in Accounts 8, Tie; 9, Rails; 10, Other track material; 11, Ballast; 12, Track laying and surfacing.

(d) All items in Account 13, Fences, snowsheds, and signs.

(e) All items in Account 26, Communication systems, except equipment of dispatcher or large relay offices.

(f) All items in Account 27, Signals and interlockers, except interlocking plants.

(g) All items in Account 37, Roadway machines; Account 38, Roadway small tools; and paving in Account 39, Public improvements—Construction.

§ 362.121 Structural property.

This class of property shall be construed generally to include the following:

(a) Under Account 5, Tunnels and subways, each tunnel or subway.

(b) Under Account 6, Bridges, trestles, and culverts; Account 7, Elevated structures; and Account 39, Public improvements—Construction, each bridge or other structure required by the instructions in the "List of Units" under Account 6, to be treated individually.

(c) Under Account 16, Station and office buildings, and Account 17, Roadway buildings, each building except those of minor importance which conform in size and character to an established standard of construction.

(d) Under Account 18, Water stations, each water station or water-treating plant.

(e) Under Account 19, Fuel stations, each fuel station.

(f) Under Account 20, Shops and engine houses, each shop building, engine house, turntable, cinder pit, or gas production plant, each plant.

(g) Under Account 21, Grain elevators, and Account 22, Storage warehouses, each building.

(h) Under Account 23, Wharves and docks, and Account 23, Coal and ore wharves, each wharf, dock, or pier.

(i) [Reserved]

(j) Under Account 26, Communication systems, each dispatcher or larger elay office.

(k) Under Account 27, Signals and interlockers, each interlocking plant.

(l) [Reserved]

(m) Under Account 29, Power plants each building, including power substation buildings.

(n) Under Account 31, Power-transmission systems, each shop plant or each power system, including each power-distribution system, power-line poles and fixtures system, and underground conduits system.

(o) Under Account 35, Miscellaneous structures, important structures as may be appropriate.

(p) Under Account 44, Ship machinery and Account 45, Power-plant machinery, each separate plant.

§ 362.122 Manner of reporting changes in mass property.

Mass property shall be listed in total by units for all years to cover the complete period subsequent to valuation date or since the date of any such previous list, unless specific instructions to the contrary are given, and the weighted average date (year) of installation shall be shown for each item except for clearing, grubbing, grading, or items in Account 12.

§ 362.123 Manner of reporting changes in structural property.

(a) Each bridge, building, structure, plant, or facility referred to in § 362.121 as "structural property" shall be reported separately from every other bridge, building, structure, plant, or facility, and the accessories attached thereto, or forming a part thereof, such as furniture, fixtures, equipment, and appurtenances shall be grouped therewith and reported in appropriate units with descriptive detail as indicated in the "List of Units" § 362.200(c).

(b) Structural property shall be reported in such a manner as to show date of installation of new facilities, date (year) of additions and betterments made to existing facilities, and date of retirements facilities or parts thereof.

§ 362.124 Structural property additions and betterments.

(a) In reporting additions and betterments to and retirements from structural property all changes affecting a given bridge, building, structure, plant, or facility shall be grouped under a common description of such facility or an appropriate reference to the same by page and item number of the Engineering Report. Each change shall be separately recorded thereunder in terms of the units and descriptions prescribed in the "List of Units" (§ 362.200(c)) and the date (year) of each change shall be noted.

(b) In reporting retirements of units designated as structural property to which additions and betterments have been added since valuation date, the net cost of such additions and betterments shall be stated separately from the costs attaching to the unit as existing on valuation date or as installed subsequently thereto.

§ 362.125 Structural property; major renewals.

When an important building or structure has been retired and replaced due to the renewal of its major portion, the retirement entry shall show all parts of the structure, including those left in place for reuse; the addition shall include such reused parts, in order that the units reported installed shall embrace all those in the facility as restored to service. Reused units and quantities must be separately stated on the report.

§ 362.126 Valuation sections.

(a) Reports shall be prepared separately for each valuation section shown in the basic engineering report and for those since established.

(b) Appropriate combinations of present valuation sections should be made within practical limitations, to promote facility and economy, subject to the approval of the Commission.

(c) Roadway machines and other similar items may be reported "Unallocated" subject to the approval of the Commission.

§ 362.127 Mileage changes.

Report shall be made of all changes in track mileage divided to show separately first main track, second main track, third main track, fourth main track, etc., and yard tracks and sidings.

§ 362.128 Separations by sheets or subschedules.

The following accounts or groups of accounts should be reported on a single sheet or series of sheets; Accounts 1 and 71 to 77, inclusive; 2, 2½ (reproductible), and 39 (assessments); 2½ (nonreproductible), 3, and 5; 6 and 7; 8 to 13, inclusive, and 39 (construction); 16, 17, and 35; 18 and 19; 20 to 22, inclusive; 23 and 24; 26; 27; 29; 31; 40 to 43, inclusive; and, 44 and 45.

§ 362.129 Modifications of items and units.

Modification in the items, units, forms, and manner of reporting may be made only with the approval of the Commission.

§ 362.130 Inventory groups.

(a) The instructions pertaining to the equipment accounts are based on the group plan of recording and reporting changes in such property.

(b) This plan contemplates the establishment of groups of cars, locomotives, etc., hereinafter referred to as "inventory groups." A group once established should remain unaltered except to the extent of additions and betterments to individual units and the retirement of units. An inventory group for property included in the final Engineering Report shall be the group established by the Commission as indicated in the final Engineering Report. For equipment acquired since valuation date each class or series of like units built under uniform plans and specifications shall constitute a new inventory group except that subdivisions may be made for convenience in accounting where a series is constructed at different plants or under varying unit contract costs.

362.131 Equipment acquired.

(a) Each inventory group established for equipment shall be reported separately from every other such group on B. V. Form No. 588–R or with the descriptive detail outlined in the List of Units. Freight charges shall be separately reported with the place built, f.o.b. point and also the setting-up point for locomotives and receiving point for cars. The name of the vendor shall be reported for equipment purchased second hand.

(b) For rebuilt or converted units constituting a new inventory group reference shall be made to the orginal group.

§ 362.132 Additions and betterments to and retirements of units.

The changes which occur in each established inventory group such as additions, betterments, and retirements made since valuation date or since the group was established shall be reported on B. V. Form No. 588–R or subschedule B. There shall be recorded and reported the data indicated by the captions on the subschedule in summary form for each year the current status of each group, as a whole, with respect to the number of units at the end of the year and the changes during the year. There shall be reported in column K a description of major additions and betterments applied during the year or period. (See § 362.129.) Symbols may be used to describe such additions and betterments.

§ 362.133 Subschedule M.

(a) On B. V. Form No. 588, subschedule M (§ 362.300) there shall be reported the changes in the physical property that is owned and "held for purposes other than those of a common carrier," including the additions to, and improvements of such property during the period and the sales, transfers, abandonments, or other dispositions made of such property or any part of it during the same interval.

(b) The information reported shall be as prescribed by subschedule M and shall be grouped as may be appropriate under the following headings that shall be inserted upon the form:

(1) Unimproved noncarrier lands.

(2) Improved noncarrier lands.

(3) Noncarrier improvements upon land which is classified as devoted to common-carrier purposes.

(4) Noncarrier improvements upon lands belonging to others.

(5) Assessments for public improvements applicable to noncarrier lands shall be reported by lump sums for each year.

§ 362.200 List of units for use of carriers in the preparation of Completion Reports and the Record of Property Changes.

(a) *Order of Commission.* Valuation Order No. 3 Second Revised Issue, prescribing the regulations and instructions to govern the recording and reporting of all extensions and improvements or other changes in physical property of every common carrier subject to the Interstate Commerce Act, provides in section 17, (§ 362.18) that such carrier shall record on Completion Reports the details of each change affecting roadway property and equipment turned over to, or retired from, operation and of common carrier property, transferred from one owner to another; section 18, (§ 362.19) provides that such carriers all establish a Record of Property Changes to which shall be transcribed from the Completion Reports a record of the changes which affect the property embraced in each valuation section.

(2) Supplement No. 5 to Valuation Order No. 3, Second Revised Issue, provides that carriers shall report to the Commission on B. V. Form 588 (§ 362.300) the changes that have been made in the physical property since the date fixed for the basic inventory of the property or since the date of any such previous report.

(3) For the purpose of establishing a uniform manner of recording and reporting such details: *It is ordered,* That:

(i) Each and every such carrier and each and every such receiver or operating trustee of any such carrier, be, and is hereby required, to record such changes in property subsequent to December 31, 1932, in accordance with the list of property units attached hereto and made a part hereof.

(ii) Each and every carrier of the class described and referred to herein and each and every receiver or operating trustee of any such carrier whose Completion Reports, Record of Property Changes, or reports on B. V. Form 588 (§ 362.300), have not been prepared for a given year or period as of the effective date of this order may prepare such records and reports in accordance with this list of property units.

(b) *Explanation.* (1) The units referred to herein are those prescribed for use of carriers in the preparation of Completion Reports, and also for the Record of Property Changes, and B. V. Form 588–R (§ 362.300) except as otherwise noted.

(2) The items and units listed are to be considered as merely representative and not as excluding from any account necessary analogous items which are omitted from the list. Where additional

units are desired in a given account, appropriate designations may be selected, preferably from the lists in other accounts.

(3) If type symbol designations are used as descriptive of the character and size of items, complete and detail description of what comprises each type shall be prepared, shall be filed with and be subject to the approval of the Commission.

(4) In the following list of units, the phrases shown in the parentheses after each item are indicative of the descriptive information required and the subdivision by classes for each item.

(5) All fixed property must be reported by definite location. Where necessary to supplement descriptions, reference to available plans and specifications should be shown on Completion Report.

(6) Materials salvaged from property retired when reused shall be designated as "second hand." Parts of a structure left in place and reused in connection with property retired and replaced shall be designated as "reused."

(c) *List of units by account numbers:*

Account 1. Engineering (No units are required for this account.)
Account 2. Land for Transportation Purposes
Account 3. Grading
See accounts 6 and 26.
Account 5. Tunnels and Subways
Account 6. Bridges, Trestles, and Culverts
Account 7. Elevated Structures
See account 6.
Account 8. Ties
Account 9. Rails
Account 10. Other Track Material
Account 11. Ballast
Account 12. Tracklaying and Surfacing
Account 13. Fences, Snowsheds, and Signs
Account 16. Station and Office Buildings
Account 17. Roadway Buildings
Account 18. Water Stations
Account 19. Fuel Stations
Account 20. Shops and Engine Houses
Account 21. Grain Elevators
Account 22. Storage Warehouses
Account 23. Wharves and Docks
Account 24. Coal and Ore Wharves
Account 26. Communications Systems
Account 27. Signals and Interlockers
Account 29. Power Plants
Account 31. Power-Transmission Systems
Account 35. Miscellaneous Structures
Account 37. Roadway Machines
Account 38. Roadway Small Tools
Account 39. Public Improvements; Construction
Account 40. Revenues and Operating Expenses During Construction
Account 42. Reconstruction of Road Property Acquired
Account 43. Other Expenditures; Road
Account 44. Shop Machinery
Account 45. Power-Plant Machinery

Equipment Accounts

Account 51. Steam Locomotives
Account 52. Other Locomotives
Account 53. Freight-Train Cars
Account 54. Passenger-Train Cars
Account 56. Floating Equipment
Account 57. Work Equipment
Account 58. Miscellaneous Equipment
Accounts 71, 72, 73, 74, 75, 76, 77.

Note.—Under these accounts there shall be recorded descriptive details which shall clearly set forth the character and the nature of the items and in such particulars as to distinguish as between payments for service, for supplies consumed, and for inventoriable property. With respect to items falling within the last-named class appropriate unit designations shall be selected from the items shown under other accounts.

When items of general expenditures have been included in any road or equipment accounts as part of the cost of any specific property, such items shall be separately stated and the nature appropriately described.

§ 362.300 List of forms.

Exhibit A—Authority for Expenditure.

Exhibit A-1—Detailed Estimate.

Exhibit B—Register of Authorities for Expenditure.

Exhibit C—Roadway Completion Report.

Exhibit C-1—Roadway Completion Report.

Exhibit D—Completion Report of Changes made in equipment for six months.

Exhibit E—Record of Property Changes.

B. V. Form No. 586—Report of roadway completion reports covering changes for six months.

B. V. Form No. 587—List of equipment completion reports covering changes for six months.

B. V. Form 588, Subschedule B (revised)—Equipment changes.

B. V. Form 588, Subschedule L (revised)—Statement showing changes in lands owned or used for the purpose of a common carrier.

B. V. Form 588, Subschedule M (revised)—Statement showing changes in physical property of owning company held for purposes other than those of a common carrer.

B. V. Form 588, Subschedule N (revised)—Statement showing changes in leases.

B. V. Form 588-R—Statement showing property changes for a certain period.

B. V. Form No. 589—Annual statement of charges and credits to the investment account for property brought into or retired from operation in a State.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF-79; Re: Notice No. 337]

Napa Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This rule establishes a viticultural area in Napa County, California, named "Napa Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) feels that the establishment of the Napa Valley viticultural area and the subsequent use of its name as an appellation of origin in wine labeling and advertising will help consumers of wine to better identify wines from Napa Valley.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Thomas Minton, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATT published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographical characteristics. Section 4.25a(e)(2) outlines procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. Approved American viticultural areas are listed in 27 CFR Part 9.

In response to a petition, ATF published a notice of proposed rulemaking in the **Federal Register** (45 FR 17026) proposing a delimited grape-growing area in Napa County, California, as an American viticultural area. The proposed area consisted of most of the Napa River watershed within Napa County. ATF solicited public comment concerning the proposed area and held a public hearing to discuss the proposal on April 28-29, 1980, in Napa, California.

Comments

ATF received 100 written comments concerning the notice proposing the Napa Valley viticultural area. Thirty-seven persons testified at the public hearing. All the commenters agreed that a Napa Valley viticultural area should be established. They felt that the appellation "Napa Valley" clearly identified a wine with distinctive characteristics. They felt that wines currently labeled "Napa Valley" came from an area which was viticulturally distinctive from surrounding areas. Nevertheless, several commenters in both written comments and oral testimony disagreed over the proposed boundaries of the Napa Valley viticultural area. In all, ATF received comments concerning five boundary proposals. The proposals were as follows—

(1) Limit the viticultural area to the watershed of the Napa River (the original proposal);

(2) Limit the viticultural area to the watershed of the Napa River but allow landowners whose property is divided by the watershed line to declare whether their property, in its entirety, is inside the viticultural area or outside of it;

(3) Limit the viticultural area to those areas within the watershed of the Napa River below the 400-foot elevation line;

(4) Extend the proposed viticultural area to include the grape-growing areas in the smaller valleys east of the Napa River watershed and within Napa County; and

(5) Extend the watershed proposal to include the area in Napa County south of Suscol Ridge.

Historical And Current Evidence

Several commenters presented evidence that the watershed area originally proposed by ATF does not include the entire area known to wine producers, grape growers, and consumers as "Napa Valley." They stated that while the proposed boundaries may delimit the Napa River Valley, they excluded other areas historically and currently identified as being part of the Napa Valley grape-growing and wine-producing area. They claim that to restrict the Napa Valley viticultural area to a smaller area than that traditionally known as Napa Valley would be unfair since other areas have equal claim to the name "Napa Valley."

At the public hearing several grape and wine producers indicated that grapes grown in regions outside the watershed area but within Napa County were of the same general quality and possessed the same general characteristics as grapes grown within the watershed area. The record shows that grapes grown in eastern valleys such as Pope Valley and Wooden Valley have been used to produce "Napa Valley" wines since the early 1900's.

Regulations concerning the establishment of viticultural areas (27 CFR 9.3(b)(1)) require that the name of a viticultural area be known as referring to the proposed area. Further, 27 CFR 9.3(b)(2) requires that proposed viticultural area boundaries be supported by historical or current evidence that the boundaries encompass the area known by the proposed name. Based on the evidence presented, ATF has determined that the name "Napa Valley" has traditionally been applied to an area larger than the watershed of the Napa River when used in grape-growing and wine-producing references.

Geographical Features

In accordance with 27 CFR 9.3(b)(3), a viticultural should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

One commenter stated that the Napa Valley viticultural area should be restricted to the area within the watershed of the Napa River below the 400-foot elevation line because differences in elevation caused differences in the growing conditions for grapes. Other commenters stated that the areas outside the Napa River watershed differed in soil and climate from the areas within the watershed. Still other commenters disagreed by pointing out similarities among the grape-growing regions throughout most of Napa County.

From the comments received, ATF has determined that while certain areas below the 400-foot elevation line and certain areas within the Napa River watershed may vary in soil or temperature from their respective surrounding areas, the entire area delimited by the 400-foot elevation line and the entire area delimited by the Napa River Watershed line do not contain a unifying viticultural characteristic which distinguishes these areas from certain areas east of the watershed or south of Suscol Ridge. Instead, the evidence shows that both the watershed area and the 400-foot elevation area possess a range of viticulture characteristics shared by areas east of the Napa River watershed and the area south of Suscol Ridge.

Soil series, such as the Bressa-Dibble-Sobrante and Bale-Cole-Yolo, found in the grape-growing regions within the Napa River watershed and the 400-foot elevation area are also found in grape-growing regions east of the watershed yet within Napa County. Other soil types found within the watershed and 400-foot elevation areas, such as the Haire-Coombs and Reyes-Clear Lake Types, are also found in the area south of Suscol Ridge.

Heat summation measurements in the grape-growing regions east of the watershed area do not vary significantly from heat summation measurements within the watershed and 400-foot elevation areas. Furthermore, from the standpoint of average temperature measurements, the vineyard regions within the Napa Valley viticultural area described in the new § 9.23 differ from the surrounding area. The vineyard regions of the Napa Valley viticultural area are warmer than the vineyard regions west of the viticultural area and cooler than the grape-growing regions east of the viticultural area.

Boundaries

Based on the historical, current, and geographical evidence, ATF has decided to extend the viticultural area beyond the original proposal to include the grape-growing areas in Napa County east of the Napa River watershed and south of Suscol Ridge. The specific boundaries of the viticultural area are described in the new § 9.23. Basically, the viticultural area includes all of Napa County except for that portion of the county northeast of Putah Creek and Lake Berryessa. ATF believes that the new boundaries encompass an area which meets the requirements for a viticultural area by including all the areas traditionally known as "Napa Valley" which possess generally similar viticultural characteristics different from those of the surrounding areas.

Miscellaneous Comments

(1) *Use of the term "valley."* Some commenters felt that the Napa Valley viticultural area had to be restricted to some portion of the Napa River Valley because the inclusion of other areas would not fit the dictionary description of a "valley." ATF has not attempted to delimit the geological formation known as "Napa Valley," but has identified a grape-growing region which takes its name from a recognizable geographical feature in the grape-growing area. The areas outside the Napa River Valley proper which have been included in the viticultural area possess viticultural characteristics similar to those found within the Napa River Valley. Also as noted before, when used in a winemaking context, the name "Napa Valley" has traditionally and historically been applied to an area larger than the Napa River Valley.

(2) *No option for property owners.* At the public hearing a commenter suggested that the Napa Valley viticultural area should be extended to include a part of Sonoma County. Later, in a written comment, this commenter stated that area in Sonoma County should not be included, but that the final regulations should allow property owners whose property is divided by the viticultural area boundary to choose whether their property, in its entirety, is in or out of the viticultural area.

ATF believes that although there may be some viticultural similarities between an area in Sonoma County and an area in the Napa Valley viticultural area, the area in Sonoma County does not meet the requirements of 27 CFR 9.3(b)(1) since the area has not been known as "Napa Valley."

Also, property located outside the boundaries of a viticultural area may not be included in that viticultural area even if it is part of a larger parcel of property divided by the viticultrual area boundary. ATF believes that to hold otherwise would make the regulations meaningless and possibly mislead consumers of wines labeled with a viticultural area appellation of origin.

(3) *Inaccurate maps.* Finally, a commenter states that the Napa County-Sonoma County line on the United States Geological Survey (U.S.G.S.) maps is inaccurate and is different from the actual county line as drawn by the tax assessors of both Napa County and Sonoma County. ATF is using the actual Napa County-Sonoma County line as the western boundary of the Napa Valley viticultural area regardless of where the U.S.G.S. maps place it. ATF normally uses U.S.G.S. maps because they are generally available throughout the United States. However, in this case, ATF is using the Napa County tax assessor's maps as the approved maps defining the Napa County-Sonoma County line.

Effective Date

These regulations are effective February 27, 1981. However, since 27 CFR 4.25a, which allows the name of an approved American viticultural area to be used as an appellation of origin, is not mandatory before January 1, 1983, and the name "Napa Valley" is currently used as an appellation on wine labels, ATF has determined that § 9.23 establishing specific boundaries for the Napa Valley viticultural area will not be mandatory before January 1, 1983.

Summary of Changes in Regulations

(1) A parenthetical statement of the mandatory compliance date has been added to the title of § 9.23.

(2) The list of maps in paragraph 9.23(b) has been completed to include the appropriate maps showing the boundaries of the Napa Valley viticultural area.

(3) The regulatory boundary description in paragraph 9.23(c) has been changed to include all of Napa County except that portion of the county northeast of Putah Creek and Lake Berryessa.

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 and Issuance

This Treasury decision is issued under the authority of 27 U.S.C. 205.

Regulations

On the basis of the foregoing, 27 CFR Part 9 is amended by the addition of § 9.23 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.23. As amended the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.
9.23 Napa Valley (not mandatory before January 1, 1983).

2. Subpart C, 27 CFR Part 9, is amended by adding § 9.23. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.23 Napa Valley (not mandatory before January 1, 1983).

(a) *Name.* The name of the viticultural area described in this section is "Napa Valley."

(b) *Approved Maps.* The maps showing the boundaries of the Napa Valley viticultural area are the—

(1) "Mt. St. Helena" U.S.G.S. 7.5 minute quadrangle;

(2) "Detert Reservoir" U.S.G.S. 7.5 minute quadrangle;

(3) "St. Helena" U.S.G.S. 15 minute quadrangle;

(4) "Jericho Valley" U.S.G.S. 7.5 minute quadrangle;

(5) "Lake Berryessa" U.S.G.S. 15 minute quadrangle;

(6) "Mt. Vaca" U.S.G.S. 15 minute quadrangle;

(7) "Cordelia" U.S.G.S. 7.5 minute quadrangle;

(8) "Cuttings Wharf" U.S.G.S. 7.5 minute quadrangle; and

(9) Appropriate Napa County tax assessor's maps showing the Napa County-Sonoma County line.

(c) *Boundaries.* The Napa Valley viticultural area is located within Napa County, California. From the beginning point at the conjuction of the Napa County-Sonoma County line and the Napa County-Lake County line, the boundary runs along—

(1) The Napa County-Lake County line;

(2) Putah Creek and the western and southern shores of Lake Berryessa;

(3) The Napa County-Solano County line; and

(4) The Napa County-Sonoma County line to the beginning point.

Signed: November 12, 1980.

G.R. Dickerson,

Director.

Approved: January 14, 1981.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 81-3144 Filed 1-27-81; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/ A No. 61-81]

Exemption of Records Systems Under the Privacy Act; Production or Disclosure of Material or Information

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: As explained in the Notice Section of the January 23, 1981, Federal Register (46 FR 7507), the Federal Bureau of Investigation (FBI) proposed to modify its Identification Division Records System, JUSTICE/FBI-009. Coincidentally, by publication of this rule, the FBI also proposes to amend 28 CFR 16.96 to revoke the exemption of this system from subsection (m) of the Privacy Act. To accomplish this it will be necessary to amend 28 CFR 16.96 by revising introductory paragraph (e) and by removing paragraph (f)(8). Since revocation of this exemption would be in the public interest, it has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is contrary to the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. § 553(b)(B).

DATE: January 28, 1981.

ADDRESS: Administrative Counsel, Justice Management Division, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider (202–633–3452).

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR § 16.96 is hereby amended by revising introductory paragraph (e) and by removing paragraph (f)(8). Paragraphs (e) and (f) are reprinted below as amended.

Dated: January 13, 1981.

William Van Stavoren,

Acting Assistant Attorney General for Administration.

(e) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f) and (g):

(1) Identification Division Records System (JUSTICE/FBI–009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons stated in subsection (d)(1) of this section.

(2) From subsections (c)(4), (d), (e) (4) (G) and (H), (f) and (g) because these provisions concern an individual's access to records which concern him. Such access is directed at allowing the subject of a record to correct inaccuracies in it. Although an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34, the vast majority of records in this system concern local arrests which it would be inappropriate for the FBI to undertake to correct.

(3) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information on these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system it is impossible to review them for relevancy.

(4) From subsection (e)(2) because the records in the system are necessarily furnished by criminal justice agencies due to their very nature.

(5) From subsection (e)(3) because compliance is not feasible due to the nature of the records.

(6) From subsection (e)(5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From subsection (e)(8) because the FBI has no logical manner to ascertain whether process has been made public and compliance with this provision would, in any case, provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

[FR Doc. 81-3101 Filed 1-27-81; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

DEPARTMENT OF COMMERCE

Office of the Secretary

28 CFR Part 50

Request for Comments on the Department of Justice's Foreign Corrupt Practices Act Review Procedure

AGENCIES: Department of Justice, Department of Commerce.

ACTION: Solicitation of public comments.

SUMMARY: The Departments are seeking public comments on the effectiveness of the Department of Justice's Foreign Corrupt Practices Act Review Procedure in reducing uncertainty, if any, as to the meaning of the antibribery provisions of the Foreign Corrupt Practices Act.

DATE: Comments should be received by February 16, 1981 to assure consideration in preparation by Justice and Commerce of a report to the President regarding the effectiveness of the Review Procedure.

ADDRESS: Written comments in three copies when possible should be sent to Ms. Jo Ann Harris, Chief, Fraud Section, Criminal Division, U.S. Department of Justice, Room 832, 315 9th Street, N.W., Washington, D.C. 20530 and in three copies when possible to Mr. Cecil Hunt, Assistant General Counsel for International Trade, U.S. Department of Commerce, Room 3845, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: James Graham, Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, Washington, D.C. (202) 724–5717 or James L. Kenworthy, Office of the General Counsel, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–4845.

SUPPLEMENTARY INFORMATION: By notice of Final Rule published in the March 31, 1980 **Federal Register** (45 F.R. 20800) (28 CFR section 50.18) the Department of Justice established in the Criminal Division of that Department a Review Procedure pursuant to which any party may request a statement of the Justice Department's present enforcement intention regarding any proposed business conduct which might be covered by sections 103 or 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–1, –2) (the "FCPA").

The FCPA, which became effective in December of 1977, is directed, among other things, at eliminating bribery of foreign government officials by U.S.-based businesses. Civil enforcement responsibility for the FCPA is shared by the Department of Justice and the Securities and Exchange Commission. Criminal enforcement of the Act is the responsibility of the Department of Justice.

The Review Procedure was established by the Attorney General in response to the President's Statement of September 26, 1978 on a National Export Policy in which, among other things, he directed the Attorney General to provide guidance to the business community which would help reduce uncertainty as to the meaning and application of the antibribery provisions of the FCPA.

Since establishment of the review procedure, five Review Requests have been received by the Justice Department and four Review Releases have been published by the Department.

In his Report to the Congress on Export Promotion Functions and Potential Export Disincentives of September 1980, the President directed the Attorney General and the Secretary of Commerce to report to him by March 1, 1981, their assessment of the first year of operation of the FCPA Review Procedure.

Accordingly, the Departments of Justice and Commerce are seeking comments from the public, including business firms and other interested entities and individuals, regarding the effectiveness and the usefulness of the FCPA Review Procedure in reducing uncertainties as to the meaning of any of the antibribery provisions of the FCPA.

Parties submitting comments are asked to be as specific as possible. However, respondents are reminded that the Departments of Justice and Commerce are soliciting only information that may be made publicly available. No "confidential" information

will be accepted. Any information so designated will be returned to the respondent.

All comments received before February 16, 1981 will be considered in the preparation of the Justice and Commerce Departments' report to the President. While comments received after that date will be considered, if possible, their consideration cannot be assured.

All comments received from the public will be a matter of public record and will be available for public inspection and copying at the Department of Commerce in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 telephone (202) 377–4217.

John C. Keeney,

Acting Assistant Attorney General, Criminal Division, Department of Justice.

Alfred Meisner,

Acting General Counsel, Department of Commerce.

[FR Doc. 81-2714 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-BW-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Surface Coal Mining and Reclamation Operations on Federal Lands Under the Permanent Program; State-Federal Cooperative Agreements; Wyoming

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) previously published notice of its intent to propose rulemaking (45 FR 45927–31, July 8, 1980) and a notice of proposed rulemaking (45 FR 64971–78, October 1, 1980) to adopt a cooperative agreement between the Department of the Interior and the State of Wyoming for the regulation of surface coal mining operations on Federal lands in Wyoming under the permanent regulatory program. Such a cooperative agreement is provided for in Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1273(c), for any State with an approved state program. The Wyoming State program was conditionally approved by the Secretary of the Interior on November 26, 1980 (45 FR 78637–84). After opportunity for public comment and thorough review of the Wyoming permanent program cooperative agreement submission, the Secretary of the Interior and the Governor of the State of Wyoming approved a permanent program cooperative agreement on January 7, 1981. The agreement becomes effective upon publication in the **Federal Register** as a final rule (i.e., 30 days after publication according to Department of the Interior rulemaking procedures).

EFFECTIVE DATE: February 27, 1981.

ADDRESSES: Copies of the Wyoming permanent program cooperative agreement submission and of the related information required under 30 CFR Part 745 are available for public inspection Monday through Friday, 8 a.m. to 4 p.m., excluding holidays, at the following addresses:

Wyoming Land Quality Division, Department of Environmental Quality, Hathaway Building, Cheyenne, Wyoming 82002

Land Quality Division, 933 Main Street, Lander, Wyoming 82520

Land Quality Division, 300 East Grinnel Street, Sheridan, Wyoming 82801

Office of Surface Mining (Region V), U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colorado 80202

Office of Surface Mining (Headquarters), Room 153, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240.

Copies of the complete administrative record of this rulemaking, including summaries of all public meetings, oral contacts or meetings with State representatives, transcript of the public hearing, copies of all written comments received, previous draft versions of the agreement and the Wyoming State program, are available for inspection at OSM Headquarters, Administrative Record Room, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Donald T. Maurer, Chief, Division of Federal Programs, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, (703) 756–6970.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the process by which the Secretary decided to enter into a permanent program cooperative agreement with the Governor of the State of Wyoming. This discussion is divided as follows:

I. Background
II. Director's Finding
III. Approval of the Agreement
IV. Summary of the Agreement and Disposition of Comments

I. Background

A. The State of Wyoming's Request

Section 745.11(b)(1) through (8) of OSM's regulations at 30 CFR 745.11(b)(1) through (8) require that certain information shall be submitted by a State with its request for a permanent program cooperative agreement except to the extent that information has previously been included in the State program. On August 13, 1979, Wyoming submitted an initial draft of a proposed cooperative agreement and the other information required by 30 CFR 745.11(b)(1) as Part Q of the Wyoming program.

Information relating to the budget, staffing, organization and duties of the State regulatory authority (Land Quality Division, Wyoming Department of Environmental Quality) was described as appearing in Parts B, E, F, I, J, L, and O of the State program. See, 30 CFR 745,11(b)(1), (2), (4), (5), and (6). A written certification from the Attorney General concluded that "no State statutory, regulatory or other legal constraint exists which would limit the capability of the Department of Environmental Quality to fully comply with Section 523(c) of Pub. L. 95–87, as implemented by 30 CFR 745." With respect to the best available figures on comparison of Federal and non-Federal acres of mineable coal and the number of Federal, non-Federal and mixed estate mining operations in the State (30 CFR 745.11(b)(3)), Wyoming referred to Part H of the State program submittal. Part H contains the statistical information on coal exploration and surface coal mining operations in the State as required by 30 CFR 731.14(h). Included in Part H are a listing of proposed or contemplated mines, a table of production figures, a listing of proposed production from Federal and non-Federal mines, and a map of all existing permitted mines in the State of Wyoming.

B. The Text of the Agreement

Since Wyoming submitted the initial draft of a proposed permanent program cooperative agreement on August 13, 1979, several revisions of the original draft have occurred based on discussions between representatives of Wyoming and the Department of the Interior. These revisions are available for inspection in the Administrative Record Room, Room 153, Interior South Building, Washington, D.C. A revised proposed agreement submitted by the State of Wyoming on June 4, 1980, was

published at 45 FR 45929–31, July 8, 1980, and its terms were summarized at 45 FR 64973–76, October 1, 1980.

In addition, meetings were held in Denver, Colorado, on August 21, 1980, and December 11, 1980, with representatives of the State of Wyoming. Copies of the notes of both meetings are included in the administrative record, as are copies of the changes proposed at each meeting. Significant revisions resulting from the August 21 meeting are summarized at 45 FR 64978 and 64976–77. Final revisions of the text discussed at the December 11 meeting will be addressed below in the summary of provisions of the approved permanent program cooperative agreement.

C. Federal Rulemaking

On July 8, 1980, OSM published notice of its intent to propose rulemaking to adopt a cooperative agreement between the Department of the Interior and the State of Wyoming for the regulation of surface coal mining operations on Federal lands in Wyoming under the permanent regulatory program. 45 FR 45927–31. The public was given opportunity to comment until September 8, 1980. On October 1, 1980, OSM published a notice of proposed rulemaking, public hearing and an extension of the comment period (until November 7, 1980). 45 FR 64971–78. All contacts with State representatives were conducted in accordance with the Department's "Guidelines for Contacts with State Officials." See, 44 FR 54444–45, September 19, 1979, and 45 FR 64972, October 1, 1980. On December 16, 1980, OSM published notice reopening the comment period for 7 days to allow the public to review and comment on late comments received and on notes summarizing two meetings held after the close of the comment period.

II. Director's Findings

Under 30 CFR 745.11(f), the Director, OSM, must make the following three findings before recommending to the Secretary that the Department of the Interior enter into a cooperative agreement with a State.

Finding No. 1: The Director finds that the State of Wyoming has an approved State Program, such program having been conditionally approved by the Secretary on November 26, 1980. 45 FR 78637–84.

Finding No. 2: The Director finds that the State regulatory authority has sufficient budget, equipment and personnel to enforce fully the State's statutes and regulations for the regulation of surface coal mining and reclamation operations on Federal lands in Wyoming. The Director makes this finding pursuant to a memorandum from the Regional Director, Region V dated January 6, 1981, explaining how the Wyoming State program's various provisions applied to operations on Federal lands. For further information on the State regulatory authority capabilities, see the discussion regarding the Secretary's findings for conditional approval of the State program (45 FR 78675, November 26, 1980). These finding were reported to the Secretary by the Director, OSM, in a decision memorandum dated January 7, 1981, which summarized the information already contained in the administrative record and recommended approval of the cooperative agreement.

III. Approval of the Agreement

Based upon the conditional approval of the Wyoming State program, the administrative record of this rulemaking, including written and oral comments and the public hearing, and the findings and recommendations of the Director, OSM, the Secretary decided to approve a permanent program cooperative agreement for the State of Wyoming. The agreement was signed in Washington, D.C. on January 7, 1981, by the Governor of the State of Wyoming and the Secretary of the Interior. By its terms, the agreement becomes effective upon publication as final rulemaking in the **Federal Register.** Accordingly, the complete text of the permanent program cooperative agreement between the State of Wyoming and the Department of the Interior is published at the conclusion of this notice. Under procedures governing rulemaking by the Department of the Interior (see, 43 CFR Part 14), the cooperative agreement will become a final rule 30 days after publication in the **Federal Register.**

IV. Summary of the Agreement and Disposition of Comments

Each article of the agreement and the corresponding comments are summarized below, along with the Department's disposition of the comments.

Article I: Introduction and Purpose

This article sets forth legal authority for the permanent program cooperative agreement. The purposes of the cooperative agreement are also listed. The cooperative agreement provides that State regulation shall be consistent not only with the Act and the Federal lands program, but also with "the State program." This language was added by the Department in accordance with Section 523(a) of the Act, which requires that a "Federal lands program shall, at a minimum, include the requirements of the approved State program." 30 U.S.C. 1273(a).

One commenter suggested addition of an Article I(3) emphasizing that the Governor and the Secretary recognize the responsibility of the Secretary to manage Federal lands for the enjoyment, use and benefit of all states and the nation. This comment has been rejected because the suggested language would be superfluous. Under Section 523(a), the Secretary is obligated to manage Federal lands in a manner consistent with Federal law and regulations and applicable State requirements. The cooperative agreement, allowing for State regulation of surface coal mining on Federal lands under the Wyoming State program, in no way negates the Secretary's ultimate responsibility for activities on Federal lands. See, Section 523(c).

Article II: Effective Date

This article provides that the signed agreement shall become effective upon publication as final rulemaking in the **Federal Register.** Under procedures governing rulemaking by the Department of the Interior (see, 43 CFR Part 14), the cooperative agreement will become a final rule 30 days after publication in the **Federal Register.** Two commenters suggested that promulgation of the cooperative agreement is premature until such time as the conditions for approval of the Wyoming State program are fully satisfied. The Department has rejected this comment because Wyoming has already agreed to accept those conditions. 45 FR 78683, November 26, 1980.

Wyoming initially submitted its proposed permanent regulatory program to the Secretary on August 15, 1979. Notice of receipt of the submission and request for public comment was published on August 22, 1979, at 44 FR 49313–14, and in newspapers of general circulation within the State. Since that time, the public has had ample opportunity to comment during the process of developing the State program. See, 45 FR 78639–40, November 26, 1980.

The State program was approved in part by the Secretary on February 15, 1980. Public announcement of the decision was published in the Federal **Register** on March 31, 1980. 45 FR 20930–82. After resubmission by the State and opportunity for public review and comment, the Secretary conditionally approved the State program on November 26, 1980. 45 FR 78637–84.

Conditional approval of a State program is authorized under 30 CFR 732.13(i) where a program is found to

have only minor deficiencies. That regulation was promulgated to give the Secretary some flexibility to conditionally approve programs were minor deficiencies must be overcome and where the State has been making a good faith effort to develop an acceptable program. 44 FR 14960, March 13, 1979.

The State program took effect in Wyoming on November 26, 1980, the date of conditional approval. 45 FR 78637–84. Thus, the Secretary is now authorized by Section 523(c) to enter into a cooperative agreement with Wyoming. Should the State fail to correct in a timely manner those minor deficiencies listed by the Secretary in his conditional approval, the conditionally approved State program will terminate (see, 30 CFR 723.13(i)(4)) and the cooperative agreement would terminate by operation of law (see, 30 CFR 745.15(c)(2)).

Article III: Scope

Article III provides that the laws, regulations, terms and conditions of the State program are applicable to Federal lands in Wyoming, except as otherwise stated in the agreement, the Act, 30 CFR 745.13 ("Authority reserved by the Secretary."), or other applicable laws.

Article III specifically implements Section 523(a) of the Surface Mining Act, which provides that "[w]here Federal lands in a State with an approved State program are involved, the Federal lands programs shall, at a minimum, include the requirements of the approved State program." 30 U.S.C. 1273(a). In addition, by making the Wyoming State program applicable to Federal lands in the State, this provision also implements the requirement of Section 523(a) of the Act to "take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question." 30 U.S.C. 1273(a).

The effect of this article is to adopt the Wyoming program as substantive Federal law enforceable by the United States. Similarly, promulgation of this cooperative agreement as a final rule will have the effect of adopting the entire agreement as substantive Federal requirements. While making the State program applicable to Federal lands in the State, this provision recognizes that authority reserved by the Secretary under 30 CFR 745.13, obligations imposed upon the Secretary by other applicable laws, and the provisions of the Act itself will be controlling in potential instances of conflict with the State program.

One commenter stated that the cooperative agreement must incorporate *all* of the requirements of the Act and the Department's regulations. It is unnecessary to include this language as a specific provision in the agreement. The Secretary has determined, through the process of conditionally approving the State program, that Wyoming's regulation of surface coal mining and reclamation operations is in compliance with the requirements of the Federal Act and regulations. Thus, application of the State program to Federal lands in Wyoming under the terms of this agreement will necessarily implement the substantive and procedural requirements of Section 523 and 30 CFR Subchapter D, which in turn make applicable all of the Federal Act and regulations (or their equivalents as conditionally approved in the State program). Nevertheless, it is understood that the Secretary's ultimate responsibility for compliance with Federal law and regulation on Federal lands under his jurisdiction—a final responsibility which cannot be delegated (Section 523(c))—necessitates that the Act must control in potential instances of conflict with the State program.

One commenter argued that the Department has incorrectly interpreted (pursuant to the definition of "Federal lands" in Section 701(4) of the Act, 30 U.S.C. 1291(4)) its jurisdiction over Federal lands to include privately-owned surface overlying federally-owned coal. This commenter believed that this interpretation thwarts the Congressional intent that the States have the primary responsibility for regulation of surface coal mining. The Secretary has rejected this comment for two reasons. First, similar comments were received, considered and rejected during the development of the permanent regulatory program for surface coal mining and reclamation operations. See, 44 FR 14911, 14973, March 13, 1979. The Secretary is not aware of any action presently pending before any Federal court in which this interpretation of "Federal lands" is under challenge. Second, this interpretation of Federal lands has in no way thwarted the Secretary from agreeing, pursuant to the cooperative agreement, to provide for State regulation of surface coal mining on Federal lands in the State.

Article IV: Requirements for the Agreement

This article, which is similar to a provision in Wyoming's interim program cooperative agreement (30 CFR 211.77(a)), pulls together into one article provisions which had been spread out through various articles in previous versions of the agreement. The article binds the Governor and the Secretary to comply with all provisions of the agreement and to continue to meet the requirements contained in the article.

Article IV provides that the State Regulatory Authority (SRA) will administer the agreement on behalf of the Governor, and that OSM will act on behalf of the Secretary. Readers should note that the SRA for purposes of administering this agreement in the State is the Wyoming Department of Environmental Quality, and that Wyoming affirms in the agreement that "[t]he SRA has and shall continue to have authority under State law to carry out this Agreement."

This article also contains provisions that require the State of Wyoming to maintain adequate funds, personnel, the equipment and laboratory facilities to fully implement the agreement. Two commenters suggested that certain evidence of the State's compliance with the interim program cooperative agreement indicated that the State was not devoting sufficient manpower to carrying out the terms of the interim program cooperative agreement. The Department is presently investigating these charges concerning the interim program cooperative agreement. However, the Secretary believes that Wyoming has sufficient budget, equipment and personnel to enforce fully the State's statutes and regulations for the regulation of surface coal mining and reclamation operations on Federal lands in the State under the permanent program cooperative agreement. (See memorandum dated January 6, 1981, from Donald A. Crane, Regional Director, Region V, to Walter Heine, Director, OSM.) As noted previously, nothing in this cooperative agreement negates the Secretary's ultimate responsibility for Federal lands. Should the State fail to comply with the terms of the agreement, the Secretary may terminate this agreement in accordance with Article IX and 30 CFR 745.15.

With regard to funding, Article IV would require Wyoming to devote adequate funds to the administration and enforcement of the requirements of the State program on Federal lands in the State. It further provides that the State may be reimbursed pursuant to Section 705(c) of the Act, 30 U.S.C. 1295(c), and 30 CFR 735.16, for costs associated with carrying out the agreement, provided that the agreement has been implemented to the satisfaction of the Department and that necessary funds have been appropriated to OSM by the Congress. Section 705(c) of the Act provides that a State with a cooperative agreement may receive an

increase in its annual grant for the development, administration, and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount that the Federal Government would have expended to regulate surface coal mining and reclamation operations on Federal lands.

Article IV requires the SRA, pursuant to 30 CFR 745.12(c), to make annual reports to the Regional Director concerning the State's compliance with the agreement. The article provides for exchange of information between the SRA and the Department, and it requires the Secretary to provide to the SRA a copy of any approved report evaluating State administration and enforcement of the agreement.

Article IV also contains a provision concerning permit application fees. Previous versions of the agreement specified dollar amounts which were identical to the requirements found in the State program. The final version of the agreement has been shortened by deleting specific amounts and cross-referencing to the Wyoming statutes.

In addition, Article IV requires that a report of the amount of permit application fees collected and attributable to Federal lands be included in the annual Financial Status Report submitted pursuant to 30 CFR 725.23. Finally, the article provides that such permit fees collected for applications on Federal lands shall be disposed of in accordance with Federal regulations found in OMB Circular No. A–102, Attachment E.

With regard to permit application fees, previous draft versions of the agreement have differed as to whether the amount of fees collected by the State for Federal lands should be deducted from the annual cooperative agreement grant for reimbursement of State costs in administering the program on Federal lands. The final agreement does not address this issue directly. Rather, it provides that the permit application fees collected by the State for Federal lands shall be disposed of in accordance with OMB Circular No. A–102 (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments), Attachment E (Program Income), 42 FR 45628–30, September 12, 1977. This directive provides for conditions to be included in individual grant agreements requiring grantees to account for program income (i.e., gross income earned by the grantee from grant-supported activities) related to projects financed in whole or in part with Federal grant funds. The Secretary agrees with the commenter who believed that failure to deduct from the grant those fees collected by the State for Federal lands would essentially amount to a double payment to the State for mining plan and permit review, administration, and enforcement. Accordingly, while recognizing that the OMB Circular permits some case-by-case discretion regarding provisions in individual grants governing program income disposal, the annual grants reimbursing States for costs associated with carrying out responsibilities under cooperative agreements will in fact require deduction from the total grant amount of the income from permit application fees.

Article V: Policies and Procedures: Mining Plan and Permit Application Review

Article V creates procedures for cooperative review of mining plans and permit applications for surface coal mining operations on Federal lands or on commingled State, private, and Federal lands. While the substance has remained essentially the same, this article has been revised from previous versions for clarity and to combine two articles (see Articles IV and VII, 45 FR 45929, July 8, 1980) into one integrated article covering mining plans and permit applications. In addition, this final version responds to several commenters who stated that the proposed procedures for the processing of mining plans and permit applications under the cooperative agreement included excessive OSM involvement, and that such involvement was contrary to one of the principal purposes of the cooperative agreement—to eliminate intergovernmental overlap and duplication.

Accordingly, the final cooperative agreement seeks to eliminate all areas of avoidable duplication of review and analysis. Procedures adopted toward this end include the following: (1) early agreement between the SRA and OSM on completeness of plans and applications, on any area requiring special attention during the review by the State or OSM, and on the work plan for the substantive review; (2) designation of an application manager by the Regional Director to maintain cognizance over the review process and to identify to the Regional Director areas of avoidable duplication; and (3) preparation of decision documents by the State which, after careful review by OSM, may be used as a basis for decision by the Secretary on the mining plan and permit application. The Secretary and the Governor expect that specific details and solutions to any problems will be worked out on a case-by-case basis.

Such procedures for elimination of duality in administration are consistent with the intent to have the SRA assume primary responsibility for the analysis and review of mining plans and permit applications for surface coal mining on Federal lands in the State.

However, readers should understand that the Secretary retains ultimate responsibility for the decision to allow mining on Federal lands. This responsibility is derived from the Secretary's nondelegable duty (pursuant to Section 523(c) of the Act, 30 U.S.C. 1273(c) and 30 CFR 745.13) for the approval of mining plans on Federal lands.

Additionally, the Secretary is charged with assuring compliance with numerous other Federal laws and regulations on Federal lands under his jurisdiction, such as the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). Thus, while the cooperative agreement provides for the State to have primary responsibility for the analysis and review of mining plans and permit applications, it will be necessary for the State to have sufficient technical and administrative capability to produce a decision package (or material readily adaptable to the decision package) which meets the legal and procedural requirements of the Department. This arrangement will enable the Department to make the final decision on the mining plan and permit application, and no surface coal mining can take place on Federal lands until the Secretary has approved the mining plan and permit application.

Article V is entitled "Policies and Procedures: Mining Plan and Permit Application Review." Previous versions of the agreement have used the terms "mine plans," "Mining and reclamation plans," and "permit applications" somewhat interchangeably. One commenter stated that this inconsistency created confusion and raised numerous questions. In response to the comment and in order to eliminate confusion, the final agreement uses both terms: "mining plan" (*i.e.*, requirements of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations at 30 CFR 211 *et seq.*) and "permit application" (*i.e.*, requirements for compliance with the Surface Mining Act and the State program).

Under Article V(6) an operator on Federal lands would be required by the Governor and the Secretary to submit an identical mining plan and permit application (or an application for a major modification to an approved mining plan and permit application) in

an appropriate number of copies to the SRA and the Regional Director. The mining plan and permit application must be in the form required by the SRA, and must also include any supplemental information required by the Secretary. At a minimum, the plan and application must include the necessary information for the SRA and the Secretary to make a determination of compliance with the State program, applicable terms and conditions of the Federal laws and regulations (including, but not limited to, those listed in an Appendix A to the agreement). Submission of the information required by the SRA would be deemed to satisfy the requirements of 30 CFR 741.12(b)(1) and 30 CFR 741.13(c) regarding the contents of permit applications.

One commenter raised numerous questions concerning the treatment of major and minor modifications under the cooperative agreement. In response to this comment, Article V(6) was revised to require that an application for a major modification to an approved mining plan and permit application be submitted in the same manner as a new mining plan and permit application. This provision is necessary because final approval of a major modification to a mining plan is a responsibility which the Secretary may not delegate. See, 30 CFR 741.13(i).

At the December 11, 1980, meeting with representatives of the State of Wyoming, State officials commented that the Department's regulations are unclear as to what constitutes a major modification. A rulemaking will be initiated in the future in order to clarify the term "major modification." However, until such time as a final rule is promulgated, OSM and the State will coordinate closely, during the cooperative review process described below, in order to identify major modifications and to assure that such modifications are processed in accordance with the Secretary's responsibilities. It is understood that modifications which are clearly minor may be approved by the SRA with regard to those requirements imposed by the State program. However, the Secretary, through the United States Geological Survey (USGS), retains approval authority over minor modifications as they affect requirements imposed by the Mineral Leasing Act of 1920.

One commenter suggested that the cooperative agreement include a listing of other Federal statutes and regulations for which compliance would be required of the permit applicant. The State submitted an Appendix A, listing major statutes for which the Secretary has ultimate responsibility to assure compliance on Federal lands. A slightly revised version of Wyoming's proposed Appendix A was adopted in the final agreement. (Included in the final version of Appendix A, in response to a commenter's suggestion, is a specific reference to Executive Order No. 11593 (May 13, 1971)). However, OSM stresses (as provided in the text of the cooperative agreement) that Appendix A is not all-inclusive of Federal requirements on surface coal mining operations on Federal lands. Among other Federal requirements not listed in Appendix A for which the Secretary is required to assure compliance (both now and under the cooperative agreement) are the following: (1) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, (2) Bald Eagle Protection Act, 16 U.S.C. 668 *et seq.*, (3) Refuse Act of 1899, 33 U.S.C. 407, (4) Antiquities Act of 1906, 16 U.S.C. 431, (5) Taylor Grazing Act, 43 U.S.C. 315 *et seq.*, (6) Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, (7) Multiple Use and Sustained Yield Act, 16 U.S.C. 528 *et seq.*, (8) Noise Control Act of 1972, 42 U.S.C. 4901 *et seq.*, (9) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and (10) Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

One commenter expressed concern that, under the terms of Article V(6)(e), insufficient information may be submitted by a permit applicant for a determination of compliance with the surface owner consent requirements of 30 CFR 741.13(c)(3) because the State's own surface owner consent provisions for State land differ from Federal requirements. No change was made in the text of the article because it is understood that information required by a State to satisfy the requirements of 30 CFR 741.13(c) must be supplemented where necessary to fully comply with the mandate of 30 CFR 741.13(c)(3). This is so because Article V(6)(e) should not be considered as reducing the requirements of Article V(6)(d). Since surface owner consent requirements on Federal lands differ from similar requirements under the State program on State lands, the Secretary believes that the Federal surface owner consent provisions are among the "other" Federal requirements under Article V(6)(d) for which the Secretary has responsibility.

Article V(7) states that the State has primary responsibility for review of mining plans and permit applications required by 30 CFR 741.13. The Secretary, through OSM's Regional Director, shall assist the State as requested, and shall evaluate the State's conclusions in order to independently determine whether the Secretary concurs in the State's decision.

One commenter urged that it be made clear that when the Secretary "evaluates" the State's analysis and conclusions, the evaluation may not be limited to a mere reading of the material submitted by the State. While the State will usually prepare the documentation and recommend a decision on the mining plan and permit application, such decision packages must provide sufficient information to meet the legal and procedural requirements of the Department of the Interior, because no mining can occur until the Secretary has independently reviewed and approved the mining plan and permit application. Should the State's documentation be insufficient to support a Secretarial decision for Federal lands, the Department must perform (either with the SRA, or independently, if necessary) whatever work is necessary to supplement the decision package so that it meets the administrative standards required for Federal decisions. Close coordination and communication with the State during the review process should result in decision packages from the State upon which the Secretary may properly base his decision.

One commenter suggested addition of a provision that the Secretary should assist the State as requested "and as staff may reasonably be available." This comment has been rejected. It is understood that performance of functions is dependent upon reasonable availability of staff. Within this context, however, the Secretary believes he has an obligation to make every reasonable effort to provide requested assistance to the State so that the process of review and analysis of the mining plan and permit application will track as closely as possible the time requirements of the State program.

Article V(8) provides that the SRA will be the primary point of contact for operators (i.e., applicants) regarding mining plans and permit applications. All joint State-Federal determinations will be channeled to applicants through the SRA. The SRA will provide to the Regional Director copies of all correspondence with the applicant concerning the mining plan and permit application. With respect to matters covered by the State program, OSM will not, to the extent reasonable, independently contact applicants concerning completeness or deficiencies of mining plans and permit applications. However, the article provides that the

Secretary may independently contact applicants to carry out responsibilities under other Federal laws, under other provisions of the Act not covered by the State program, or in instances of disagreement over the Act and the Federal lands program. Copies of such independent correspondence between OSM and applicants will be sent to the State.

One commenter objected to previous versions of the article which precluded independent contact with applicants by OSM on matters covered by the State program. The Department has agreed with the commenter and modified the language to provide that, "[t]o the extent reasonable," OSM would not independently initiate contacts with applicants concerning matters covered by the State program. Flexibility and a rule of reason must govern here. There are times when the SRA is not available and the applicant must be notified, or instances where the applicant will contact OSM. Of course, when matters of substance—such as a need for data, clarification of data, or mine site investigations—are involved, OSM will work through the SRA.

One commenter suggested that copies of independent correspondence between OSM and the applicant be sent to the State, consistent with the requirement that the SRA provide copies to OSM of correspondence concerning the mining plan and permit application. The comment has been accepted and this provision has been added to Article V(8).

One commenter urged that, for administrative purposes, seven copies be sent to OSM of all correspondence or information concerning the application. This comment has been rejected because such procedural details will be worked out on a day-to-day basis by the State and OSM.

Article V(9) makes the Regional Director responsible for ensuring that information received by OSM regarding the application be sent to the SRA. During the process of reviewing mining plans and permit applications, the Regional Director and the SRA will coordinate on a regular basis. The Secretary regards this coordination as crucial if timely decisions are to be made. As noted previously, no mining can take place on Federal lands until the Secretary has approved the mining plan and permit application. If the SRA's documentation and recommended decision do not meet the legal and procedural requirements which are imposed upon the Secretary by statute, regulation, and Federal judicial interpretation, the Secretary will require additional information to produce a legally supportable decision under Federal standards. Close coordination throughout the review process will help to assure that the State's work will produce a decision package which can support a Secretarial decision, thus obviating the necessity for additional work (and time) after the State has forwarded its recommended decision to the Regional Director.

Recognizing that other Federal agencies have varying degrees of responsibility over mining plans and permit applications on Federal lands in Wyoming, Article V(10) makes the Regional Director responsible for obtaining on a timely basis and making known to the SRA the views of other Federal agencies. Likewise, the SRA shall inform the Regional Director of its findings which bear on the responsibilities of other Federal agencies. The effect of this article, therefore, is to make the Regional Director responsible for obtaining the views of all agencies on the Federal side, and the SRA responsible for obtaining the views of all agencies on the State side, with such coordination to be done in a timely manner and with information to be exchanged.

By designating OSM, through the Regional Director, as the coordinator for obtaining the views of all Federal agencies which may have some degree of responsibility over mining plans and permit applications on Federal lands, the article responds to a commenter who suggested that procedure. (Previous versions of the agreement limited the Regional Director's responsibility to obtaining the views only of Federal agencies in Interior.) Designation of a single contact point for all Federal Agencies will contribute to a more efficient review process and will better enable the SRA to meet the time deadlines of the State program. The State expressed agreement with this procedure at the December 11, 1980, meeting with representatives of OSM.

In adopting this comment, the Secretary has rejected a comment that the SRA should be given the authority to "coordinate the review and approval of . . . all federal permits for mining operations." The same commenter also believed that OSM should defer to State and Federal regulatory authorities implementing other Federal laws. Again, the approach taken in Article V(10) corresponds to the State's preference, promotes efficiency and aids in completing the review process within the State program time deadlines. Because the Secretary is ultimately responsible for compliance with all Federal laws and regulations on Federal lands under his jurisdiction, it is appropriate for OSM to act as coordinator for obtaining the views of other Federal agencies so that the Secretary may assure compliance with the approved State program and other Federal standards.

Article V(10) also includes a provision requiring the Regional Director to take appropriate action to facilitate discussions between the SRA and Federal agencies concerning problems identified in the review. One commenter suggested that the SRA have a similar responsibility to facilitate discussions between OSM and State agencies to resolve issues. The Secretary has rejected this comment. The State should have primary responsibility for review of the application under the terms of the State program, and Federal inquiries should be directed through the SRA.

Article V(11) begins discussion of the actual review process. After receipt of a mining plan and permit application, the Regional Director must review the documentation for completeness with respect to other Federal laws and policies and for identification of unique or special circumstances. The Regional Director must designate an OSM application manager to serve as the primary point of contact between OSM and the SRA during the review process. OSM's application manager is responsible for identifying areas of avoidable duplication of review and analysis, and such duplication must be eliminated by the Regional Director.

Within 50 days of receipt of the application, OSM and the SRA must meet to discuss completeness. After agreement on completeness (or no longer than 30 days thereafter), OSM and the SRA must agree on a work plan and schedule for review. The Regional Director must identify specific or general areas of concern and recommend possible OSM assistance. The SRA must inform OSM of areas requiring OSM assistance.

One commenter suggested that OSM's completeness review include requirements of the Act in addition to other Federal laws and policies. The Secretary chose not to adopt within the agreement a provision requiring a formal OSM completeness review for compliance with requirements of the Act, because the State has been given primary responsibility for review of the requirements of the Act as incorporated into the approved State program. Nevertheless, it is anticipated that OSM will conduct its own informal completeness review for compliance with the Act's requirements in order to gain familiarity with the mining plan and permit application. Such informal

review will provide for more effective coordination between OSM and the SRA during the review process and will prepare OSM staff for its final review of the State's documentation and recommended decision prior to a Secretarial decision. In addition, OSM's obligation to identify "unique or special circumstances" necessitates that OSM's completeness review include an examination of compliance with the State program and the Act.

Designation of an application manager to coordinate OSM responsibilities (including obtaining the views of other Federal agencies) and to identify areas of avoidable duplication responds to several commenters who believed that excessive OSM involvement in a review for which the State is to be primarily responsible is contrary to the intent of the cooperative agreement. The Secretary believes that these provisions in the final agreement will promote efficiency and serve to diminish duality of administration in the review process. However, some degree of duplication may remain. OSM must be familiar with the application in order to identify unique or special circumstances, to assist the SRA where assistance is requested, to coordinate review for compliance with other Federal laws, regulations, and policies and with provisions of the Act not covered in the State program, and to be in a position to review the State's documentation and recommended decision to assure that the decision package meets those Federal legal and procedural requirements necessary to produce a legally supportable Secretarial decision. Absent unique or special circumstances, the State will be primarily responsible for completeness review of those aspects of the mining plan and permit application covered by the State program. However, a high degree of coordination (through the OSM application manager) throughout the process is essential to assure that the SRA and OSM will meet the time deadlines of the Wyoming State program and, to the extent possible, that the State's proposed decision packages will meet Federal standards and obviate the necessity for extensive and time-consuming Departmental review prior to Secretarial decision.

A previous draft introducing the concept of an application manager called for that person to be responsible for the elimination of duplication. One commenter suggested that this responsibility was inappropriate because an OSM staff person would not be in a position to assume all of its responsibility. Accordingly, the final agreement makes the application manager responsible for identifying areas of avoidable duplication and charges the Regional Director with responsibility for eliminating duplication.

There are three additional aspects to the problem of eliminating duplication. First, the agreement refers to "avoidable" duplication. As discussed above, it is impossible to eliminate all duplication due to the very nature of the SRA's responsibilities under the State program and the Secretary's overall responsibilities on Federal lands under the Act, the regulations, and other Federal requirements. Thus, some duplication of review is unavoidable, although the Secretary recognizes the primacy of the State for review and analysis of matters covered by the State program. Second, in attempting to eliminate avoidable duplication, the Regional Director will be bound to requirements of Federal law and Departmental policy. Thus, situations may arise where the Regional Director does not have absolute discretion to eliminate a particular duplicative process and may only recommend elimination of particular duplication, subject to approval (for example) by the Director, OSM. Third, elimination of duplication, in practice, will require cooperation between OSM and the SRA. In effect, elimination of duplication will be a shared responsibility. As areas of avoidable duplication are identified on a case-by-case basis during the initial reviews of mining plans and permit applications under the cooperative agreement, the entire review process will become more efficient and minimize duality in administration.

Earlier versions of the agreement provided for a completeness review meeting between OSM and the SRA within 60 days of receipt of the application. the timing has been changed to 50 days, in response to a request from the State of Wyoming during the meeting on December 11, 1980. The purpose for shortening the time period is to assist the State in meeting the time requirements imposed on the SRA by the State program.

With regard to the timing of the completeness meeting, one commenter suggested that a provision should be added allowing for alternate (and extended) time frames in the event that OSM could not meet the time limit because of either the complexity of the plan or a shortage of staff. The Secretary has rejected this comment. Since the State has primary responsibility for review of mining plans and permit applications, OSM has an obligation to make every reasonable effort to perform its functions within a time frame which would assist the State in meeting the time deadlines imposed by the State program. Of course, a prerequisite to OSM's meeting strict time frames is the cooperation of the SRA in promptly forwarding copies of all information to OSM (as provided for in the agreement).

A previous version of the agreement specified that the SRA and the Regional Director should meet to discuss completeness. One commenter believed that it was inappropriate to require the Regional Director's participation in this meeting. OSM agreed with the comment and substituted "OSM" for "Regional Director" in order to clarify that the Region's technical staff may carry out this function.

Another commenter suggested that the SRA be required to inform the Regional Director "in a timely manner" where OSM assistance will be needed. The suggested language appears to be unnecessary. Timely communications during the entire review process are required if the time deadlines of the State program are to be met, and it is certainly in the best interests of the SRA to assure that OSM has sufficient opportunity to provide requested assistance.

Previous versions of Article V(11) included a provision requiring that any disagreements between OSM and the SRA over the division of duties or the schedule under the work plan be referred to the Secretary and Governor for resolution. One commenter suggested that this provision be deleted, believing such disputes should be resolved at the regional level rather than at the level of the Secretary or Governor. The Secretary has accepted this comment, believing that only resolution of disagreement (between the SRA and the Regional Director) on final decisions for mining plans and permit applications merits referral to the Governor and the Secretary. At the December 11, 1980, meeting, the State agreed to delete this provision. Article V(15) of the agreement now provides for referral to the Governor and the Secretary of disagreements on final decisions. The provision is similar to Article IV(B)(7) of the interim program cooperative agreement with the State of Wyoming. 30 CFR 211.77(a).

Articles V(12)–V(16) have been altered from previous versions of the agreement in order to eliminate duplication in the text. Article V(12) provides that the SRA shall prepare, unless the work plan and schedule provide otherwise, a technical/environmental analysis document which

will include a proposed final decision on the mining plan and permit application. In order to eliminate duplication, the SRA and OSM will cooperate to the fullest extent allowed by State and Federal law and regulations in conducting the technical/environmental analysis and in meeting NEPA requirements. The SRA will send to the Regional Director copies of drafts of these documents, and the Regional Director will review the documents and inform the SRA within 30 days, whenever possible, of changes that are necessary. After considering the comments of the Regional Director, the SRA will send back a final technical/environmental analysis document and a proposed final decision on the mining plan and permit application. After receipt of the documentation, the Regional Director will have 30 days in which to act. Should no further changes be required, the Regional Director will proceed in accordance with 30 CFR 741.21 and inform the SRA of his action. Finally, OSM will be responsible for development of any environmental impact statements required under NEPA.

Under the initial Federal lands program (30 CFR Part 211), OSM prepares a recommendation package which typically consists of a technical analysis, environmental assessment (and/or an environmental impact statement), proposed stipulations and other documents (e.g., regional recommendation, comment letters, concurrence letters). See, for example, 45 FR 37743, June 4, 1980, announcing the notice of pending decision and availability of documents for the Buckskin Mine, Campbell County, Wyoming. These documents constitute "the record" upon which the Secretarial official makes a decision on the mining plan pursuant to Section 523(c) of the Act. 30 U.S.C. 1273(c). A similar recommendation package has already been prepared under the permanent program in Montana. See, 45 FR 80368, December 4, 1980.

The cooperative agreement assigns responsibility (unless altered by mutual agreement of the SRA and OSM during the work plan stage) for the technical/environmental analysis to the SRA. Such documentation will be prepared by the SRA in accordance with the requirements of the State program, and with a special understanding of those legal and procedural requirements necessary for a decision package that will support a Secretarial decision on the mining plan and permit application. It is anticipated that coordination and cooperation between OSM and the SRA throughout the review process (e.g., at the completeness review stage, or at the stage where the Regional Director comments on the SRA's final draft documentation) will result in the SRA's final documentation and recommended decision being sufficient to support a Secretarial decision following mandatory OSM review. In instances where the documentation is insufficient to comply with Federal administrative standards required of Secretarial decisions, the SRA (or OSM independently) must supplement the record. At a minimum, the SRA's documentation will become a part of the overall Secretarial decision package, subject to OSM supplementation in order to produce a decision package that will meet Federal legal and procedural requirements for such decision. It is the Department's responsibility, after review of the State's final documentation and recommended decision (and OSM should be well-informed due to close coordination with the SRA throughout the review process) to assure that the Regional Director's recommendation is in compliance with the Standards of the Act, the regulations, and all other applicable Federal laws and policies. For this reason (along with previous discussion concerning the Secretary's ultimate responsibility to assure compliance with the Act, the regulations, and all other Federal laws and requirements), the Secretary rejected the suggestion of one commenter that the agreement state specifically that the Department will not refuse to approve an application which meets Wyoming's State program requirements.

One commenter urged addition of language expressly providing that OSM may perform technical/environmental analyses in the course of program oversight functions and as necessary to carry out the Secretary's responsibilities under the Act, NEPA, and other Federal laws. No change was made in the text of the agreement, although the Secretary agrees with the comment. It is understood that OSM must perform any analyses necessary to assure that the decision package will support a Secretarial decision, and the work plans will ensure that this responsibility is carried out. However, emphasis will be placed on cooperation and coordination with the SRA throughout the entire review process, in hopes of minimizing the need for additional OSM staff work to supplement the record once the State has sent its final documentation and recommended decision to the Regional Director.

One commenter suggested addition of language requiring the SRA to forward copies of drafts of the technical/environmental analysis to the Regional Director "in a timely manner." OSM did not add this language, because the 30-day time limit ("whenever possible") for the Regional Director's review of the drafts should begin to run upon receipt by the Regional Director. Of course, it is in the interests of the SRA to forward all information to the Regional Director in a timely manner, so that the time limits of the Wyoming State program can be maintained.

Two commenters were concerned about the participation of the Federal surface managing agencies in the review process. One suggested a requirement for immediate notice of proposed mining activities in the vicinity of the boundaries of any unit of the National Park Service. Another suggested a provision requiring the SRA to consult with the surface managing agency during preparation of the technical/environmental analysis. The Secretary declined to add this specific requirement to the agreement, but notes that full consideration of the views of the surface managing agency is assured through the coordinating efforts of the OSM application manager (Article V(11)) and the obligation of the Regional Director to facilitate discussions between the SRA and concerned Federal agencies wherever desirable (Article V(10)).

Several changes to the specific text of Article V(12) were recommended by OSM in response to comments and were accepted by Wyoming at the December 11, 1980, meeting. First, the Regional Director's review of the draft technical/environmental analysis was required to be completed within 30 days "whenever possible." The additional language was added in order to allow the Regional Director some flexibility in instances where a particular mine plan may be complex. OSM, however, will make every reasonable effort to assure that the 30-day time limit is met. Addition of the language also responds to a comment suggesting that some flexibility would be necessary.

A second change involved deletion of a provision allowing for referral to the Governor and the Secretary in instances where the Regional Director failed to act within 30 days, or where the changes requested by OSM were not agreeable to the State. The intent of this provision had been to induce the Regional Director to act in a timely manner on the final State submission. Both OSM and Wyoming agreed that if they cannot reach agreement on the final decision, their differing recommendations would

be referred to the Governor and the Secretary for resolution, and that the Regional Director would be required to act within the 30-day limit. See Article V(15).

One commenter suggested that the 30-day time limit itself be deleted because it was overly restrictive. The commenter believed that the Regional Director could not possibly act within 30 days if NEPA compliance documents were not yet complete. The agreement retains the 30-day limit for the Regional Director's action on the State's final recommended decision because OSM and the State agree that an action-forcing time limit should be retained. However, both OSM and the State were agreed that the Regional Director's "action" will constitute a decision on whether the State submission is adequate to support a Secretarial decision on the mining plan and permit application, (i.e., the Regional Director will determine whether the documentation meets the standards required by Federal law, regulation, and judicial interpretation of Federal administrative procedures). If the State submission is inadequate, the Regional Director will so inform the SRA within 30 days and work together with the SRA to supplement the record where necessary in an expeditious manner. As noted in the agreement, if no further changes are required, the Regional Director will proceed in accordance with 30 CFR 741.21 (i.e., forward his recommendation to the Director, OSM, to submit the mining plan to the Secretary for his final decision).

In response to a comment and by agreement with the State of Wyoming, a provision has been deleted which prohibited delegation by the Governor and the Secretary for decisions on areas of disagreement on the final action which are referred to them for resolution. The commenter believed that the cooperative agreement was not the appropriate vehicle to restrict the Secretary's authority to delegate. The Department and Wyoming agree that this requirement was overly restrictive.

One commenter suggested addition of language expressly requiring the SRA to revise the technical environmental analysis and the recommended decision according to the recommendations of the Regional Director. The Secretary has declined to adopt the suggested language for two reasons. First, it is understood that no mining can take place on Federal lands until the Secretary has approved the mining plan and permit application. It is the Regional Director's responsibility to advise the SRA of the standards which must be met to produce a record that is supportable under Federal law, regulation, policy, and judicial interpretation. Second, a mechanism has been provided (discussed above, and under Article V(15)) for referral to the Governor and the Secretary of disagreements between the SRA and the Regional Director over the final action to be taken on a mining plan and permit application. However, both OSM and Wyoming anticipate that every reasonable effort will be made to resolve differences at the regional level.

One commenter posed several questions concerning the appropriate forum and procedures for appealing decisions on mining plans and permit applications. As noted previously, no surface coal mining may take place on Federal lands in Wyoming until the Secretary has independently reviewed the State's final documentation and recommended decision and has approved the mining plan and permit application as being in compliance with the Act, the State program, and all other Federal laws, regulations, and policies. Accordingly, the final decision on a mining plan and permit application on Federal lands in Wyoming is made by the Department of the Interior, and (as provided in Article V(12)) such decision is to be made in accordance with 30 CFR 741.21 after the Regional Director has taken action with respect to the State's final documentation and recommended decision. Therefore, the provisions of 30 CFR 741.21 will govern public notice of the decision and the procedures for obtaining an adjudicatory hearing on appeal of the final decision. 30 CFR 741.21(a)(4).

It is appropriate to discuss here the use by OSM of the technical/environmental analysis prepared by the SRA for satisfying the Secretary's obligations under NEPA. The Department and its member offices and bureaus must comply with NEPA, its implementing regulations, and the Department's own guidelines. 40 CFR Part 1500 *et seq.*, (regulations of the Council on Environmental Quality); 45 FR 27541–48, April 23, 1980, (Department of the Interior Notice of Final Revised Procedures); *see also* 45 FR 10043–45, February 14, 1980 (Notice of Proposed Revised Instructions for the Office of Surface Mining). These authorities require the Department, prior to a decision on a mining and reclamation plan on Federal lands, to prepare an environmental assessment or environmental impact statement. The current regulations (30 CFR 745.13(b)) do not allow the Secretary to delegate his NEPA duties to the States. However, the Secretary believes that this regulation allows States to assist in preparation of NEPA documents. In other words, the Secretary must assume full responsibility for ensuring compliance with NEPA, but joint preparation of environmental documents is an authorized means of achieving that compliance. 44 FR 14987–88, March 13, 1979. General authority for allowing joint preparation of environmental documents is found at 40 CFR 1506.2. However, the Secretary reserves his authority, and will exercise his obligation, to evaluate independently and approve the final environmental assessment or environmental impact statement.

The theory underlying NEPA compliance for the Wyoming cooperative agreement is that the analysis contained in the SRA's technical/environmental analysis will be readily adaptable into an environmental assessment because Wyoming has a State statute similar to NEPA. After independent review and analysis, the Secretary may be able to approve such an environmental analysis as a final NEPA compliance document. It is assumed that during the early stages of implementation of this cooperative agreement, OSM may, to some extent, be required to supplement portions of the SRA's environmental analysis so that the documentation complies with the requirements of NEPA. However, it is expected that the identification of problems and issue areas during the joint case-by-case review of initial mining plan and permit application submissions will lead to a thorough understanding by the SRA of the Secretary's NEPA obligations, and that this understanding (along with consultation and cooperation throughout the review process) will eventually result in environmental analysis documents prepared by the State which can be approved in full by the Secretary after independent review and analysis. In instances where it is determined during the review process that an environmental impact statement will be necessary in order to satisfy the requirements of NEPA, the SRA's environmental analysis will become a part of the record upon which OSM will base its substantive analysis and complete the document in full compliance with Federal administrative requirements and OSM and Departmental policies and procedures.

Finally, with regard to the provision of Article V(12) that duplication shall be eliminated to the fullest extent allowed by State and Federal law and regulations, the Secretary believes that

certain of the "other" Federal requirements for which the Secretary is obligated to assure compliance are susceptible to joint participation by the SRA and OSM during the technical/environmental analysis stage of the review process (similar to the discussion above concerning joint preparation of NEPA compliance documents, with independent review and approval by the Secretary). Included among these are requirements of Executive Order No. 11988 (May 24, 1977) for floodplain protection; Executive Order No. 11990 (May 24, 1977) for wetlands protection; and the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* A discussion of some Federal requirements for which it is anticipated that the SRA may perform much of the work to assure compliance is included below in connection with Article XIV.

Article V(13) provides that, to the fullest extent practicable, the time schedules detailed in the Wyoming Environmental Quality Act (i.e., from the State program) shall apply to the review of mining plans and permit applications. One commenter believed that the cooperative agreement should contain a time schedule and a detailed discussion of the various steps in the SRA's permitting process. This comment was rejected because the agreement is not the appropriate vehicle for such a discussion. General information on the time schedule and steps in the SRA's permitting process may be obtained by reference to the Wyoming Environmental Quality Act, while specific time schedules will be developed under work plans (Article V(11)) on a case-by-case basis.

Deleted from Article (V)(13) was a provision indicating that publication of the application by Wyoming under its State program would not be approved until the Department's NEPA duties are completed. This provision was deleted, with the agreement of representatives of Wyoming at the December 11, 1980, meeting, as being unnecessary for inclusion in the text of the cooperative agreement.

It is important to note that previous versions of the cooperative agreement have included a provision (see, for example, Article VII (11)(b), 45 FR 45929, July 8, 1980) that a decision to approve or disapprove a mining plan and permit application for Federal lands under the cooperative agreement would be made within one year of the time the application was certified as complete. Two commenters objected to this provision, asserting that the one-year time period ignores the time mandates of the State program (Wyoming Statutes 35-11-406(e)-(k)) and expressing the belief that the Federal review and approval should exactly track the schedule set forth in Wyoming's State program.

As indicated by the text of the final agreement, the one-year time period has been deleted and, to the fullest extent practicable, the time schedules of the State program will be followed. However, several general points must be made concerning the timing of the Federal decision on a mining plan and permit application for Federal lands submitted under this cooperative agreement. First, the time schedules mandated by the State program apply to review and decision on mining plans and permit applications for non-Federal and non-Indian lands within Wyoming. As such, these time frames may not necessarily be suitable for application to decisions on Federal lands, due to the existence of numerous other Federal laws and regulations for which the Secretary is responsible to assure compliance. However, the Secretary has agreed to follow the time schedules of the Wyoming State program to the fullest extent practicable for the following reasons: (1) as noted by one commenter, the Wyoming statute has established a reasonable and workable schedule for the approval process, and (2) a primary purpose of the cooperative agreement is to "provide uniform . . . application of the program in Wyoming" (Article I(2)). Nevertheless, there is no legal obligation placed upon the Secretary to make a Federal decision within the time frames of the Wyoming schedule.

A second general point concerns the Secretary's views of how the time schedules will work in actual practice under the cooperative agreement. It is anticipated that in most cases the State of Wyoming will, in fact, be able to complete its documentation and make a recommended decision to the Regional Director within State program time schedules. This process will be aided by the provisions of the cooperative agreement (discussed above) which provide for consultation, cooperation, and elimination of duplication throughout the entire review process, in addition to timely exchanges of information and requests for assistance. In addition, designation of an OSM application manager to coordinate Federal review (including obtaining the views of other Federal agencies) will increase efficiency and limit duplication. Finally, time deadlines included in the text of the agreement (e.g., 50 days for completeness review; 30 days, whenever possible, for the Regional Director to comment on drafts of the SRA's technical/environmental analysis and recommended decision) are intended to aid in reaching a State decision (and recommended decision to the Secretary) within the time schedules of the State program.

A third general point concerns the timing for obtaining necessary approvals from other Federal agencies. It is intended that OSM will cooperate closely throughout the entire review process with those other Federal agencies whose views are necessary or whose approvals are required so that those necessary approvals can be made in a timely manner. Under 30 CFR 741.21(a)(1), the Regional Director is required to obtain the concurrence of the authorized officer of the surface managing agency, and the concurrence of the Director, USGS, for compliance with the requirements of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, relating to the development, production and recovery of mineral resources. Such concurrences must be obtained prior to the Regional Director's approval of the decision package. The Regional Director shall, therefore, be responsible for obtaining the concurrences of these agencies within the 30-day time limit, or for contacting the SRA within 30 days concerning difficulties expressed by those agencies.

A fourth general point concerns what will happen after the Regional Director has taken his 30-day action on the State's final documentation and recommended decision. If no further changes are required, Article V(12) provides that the Regional Director shall proceed in accordance with 30 CFR 741.21 and inform the SRA of his action. Accordingly, the Regional Director will forward to the Director, OSM, the decision package, consisting of the State's final documentation and recommended decision, any additional changes or findings or compliance documents by the Regional Director, the mandatory concurrences of the authorized officer of the surface managing agency and the Director, USGS, pursuant to 30 CFR 741.21(a)(1), and the Regional Director's recommended decision. The Director shall then obtain the approval of the Secretary for the mining plan, after which the Director may approve the permit application. The Director has been delegated this responsibility under 30 CFR 741.21(a)(2).

The decision process after the Regional Director's 30-day action is not subject to the time schedules of the Wyoming State program. Nor, it should be pointed out, is the timing requirement

of 30 CFR 741.21(a)(4)(i) applicable to this decision. The approved State program provides for a decision by the State within a time frame approved by the Secretary as substantially equivalent to the requirement of 30 CFR 741.21(a)(4)(i), but that regulation does not take into account the joint (i.e., two step) State and Federal decision-making process that must take place under the cooperative agreement. Nevertheless, in practice, the final action taken by the Regional Director (i.e., the delegated representative of the Director and the Secretary) will be of such quality as to result in a minimum of delay for the final Secretarial decision on the mining plan and the Director's subsequent decision on the permit application. In other words, the decision package submitted by the Regional Director should fully comply with all Federal legal and procedural requirements necessary to produce a legally supportable Secretarial decision, and final Secretarial action should occur expeditiously. Of course, unanticipated delays could occur if issues arise during the course of the review of the decision package by the Director, the Secretary, or their respective staffs.

If the Regional Director's 30-day action (i.e., under Article V(12)) constitutes a notification to the State of problems or issues which need to be resolved prior to submission to the Secretary, OSM and the SRA will cooperate to resolve these difficulties in an expeditious manner. Once the difficulties are resolved and the Regional Director approves a final decision package, the Regional Director will then proceed in accordance with 30 CFR 741.21. Despite the fact that every reasonable effort will be made to resolve these problems at the regional level, issues that cannot be resolved will referred, by the terms of the cooperative agreement, to the Governor and the Secretary for resolution.

A fifth general point concerns the effect of NEPA compliance on the Regional Director's ability to make a decision within the 30-day time limit. As recognized in previous versions of this cooperative agreement (see discussion above concerning the provision which was deleted from earlier versions of this article), the amount of time necessary for Federal compliance with NEPA may require that the time schedules be extended. NEPA imposes upon the Department major obligations for which the Secretary has ultimate responsibility to assure compliance. For mining plans and permit applications where an environmental assessment alone will satisfy the requirements of NEPA, OSM anticipates that NEPA compliance documents shall be completed in a timely manner to assure that the Regional Director can act within the designated time period. In those instances where an environmental impact statement (EIS) is necessary, however, the more detailed review and analysis and more stringent procedural standards may create a situation in which the State is prepared to forward its decision to the Regional Director (under the time schedules of the Wyoming State program) prior to completion of the EIS document. In such cases, the Regional Director may review and comment informally to the SRA concerning the acceptability of the State's final documentation and recommended decision. However, final review by the Regional Director must await completion of the EIS because the Regional Director's recommendation to the Director must take into account those factors discussed in the EIS. See, 40 CFR 1502.1. Further consideration of the EIS will take place when the decision package is forwarded to the Secretary. So, in those cases where the EIS is not complete at the time the SRA sends to the Regional Director the State's final documentation and recommended decision on the mining plan and permit application, the Regional Director will have 30 days from completion of the EIS to act on the State's decision package pursuant to Article V(12) of this agreement.

In conclusion, every reasonable effort will be made to assure that the time schedules of the State program are followed prior to final submission to the Regional Director, and final Secretarial decisions after the Regional Director's action will be made in as expeditious a manner as possible.

Article V(14) provides that the requirements of 30 CFR 741.18 ("Public participation in permit review process.") will be satisfied by compliance with the procedures for public participation in the approved State program. However, the article provides that the Department will be available to attend all informal conferences and hearings. Further, the Department's authority under 30 CFR 741.19 ("Availability of information.") is unaffected by the provisions of Article V(14).

One commenter suggested addition of language requiring that informal conferences and hearings be held jointly. The commenter believed such language was necessary so that mutually agreed upon schedules would be established reather than unilateral schedules. This language was not added. The Secretary anticipates that the SRA will cooperate with OSM in scheduling conferences and hearings on mining plans and permit applications on Federal lands so that OSM representatives can attend.

One commenter was unclear as to who conducts the informal conferences. The commenter believed that the Secretary is required by law to make an independent decision to approve or disapprove, so his representatives should participate. OSM views that informal conference as properly being conducted by representatives of the SRA under the approved procedures of Wyoming's State program. Departmental representatives will be available to attend all informal conferences, and the Secretary expects that the SRA and the OSM regional office will cooperate to assure Federal participation in all such hearings concerning mining plans and permit applications on Federal lands. The Secretary's obligation to make an independent decision to is fulfilled by the procedures described above: the SRA compiles the record (including a transcript of any informal conference or hearing) and prepares final documentation and the State's decision (which is its recommendation to the Secretary); and the Regional Director prepares the final decision package for Secretarial decision.

Article V(15) provides that when the Regional Director and the SRA cannot agree on the final actions to be taken by the SRA and the Department on the mining plan and permit application, the matter shall be referred to the Secretary and the Governor for resolution. This provision was discussed previously in the review of Article V(11) of this agreement. OSM repeats that this referral mechanism applies only to disagreements over final actions (i.e., after the SRA has sent the State's final documentation and recommended decision to the Regional Director).

Article V(16) provides that nothing in the cooperative agreement shall be construed to limit the Secretary's authority under 30 CFR 741.16 ("Conditions of permits."), 30 CFR 741.17 ("Criteria for permit approval or denial."), and 30 CFR 741.21 ("Review of permit applications."). OSM believes, however, that the conditions of these Federal regulations will be satisfied through application of the approved State program and the procedures outlined in this cooperative agreement.

Having completed the summary and disposition of specific comments on Article V, OSM wishes to respond to several comments on Article V in general.

One commenter believed that the term "Regional Director" should be changed

to "OSM" throughout the agreement in order to make clear that these duties may be delegated. This comment has been rejected for several reasons. First, the Secretary wishes to make clear that, particularly for certain aspects of Article V, the Regional Director is the responsible official for assuring maintenance of schedules and OSM cooperation throughout the mining plan and permit application review process. Second, it is understood that the Regional Director may delegate certain duties for which he is responsible, while maintaining his ultimate responsibility for the successful performance of those duties.

One commenter (the USGS) raised numerous questions concerning the effect of the cooperative agreement on the regulation of coal exploration on Federal lands in Wyoming. These issues were discussed at a meeting with officials of the USGS on December 8, 1980, and at the December 11, 1980, meeting with representatives of the State of Wyoming. Summaries of the issues discussed at each of the meetings are available in the administrative record of this rulemaking.

Coal exploration activities on Federal lands are currently governed by 30 CFR 211 and 744 and 43 CFR 3410. See also "Memorandum of Understanding, BLM–GS–OSM, Management of Federal Coal," announced at 44 FR 70009, December 5, 1979. Briefly, the Geological Survey administers all coal exploration activities on Federal lands outside of the permit area for a surface coal mining operation approved under 30 CFR, Chapter VII, Subchapter D. OSM administers all coal exploration activities on Federal lands within an approved permit area for surface coal mining and reclamation operations.

It was agreed that this document should not address exploration activities. Thus, the current scheme for regulation of exploration on Federal lands will remain in effect. The USGS will continue to meet its exploration responsibilities in cooperation with the State on Federal lands outside the permit area, and OSM will continue, in cooperation with the State, to exercise ultimate responsibility for exploration activities under the State program on Federal lands within the permit area.

One commenter (the USGS) expressed concern over the avoidance of references in the cooperative agreement to the Secretary's responsibilities under the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.* OSM believes the Secretary's responsibilities for assuring compliance with the Mineral Leasing Act are adequately referenced in the agreement and this **Federal Register** document. Appendix A to the agreement lists some of the other Federal requirements for which the Secretary is responsible, and it includes a listing of the Mineral Leasing Act and its implementing regulations (including 30 CFR 211 *et seq.*). The State of Wyoming recognizes that compliance with the Mineral Leasing Act is an essential part of the Secretary's obligations for Federal lands in the State, and understands that no mining plan or permit application will be approved until compliance is demonstrated.

Under Article V, OSM expects that the technical/environmental analysis prepared by the SRA on the mining plan and permit application will provide a substantial portion of the record upon which a decision can be based on compliance with the Mineral Leasing Act. Additional studies, reports or investigations which may be necessary to determine compliance will be conducted by the USGS. It is the responsibility of the Regional Director to coordinate closely with USGS throughout the review process so that the required concurrences of the Director, USGS (see 30 CFR 740.4) can be obtained in a timely manner. OSM reiterates that the decision package forwarded by the Regional Director to the Director and the Secretary must demonstrate compliance with *all* Federal laws, regulations, and policies for which the Secretary has ultimate responsibility on Federal lands.

One commenter (the USGS) raised questions concerning the confidentiality of coal resource and reserve data and certain financial information on Federal leases. Wyoming and OSM agreed, at the meeting on December 11, 1980, that the confidentiality provisions of the approved State program (which the Secretary understands to be similar to the Federal provisions) would be applicable for Federal lands in Wyoming. The agreement contains no specific provision on confidentiality.

Finally, it is important to note with regard to Article V that the Secretary expects decisions on permit renewals, permit revisions, and applications for the transfer, assignment or sale of rights granted under permits to be reached in accordance with both the requirements of the Act and regulations (see 30 CFR 741.23, 741.24, and 741.25) as incorporated in the approved State program, and the procedures and requirements set out in this agreement for mining plan and permit application review.

Article VI: Inspections

Article VI(17) provides that the SRA shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the State program. The Secretary's obligations under 30 CFR 842.11(c) shall be satisfied by the SRA's inspection.

Article VI(18) provides for the filing of State inspection reports with the Secretary on a timely basis subsequent to any State inspection. Such reports shall describe the general conditions of the lands under the permit and license, the manner in which operations are being conducted, and the operator's compliance with applicable performance and reclamation standards.

Under Article VI(19), the SRA is designated as the point of contact for operators and the sole inspection authority for compliance with requirements covered by the cooperative agreement. However, nothing in the agreement prevents Federal agencies from conducting inspections for purposes other than those covered by the agreement. The article also provides that the Department may conduct any inspections necessary for compliance with 30 CFR Parts 842 and 743, as Part 743 relates to obligations under law other than the Act.

Article VI(20) requires the Regional Director to give the SRA reasonable notice prior to conducting a Federal inspection so that State inspectors may have an opportunity to participate. Where the inspection is to be conducted under 30 CFR 842.11(b)(1)(ii)(C) in response to a citizen complaint of an imminent environmental danger or threat to human health, the SRA will be contacted, if practicable, no less than 24 hours prior to the Federal inspection in order to facilitate joint participation. This article preserves, however, the right of the Secretary to conduct inspections without prior notice if necessary to carry out his responsibilities under the Act.

Under Article VI(21), representatives of the State and the Department will be made mutually available to serve as witnesses in enforcement actions taken by either party.

One commenter expressed the opinion that the article appears to be ambiguous and contradictory to the Act concerning when Federal inspectors can make inspections and under what law. The commenter also believed that the article appears to state that the Secretary is giving up inspection powers, contrary to the requirements of the Act. The Secretary disagrees with the commenter and views Article VI as establishing a workable relationship with the State for inspections under the cooperative agreement. State assumption of Federal inspection functions is authorized under

approved cooperative agreements. See, 30 CFR 743.4(b). Inspections conducted by the SRA under the cooperative agreement will fully comply with the inspection provisions of the conditionally-approved State program. Thus, designation of the SRA as the inspection authority in the State not only comports with the approved State equivalents of the requirements of the Act and the OSM regulations, but also effectutates a principal goal of the cooperative agreement—to provide uniform application of the State program in Wyoming.

The SRA is the primary inspection authority under this agreement. However, the article reserves to the Secretary his authority to conduct inspections to assure compliance with the Federal laws and regulations for which he maintains ultimate responsibility on Federal lands. Article VI(19). Thus, the Secretary may conduct any inspections required by 30 CFR 743.4(c) and (d), and any inspection under 30 CFR 743.4(a) for requirements other than those incorporated in the approved State program. Inspections under 30 CFR 743.4(a) for requirements covered by the approved State program are properly delegable to the State under 30 CFR 743.4(b).

The Secretary has (at least) two mechanisms for maintaining cognizance over, and oversight of, the quantity and quality of SRA inspections. First, the cooperative agreement provides for the SRA to file with the Secretary reports of all inspections conducted. Second, the cooperative agreement specifically provides that the Secretary may conduct *any* inspection necessary to assure compliance with 30 CFR 842 (including citizens' requests under 30 CFR 842.11(b) and 842.12). Through this mechanism, the Secretary retains the authority (in an oversight capacity) to assure compliance with the requirements of the Act. In other words, the delegation of inspection authority to the State under 30 CFR 743 for those requirements of the Act and the regulations which are incorporated into the approved State program is essentially a delegation of the primary authority and lead responsibility for inspections on Federal lands in Wyoming. Such delegation is consistent with the goals underlying the development of cooperative agreements. Yet, the Secretary retains, under 30 CFR 842, an oversight responsibility and authority for inspections to assure that the SRA is properly exercising its inspection responsibilities under 30 CFR 743.4(b), the State program, and this cooperative agreement.

Finally, readers should note that failure of the SRA to properly carry out its inspection responsibilities could result in termination of the agreement pursuant to Article IX and 30 CFR 745.15. Thus, OSM regards the inspection provisions of the agreement, with delegation of lead responsibility to the State and maintenance of full authority by the Secretary under 30 CFR 842 to assure compliance with the mandates of the Act, as fully comporting to the requirements of the Act and the goals of the cooperative agreement.

One commenter urged the inclusion in Article VI(19) of language specifically referring to the Secretary's inspection obligations under the Mineral Leasing Act of 1920. The Secretary declined to include a specific reference because it is clearly understood that the Secretary's authority to conduct any inspections necessary to comply with "obligations under law other than the Act" includes inspections for compliance with the Mineral Leasing Act. In addition, the Mineral Leasing Act is specifically listed in the Appendix A to the agreement.

One commenter believed that the agreement should be clear that the Secretary has the right to inspect operations without advance notice, pursuant to 30 CFR 743.11(a) and 30 CFR 211.70. Both of these provisions refer to inspections without advance notice to the operator, and this right is preserved in the cooperative agreement. The agreement's requirement of reasonable notice to the SRA prior to conducting an inspection does not interfere with the right of the Secretary to conduct an inspection without advance notice to the operator.

One commenter urged that a time limit be set on the State for filing inspection reports with the Secretary in order to assure that such reports are filed in a timely manner. No specific time limit has been set, but language has been added to require the filing of inspection reports "on a timely basis." See, Article VI(18).

Finally, one commenter urged addition of a provision requiring that the surface managing agency be contacted for possible participation in inspections initiated when environmental dangers are identified. The Secretary declined to include this suggestion as a specific provision in the agreement, but notes that it is the responsibility of OSM to coordinate with all other Federal agencies having obligations on the affected lands.

Article VII: Enforcement

Article VII(22) provides that, with respect to the requirements of the cooperative agreement and the State program, the SRA is the primary enforcement authority. Under article VII(23), the SRA shall have primary responsibility, during any joint inspections with the Department, for enforcement actions, including issuance of orders of cessation, notices of violation, and assessment of penalties. In addition, the article provides for consultation between the Department and the SRA prior to a decision to suspend or revoke a permit. Article VII(24) provides that the Department may take any enforcement action necessary for compliance with 30 CFR Parts 843 and 845 during any inspection made solely by the Department or any joint inspection where the SRA and the Department fail to agree on the propriety of enforcement action. Article VII(25) requires prompt and reciprocal notification by the SRA and the Department of all violations of applicable laws, regulations, orders, or approved mining plans and permits, and of enforcement actions taken. Article VII(26) indicates that the agreement does not limit the authority of the Department to enforce violations of Federal laws other than the Act.

One commenter believed that giving the State primary responsibility for enforcement during joint Federal-State inspections violated the Secretary's statutory responsibilities to issue notices of violation and cessation orders. The Secretary believes that Article VII is in accord with the mandates of the Act and the goal of the cooperative agreement to provide for uniform application of the State program in Wyoming. As with the designation of the State as the primary inspection authority, the Secretary is authorized under 30 CFR 743.4(b) to allow the State to assume enforcement functions of the Regional Director pursuant to an approved cooperative agreement. Thus, as the primary enforcement authority of the requirements of the Act as incorporated in the approved State program, the SRA is the appropriate entity to issue notices of violation and cessation orders for violations of the State program. However, the commenter's concerns are completely allayed by the provision in Article VII(24) that "the Department may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845" during "any joint inspection where the SRA and the Department fail to agree regarding the propriety of any particular enforcement action." Thus, the State assumes lead responsibility for enforcement of the State program on Federal lands, but the Secretary is authorized to enforce where necessary

to carry out his duties under the Act and the regulations. Of course, failure of the SRA to meet its enforcement obligations under the State program and this agreement could result in termination of the agreement pursuant to Article IX and 30 CFR 745.15.

Regarding the same provisions, one commenter suggested that in the case where State and Federal inspectors disagree in the field and the Department takes enforcement action, a situation could arise where State personnel might be called as witnesses against the Department's enforcement action. The commenter believed that in order to avoid this situation in all but the most serious cases, the agreement should provide for a period of consultation prior to the Department taking any enforcement action. Although the commenter's point is well taken, Article VII(24) has not been changed to include a specific consultation requirement. With increasing experience of both OSM and the SRA in implementing this agreement, those situations in which the SRA and the Department cannot agree on enforcement actions should be minimized. However, the Secretary cannot agree to a consultation requirement which might prevent immediate enforcement action against practices which threaten the public health or safety.

One commenter requested a provision for ensuring that copies of all papers relating to enforcement are filed with OSM so that a complete record is kept. Such a requirement is unnecessary in view of the requirement of Article VII(25) for prompt and reciprocal notification concerning all violations and enforcement actions taken.

One commenter inquired whether under the provision for Federal-State consultation prior to a decision to suspend or revoke a permit, that consultation would occur before the notice to show cause is issued or before the final decision to suspend or revoke. The Secretary views the language in Article VII(24) as providing for consultation after the issuance of the show cause order and "prior to issuance of any decision to suspend or revoke a permit."

The same commenter questioned whether, if either the State or the Federal government issued a notice to suspend a permit, all mining would be suspended or only that part of the operation on lands under the jurisdiction of the issuing agency. In view of one of the primary goals of this Federal-State cooperative agreement—to "provide uniform . . . application of the Program in Wyoming"—the Secretary believes that suspension of a permit for violation of a requirement of the Act and the regulations, as incorporated into the approved State program, would clearly require suspension of all mining on the permit area. However, the Secretary cannot anticipate every situation which might arise during implementation of the cooperative agreement. Thus, as to situations where possible suspension of a permit is based on violations of other Federal requirements enforceable by the Secretary but not a part of the State program, the Secretary believes the question of which portion of a permit area of commingled State and Federal lands would be closed down will need to be resolved on a case-by-case basis.

The same commenter believed that the text of Article VII(24), in referring to situations where the SRA and the Department fail to agree during a joint inspection on the propriety of any particular enforcement action, is unclear as to who determines that agreement has not been reached and as to when the determination is made. The commenter believed it would be unsound enforcement policy to set up situations where Federal and State inspectors have to concern themselves with lengthy negotiations on what actions to take. The Secretary agrees that lengthy negotiations over the type of enforcement action to be taken would hinder effective enforcement of the Act and the State program. However, the Secretary believes that the commenter's concern is unwarranted. Article VII(24) clearly states the Department may take enforcement action when the SRA (i.e., State inspectors) and the Department (i.e., Federal inspectors) fail to agree "*during* . . . any joint inspection."

The same commenter urged, in light of the Secretary's duty to enforce the Act, that the phrase "other than the Act" be deleted from Article VII(26), which provides that the agreement does not limit the Department's authority to enforce violations of Federal laws other than the Act. The Secretary rejected this comment for several reasons. First, Article VII(26) serves as a specific reservation of authority to take enforcement action for those "other" Federal requirements for which the Secretary is obligated to assure compliance. Second, as has been pointed out above, the Secretary has not shirked his duty to enforce the Act. Rather, through the mechanism of the cooperative agreement, the Secretary has provided (pursuant to 30 CFR 743.4(b)) for the State to take lead responsibility for enforcement of the State program, while the Secretary retains full authority to take enforcement actions necessary to comply with 30 CFR Parts 843 and 845.

Article VIII: Bonds

This article creates requirements for joint Federal and State approval and release of performance bonds for surface coal mining and reclamation operations on Federal lands in accordance with the procedures and requirements of the approved State program and Federal law. Wyoming's system of bonds and liability insurance or other equivalent guarantees is generally described in Part G.3 of Wyoming's program submittal and is discussed in detail in Finding 18 of the partial approval **Federal Register** notice, 45 FR 20968–70, March 31, 1980. Special requirements of the Mineral Leasing Act and other Federal laws appear at 30 CFR Part 742 and 43 CFR Part 3504.

Article VIII(27) requires operators to submit a single bond payable to both the United States and the State to cover the operator's responsibilities under the Act and the State program. The bond is conditional upon compliance with all requirements of the Act, the State program, and the permit.

Article VIII(28) requires the SRA to obtain the consent of the Department prior to releasing an operator from an obligation under a bond required by the State program. Consent of the Department shall be based on field measurements, observations, and correlation with other Federal agencies with authority over the affected lands. The SRA must also advise the Department of annual adjustments to the bond made in accordance with the State program.

Article VIII(29) provides that, with the consent of the Department, an operator's performance bond shall be subject to forfeiture according to the requirements and procedures of the State program.

One commenter urged that Departmental consent to bond release be based on field measurements, observations, and consultation with other Federal agencies with responsibilities on the affected lands. The Secretary agreed with the commenter and added the appropriate language in Article VIII(28).

The same commenter also urged that the SRA be required to obtain the Department's consent prior to annual adjustment of the bond in order to ensure that bond adjustment meets Federal requirements. The final cooperative agreement does not include a requirement for Departmental consent on annual adjustments to the bond. Inclusion of such a requirement was believed unnecessary because the Secretary understands that the State

will only increase the bond amount during the annual adjustment process. Decreases of the bond amount are considered by the State to be partial bond releases, and such releases would therefore be subject to the bond release provisions of the State program and this agreement.

One commenter posed numerous questions concerning the bond provisions (e.g., Who holds the bond? Who revokes it? Who issues the public notice of proposed bond release? Who holds the hearing? Does Secretarial consent to bond release create a right to a Federal adjudicatory hearing?). The Secretary believes that, in line with the goals underlying Federal-State cooperative agreements, the State should have lead responsibility for implementation of the bonding provisions of the Act, as incorporated into the approved State program. Thus, in accordance with the terms of the agreement, the State will be responsible for the procedural requirements of the bonding provisions. However, readers should note that any bond release is subject to the consent of the Department of the Interior (and such consent will include, among other factors, consideration of compliance with Mineral Leasing Act requirements).

The same commenter also believed that forfeiture appears to deprive the Secretary of the right to collect on a bond. Again, the Secretary views the State as having the lead responsibility for implementation of the bonding provisions of the Act, as incorporated into the approved State program. Thus, forfeiture of the bond, with the consent of the Department, will be done in accordance with the requirements and procedures of the State program. The Secretary cannot anticipate every situation which will arise during implementation of the agreement. However, it is anticipated that disposition of funds according to function (e.g., State program requirements vs. permit requirements covering Secretarial responsibilities under other Federal laws) will be decided on a case-by-case basis and in accordance with the requirement of Departmental consent prior to forfeiture.

Article IX: Termination of Cooperative Agreement

This article provides for termination of the cooperative agreement in accordance with 30 CFR 745.15. The text of this article differs from previous versions of the agreement in that it was shortened by cross-referencing the appropriate section of 30 CFR Chapter VII.

Article X: Reinstatement of Cooperation Agreement

This article provides that a terminated cooperative agreement may be reinstated under the provisions of 30 CFR 745.16. Like Article IX, this article was shortened by cross-referencing the appropriate section of 30 CFR Chapter VII.

Article XI: Amendments of Cooperative Agreement

This article provides that the cooperative agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14. This article likewise was shortened by cross-referencing the appropriate section of 30 CFR Chapter VII.

Article XII: Changes in State or Federal Standards

This article states that the Department or the State may, from time to time, promulgate new or revised performance standards, reclamation requirements, or enforcement and administration procedures. For those changes which require rulemaking, each party is to have a minimum of six months. Wyoming will have a longer time (until the close of the next regular legislative session) within which to make changes which require legislative authorization. Compliance with this article will require that the parties provide to each other copies of any changes to their respective laws, rules, regulations, or standards which pertain to the enforcement and administration of the agreement. 30 CFR 745.12(d).

OSM anticipates that any such changes or revisions originating in the State would be processed pursuant to the provisions of 30 CFR 732.17, governing amendments to State programs. Additionally, OSM notes that changes or revisions to the laws, rules, regulations, or standards of the State program may not interfere with the Secretary's obligation on Federal lands to assure compliance with applicable Federal laws and regulations.

Several commenters raised questions concerning State program provisions which are based upon suspended or remanded Federal regulations. A complete discussion of the Secretary's consideration of suspended or remanded regulations within the context of approval of the Wyoming State program appears at 45 FR 78638–39, November 26, 1890. One commenter believed that provisions of the State program which represent suspended or remanded OSM regulations cannot be enforced by the United States. The Secretary rejects this comment in light of the express language of Section 523(a) of the Act that "[w]here Federal lands in a State with an approved State program are involved, the Federal lands program shall, at a minimum, include the requirements of the approved State program." 30 U.S.C. 1273(a).

A second commenter believed that the cooperative agreement should expressly grant to the State the right to revise Federally-mandated State regulations which have been suspended or remanded. The Secretary declined to include such specific provision in the agreement in light of the ability of the State to amend the State program pursuant to 30 CFR 732.17.

Article XIII: Changes in Personnel and Organization

As required by 30 CFR 745.12(d), this article requires the parties to report to each other any substantial changes in funding, staffing, structure, or other changes which would affect the administration and enforcement of the cooperative agreement.

One commenter suggested that, for the sake of efficiency, notification of changes in personnel be limited to those persons "performing substantial mine plan review, inspection, or allotted administrative duties." The Secretary rejected this comment, believing the suggested language unnecessary and not wanting to make notification dependent upon differing interpretations of "substantial."

Article XIV: Reservation of Rights

This article is mandated by section 523(c) of the Act, 30 U.S.C. 1273(c), 30 CFR 745.13, and other authorities. It makes clear that certain responsibilities of the Secretary may not be delegated to the State, and that the cooperative agreement shall not be construed as waiving or preventing the assertion of any rights not expressly addressed in the agreement or available to the parties under other laws and regulations, including those cited specifically in the article.

Pursuant to 30 CFR 745.13 and the terms of Article XIV, the Secretary reserves authority and responsibility for several Mineral Leasing Act functions (e.g., evaluation of coal resoures, release of lease bonds, and surface owner consent determination). The Secretary also reserves the authority and responsibility for several specific functions which are an integral part of the cooperative mining plan and permit application review procedures discussed above.

It is important to note that, in a manner similar to that described

previously concerning Departmental compliance with NEPA in the process of making decisions on mining plans and permit applications, it may be possible for the SRA to perform much of the basic research and analysis required for a Secretarial decision on compliance with other Federal laws, regulations, and policies in the process of finalizing the State's technical/environmental analysis. One commenter believed that the cooperative agreement should delegate to the SRA responsibility for assuring compliance with Executive Order No. 11988 (May 24, 1977) for floodplain protection, Executive Order No. 11990 (May 24, 1977) for wetlands protection, and the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* The Secretary declined to include in the cooperative agreement a specific delegation to the SRA of these responsibilities, because these are Federal requirements outside the scope of the Act and for which the Secretary has ultimate responsibility to assure compliance. However, the Secretay anticipates that much of the analysis required for compliance with these Executvie Orders and the National Historic Preservation Act (or, for example, the Mineral Leasing Act, the Endangered Species Act, NEPA, etc.) can be performed by the SRA in its technical/environmental analysis. Of course, all such work will be subject to supplementation by OSM staff where necessary, and to independent review and decision by the Secretary. Such procedure is in accordance with one of the principal goals of the cooperative agreement—to eliminate the intergovernmental overlap and duplication. It is expected that the degree to which the State can perform basic analysis and prepare documentation concerning other Federal requirements will be developed under this cooperative agreement on a case-by-case basis.

With regard to the National Historic Preservation Act, in particular, one commenter (the Advisory Council on Historic Preservation) believed that certain aspects of the Secretary's responsibilities under Section 106 of the National Historic Preservation Act were entirely appropriate for assignment of lead responsibility to the State under the cooperative agreement. Specifically, the commenter believed that functions described in paragraphs II A–C of a "Programmatic Memorandum of Agreement Among the Department of the Interior, Bureau of Land Management, Office of Surface Mining Reclamation and Enforcement, and United States Geological Survey, and the Advisory Council on Historic Preservation Regarding the Federal Coal Management Program," including identification of properties listed and eligible for listing in the National Register, might logically be assigned to the SRA "provided the [SRA] is required to adhere to the same identification standards utilized by Federal agencies, and given OSM oversight and monitoring." Tha same commenter believed that those functions described in paragraphs II D–F of the Programmatic Memorandum of Agreement should remain with OSM. Both the comment of the Advisory Council on Historic Preservation and the Programmatic Memorandum of Agreement are included in the administrative record of this rulemaking. The Secretary will use the comments of the Advisory Council as guidance in reaching case-by-case decisions on the degree to which requirements of the National Historic Preservation Act can be satisfied through the SRA's technical/environmental analysis. However, the Secretary reiterates that any State analysis used for assuring compliance with these and other Federal requirements will be subject to OSM supplementation where necessary, and independent review and decision by the Secretary.

Article XV: Definitions

This article states that terms and phrases used in the agreement shall have the same meanings as set forth in 30 CFR Parts 700 and 701.

Statements of Significance and Environmental Impact

The Department of the Interior has determined that this document is not a significant rule and does not require preparation of a regulatory analysis under Executive Order No. 12044 (March 23, 1978) and 43 CFR Part 14. A copy of this determination is available in the administrative record of this rulemaking.

Pursuant to Section 702(d) of the Act, 30 CFR 1292(d), proceedings relating to the adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program and are therefore exempt from the requirement to prepare a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Dated: January 18, 1981.

Joan M. Davenport,

Assistant Secretary of the Interior.

Accordingly, Title 30 CFR Part 950 is amended by adding Section 950.20 as follows:

PART 950—WYOMING

§ 950.20 State-Federal Cooperative Agreement.

Cooperative Agreement

The State of Wyoming (State) acting through the Governor and the Department of the Interior (Department) acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction and Purpose

1. This Agreement is authorized by Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Act), 30 U.S.C. 1273(c) which provides for a State with a Permanent Regulatory Program (Program) approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining on Federal lands.

This Agreement provides for State regulation consistent with the Act, the Federal lands program and the State program for surface coal mining and reclamation operations on Federal lands.

2. The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program in Wyoming, in accordance with the Act.

Article II: Effective Date

3. This agreement is effective following signing by the Secretary and the Governor, and upon final publication as rulemaking in the **Federal Register.** This Agreement shall remain in effect until terminated as provided in Article IX.

Article III: Scope

4. Under this agreement, the laws, regulations, terms and conditions of the Program conditionally approved effective November 26, 1980, 45 FR 78637–84, for the administration of the Act are applicable to Federal lands within the State except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws.

Article IV: Requirements for the Agreement

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

(a) *Responsbile Administrative Agency.* The State Regulatory Authority (SRA) shall be responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

(b) *Authority of State Agency.* The SRA has and shall continue to have authority under State law to carry out this Agreement.

(c) *Funds.* The State will devote adequate funds to the administration and enforcement of Federal lands in the State of the

requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, the Department shall reimburse the State as provided in Section 705(c) of the Act and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement.

(d) *Reports and Records.* The SRA shall make annual reports to the OSM Regional Director, Region V (Regional Director), containing information respecting its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(c). The SRA and the Secretary shall exchange, upon request, information developed under this Agreement. The Secretary shall provide the SRA with a copy of any approved evaluation report prepared concerning State administration and enforcement of this Agreement.

(e) *Personnel.* The SRA shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the Program.

(f) *Equipment and Laboratories.* The SRA shall have access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

(g) *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with W.S. 35–11–406(a)(xii). All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 725.23 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, OMB Circular No. A–102, Attachment E.

Article V: Policies and Procedures: Mining Plan and Permit Application Review

6. The Governor and the Secretary agree and hereby require that an operator on Federal lands shall submit an identical mining plan and permit application [or an application for a major modification to an approved mining plan and permit application] in an appropriate number of copies to the SRA and the Regional Director. The mining plan and permit application shall be in the form required by the SRA and include any supplemental forms required by the Secretary. The mining plan and permit application shall include the information required by, or necessary for, the SRA and the Secretary to make a determination of compliance with:

(a) W.S. 35–11–406(a) and (b) (1980);

(b) Chapter II, Land Quality Division Rules and Regulations, Department of Environmental Quality, or other chapters where these may supersede Chapter II;

(c) Applicable terms and conditions of the Federal coal lease; and

(d) Applicable requirements of the Program, and other Federal laws and regulations, including, but not limited to those listed in Appendix "A".

(e) A mining plan and permit applicant on Federal lands in the State shall satisfy the requirements of 30 CFR 741.12(b)(1) and 30 CFR 741.13(c) by submitting the information required by the SRA.

7. The SRA shall assume primary responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining and reclamation permits on Federal lands in the State. The Secretary shall, as requested, assist the State through the Regional Director in this analysis and review. The Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision.

8. The SRA will be the primary point of contact for operators regarding the processing of mining plans and permit applications. The SRA will be responsible for informing the applicant of all joint State-Federal determinations. The SRA shall send copies of all correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the mining plan and permit application to the Regional Director. To the extent reasonable OSM will not independently initiate contacts with applicants regarding completeness of deficiences of mining plans and permit applications with respect to matters covered by the Program. The Secretary may act independently of the State to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the program, and in instances of disagreement over the Act and the Federal lands program. A copy of all independent correspondence with the applicant which may have a bearing on decisions regarding the mining plan and permit application shall be sent to the State.

9. The Regional Director is responsible to ensure that any information OSM receives concerning the application is sent to the SRA. The Regional Director and the SRA shall regularly coordinate with each other during the permit review process as needed.

10. The Regional Director shall be responsible for obtaining on a timely basis the views of all Federal agencies with jurisdiction or responsibility over a mine plan and permit application on Federal lands in the State, and for making these views known to the SRA. The SRA shall keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies. The Regional Director shall take appropriate steps to facilitate discussions between the SRA and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

11. Upon receipt of a mining plan and permit application, the Regional Director shall begin a review of completeness of the application with respect to other Federal laws and policies, and for identification of unique or special circumstances. The Regional Director shall identify a person as the OSM application manager. The OSM application manager shall serve as the primary point of contact between OSM and the SRA throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated by the Regional Director. Not later than 50 days after an application has been received, OSM and the SRA shall meet to discuss whether the application is complete in form and content. When both agree that the application is complete, or no later than 30 days thereafter, they shall agree upon a work plan and schedule for the substantive review of the application. The Regional Director shall inform the SRA of any specific or general areas of concern which require special handling or analysis and whether he recommends OSM assistance. The SRA shall inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

12. Unless the work plan and schedule provides otherwise, the SRA shall prepare the technical/environmental analysis document, which shall include a proposed written final decision on the mining plan and permit application. To the fullest extent allowed by State and Federal law and regulations, the SRA and OSM will cooperate so that duplication will be eliminated in conducting the technical/environmental review and analyses and meeting NEPA requirements for a proposed mining plan and permit application. Copies of drafts of these documents shall be sent to the Regional Director for his review and comment. The Regional Director shall evaluate the documents and inform the SRA within 30 days whenever possible of any changes that should be made. The SRA shall consider the comments of the Regional Director and send a final technical/environmental analysis document and proposed final decision to the Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of the SRA's final technical/environmental analysis document and proposed final decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21 and inform the SRA of his action. Where an EIS is required, OSM shall develop the necessary planning documents, ensure that the necessary administrative requirements are met and complete the statement.

13. To the fullest extent practicable, the time schedules detailed in the Wyoming Environmental Quality Act shall apply.

14. Compliance with requirements and procedures of the program shall satisfy the requirements of 30 CFR 741.18, except that the Department shall be available to attend all informal conferences and hearings. Nothing in this paragraph shall affect the Department's authority under 30 CFR 741.19.

15. In the event the SRA and the Regional Director cannot agree to the final actions to be taken by the SRA and the Department on the mining plan and permit application, the matter shall be referred to the Governor and the Secretary for resolution.

16. Nothing in this Agreement shall be construed to limit the Secretary's authority in 30 CFR 741.16, .17 and .21.

Article VI: Inspections

17. The SRA shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with its Program. The SRA's inspection shall satisfy the Secretary's obligations under 30 CFR 842.11(c).

18. The SRA shall, subsequent to conducting any inspection, and on a timely basis, file with the Secretary an inspection report adequately describing (1) the general conditions of the lands under the permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

19. The SRA will be the point of contact and sole inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent Federal inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743, as Part 743 relates to obligations under law other than the Act.

20. The Regional Director shall give the SRA reasonable notice of his intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When the Department is responding to a citizen complaint of an imminent environmental danger or a threat to human health pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact the SRA no less than 24 hours if practicable, prior to the Federal inspection to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to the SRA if necessary to carry out his responsibilities under the Act.

21. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

22. The SRA shall be the primary enforcement authority concerning compliance with the requirements of this Agreement and its Program.

23. During any joint inspection by the Department and the SRA, the SRA shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The Department and the SRA shall consult prior to issuance of any decision to suspend or revoke a permit.

24. During either any inspection made solely by the Department or any joint inspection where the SRA and the Department fail to agree regarding the propriety or any particular enforcement action, the Department may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845.

25. The SRA and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining plans and permits subject to this Agreement, and of all actions taken with respect to such violations.

26. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

Article VIII: Bonds

27. The SRA and the Secretary shall require all operators on Federal lands to submit a single bond payable to both the United States and the State to cover the operator's responsibilities under the Act and the Program. Such bond shall be conditional upon compliance with all requirements of the Program, the Act and the permit.

28. Prior to releasing the operator from an obligation under a bond required by the Program, the SRA shall obtain the consent of the Department. Departmental consent shall be based on field measurements, observations, and correlation with other Federal agencies having authority over the affected lands. The SRA shall also advise the Department of annual adjustments to the bond pursuant to the program.

29. The operator's performance bond shall be subject to forfeiture, with the consent of the Department, in accordance with the procedures and requirements of the Program.

Article IX: Termination of Cooperative Agreement

30. This Agreement may be terminated by the State or the Secretary under the provisions of 30 CFR 745.15.

Article X: Reinstatement of Cooperative Agreement

31. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XI: Amendments of Cooperative Agreement

32. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XII: Changes in State or Federal Standards

33. The Department or the State may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make changes. For changes which require legislative authorization, the State shall have until the close of its next regular legislative session in which to make the changes.

34. The SRA and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIII: Changes in Personnel and Organization

35. The SRA and the Department shall, consistent with 30 CFR Part 745, advise each other of changes in organization, structure, functions, duties and funds of the officer, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The SRA and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, locations and telephones numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XIV: Reservation of Rights

36. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement, that the State or the Secretary may have under other laws or regulations, including the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy and Management Act, the Constitution of the United States, the Constitution of the State or State laws.

Article XV: Definitions

37. Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700 and 701 shall be given the meanings set forth in said definitions.

[Pub. L. 95-87, Sec. 523(c) (30 U.S.C. 1273(c))]

Dated: January 7, 1981.

Ed Herschler,

Governor of Wyoming.

Cecil D. Andrus,

Secretary of the Interior.

Appendix A

(1) The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

(2) The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 30 CFR 211 *et seq.*

(3) The National Environmental Policy Act of 1969, 42 U.S.C. 4312 *et seq.*, and implementing regulations including 40 CFR 1500 *et seq.*

(4) The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR 402.

(5) The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR 800, and Executive Order 11593 (May 13, 1971).

(6) The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

(7) The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

(8) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

(9) The Reservoir Salvage Act of 1960, amended by the Preservation and Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

[10] Executive Order 11988 (May 24, 1977) for floodplain protection. Executive Order 11990 (May 24, 1977) for wetlands protection.

[FR Doc. 81-2995 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR PART 205

[DoD Directive 5040.1]

Defense Audiovisual Agency

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment expands the Defense Audiovisual Agency's administrative authorities that are required to make the Agency administratively independent and fully operational.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. A. Ehlers, Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense, Washington, D.C. 20301, The Pentagon 202-695-4281.

SUPPLEMENTARY INFORMATION: In FR Doc. 79-27403 appearing in the Federal Register on September 4, 1979 (44 FR 51571) the Office of the Secretary of Defense published the Charter of the Defense Audiovisual Agency, which became effective June 12, 1979. This is a revision to Part 205 of this title.

Accordingly, 32 CFR, Chapter 1, Part 205, is amended as follows:

PART 205—DEFENSE AUDIOVISUAL AGENCY

1. Section 205.10 is revised and now reads as follows:

§ 205.10 Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, directives, and instructions, the Director, DAVA, or, in the absence of the Director, the person acting for the Director is hereby delegated authority, as required in the administration and operation of DAVA to:

(a) Exercise the power vested in the Secretary of Defense by 5 U.S.C. § 302 and 5 U.S.C. § 3101 pertaining to the employment, direction, and general administration of civilian personnel.

(b) Fix rates of pay for wage rate employees exempted from the Classification Act by 5 U.S.C. § 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director shall follow the wage schedule established by the DoD Wage Fixing Authority.

(c) Establish such advisory committees and employ such part-time advisers as approved by the Secretary of Defense pursuant to the provisions of 10 U.S.C. § 173, 5 U.S.C. § 3109(b), and the agreement between the Department of Defense and the Office of Personnel Management on employment of experts and consultants, dated March 14, 1975.

(d) Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of 5 U.S.C. § 2903(b).

(e) Establish an Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government for suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, in accordance with the provisions of 5 U.S.C. § 4503 and applicable Civil Service Regulations.

(f) In accordance with the provisions of 5 U.S.C. § 7532, Executive Order 10450, and 32 CFR 156.

(1) Designate positions as "sensitive";

(2) Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed; and

(3) Authorize the suspension, but not terminate the services of, an employee in the interest of national security.

(g) Clear civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of 32 CFR 156 and Executive Order 11652.

(h) Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and 42 U.S.C. § 405(p)(1) and (2).

(i) Authorize and approve overtime work for civilian officers and employees in accordance with the provisions of subchapter V, Chapter 55, title 5, U.S. Code, and applicable Civil Service Regulations.

(j) Authorize and approve:

(1) Travel for civilian employees in accordance with the Joint Travel Regulations, Volume 2, Department of Defense Civilian Personnel.

(2) Temporary duty travel for military personnel in accordance with Joint Travel Regulations, Volume I for Members of the Uniformed Services.

(3) Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required, pursuant to the provisions of 5 U.S.C. § 5703.

(k) Approve the expenditures of funds available for travel by military personnel for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances when the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. § 412, 5 U.S.C. §§ 4110 and 4111). This authority cannot be redelegated.

(l) Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of 44 U.S.C. § 3102.

(m) Establish and use imprest funds for making small purchases of material and services, other than personal, when it is determined more advantageous and consistent with the best interest of the Government, in accordance with the provisions of DoD Directive 5100.17, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Fund," March 5, 1973.

(n) Authorize the publication of advertisement, notices, or proposals in newspapers, magazines, or other public periodicals, consistent with 44 U.S.C. § 3702.

(o) Establish and maintain appropriate property accounts, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of this Part, pursuant to DoD Directive 5200.8 "Security of Military Installations and Resources," July 29, 1980.

(q) Establish and maintain, for the functions assigned, an appropriate

publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980.

(r) Enter into support and service agreements with the Military Departments, other DoD Components, or other Government agencies, in accordance with the provisions of DoD Directive 4000.19, "Interservice, Interdepartmental, and Interagency Support," October 14, 1980, as required for the effective performance of assigned responsibilities and functions.

(s) Enter into and administer contracts directly or through a Military Department, a DoD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment, and services required to accomplish assigned responsibilities and functions. To the extent that any law or Executive Order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

(t) Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration with respect to the disposal of surplus personal property.

The Director, DAVA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective immediately.

(Title 10, U.S.C.)

M. S. Healy,

OSD Federal Register Liaison Officer Washington Headquarters Services Department of Defense.

January 16, 1981.

[FR Doc. 81-3001 Filed 1-27-81; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

35 CFR Part 253

Regulations of the Secretary of the Army

AGENCY: Secretary of the Army.

ACTION: Final rule.

SUMMARY: By this document, the regulations governing employment and compensation for Federal agencies operating in the area formerly known as the Canal Zone are amended to permit employees of certain Federal agencies not covered by those regulations to be employed in agencies covered by these regulations without substantial loss of pay. This amendment is intended to benefit principally employees of the Administrative Office of United States Courts, which will be terminating its operations in Panama over the next fifteen months. Because this rule pertains to personnel of agencies covered by these regualtions, it is unnecessary to issue a notice of proposed rulemaking under 5 U.S.C. § 553.

EFFECTIVE DATE: This amendment is effective January 19, 1980.

FOR FURTHER INFORMATION CONTACT: Col. Robert D. Banning, Office of the Assistant Secretary of Army (CW), Washington, D.C. 20310, Tel (202) 695-1370.

Accordingly, 35 CFR Part 253 is amended as follows:

1. Section 253.131(b) is amended by removing the second sentence thereof.

2. Section 253.131 is amended by adding a new paragraph (g), to read as follows:

(g) Notwithstanding § 253.102, different rates of pay may be established for employees in the following groups: (i) employees occupying positions on September 30, 1979 and who continuously occupy positions after that date, employees who were separated by reason of a reduction in force on September 30, 1979 and were reappointed to positions in the Commission before April 1, 1980, and persons employed on September 30, 1979 by an agency of the United States Government (other than a department subject to this Part) which since that date has had responsibility for carrying out the rights and responsibilities of the United States under the Panama Canal Treaty of 1977 if the person is appointed to a position under this Part within 90 days of terminating employment with such agency; and (ii) other employee.

(2 C.Z.C. §§ 142(b), 144, 155, 76A Stat. 16, 17, 19; 35 CFR 251.2)

Michael Blumenfeld,

Assistant Secretary of Army (CW).

January 19, 1981.

[FR Doc. 81-7030 Filed 1-27-81; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-2, 60-4, 60-20, 60-30, 60-50, 60-60, 60-250, 60-741

Government Contractors; Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule; deferral of effective date.

SUMMARY: This notice defers the effective date of certain OFCCP regulations until April 29, 1981.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Cisco, Acting Director Division of Program Policy, Office of Federal Contract Compliance Programs, Room C-3324, U.S. Department of Labor, Washington, D.C. 20210, Telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: The effective date of the regulations contained in 41 CFR Chapter 60 and published in the **Federal Register** on December 30, 1980 (45 FR 86216), and of the corresponding correction notice published in the **Federal Register** on January 23, 1981 (46 FR 7332) has been deferred until April 29, 1981.

The Purpose of this action is to allow the Department to review the rule fully before it takes effect.

Signed at Washington, D.C., January 26, 1981.

Alfred M. Zuck,

Acting Secretary of Labor.

[FR Doc. 81-3279 Filed 1-27-81; 8:45 am]

BILLING CODE 4510-27-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 9

[Docket No. FEMA-GEN-9-B]

Floodplain Management and Protection of Wetlands

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Amendment of Regulations.

SUMMARY: This amendment changes the date of implementation of the requirement for individual rating of structures in coastal high hazard areas from February 1, 1981, to May 1, 1981.

EFFECTIVE DATE: This amendment is effective upon signature.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Assistant to the General Counsel for Environmental Quality and

Hazard Mitigation, 1725 I Street, NW., Washington, D.C. 20472, tele: (202) 634–1990.

SUPPLEMENTARY INFORMATION: Section 9.11(e) of the FEMA floodplain management regulations (44 CFR Part 9, 45 FR 59520, 59538, September 9, 1980) provides that in implementing the National Flood Insurance Program (NFIP), the Federal Insurance Administrator, who heads a component within the Federal Emergency Management Agency, and to whom the Director, FEMA, has delegated NFIP responsibility, will take a number of actions. As conditions for receiving flood insurance for new construction and substantial improvement in coastal high hazards areas, there must be individual insurance rating of structures; designation of wave heights; and elevation of structures on piles or columns to the wave height level.

This requirement was to take effect on February 1, 1981. Thereafter, the Federal Insurance Administrator could only provide flood insurance if these requirements had been met.

There are other provisions of Part 9 which deal with allied matters of denial of insurance coverage for failure to take property floodplain management measures. These have been suspended pending policy review. See 45 FR 79069, 79122. Consistent with this, and because of ongoing policy review matters, and to aid in program administration, it is desirable to defer this implementation for three months.

The regulation must take effect immediately so that people can be advised the February 1 date need no longer be met. This need for immediacy constitutes good cause for making the rule effective the date of signature.

§ 9.11 [Amended]

Accordingly, 44 CFR 9.11(e)(2) is amended by changing the date February 1, 1981 to May 1, 1981.

Dated: January 21, 1981.

Bernard T. Gallagher,

Acting Director.

[FR Doc. 81-3250 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Jacksonville, Arkansas; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Jacksonville, Arkansas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Jacksonville, Arkansas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 050180 Panel 0010C, published on October 6, 1980, in 45 FR 66091, indicates that Lot 72, Northlake Subdivision, Phase II, Jacksonville, Arkansas, as recorded in Plat Book A–183, Page 78–50110, in the Office of the Clerk, Pulaski County, Arkansas, is within the Special Flood Hazard Area.

Map No. H & I 050180 Panel 0010C is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on January 29, 1980. This property is in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc. 81-3081 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Marysville, California; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator publish a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Marysville, California. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Marysville, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on

the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034 Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & 060428 Panel 0001B, published on October 23, 1979, in 44 FR 61026, indicates that Lots 9 through 17 and Parcel A, Subdivision Tract Map No. 79-267, East Lake Commons, Marysville, California, as recorded in Book 31, Pages 17 and 18 under Recording No. 7537, in the Office of the Recorder, Yuba County, California, are within the Special Flood Hazard Area.

Map No. H & I 060428 Panel 0001B is hereby corrected to reflect that Lots 12 and 13 and Parcel A of the above mentioned property are not within the Special Flood Hazard Area indentified on January 19, 1978. These properties are in Zone B.

Map No. H & I 060428 Panel 0001B is also corrected to reflect that Lots 9 through 11 and 14 through 17 of the above mentioned property are not within the Special Flood Hazard Area identified on January 19, 1978. These lots are in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administator.

[FR Doc. 81-3082 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Morgan Hill, California, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Morgan Hill, California. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Morgan Hill, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410, (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060346 Panel 0005B, published on October 6, 1980 in Vol. 45, FR 66118 indicates that Lots 5 through 11, Tract Number 5979; and Lots 1 through 23, Tract Number 6228, Morgan Hill, California, recorded as File Number 6401813 in Book 443 of Maps, Pages 32 and 33; and File Number 6445287 in Book 446 of Maps, Pages 30 and 31, in the Office of the Recorder, Santa Clara County, California, are within the Special Flood Hazard Area.

Map No. H & I 060346 Panel 0005B is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on June 18, 1980. These lots are in Zone B.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3083 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Northglenn, Colorado; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Northglenn, Colorado. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Northglenn, Colorado, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410. Telephone (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda,

Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 080257 Panel 0002A, published on October 6, 1980, in 45 FR 66110, indicates that Lot 28, Block 11, North Glenn—Twenty Fourth Filing, Northglenn, Colorado, recorded as Reception No. 779061 in File 12, Map 4, in the Office of the Clerk and Recorder, Adams County, Colorado, is within the Special Flood Hazard Area.

Map No. H & I 080257 Panel 0002A is hereby corrected to reflect that the above mentioned lot is not within the Special Flood Hazard Area identified on September 15, 1978. This lot is in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3084 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of St. Augustine, Florida; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas haye been published. This list included the City of St. Augustine. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of St. Augustine that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free 800-424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 125145B, Panel 03 published on October 23, 1979 in 44 FR 61015 indicates that Lots B, C, D, 2, 3 and a portion of Lots 18 and A of the Burt Subdivision of Lot 1, Block 46J in the City of St. Augustine, Florida, and being recorded in Official Records Books 145, 182 and 190, Pages 455, 410 and 220, respectively, in the Office of the Clerk of the Circuit Court of St. Johns County, Florida, are within the Special Flood Hazard Area.

Map Number H & I 125145B, Panel 03 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on November 28, 1975. This property is in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3085 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Texarkana, Texas; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Texarkana, Texas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Texarkana, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410, (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480060 Panel 0020A, published on October 23, 1979, in 44 FR 61022, indicates that a 10.785 acre tract

in the MEP & P Railway Company Survey A–434, and being a portion of Lots 8 and 9 of City Improvement Company's Annex, Texarkana, Texas, recorded as Instrument No. 2728 in Volume 647, Pages 390 through 392, in the Office of the Clerk, Bowie County, Texas, is within the Special Flood Hazard Area.

Map No. H & I 480060 Panel 0020A is hereby corrected to reflect that the existing K-Mart Store located on the above mentioned property is not within the Special Flood Hazard Area identified on March 1, 1979. This structure is in Zone C.

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

Issued: January 13, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3066 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Toledo, Ohio; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Toledo, Ohio. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Toledo, Ohio, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 395373, Panel No. 0020A, published in October 6, 1980, in Vol. 45 FR 66086, indicates that a 2.36 acres parcel of land, being part of the northeast one-quarter of the northwest one-quarter, Section 8, Town 3, in the United States Reserve, City of Toledo, Lucas County, Ohio, as recorded in Volume 1924, Page 336, in the Office of the Recorder of Lucas County, Ohio, is partially located within the Special Flood Hazard Area.

Map No. 395373, Panel No. 0020A, is hereby corrected to reflect that the existing structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on June 4, 1980. The structure is in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

FR Doc. 81-3067 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for Brazoria County, Texas; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Brazoria County, Texas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Brazoria County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with S 70.7(b):

Map No. H & I 485458C Panel 73, published on October 23, 1979, in 44 FR 61021, indicates that Lake Jackson Farms Subdivision, Brazoria County, Texas, as recorded in Volume 4, Page 20 of the Plat Records, bearing File Number 10406, in the Office of the Clerk of the County Court, Brazoria County, Texas, is within the Special Flood Hazard Area.

Map No. H & I 485458C Panel 73 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area

identified on October 27, 1978. This property is in Zone B.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3068 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Douglas County, Nevada; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Douglas County, Nevada. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Douglas County, Nevada, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b).

Map No. H & I 320008 Panel 0105A, published on October 6, 1980 in 45 FR 66121, indicates that a 6.57 acre parcel of land and a 7.10 acre parcel of land, located in the South ½ of the Northwest ¼, Section 4, Township 12 North, Range 20 East, Douglas County, Nevada, as recorded in Book 475, Pages 74 and 75, and Book 473, Pages 47 and 48, respectively, in the Office of the Recorder, Douglas County, Nevada, within the Special Flood Hazard Area.

Map No. H & I 320008 Panel 0105A is hereby corrected to reflect that the above mentioned property are not within the Special Flood Hazard Area identified on March 28, 1980. This property is in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3069 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the County of Escambia, Florida; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the County of Escambia, Florida. It has been determined by the Federal Insurance Administrator, after further technical review of the Flood Insurance Rate Map for the County of Escambia, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, Phone (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H and I 120080A, Panel 0011, published on September 30, 1977, in 44 FR 61014, indicates that Lots 13 through 15A, Block A; Lots 2 through 5A and 8 through 9A, Block B; Lots 4 and 4A, Block C, Unit 1; Lots 16 through 45, Block A; Lots 1 and 10 through 16, Block B; Lots 5 and 6, Block C, Unit 2; Lots 1 through 11, Block A; Lots A through 27, Block B, Unit 3; proposed Lots 46 through 51, Block A; and proposed Lots 7 through 21, Block C, Unit 4 as recorded in Plat Book 9, Page 32; Plat Book 10, Page 62; and in Plat Book 10, Page 64; respectively, in the Office of the Clerk of Escambia County, Florida and proposed Unit 4 of Pine Lakes Estates as recorded in the Deed, Book 808, Page 739 in the Office of the Clerk of Escambia County, Florida are within the Special Flood Hazard Area.

Map Number H and I 120080A, Panel 0011 is hereby corrected to reflect that the existing structures located on the above property are not within the Special Flood Hazard Area identified on September 30, 1977. The structures are in Zone C.

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

Issued: January 8, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3090 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for Harris County, Texas; Under National Flood Insurance program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Harris County, Texas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Harris County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480287B Panel 78, published on October 23, 1979, in 44 FR 61022, indicates that the proposed Bellarie-Wilcrest Shopping Center, located on a 9.9184 acre tract of land out of Lot 112, Dairy Subdivision, Harris County, Texas, recorded as File Code Number G424614, Film Code Numbers 150–93–1416 through 150–93–1420, in the Office of the Clerk, Harris County, Texas, is within the Special Flood Hazard Area.

Map No. H & I 480287B Panel 78 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on July 30, 1976. This property is in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3091 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Riverside County, California; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Riverside County, California. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Riverside County, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060245 Panel 2125A, published on October 6, 1980, Vol. 45 FR 6618, indicates that Block 34, Map of Parsons Survey of the Town of Winchester, Riverside County, California, as recorded in Map Book 2, Page 11, in the Office of the Recorder, Riverside County, California, is partially within the Special Flood Hazard Area.

Map No. H & I 060245 Panel 2125A is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on April 15, 1980. This property is in Zone C.

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

Issued: December 12, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3092 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for Sacramento County, Calif., Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Sacramento County, California. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Sacramento County, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060262 Panel 0340A, published on October 23, 1979, in 44 FR 61026, indicates that Lots 56 through 102, Parkside Meadows, Unit No. 4, Sacramento County, California, as recorded in Book 136 of Maps, Map Number 19, in the Office of the Recorder, Sacramento County, California, are within the Special Flood Hazard Area.

Map No. H & I 060262 Panel 0340A is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on March 15, 1979. These lots are in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3093 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for St. Charles County, Missouri, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. The list included St. Charles County, Missouri. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for St. Charles County, Missouri, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410 (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland, 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 290315 Panel 0215A, published on October 23, 1979, in 44 FR 61024, indicates that Lots 1, 5, 6, 8, 10, and 11, Bunker Hill, St. Charles County, Missouri, recorded as Instrument Number 12572 in Plat Book 18, Pages 27 and 28, in the Office of the Recorder, St. Charles County, Missouri, are partially within the Special Flood Hazard Area.

Map No. H & I 290315 Panel 0125A, is hereby corrected to reflect that the existing structures on the above mentioned lots are not within the Special Flood Hazard Area identified on September 15, 1978. These structures are in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3094 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the Town of Cheektowaga, New York; Under National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been

published. This list included the Town of Cheektowaga, New York. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Cheektowaga, New York that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed listed below are in accordance with § 70.7(b):

Map Number H & I 360231, Panel 0005C and Map Number H & I 360231, Panel 0010C, published on October 23, 1979, in 44 FR 61014, indicates that the property bounded by Indian Road, Cayuga Creek and the Penn Central Railroad in the Town of Cheektowaga, New York, as recorded in the Deed, Liber 7602, Pages 361 and 362, in the Office of the Clerk, Erie County, New York is within the Special Flood Hazard Area.

Map Number H & I 360231, Panel 0005C and Map Number H & I 360231, Panel 0010C, are hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area with the exceptions of the following portions:

Portion 1: * * * Beginning at a point approximately one hundred ten (110) feet north of the intersection of the center line on Cayuga Creek as now located and the monumented center line of The Gardenville Branch Railroad of the Penn Central Company; running thence northeasterly four hundred fifty (450) feet; thence westerly twenty (20) feet; thence southwesterly four hundred fifty (450) feet to the existing boundary of FIA's designated floodway.

Portion 2: * * * Beginning at a point along the western property line approximately two hundred forty (240) feet north of the intersection of the center line of Cayuga Creek as now located and said western property line; running thence northerly seven hundred ninety (790) feet along said property line; thence easterly fifteen (15) feet; thence southerly seven hundred ninety (790) feet more or less to the existing boundary of FIA's designated floodway.

Portion 3: * * * All the property lying within the existing floodway designated by FIA.

The property is in Zone C which is an area outside the limits of the 500-year flood.

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

Issued: December 15, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 81-3095 Filed 1-27-81; 8:45 am]
BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the Borough of Bloomingdale, New Jersey, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Borough of Bloomingdale, New Jersey. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Bloomingdale, New Jersey that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free 800–424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 345284B, Panel 03 published on October 23, 1979 in 44 FR 61007 indicates that the property located at 9 West Buena Vista Way, Bloomingdale, New Jersey, as recorded in Deed Book M89, Page 149, in the Office of the Register of Passaic County, New Jersey, is within the Special Flood Hazard Area.

Map No. H & I 345284B, Panel 03 is hereby corrected to reflect that the structure on the above mentioned property is not within the Special Flood Hazard Area identified on July 9, 1976. This lot is in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3072 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Butte-Silver Bow, Montana, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Butte-Silver Bow, Montana. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Butte-Silver Bow, Montana that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquistion purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 300077 Panel 0340C, published on October 6, 1980 in Vol. 45 FR 66111 indicates that a 51.00 acre tract of land, located in the Southeast Quarter of Section 18, Township 1 South, Range 9 West, Butte-Silver Bow, Montana, as recorded on Roll 2, Card 656, in the Office of the Recorder, Silver Bow, Montana, is within the Special Flood Hazard Area.

Map No. H & I 300077 Panel 0340C is hereby corrected to reflect that the existing structures for Tom Caddy, Gordon Chirdon, and Jack Hendrickson, located on the above mentioned property are not within the Speical Flood Hazard Area identified on September 28, 1979. These structures are in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3073 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Aurora, Colorado, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. The list included the City of Aurora, Colorado. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Aurora, Colorado, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410 (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland, 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 080002 Panel 0015A, published on October 23, 1979, in 44 FR 61024, indicates that Lots 36, through 39, Block 2, Calico Subdivision, Filing No. 1, Aurora, Colorado, as recorded in Book 45, Pages 46 and 47, in the Office of the Recorder, Arapahoe County, Colorado, are within the Special Flood Hazard Area.

Map No. H & I 080002 Panel 0015A, is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on June 1, 1978. These lots are in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3074 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Boynton Beach, Florida, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Boynton Beach, Florida. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Boynton Beach, Florida that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Areas, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free 800–424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 120196, Panel 0005B, published on October 23, 1979 in 44 FR 61014 indicates that Buildings 1A, 1B, 2A, 2B, 3A, 3B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, 12A, 12B, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 17A, 17B, 19A, 19B, 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 24A, 24B, 25A, 25B, and 26B as recorded in Plat Book 31, Page 21 in the Office of the Clerk of the Circuit Court of Palm Beach County are within the Special Flood Hazard Area.

Map Number H & I 120196, Panel 0005B is hereby corrected to reflect that the existing structures on the above mentioned property are not within the Special Flood Hazard Area identified on January 3, 1979. These structures are in Zone B.

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

Issued: January 12, 1981.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 81-3075 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Casselberry, Florida Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Casselberry, Florida. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Casselberry, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 120291, Panel 0005C, published on October 6, 1980, in Vol. 45, FR 66058 indicates that the property known as Lots 16 and 17, Block A; Lots 15, 16 and 18, Block B; Lots 1 and 2, Block C of Camelot Unit 3; Lots 1, 2 and 3, Block B; Lots 20 through 27, Block C; and Lots 9 through 11, Block D of Camelot Unit 4, as recorded in Plat Book 20, Pages 88 and 89 and Plat Book 21, pages 38 and 39, respectively, in the Office of the Clerk of Seminole County, Florida is within the Special Flood Hazard Area.

Map Number H & I 120291, Panel 0005C, is hereby corrected to reflect that the existing structures located on the above property are not within the Special Flood Hazard Area identified on July 2, 1980. The structures are in Zone C.

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

Issued January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3076 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of Deerfield Beach, Florida, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Deerfield Beach, Florida. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Deerfield Beach, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 125101, Panel 0001C, published on October 6, 1980 in 45 FR 66058, indicates that a certain property located in the City of Deerfield Beach, Florida, as recorded in the Deed, Official Record 8983, Page 711, in the Official Records of Broward County, Florida, is located within the Special Flood Hazard Area.

Map Number H & I 125101, Panel 0001C is hereby corrected to reflect that those portions of the above-mentioned property that are at or above 8 feet National Geodetic Vertical Datum of 1929 (NGVD) as shown on the property survey prepared by Arthur D. Strock Associates, dated September 26, 1980 are not within the Special Flood Hazard Area identified on May 26, 1978. Those portions of the property that are between 8 feet (NGVD) and 10 feet (NGVD) are in Zone B. Those portions that are above 10 feet (NGVD) are in Zone C.

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

Issued: January 8, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3077 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the City of El Cajon, California, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of El Cajon, California. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of El Cajon, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 060289 Panel 0001B, published on October 23, 1979, in 44 FR 61025, indicates that Lots 57 through 102 and B, Fletcher Hills Meadows, Unit No. 5, El Cajon, California, recorded as Map Number 8719, File Number 77–479282, in the Office of the Recorder, San Diego County, California, are within the Special Flood Hazard Area.

Map No. H & I 060289 Panel 0001B is hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on September 15, 1979. These lots are in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3078 Filed 1-27-81; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Garland, Texas, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Garland, Texas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Garland, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, DC 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 485471 Panel 0005B, published on October 6, 1980 in vol. 45 FR 66098 indicates that Lots 5 through 17, Block 1, Springpark Central, 7th Addition, Garland, Texas, as recorded in Colume 77245, Page 3155 of Map Records, in the Office of the County Clerk, Dallas County, Texas, are within the Special Flood Hazard Area.

Map No. H & I 485471 Panel 0005B is hereby corrected to reflect that the above mentioned lots, with the exception of the rear 40-foot Building Line are not within the Special Flood Hazard Area identified on November 1, 1979. The lots are in zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3079 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Township of West Norriton, Pennsylvania, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final Rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Township of West Norriton, Pennsylvania. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of West Norriton, Pennsylvania, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or Toll Free Line (800) 424–8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The map amendments listed below are in accordance with § 70.7(b):

Map No. 420711, Panel No. 0001B, published on October 6, 1980, in 45 FR 66051, indicates that Building Units Nos. 42 and 43, Building Units Nos. 66 through 71, Building Unit No. 77, Building Units Nos. 97 and 98, Building Units Nos. 155 and 156, Building Units Nos. 186 and 187, Building Units Nos. 258 through 262, Building Units Nos. 264 through 269 and Building Unit No. 482, Norrington Knoll, Township of West Norriton, Montgomery County, Pennsylvania, as recorded in Deed Book 3893, Pages 367 through 376, in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania, are located within the Special Flood Hazard Area.

Map No. 420711, Panel No. 0001B, is hereby corrected to reflect that the Building Units proposed for the above-mentioned property are not within the Special Flood Hazard Area identified on September 30, 1977. The property is in Zone C.

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

Issued: January 12, 1981

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3086 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the Township of Whitemarsh, Pennsylvania, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Township of Whitemarsh, Pennsylvania. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Township of Whitemarsh, Pennsylvania, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6570 or Toll Free Line (800) 424–8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The map amendments listed below are in accordance with § 70.7(b):

Map No. 420712, Panel No. 0001A, published on October 23, 1979, in 44 FR 61012, indicates that Lot No. 36, Lot No. 40, Lots Nos. 60 and 61, Lot No. 108 and Lots Nos. 170 and 171, Andorra Nurseries, Section Four, Township of Whitemarsh, Montgomery County, Pennsylvania, as recorded in Deed Book 914, Pages 31, 32, 45, 46, 50, 51, 67 through 69, 74 through 76 and 78 through 81, Deed Book 937, Pages 185 through 187 and Deed Book 1684, Pages 485 through 487, in the Office of the Recorder of Montgomery County, Pennsylvania, are located within the Special Flood Hazard Area.

Map No. 420712 Panel No. 0001A, is hereby corrected to reflect that the above-mentioned lots are not within the Special Flood Hazard Area identified on December 1, 1977. The lots are in Zone C.

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

Issued: December 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3097 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5712]

Letter of Map Amendment for the Unincorporated Area of Arlington County, Virginia, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Unincorporated Area of Arlington County, Virginia. It has been determined by the Federal Insurance Administrator, after acquiring additional flood information and after technical review of the Flood Insurance Rate Map for the Unincorporated Area of Arlington County, Virginia, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or Toll Free Line (800) 424–8872.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. H&I 515520A, Panel No. 06, published on October 23, 1979, in 44 FR 61012 indicates that a 2.673 acres parcel of land, being part of the Old Factory Hatch Tract and part of Parcels 3, 4 and 6, Section 3, Long Branch Park and Section J, Shirley Park, less a parcel containing 0.795 acres already acquired or to be acquired by the County of Arlington, Unincorporated Area of Arlington County, Virginia, as recorded in Book 1883, Pages 360 through 362, in the Office of the Clerk of the Circuit Court of Arlington County, Virginia, is located within the Special Flood Hazard Area.

Map No. H&I 515520A, Panel No. 06, is hereby, corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on December 31, 1976. The property is in both Zone B and C.

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

Issued: December 12, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3098 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Houston, Texas, Under National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The Federal Insurance Administrator published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Houston, Texas. It has been determined by the Federal Insurance Administrator after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Houston, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-6570 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free (800) 424-9080).

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480296 Panel 0150B, published on October 6, 1980, in Vol. 45 FR 66098, indicates that Northbrook, Section Four, Houston, Texas, as recorded in Volume 280, Page 38, in the Office of the Clerk, Harris County, Texas, is partially within the Special Flood Hazard Area.

Map No. H & I 480296 Panel 0150B is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on December 11, 1979. This property is in Zone C.

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

Issued: January 12, 1981.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 81-3080 Filed 1-27-81; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 530

Interest on Awards of Reparation; Interpretive Ruling

AGENCY: Federal Maritime Commission.

ACTION: Interpretive rule on interest awards is repealed.

SUMMARY: A fixed level of interest will not be applied to all reparation awards arising out of violations of the Shipping Act as determined in proceedings before the Commission. Because of the recent volatility of interest rates, the level of interest on reparation awards will be determined on an *ad hoc* basis.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's May 14, 1980 policy statement entitled "Interest on Awards of Reparation" (46 CFR 530.12, 45 FR 31722) has been repealed in response to a petition filed by four steamship conferences. Although the policy statement was not intended to establish a binding norm of awarding 12 percent interest in all instances, it has been repealed to underscore the fact that interest due on reparation awards is evaluated on a flexible, case-by-case basis.

§ 530.12 [Removed]

Accordingly, Part 530, Title 46, Code of Federal Regulations is amended by the removal of § 530.12.

By the Commission, January 5, 1981.

Francis C. Hurney,

Secretary.

[FR Doc. 81-3171 Filed 1-27-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 31

[Docket No. 20188; FCC 80-650]

Uniform System of Accounts for Class A and Class B Telephone Companies; Amendment Permitting Depreciable Property To Be Placed in Groups Comprised of Units With Expected Equal Life for Depreciation Under the Straight-Line Method.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its accounting rules to permit telephone companies subject to its jurisdiction to employ the unit summation or equal life group procedure in computing depreciation. Telephone companies having depreciation reserves in sufficient detail may seek permission to employ remaining-life depreciation rates. The staff will determine the book reserves for those carriers now lacking reserves in such detail. These changes were requested by telephone companies, which asserted that faster recovery of capital was essential to the maintenance of financial integrity of those concerns. The intended effect of these changes is to permit the allocation of cost of property over the service life in a straight-line pattern.

EFFECTIVE DATE: July 1, 1981.

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

FOR FURTHER INFORMATION CONTACT: Kenneth A. Moran, Common Carrier Bureau (202) 632-6956.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: November 6, 1980.

Released: December 5, 1980.

By the Commission.

Table of Contents

Section		Paragraph
I.	Introduction	1
II.	History of the Proceeding	5
III.	The Role and Purpose of Depreciation Accounting	10
IV.	Statutory Provisions	16
V.	Rules Implementing Section 220	20
VI.	The Investors' and the Consumers' Interest in the Cost and Recovery of Capital	32

VII. Evaluation of the ELG Proposal:
A. Positions of the Parties 37
B. Discussion of the Merits 47
VIII. Alternative Methods 67
IX. Limiting Application of New Methods to New Plant Additions 71
X. Remaining-Life 76
XI. Special Consideration of Present Investment in Account 232—Station Connections 85
XII. Conclusions—FCC Policy—Rules—Interpretations 89
XIII. Ordering Clauses 98
Appendix

I. Introduction

1. The American Telephone and Telegraph Company and the associated Bell System operating telephone companies (hereafter AT&T or Bell) filed a petition on September 23, 1973 requesting that the Commission amend Part 31 of its Rules and Regulations (Uniform System of Accounts for Class A and Class B Telephone Companies) to permit property to be placed in subgroups comprised of units expected to have the same life for depreciation accrual rate development purposes. In essence, AT&T requested that the Commission amend Part 31 to allow the use of the straight-line equal life group (SLELG) procedure of depreciation rate development for property (except station connections) placed in service after December 31, 1974. The equal life group procedure is also known as the unit summation procedure. Currently, telephone companies are allowed to use only the straight-line group procedure of depreciation rate development as defined in Part 31 with the practice having been to determine depreciation rates by using the straight-line vintage group (SLVG) procedure.

2. The basic reason given by AT&T for proposing SLELG is that such a method would provide for the recovery of capital more nearly in line with its consumption as measured by the physical retirement of property. Under the SLVG method, depreciation is accrued on a class or subclass of depreciable plant on the basis of the average service life of each vintage group. According to AT&T, a reserve deficiency results at the time of retirement in the case of plant retired before an age equal to the average service life of the vintage group. This reserve deficiency is later made up by accruals on units that live beyond the average service life of the group. Under the SLELG method, depreciation is accrued upon those units of property in a vintage group that are expected to have the same service life so that, if projections are accurate, no reserve deficiency results since each unit is fully depreciated in the accounts at the time of retirement. The use of the SLELG method results in a higher accrual rate during the earlier years of the total property service life and a lower rate in later years.

3. In its petition, AT&T stressed the importance of the proposed change on the maintenance of the financial integrity of the Bell System companies. It alleged that because the SLVG method now being used fails to match the capital recovery with the rate of capital consumption, the companies are failing to generate funds as rapidly as they should. Thus, AT&T asserted, the companies are faced with going to the outside capital markets for replacement of plant retired at an earlier date than the average service life when such funds should be internally generated through appropriate depreciation procedures. Bell claims that the proposed SLELG method will more closely match capital recovery with capital consumption and thus will provide an amount of internal cash flow which will more nearly match replacement construction requirements. AT&T proposed that the changeover from SLVG to SLELG be phased in over a five-year period to minimize the impact on depreciation rates, accruals, and revenue requirements.

4. In addition to AT&T's proposal to permit a change from the SLVG method to the SLELG method of depreciation, the Commission also is considering issues relating to the impact of the proposal on all parties concerned and on the most effective way to implement the proposal.

II. History of the Proceeding

5. Following the receipt of AT&T's petition for rulemaking, the Commission, on October 10, 1973, issued a public notice asking for comments within thirty days on AT&T's proposal. Nineteen parties [1] filed initial comments, some of which were not timely and some of which were not served on AT&T. While some of these comments touched on the merits of AT&T's proposal, the bulk were concerned with procedural matters, such as, that time should be allowed to study the proposal or that hearings should be held on the subject. AT&T filed reply comments urging that the Commission proceed with the issuance of a Notice of Proposed Rulemaking (NPRM) at the earliest opportunity.

6. The Commission released a NPRM on September 19, 1974, establishing Docket No. 20188 and inviting comments and reply comments from all interested parties on AT&T's petition. After granting several requests for extensions of time, the Commission set March 24, 1975, as the date for filing comments and May 26, 1975, as the date for filing reply comments. In addition to the Bell System, eighteen parties filed comments in response to the Commission's notice and five parties filed reply comments. These parties are identified and their comments discussed Section VII, below.

7. In June 1976, the Commission awarded a contract to Ernst & Ernst, Inc., (Ernst), an independent accounting firm to conduct a study of various aspects of depreciation. Ernst completed the study, entitled "Study of Depreciation Rate Practices and Policies," in July, 1977. Among the issues studied by Ernst were the use of Equal Life Group Depreciation in general and the Docket No. 20188 proposal in particular. Following the completion of the study, the Commission issued a public notice seeking comments on the Ernst report. Thirteen parties, including the petitioner, filed comments, which are discussed in Section VII, below.

8. On March 22, 1978, GTE Service Corporation submitted a request to the Secretary of the Commission, together with a copy of the January 13, 1978, Canadian Radio-television and Telecommunications Commission's (CRTC) Decision In Phase I of the Inquiry into Telecommunications Carriers' Costing and Accounting Procedures (Cost Inquiry), which was initiated in 1972 by the Canadian Transport Commission. As the CRTC proceeding had been extensively covered in the Ernst report, GTE asked that the decision in that proceeding be included in the record of Docket 20188. That particular decision dealt specifically with the appropriateness of the ELG procedure and how it should be implemented by Canadian companies.

9. On February 25, 1980, the Chief, Accounting and Audits Division of the Common Carrier Bureau requested that AT&T and GTE provide revenue requirement impact studies for their respective domestic telephone systems based upon alternative accounting assumptions. The studies were received and served on all parties of record in this proceeding during March 1980. The Common Carrier Bureau announced in a Public Notice on March 31, 1980, the receipt of the revenue requirement impact studies and that any party(ies) wishing to comment on the impact

[1] The parties, including those whose comments were not timely and/or were not served on AT&T are GTE Service Corporation, Rochester Telephone Corporation, Arthur Andersen & Co., Arthur Young & Company, Coopers & Lybrand, Department of Defense, and the following state public service commissions: Alabama, Arizona, California, Illinois, Kentucky, Maryland, Michigan, Mississippi, New York, North Carolina, Ohio, Tennessee and Wisconsin.

studies could do so by May 1, 1980. Three responses were received on these revenue requirement impact studies, from the State of Wisconsin Public Service Commission, the New York Public Service Commission, and the Department of Defense on behalf of all Federal Executive Agencies.

III. The Role and Purpose of Depreciation Accounting

10. In order to understand the purpose of depreciation accounting, we should first know the purpose of accounting in general and some of its basic tenets. Accounting, as developed over the years, has had as its most basic purpose the goal of presenting a financial picture to investors and others that would portray the current condition of the venture; the results of management's stewardship of the investors' funds; the relative integrity of the enterprise; and, on an interim or periodic basis, the results of operations or progress of the business. One of the earliest concepts was that of matching costs and revenues. That concept attempts to relate costs to the period in which they occur and against the revenues generated for which those costs were incurred. It has been said that every expense is related directly or indirectly to the production of revenue. However, not every expenditure is appropriately charged to the accounting period in which it is incurred. Expenditures for some items are more properly charged to the various periods in which they are useful in the production of revenues. Expenditures for long-lived assets are of this nature and the matching principle requires a determination of how much of the cost should be charged to each succeeding period. This process has been called "depreciation accounting."

11. Frequently, there is substantial misunderstanding as to the degree of precision embodied in financial statements and reports. The National Association of Railroad and Utilities Commissioners (NARUC) in the 1943 "Report of Committee on Depreciation" (p. 33) said:

> Only after a plant asset has lived its useful life will the true depreciation cost be known. The same difficulty is encountered in computing the annual profit and loss of businesses. Only after a business has been wound up can the absolute profit and loss be determined, and then only for the entire period of its existence. Nevertheless it is necessary to make determinations of depreciation and profit and loss periodically, at least annually, and the fact that very precise answers cannot be obtained should be no deterrent. Reasonably accurate results in both cases are all that should be expected and these can usually be achieved.

12. Even earlier than 1943, a similar observation directly related to the measure of depreciation was made by Justice Brandeis in *United Railways & Electric Co. v. West*, 280 U.S. 234, 262, 50 S. Ct. 123, 74 L.Ed. 390, (1930), who acknowledged the lack of precision in the exercise when he said:

> * * * an annual depreciation charge is not a measure of the actual consumption of plant during the year. No such measure has yet been invented. There is no regularity in the development of depreciation. It does not proceed in accordance with any mathematical law. There is nothing in business experience, or in the training of experts, which enables men to say to what extent service life will be impaired by the operations of a single year, or of a series of years less than the service life * * * even where it is known that there has been some lessening of service life within the year, it is never possible to determine with accuracy what percentage of the unit's service life has, in fact, been so consumed. Nor is it essential to the aim of the charge that this fact should be known. The main purpose of the charge is that irrespective of the rate of depreciation there shall be produced, through annual contributions, by the end of the service life of the depreciable plant, an amount equal to the total net expense of its retirement.
>
> * * * It is a bookkeeping device introduced in the exercise of practical judgment to serve three purposes. It preserves the integrity of the investment. * * * It serves to distribute equitably throughout the several years of service life the only expense of plant retirement which is capable of reasonable ascertainment—the known cost less the estimated salvage value. And it enables those interested, through applying that plan of distribution to ascertain, as nearly as is possible, the actual financial results of the year's operation.

13. Recognition of the inability of individuals to achieve absolute precision in arriving at various accounting measures however, should not diminish the striving for such measures since a failure to attain reasonable measures can result in erroneous and misleading financial reports. Reliance on such erroneous information, in turn, can result in erroneous investment and regulatory decisions.

14. All accounting measures are important, but in the case of capital intensive industries the measure of depreciation becomes even more important. On the whole such industries are frequently regulated and annual revenue requirements reflect both the current measure of the consumption of capital (depreciation) and a provision for the costs (return requirement) of the capital still unrecovered through depreciation charges. If depreciation policies or practices were to be determined solely with concern for the level of revenue requirements, the actual measure of depreciation might be misstated. Such distortion of the measure of depreciation would in turn lead to a misstatement of the results of operations for the period and would also misstate the relative position of the enterprise as shown by its balance sheet. If such distortions were perceived by present and potential investors and were deemed to be deleterious to the safety and recovery of their investment, they in turn would likely demand a higher return on their funds. Consequently, a failure to properly measure by understating these costs would, in the long run, probably be offset by higher costs of capital without any real avoidance of the ultimate need to provide full recovery for the capital. The importance of a proper measure of depreciation and the potential adverse effects of improper measures on investors were addressed in the NARUC "Reports of Committee on Depreciation for the Years 1943 and 1944," starting at page 128:

> Those consequences stem from the fact that depreciation expense is an operating cost commensurate with the consumption of service life of the utility plant. Accordingly, if the annual accrual for depreciation is understated, there is a corresponding overstatement or inflation of net income and earned surplus. Investors are given an illusory and false impression with regard to earnings coverage, the effects of which are twofold and cumulative. * * * Moreover, if past deficiencies in depreciation accruals were substantial, it may be necessary to make up the back accruals by an appropriate adjustment of existing or future earned surplus and, in extreme cases, of the capital account itself.

15. Measures of costs under depreciation accounting, as well as other forms of accounting, are of the utmost importance and should be as accurate as circumstances will allow. The accounting measures of costs and revenues are the information base upon which pricing and ratemaking decisions are predicated. These same measures establish the amount of expenses that a regulated enterprise must have an opportunity to recover. Finally, it is the provision for depreciation that ultimately determines how much remains in the rate base and thus, how much in dollars must be provided to investors as a return on their remaining investment.

IV. Statutory Provisions

16. Recognizing the need for accurate accounting measures and records, including an accurate measure of annual depreciation charges within reasonable limits, the Communications Act of 1934 gave the Commission the authority to "* * * in its discretion, prescribe the

forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act * * *." These provisions are set forth in Section 220(a).

17. In Section 220(b), the Commission is required to "* * * as soon as practicable, prescribe for such carriers the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property. * * * The Commission may, when it deems necessary, modify the classes and percentages so prescribed."

18. Paragraph (g) of Section 220 requires the Commission to give carriers "at least six months" notice before required accounting changes are to take effect.

19. Paragraph (i) of Section 220 requires the Commission to give state commissions having an interest a reasonable opportunity to present their views as to proposed changes in prescribed requirements.

V. Rules Implementing Section 220

20. The Commission's rules establishing overall accounting and the more specific depreciation accounting requirements are embodied in Parts 31, 33, 34, 35, and to some extent in Part 43. Parts 31 and 33 establish Uniform Systems of Accounts for Class A, B, and C Telephone Companies. Parts 34 and 35 establish Uniform Systems of Accounts for Radiotelegraph Carriers and for Wire-Telegraph and Ocean-Cable Carriers, respectively. Part 43 establishes requirements for various reports of communication common carriers and certain affiliates. Part 43 derives its authority from Sections 211 and 219 of the Communications Act of 1934. It is of importance here that Section 43.43 sets forth requirements for reports of proposed changes in depreciation rates.

21. The essential provisions of Part 31 are of the most importance at this time as they cover all of the subject telephone companies for whom we presently prescribe depreciation rates. The only other carriers for which the Commission has recently prescribed depreciation rates are Western Union Telegraph Co. (WU), which is subject to Part 35 of the Commission's rules, and ITT World Communications, Inc., which is subject to Part 34 of the Commission's rules.

22. The portions of Part 31 that are of the most immediate significance in terms of defining or establishing depreciation accounting requirements are: Section 31.01–3, Definitions; Section 31.02–80, Computation of depreciation rates; Section 31.02–81, Depreciation charges; Section 31.02–82, Classes of depreciable telephone plant; and Section 31.02–83, Plant retired for causes not factors in depreciation. Other sections of Part 31 set forth requirements and definitions of specific accounts such as the balance sheet accounts for telephone plant in service; extraordinary maintenance and retirements; and depreciation reserve. In the operating expense accounts, similar provisions are made for the depreciation and the extraordinary retirements expense accounts.

23. Under the definitions portions of Parts 31, 34 and 35 the significant differences are as follows:

Part 31 includes a definition of group plan—which does not appear in Parts 34 and 35.

Sec. 31.01–3 Definitions.

(q) "Group plan," as applied to depreciation accounting, means the plan under which depreciation charges are accrued upon the basis of the original cost of all property included in each depreciable plant account, using the average service life thereof properly weighted, and upon the retirement of any depreciable property its full service value is charged to the depreciation reserve whether or not the particular item has attained the average service life.

Parts 34 and 35 include definitions of "Net book cost" and "Subclass" which do not appear in Part 31.

Sec. 34.02–1 Restrictive use of certain terms. "Net book cost," as applied to a specific portion of plant, means the "book cost" of that portion minus that part of the related depreciation (or amortization) allowance account that is assignable to that portion of the plant.

"Subclass," as applied to depreciable plant, means that portion of a "class" of plant, preferably corresponding to one or more "subprimary" plant accounts, to the cost of which a specific percentage rate of depreciation is applied in accounting for "depreciation," which percentage rate differs from those that are applied with respect to other "subclasses" of the same "class" of such plant.

24. Rules regarding treatment of retirements of plant for causes that were not factors in the computation of depreciation (extraordinary retirements) are essentially identical for Parts 31, 34 and 35.

25. The rules for the computation of depreciation rates are essentially identical except that Part 31 includes a sentence as follows:

These percentage rates shall be computed in conformity with the group plan of accounting for depreciation * * *.

26. Part 31 also includes some specific reference to removal costs of station apparatus and its accounting in the station connections account. This portion is unique to the telephone companies and would not be applicable to the other types of carriers.

27. Parts 34 and 35 under the instructions for the computation of depreciation rates, as previously stated, are essentially identical to Part 31, with the exceptions noted above, and in addition have one other very significant difference. Both Parts 34 and 35 include language specifically addressing the calculation of and use of "remaining-life rates." The language in Section 34.04–2, computation of depreciation rates, says:

(c) * * * However, a carrier, upon receiving prior approval from the Commission or, upon prescription by the Commission, shall apply such depreciation rate as will amortize the difference between the net book cost of a class or subclass of plant and its estimated net-salvage value during the known or estimated remaining service life of that plant. Any carrier which, at the effective date of this rule, is applying the remaining-life method of depreciation accounting may continue to do so unless otherwise directed by the Commission.

28. This last item regarding remaining-life depreciation will be addressed further in a discussion of reconciliation of differences in the Commission's rules. Paragraph 12 of the NPRM addressed the question of whether conformity, by like amendments, should be sought in the Commission's rules.

29. A common thread throughout the Commission's rules for depreciation accounting has been that its purpose is to allocate through annual charges to expense the service value of the property over its service life in accordance with the straight-line concept. The Commission defines "service value" as the difference between original cost and net-salvage value, and "service life" as the period of time between installation and retirement of plant. The Commission's definition of the straight-line concept as stated in Part 31, Section 31.01–3, Definitions is:

(gg) "Straight-line method," as applied to depreciation accounting, means the plan under which the service value of property is charged to operating expenses and to clearing accounts and credited to the depreciation reserve through equal annual charges as nearly as may be during its service life.

30. The Commission's requirement that depreciation charges follow the straight-line concept is one that is well recognized by other regulatory bodies and more importantly enjoys widespread use and recognition by businesses in general. The comments of the Committee on Depreciation of

NARUC in its 1943 report (page 89) are of interest:

Widespread Use of Straight-line Method

It is significant that the straight-line method is in almost universal use. This does not prove it to be the best method. Nevertheless, when business managements throughout the country, free to adopt any reasonable method, have used the straight-line method, such general acceptance of the method is entitled to great weight in considering its merits.

31. In 1975 the Technical Research Division of the American Institute of Certified Public Accountants found that the straight-line pattern for allocating depreciation charges was still the overwhelming choice among businesses in general.

VI. The Investors' and the Consumers' Interest in the Cost and Recovery of Capital

32. In considering this matter it is important to recognize some fundamental concepts that have been recognized by both the courts and practical observers in business, finance and academia.

33. As observed by the U.S. District Court in *Goelet v. United States*, 161 F. Supp. 305 (S.D.N.Y. 958), the purpose of depreciation is to make provision for recovery or charge of the original cost of the property by the end of its life. It is noteworthy that the court did not say more, nor did it say less. The comments of Justice Brandeis in *United Railways & Electric Co. v. West, supra*, also considered the purpose of the charge.

34. Forty-three years later in the course of its review of another case involving depreciation recovery, the United States Court of Appeals, District of Columbia Circuit, enunicated the same principle of investor recovery of the whole cost of investment and the attendant interim inaccuracies of the process in *Democratic Central Committee of the District of Columbia et. al., Petitioners v. Washington Metropolitan Area Transit Commission, Respondent*, 485 F. 2d 786 (1973) where it said:

Computations of the cost of ordinary depreciation—normal physical deterioration—are made on the basis of estimates of service life and salvage value, and charges therefor are usually spread over the service period. Depletion allowances are similarly based on estimates of productive life, and usually are similarly spread. Even obsolescence may sometimes be foreseen and calculated in much the same manner. It is evident that if all predictions are accurate and the asset remains in service for precisely the period anticipated, the process will eventually yield to investors the exact amount of their investment, and will ultimately cost consumers the same amount. Consumers will thus absorb the investment loss and investors will be made whole.

But calculations, even of the highest predictive quality, sometimes go awry. Service life, productive life or salvage value may turn out to be more or less than originally estimated. Obsolescence may be slower or faster than expected in the beginning, or may arrive suddenly, and damage to or destruction of the asset may occur just as suddenly. In most instances, however, the consumers' financial obligation remains intact, the investors' right to recoupment remains unimpaired, and appropriate adjustments must be made. This is so although in terms of original expectations, the loss of serviceability is premature. Consumers bear the risk of that loss unless investors have been compensated for assuming it; if, as is more usual, investors have not, return of their investment is fully assured.

In this milieu, the distribution of the risks and burdens on utility assets is apparent. Consumers must ordinarily bear the expense of normal maintenance and, according to some decisions, of deferred maintenance as well. Beyond that, consumers must usually absorb the investment losses wrought by normal wear and tear on depreciable assets, and by exhaustion of depletable assets. *Even when an asset is underdepreciated at the time it is retired from service, consumers must reimburse the investors therefor. And when utility property becomes unsuitable by reason of obsolescence before investors have fully recouped their investment in it, the loss is passed on the consumers.* (Emphasis added; footnotes omitted)

35. Those same principles were acknowledged by this Commission in its Phase II Final Decision and Order in Docket 19129 at paragraph 172 where it cited the above court decision and said:

We believe that these principles apply with equal force to capital gains on the disposition of AT&T's retired plan (which was once in the rate base) and that, under these principles, the gains in question here should benefit the ratepayer. By the same token, the ratepayers bear the risk of loss from sale below current book value of the property.

36. In the next paragraph of that order the Commission went on to say:

We turn first to the case of depreciable property where we believe the fact that the users bear the risk of loss may be most clearly seen. *It is settled law that AT&T's stockholders are entitled to the opportunity to earn a fair return on the amount of capital they have prudently invested in the regulated enterprise.* See *F.P.C. v. Hope Natural Gas Co., supra*, at 603, *Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission*, 262 U.S. 276, 289-90 (concurring opinion of Brandeis, J.) (1923). In practice, this translates to a return on the original (or depreciated book) value of AT&T's assets used and useful in providing telecommunications service. *Depreciation, in turn, is calculated on the original cost of AT&T's plant and is designed to regain over the service life of the asset the entire amount the investors paid to purchase it.* The money necessary to repay the investors, of course, comes from the users of AT&T services. Thus the ratepayers bear the risk both in terms of the return they pay the investors for the use of their capital and in the reimbursement of the investors for the decline in value (depreciation) of the assets used to provide service. To make this clear, we note that AT&T's method of depreciation, the Straight-Line Vintage Group method, see *supra* n. 90, does not recognize gains or losses. Under group depreciation, individual items of plant are grouped with similar types of plant and the depreciation is calculated on the projected average life of the group. If an item within a group is destroyed, becomes technically obsolete, or otherwise is rendered unfit for service ahead of the projected date and is thus prematurely removed from service, the ratepayer reimburses AT&T for the loss of that asset because AT&T merely reduces the asset account and the depreciation reserve by equivalent amounts. Depreciation, and return, are then calculated from year to year as if they were still in the rate base until the investors have recovered the full purchase price plus return on their investment. This method of depreciation is prescribed for AT&T's use and is fully in accord with regulatory theory. It has the benefit, in an ongoing enterprise such as AT&T, of spreading losses over a reasonable period so as to minimize the impact on the ratepayers of catastrophic losses in any one year (if they are not covered by insurance). Still, this does not change the fact that the ratepayers bear the risk of loss in value. Thus, when such a piece of property is retired and disposed of and a gain results, the equities of the situation would suggest that the ratepayer should receive the benefit of that gain. Further, it is reasonable that the gain should be measured from the current book value of the property, original cost less depreciation and that it should be reflected as operating revenue. (Emphasis added).

VII. Evaluation of the ELG Proposal

A. Positions of the Parties

37. The parties filing comments in this proceeding, in addition to the Bell System, generally can be grouped into three categories—the independent telephone industry, along with Western Union Telegraph Co. (WU); the accounting profession; and the state regulatory commissions and associations representing these commissions. The basic positions of these groups, and the positions of the various individual parties making up the groups, are discussed below.

38. The Bell System, obviously, urges the Commission to adopt the ELG method of depreciation. In its comments, AT&T repeats its earlier position put forth in its petition, and discussed in the "Introduction" to this order. Essentially, Bell stresses the importance of matching capital recovery with capital consumption, which will provide more internally generated funds to meet replacement construction requirements. Also, AT&T underlines the importance of the proposed change in depreciation practices on the maintenance of the financial integrity of the Bell System companies.

39. The independent telephone industry (comments were filed by General Telephone and Electronics, United Telephone Co., Continental Telephone Co., and the United States Independent Telephone Association) and WU favor the adoption of the ELG method of depreciation, but with certain qualifications. For example, while General Telephone and Electronics (GTE) supports the use of ELG, it recommends applying the method to all new property at one time, rather than using a gradual "phase-in" approach as desired by AT&T. In addition, GTE suggests the use of "capital recovery schedules" which would set an advance determination of capital use and recovery, and then have the company accountable for the achievement of the schedule. The United Telephone Company (United) favors the use of ELG, and recommends that all telephone companies simultaneously phase-in property under that method. United also recommends that companies be allowed to use simulated data in using ELG because of the complexities involved in some cases in the use of actual data. Continental Telephone Company (Continental) also favors the use of ELG, but is concerned about the difficulty of attempting to follow AT&T's complex methodology. Therefore, Continental requests that the methodology used by AT&T not be made mandatory. The United States Independent Telephone Association (USITA) favors the adoption of ELG, but states that its use should be elective and should be as flexible as possible. WU does not object to the adoption of ELG, but does not want to use it.

40. Two accounting firms and the American Institute of Certified Public Accountants (AICPA) filed comments in response to the NPRM in this proceeding. The firm of Coopers & Lybrand endorsed the use of ELG, but commented that the use of that method depended to a great degree on the availability of data. While the Bell System would have the necessary data to use ELG, Coopers & Lybrand believes, it is questionable whether small firms would have that data. The firm of Arthur Andersen and Company recommended that the Commission adopt the use of ELG, and encouraged other commissions to follow the FCC. Finally, the AICPA endorsed the use of ELG, given the availability of adequate data, as it should result in a more accurate matching of capital recovery with capital consumption which seems to be implicit in the Commission's rules.

41. Seven state regulatory commissions (California PUC, Colorado PUC, Florida PSC, Kentucky PSC, Maryland PSC, New York PSC, and Wisconsin PSC), plus the NARUC Subcommittee of Staff Experts on Accounting, the Southeastern Association of Regulatory Utility Commissioners (SEARUC), and the Department of Defense filed comments in response to the NPRM. All of these parties opposed the adoption of ELG, for a variety of reasons. The principal reason given by the state commissions for opposing ELG was that its adoption would result in an increase in revenue requirements and consequently an increase in rates to subscribers at the same time that inflation was driving up the prices of other utilities such as electric and gas. Additionally, they argued that the adoption of ELG would result in an added burden, and thus an added cost, to the commissions attempting to administer the method (most of the state commissions commenting believed that the method would be too complex to cope with and that commissions would be unable to administer it); it would result in an added cost to companies utilizing the method; and it would result, effectively, in a domino effect leading to the approval of the use of ELG by other regulated utilities. The NARUC subcommittee expressed its concern about the burden of increased revenue requirements on the ratepayer, and added that if ELG is adopted by the FCC, its use should be made mandatory only for the large telephone companies and elective for others. The SEARUC and the Department of Defense both opposed the adoption of ELG at the time their comments were filed, and recommended that hearings be held on the matter. Other arguments contended that the use of ELG would lead to higher income taxes, thus a greater burden on ratepayers; that ELG was not a proper group method within the definitions of the Commission, and that there was no demonstrated need for increased cash flows for the industry.

42. Reply comments were submitted by six parties in this proceeding—AT&T, GTE, the Wisconsin PSC, the California PUC, the New York PSC, and the Department of Defense. Essentially, these replies reiterated the positions of these parties expressed in their earlier comments. AT&T argued that while the immediate impact of the adoption of ELG is an increase in revenue requirements, and thus rates, a cross over point will be reached in the longer-run and rates will actually decline. Additionally, AT&T notes that although the method may be complex to administer, with the use of computers by commissions, much of the complexity would be eliminated. Bell also stresses, as it had in earlier comments, the importance of matching capital recovery and capital consumption. GTE emphasizes in its reply comments the superiority of ELG over VG because the recovery of capital coincides more closely with consumption of capital. The state commissions and the Department of Defense contend in their replies that ELG does not provide a better matching of capital consumption with capital recovery and that the adoption of ELG is, in essence, the granting of a rate increase. However, the NARUC Subcommittee of Staff Experts on Accounting did recognize that there was technical support for ELG.

43. The Ernst report, "Study of Depreciation Rate Practices and Policies," was completed in July, 1977. As mentioned earlier, the use of ELG depreciation in general, and Docket No. 20188 in particular, were among the issues considered in the study. Ernst concluded that ELG provided a better matching of capital consumption with capital recovery than VG. Moreover, the study found that the use of ELG would increase a company's internally generated funds compared to the VG method and that the use of ELG would provide more information to commissions about capital management by utilities. However, Ernst also pointed out that the use of ELG would result in increased revenue requirements initially, and possibly over the longer term, depending on growth rates, cost of capital and tax policies. Additionally, Ernst acknowledged that the use of ELG would result in an increased regulatory burden and consequently, increased regulatory staffs. In its conclusions Ernst recommended that the Commission should adopt ELG on a flash-cut basis as all the Commission's objectives would be better served by ELG than by VG; that it be allowed in such a manner that it could be adopted by any company, large or small; that depreciation

reserves be established by depreciable category and maintained on a continual basis; that the FCC explore possible refinements in depreciation practices; that implementation problems, such as salvage accounting and application of ELG by the Independents be resolved by the regulators an the carriers; and that the Commission should monitor the activity in the accounting community regarding other concepts of "cost" and depreciation. The last recommendation was directed toward inflation type measures of accounting data.

44. Ten parties commented on the Ernst report. These were AT&T, GTE, United Telephone Co., USITA, California PUC, Flordia PSC, New York PSC, Wisconsin PSC, the NARUC subcommittee and the Department of Defense. Essentially, all of these parties repeated their earlier positions on Docket No. 20188. AT&T's lengthy comments were the only comments to address the study in depth, and those comments pertaining to Docket No. 20188 were much the same as the earlier comments and reply comments filed in the proceeding.

45. In March of 1978, GTE submitted a copy of a decision by CRTC in Phase I of the Cost Inquiry, which GTE requested be placed in the record of this docket. The particular decision focused on the allowance of ELG as a depreciation method for telecommunications carriers, and did approve such use.

46. Finally, during 1980, upon request of the Chief, Accounting and Audits Division, Common Carrier Bureau, AT&T, and GTE filed updated impact data with respect to the implementation of ELG with the Commission and upon all parties of record. Following these submissions comments were solicited by a public notice which was also directly served on all parties of record. Comments were filed by the New York and Wisconsin Public Service Commissions and by the Department of Defense. The commenting parties repeated their earlier comments.

B. Discussion of the Merits

47. We begin by acknowledging that the issues involved in this proceeding are complex and not readily characterized as "right" or "wrong." Where depreciation methods and procedures are concerned, reasonable judgment must often substitute for mathematical certainty. We also recognize that a Commission-endorsed depreciation policy must consider economic and other public policy points of view. As will be specified later, we are directing the staff to continue to analyze accounting and depreciation issues within this broader context.

48. With respect to the straight-line equal life group procedure, we find that its application on an optional basis will further the mandate of Section 1 of the Communications Act, "to make available, so far as possible, to all people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges. . . ." 47 U.S.C. § 151. The primary attraction from an accounting perspective of SLELG is that it appears to calibrate more closely the flow of revenues with the recovery of capital. Communications is a large and growing component of our nation's economy. It offers bright prospects for improving our society's productivity. Technological trends suggest an increasingly dynamic environment for telecommunications, with innovation in equipment and services proceeding at a much more rapid pace than in the past.

49. If the public is to realize the benefits of advances in communications, it is necessary that accounting and depreciation rules not stifle innovation and inhibit the introduction of new technology. It is important that the companies, their customers, and their investors, as well as the regulators, all have an accurate and objective financial picture of the companies' operations and capital requirements. The seeming attraction of stretching out lives to hold down depreciation expenses may impose longer-term costs on our society that far outweigh the short-term advantages. Although our decision to permit SLELG (or, with prior approval or appropriate showing, other methods or procedures), is likely to result in an increase in the near term in revenue requirements, we believe that the relative size of the increment will be repaid many times over in the future years as the ability of regulated telephone companies to continue to provide ". . . rapid, efficient . . . communication service with adequate facilities at reasonable charges is enhanced." The ultimate burden on different user groups of any future rate increases resulting from our decision depends on the particulars of future plant investment as well as on the jurisdictional separations of such investment and corresponding expenses. The latter is the subject of a recently established Federal-State Joint Board.[2] Moreover, our decision to phase in the implementation of ELG will ameliorate any revenue requirement impact and permit us to take further action in a timely manner if warranted.

[2] *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, FCC 80-339.

50. The remainder of this section will explain in greater detail the basis of our decision. To begin, we note an interesting view expressed at the turn of the century:

> The Question of Depreciation is one upon which so many articles have been written and so many opinions expressed that there would not appear to be much more which could profitably be said on the subject.[3]

Nevertheless, the record in this docket and the professional literature on the subject since that date are voluminous. From a thorough examination of the record and a comprehensive survey of the literature, we believe we can draw the following conclusions.

51. First, given the uncertainties of life estimation and results from statistical theory, variance of errors in prediction is likely to be less for larger groups of investment than for individual elements or smaller groups. Since accuracy is desirable, group methods are to be preferred according to this criterion. This should not preclude the application of unit methods for specific circumstances at some future time if the circumstances so warrant. Our rules should be changed to acknowledge such a possibility.

52. Second, as the amount to be depreciated consists of one known (original cost) and two unknowns (cost of removal and salvage), we think it better to insist on a more disaggregated measure of accumulated depreciation (depreciation reserve) for the original cost of property while permitting a more general aggregation of accumulated depreciation provisions for the cost of removal and salvage. Such provisions could be vintage level reserve records for original cost and category level reserves for removal and salvage. This is similar to the decision of the CRTC in the case of ELG decided January 13, 1978.

53. Third, as to the methods to be allowed, we can only take notice of the consistent and preponderant choice of straight-line allocation patterns used by both the majority of regulatory bodies and more importantly by the majority of businesses, especially those that are unfettered by regulation. This choice has been made repeatedly over the years. Its preferability is noted in the proceedings in Docket 14700 before the ICC from 1923 to 1926 and prior to that by its selection and application by AT&T, in the NARUC report in 1943, and again in the survey conducted by the AICPA Research Division in 1975. Given that

[3] *The Accountant*, August 8, 1903 as quoted in "Accounting for Depreciable Assets," Technical Research Division, American Institute of Certified Public Accountants, Inc., 1975, p. 1.

consensus, this Commission reiterates its preference for the straight-line allocation method. However, as in all things predictive, circumstances in the future might warrant some other allocation method for specific categories of investment under specific circumstances. In the event that a carrier under the jurisdiction of this Commission should make a persuasive argument in support of application of some timing pattern other than straight-line, then the staff of this Commission will review the circumstances and make appropriate recommendation to the Commission as to whether depreciation rates calculated by a method to achieve an allocation of costs other than straight-line should be approved or denied. In short, our rules should be amended to indicate that straight-line is a preference only absent other persuasive proof.

54. Fourth, it is certain that we have entered the age of computers and that earlier objections to the unit summation or ELG methods, based on the added mathematical complexities, are no longer of themselves a justifiable basis for denying companies having such data processing capacities the use of any given method. The calculations, though voluminous, are straight forward and readily programmable.[4]

55. Fifth, from the perspective of accounting, the unit summation or ELG procedure is a superior one. This opinion was expressed as early as 1932 by Robley Winfrey, a noted expert in depreciation methods and processes. His views are summarized in passages from the book referenced in footnote 4:

> The unit summation procedure when used with the straight-line depreciation method corresponds to the basic concept of straight-line depreciation as generally understood in relation to single units of property. The results, when this procedure is used, are systematic and consistent with respect to a unit, a vintage group, a plant account, and the total investment in a utility system. The unit summation procedure permits the accrual of depreciation on property while it is serving the customers and at the time such expenses are rationally allocable to those customers.
>
> The use of the unit summation procedure to apply the straight-line method results in a systematic and consistent method of depreciation, both from a year-to-year standpoint and from a unit, account and total plant standpoint. The manner in which the property is grouped should not affect the overall company accrual. The procedure provides a means for accruing the depreciable cost, no more or no less. It also results in an accrued amount directly related to the life of the existing property and in an amount consistent with good judgment when related to the age and life of a matured property.

Id. at pages 36, 38.

56. Other parties expressed similar conclusions in the record (see e.g., Ernst report at p. 443, Comments of AICPA, dated March 24, 1975). However, comments filed by the Wisconsin, New York, California, and Maryland Commissions claim similar virtues for the currently used straight-line vintage group method. The principal contention of these commissions seems to be based on a definitional distinction and on a quote from a text by Winfrey. These arguments are sufficiently refuted by the Ernst report (at page 329) and by the statements of Winfrey (see paragraph 55).

57. Accordingly, this Commission accepts the recommendation of the staff based on analysis of the record and the literature that the unit summation or ELG method is acceptable, provided it is assured that adequate data is available for proper application of the method; that record keeping and reporting practices will enable monitoring of the reasonableness of the rate of allocation of both original cost and provisions for salvage and removal; that such allocation of original cost will achieve allocation over the service life of the property neither more nor less than 100% of the investment net of salvage value.

58. Sixth, comments have suggested that the unit summation or equal life group method does not enable or enhance determinations of salvage, removal, or life survivorship estimates. Of course it does not, for it is nothing more than an added step to the process that is presently being followed in the application of the vintage group method. It is, as its proponents state, nothing more than a mathematical process, going one step further than the present vintage group calculations. It has been precisely that further step and its requisite data handling requirements that has blocked prior usage of this method.

59. Seventh, argument has been made that the unit summation method or ELG is more sensitive than is the straight-line vintage group method to the shape of the estimated life curve which is applied to the particular property. This appears to mean that SLVG is more concerned with survivorship over the whole-life span than with the measurement of property survivorship within more limited interim periods. This may be true; however, it is the basic contention of the advocates of ELG that the primary failure of the VG method is in relation to the allocation of costs for those properties which last only a few years in plant groupings that tend on average to live for a great number of years. It is to be presumed and expected that those studying the survivorship patterns, both company and commissions, will strive to select the most representative data, including its probabilities, for rate setting purposes. Again, this is not an exercise in precision, but it is a most reasonable attempt to measure, and re-measure as necessary, the consumption of capital of long lived investments.

60. Eighth, the petitioners have asserted that adoption of ELG will enhance cash flows or internally generated funds, thus reducing the need for and demands upon outside capital sources. Those in opposition have contended that adoption will increase revenue requirements on consumers and will impose an added burden on regulatory commissions and smaller carriers. Further, opponents have contended that adoption might have a domino effect—forcing approval of similar methods for other utilities.

61. There is no doubt that any change which moves the recognition of costs from a decelerated or deferred mode to a more instant recognition will increase both revenue requirements and cash flow. The results are the same. Any resulting ratemaking changes can and should be addressed in the rate setting process.

62. The contention that the adoption will impose added burdens on regulatory bodies is not without merit. It is true that the final calculations, that is the added step, will require additional efforts. On the other hand, the contentions that more work will have to go in to the preliminary processes merely acknowledges that perhaps not enough attention was being given to the life, salvage and removal estimation processes because within broad averages, errors due to lack of attention went unnoticed. That is not of itself a sufficient basis for denying more precise measures of cost allocation.

63. The proposition that smaller carriers might either be disadvantaged or unable in any event to implement the unit summation process acknowledges something that has long been in existence. In fact, for many of the smaller carriers, the requisite data necessary to support really fine applications of the vintage group process have been lacking. In its approval of the ELG method, the Commission does not intend to make it, or any other method, mandatory.

64. The question of appropriate depreciation methods for other utilities

[4] See Fitch, Wolf, and Bissinger, *The Estimation of Depreciation*, Center for Depreciation Studies, Western Michigan University, 1975, p. 38. Similar support was given by Robley Winfrey (co-author), *Engineering Valuation and Depreciation*, 1953, in a letter to Dr. Fitch which the authors reproduced at page 45 of their text.

is an appropriate subject for those authorities having jurisdiction. In the instant order, this Commission addresses depreciation issues for carriers within its statutory authority and responsibility.

65. As stated heretofore, both the impact of revenue requirements and the burdens placed upon the regulatory staffs require consideration. Furthermore, the need for assurance that the reporting and record keeping practices provide adequate safeguards and checks on accountability becomes more critical as the industry continues to grow and change. Therefore, the Commission will direct that implementation be allowed on a progressive basis. During 1981, the staff will address the adoption of ELG by those carriers capable of implementing it and providing adequate supporting and controlling mechanisms and only for new additions to property falling within the broad classification of outside plant. The impact data provided by the carriers indicate that the added revenue requirements would approximate $80 million in 1981. During 1982, the staff and carriers can address adoption of ELG for new additions to property falling within the broad classification of central office equipment. The impact data indicate added revenue requirements for this category of plant would approximate $136 million if implemented in 1981. Delaying implementation by one year is likely to lead to a somewhat higher first year impact. Finally, in 1983 the staff and carriers can address implementation of ELG for all new plant additions to the remaining categories of plant investment. It should be noted that this could conceivably include the categories of station apparatus and large PBX as well as buildings and general equipment and station connections. The impact anticipated from adoption of ELG for buildings and general equipment are expected to be very minimal. The major anticipated impact is expected from station apparatus and large PBX. However, actions being taken in both Docket 20828, the Second Computer Inquiry, and in Docket 79-105, Station Connections, are focused on the probable deregulation, or in any event expensing of, the new additions to such investment categories. Such actions are expected to become final in 1982 and therefore the likelihood of application of ELG methods to such property investments is extremely low. The Commission believes that the phasing in of the new methods in this manner will substantially reduce the immediate impacts on both revenue requirements and staff resources.

66. Ninth, the petitioners proposed among other things to have a true-up process approved for application to the errors that would gradually enter into the ELG, or into any other, process. Opponents have stated that the proposed annual true-up process would force state and federal staff experts to concern themselves with addressing changes to every vintage of every category of plant in every year. This appears to be true, and the only immediate solution would appear to be some form of blanket authority to be granted to the carriers. The Commission does not believe that such a blanket approval would be appropriate, nor does it believe that it would meet the requirements of Section 220 of the Act that all changed depreciation percentage rates be prescribed by the Commission. Errors are likely to occur in any method predicated upon estimates of prospective events. We will address corrective measures to be applied to embedded investment in Section X of this order. ELG adjustments will be handled by application of remaining-life adjustments in the setting of rates during the normal represcription process.

VIII. Alternative Methods

67. In the NPRM dated September 19, 1974, at Par. 9, we asked parties to submit alternative methods. Three alternative methods have been presented for consideration. They are as follows:

A. Declining Balance x 1.7

This method was considered by Ernst but lacked any substantial explanative support. The method was offered as a surrogate for achieving the result of ELG without having to engage in all the extensive work and computations inherent in the ELG method.

Ernst rejected the method as a proper surrogate for ELG. One major drawback was that the factor of 1.7 was only appropriate for the illustrative data submitted by the petitioner in support of its application. The factor of 1.7 was not appropriate for either overall actual conditions or for any particular plant investment category of any real carrier. In short, the factor was a figure that was backed into after first having ascertained the ELG result by application of all of the complexities of calculation of the ELG method.

B. Remaining-Life Method

This method, as an alternative to ELG, was proposed by the California Public Service Commission, which presently employs remaining-life calculations of SLVG rates for intrastate ratemaking purposes in it regulation of the Pacific Telephone and Telegraph Company. It should first be noted that remaining-life is not, as such, a method; it is merely a further step in the calculation of depreciation rates and is a concept that is applicable to almost any method for calculating depreciation rates. The application of remaining-life will be addressed separately further on.

C. Capital Recovery Schedules

The use of capital recovery schedules was recommended by GTE as an alternative to both ELG and SLVG. Such schedules would be precalculated for various investment survivorship patterns and probable average life and total life span that are encountered in experience with telecommunications plant investments. Companies having more advanced capabilities, such as GTE and or AT&T, could calculate the table of factors to be applied to investments fitting the various survivorship patterns. Smaller companies could then select from among the several choices and apply those factors to their investment. The schedules might not achieve the fine tuned results expected of the larger carriers but should for all intents and purposes achieve reasonable results.

68. In our discussion of the merits of arguments surrounding the adoption or use of the unit summation or ELG method, we reasserted our support of the straight-line allocation standard or pattern while leaving the door open to other allocation patterns if and when proven appropriate and necessary. (See para. 53, *supra.*) We also acknowledged our preference, over the years, for group methods as opposed to unit applications.[5]

69. Within those parameters, we recognize that not all carriers have the requisite data bases or sophisticated resources in teams of modern data processing equipment. Lack of either can be a serious impediment to implementation and application of complex methodologies. The Commission wishes to clarify its belief that the purpose of allocating costs of depreciable plant in a consistent, predictable and rational manner is to achieve as accurate a measure of consumed capital costs as is reasonable of attainment. It is this goal, rather than the particular method, that is of primary importance.

[5] As we noted in para. 51, supra, we are prepared to consider unit depreciation proposals in special circumstances.

70. The burden of demonstrating that any particular method is both reasonable and practicable for the purposes of meeting the requirements of depreciation accounting is upon the carrier seeking approval of such method or application. The Commission cautions however that alternative or new methods must meet the tests of accountability and generally are more suited for application to prospective property additions, rather than application to presently embedded plant.

IX. Limiting Application of New Methods to New Plant Additions

71. Admittedly, any change in accounting practices entails more work effort. Given the complexity of accounting for telephone property, it seems reasonable to approach such changes on a gradual or phased-in basis.

72. Application of the ELG method requires maintenance of investment and reserve for depreciation data on a vintage level of investment basis. At the present time, AT&T does not have book reserve for depreciation balances at even the plant account or category of investment level, let alone at the more disaggregated vintage level. Under such conditions, it would appear to be impractical to attempt to change to ELG methods for presently embedded plant.

73. If new additions to plant are depreciated under the ELG or some other method, then the balance subject to SLVG depreciation will diminish and ultimately be fully depreciated and retired. In the end result, all methods approach a 100% recovery. Thus by stopping the continued replenishment of investment subject to the SLVG method, the reserve balance attributable to that investment will ultimately approach the same results that would have been attained if the ELG method had been followed.

74. Furthermore, the present embedded investments have other problems associated with them. Specifically, the lack of detailed, disaggregated reserve data impedes development of supporting cost of service data. The lack of reserve accounts by plant investment category or account impedes application of corrective action to overcome real deficiencies of cost allocation and capital recovery arising out of cumulative past errors of life estimation. Lack of detailed reserve information also impedes a ready assessment of the net book cost of investments in categories of plant proposed for deregulation under the provisions of Docket 20828, the Second Computer Inquiry.

75. Properly addressing these problems requires a determination of the appropriate portion of present book reserves to be allocated or identified as being applicable to specific plant investment categories. Continued treatment of present investment amounts on a consistent basis through continued use of the SLVG method is the most logical way to go. Introduction of new methods in mid-stream would only further complicate already difficult problems.

X. Remaining-Life

76. As discussed earlier, there is nothing in the training of experts nor are there any mathematical laws that will impart an absolute precision to the determinations made under presently known depreciation practice. Consequently, there would appear to be some need for a corrective mechanism if one wishes to attain the goal of assigning or allocating costs over the service life of any particular asset. If actual results appear to be allocating costs faster than necessary to achieve 100% recovery by the likely retirement of a particular investment, then there is a need for a reduction in the current and prospective changes in order to assure that not more than 100% will be charged by the time of retirement. If on the other hand, it appears that retirement will occur before all the costs are allocated, then an equivalent mechanism is needed in order to increase current and prospective charges so that all costs are allocated by the time of retirement. If such circumstances are not self balancing then the likelihood exists that either too much or too little will be allowed to stand in the reserve, perhaps for perpetuity. Such a result is not desirable.

77. At the present time, and over the past decades, depreciation rates calculated by this Commission have been arrived at by a process or final step known as "whole-life." Meritoriously, this approach attempted to calculate the annual charge that would be appropriate, if the currently estimated whole-life of the asset had, in fact, been so determined at the onset of the asset's life. Thus, customers would only be charged costs equivalent to the pro rata portion of total cost applicable to the instant time period. Current customers would not be charged any costs attributable to past periods, nor would they be charged any costs attributable to future time periods.

78. The use of whole-life rate calculations did not create any problems as long as property could be grouped in one very large universe without concern for attributes of any particular type of property, and as long as the overall results achieved tended to approximate theoretical results. This latter condition would occur when various errors of estimate were fully or almost fully compensating. Such conditions appear to have been in existence up to and including the late 1960's. After that, the factors involved in determining lives and types of telecommunications investment began to change more rapidly.

79. The essential difference between whole-life and remaining-life depreciation rate calculations is that the former attempts to determine that annual charge that would be appropriate in the event that the current predictions of whole-life (estimated future life added to current experienced or expired life) were in fact correct. The remaining-life process proceeds on the premise that the current prediction of remaining or prospective life is correct and attempts to allocate any unrecovered or unallocated costs over that time period. That is, the original cost less accumulated reserve, or net unrecovered cost is divided by the prospective remaining-life in order to determine the annual future charges to expense.

80. One requisite for application of remaining-life rates is the ability to determine the current net unrecovered cost. The current reserve for depreciation attributable to the particular book balance of investment must be known if net unrecovered cost is to be determined. Such reserve balances are not available for the AT&T companies.

81. Currently, theoretical measures of the adequacy of carrier book reserves (that is, what the reserve should be based upon current predictions of remaining-life of investments and probable future accruals or allocations of investment costs) indicate that lives have been shortened substantially over previous estimates. The net result is that past allocations of costs to operating periods have been inadequate. If corrective action is not provided for, then at some future date, there will remain on the carrier's books of account a net plant balance, although the physical assets themselves will have been retired from service. Therefore, we will amend our Rules to indicate that, when necessary, we will permit the use of remaining-life depreciation rate calculations.

82. As with any change in the manner of calculating annual expense allocations of such very substantial amounts of money, the application of remaining-life might result in sharp increases in revenue requirements and in user charges. We therefore direct the

staff to keep the Commission fully informed as to the difference in amounts of annual charges involved in any recommendations for prescribed rates that it might make. For at least a period of three years, we require that all rates recommended for prescription carry with them a statement of the dollar impact in terms of annual expense, as between the rates calculated under the whole-life concept and under the remaining-life concept. Thereafter, the staff is to advise the Commission as to such differences whenever the proposed remaining-life rates result in an increase in proposed annual charges of 115 percent or more than the increase in annual charges arrived at by calculating whole-life rates.

83. With respect to telecommunications investment, the impact of new technology and the transition from a monopoly to a competitive environment have led to an overall shortening of life estimates. If the currently estimated shorter lives had been known all along, then past depreciation rates would have been higher even under the timing pattern of SLVG, and current reserves would be higher. Absent a reversal of current trends and without corrective action, the amount of difference due to errors of life estimate will continue to grow, and upon ultimate retirement the reserve provisions will not be adequate. It is for this reason that the Commission makes the choice that it must regarding the charging of costs to current and future periods.

84. For those carriers that do not maintain book reserves in sufficient detail to calculate remaining-life rates (e.g., the Bell Operating Telephone Companies), we direct the staff to determine, as expeditiously as possible, the most reasonable allocation of the current book reserves to plant categories. Furthermore, we direct these and all other subject carriers to maintain their book reserves in sufficient detail to allow the determination of depreciation rates by the remaining-life technique for subclasses of property for which depreciation rates are used. It is our desire that these actions not be delayed and that the corrective measures of remaining-life rates be implemented as soon as practicable. It is also our desire that the staff analyze the consequences of alternative reasonable allocations with respect to probable effects on revenue requirements, on the impact of increased expenses on various user groups, and on the incentives for company management to undertake accurate life estimates and to make investment decisions that will promote the public interest.

XI. Special Consideration of Present Investment in Account 232—Station Connections

85. In Docket 79–105, also addressed today, we consider the propriety of continuing the present practice of capitalizing amounts expended in the connection and reconnection of customer station apparatus. This consideration arose out of the findings in Docket 19129. In particular, the amount so invested or capitalized was growing at an extraordinary rate in comparison to growth in other plant investment categories.[6] This was in part due to the accounting treatment of disconnections and reconnections (churning of connections) and in part due to the concept that as such, connections had no particular age life relationship to retirements. The net effect was that annual charges to depreciation expense were designed to offset only the net retirements of any year (disconnects less reconnects), thus resulting in a zero reserve balance. In Docket 19129, it was found that the ultimate effect of this depreciation treatment was not significantly different from the long rejected concept of retirement accounting. Under this concept, annual depreciation charges cover only the year's net retirements and include no provision for the consumption within the year of a portion of the investment in assets still surviving.[7]

86. In Docket 79–105, we concluded that there is a substantial difference in physical characteristics between the outside or service wire portion of the connection (otherwise referred to as the drop and protector block) and the inside or customer premise portion of connections. In that proceeding we also found that there is not only a strong case for the expensing of the expenditures for the inside portion of the wiring, but also for considering the inside portion to be a part of customer premises equipment rather than a part of carrier plant. To that end, we are issuing in that docket a further notice of proposed rulemaking regarding the detariffing of inside wiring. Because separate accounting treatment of the inside wire is appropriate under either continued expensing or full detariffing we directed in Docket 79–105 that property or investment in Account 232 should be separated into two parts, viz. that representing the outside or company provided customer service wire portion and the inside or customer premise portion of the connection.

87. There are significant differences in the factors affecting the probable service lives of the outside and inside portions of the investment. The outside portion is more subject to the actions of the elements and is also more subject to the actions of public authorities. The inside portion is more susceptible of the vagaries of customer preference, rather than actions of wear and tear, or the elements. In Docket 79–105 we asked the staff to work with the carriers to separate the present investment in Account 232, Station Connections, into its two primary parts as identified herein. We herein direct the staff to then proceed to develop appropriate allocations of the reserve for depreciation and an appropriate depreciation rate for each new investment category. Records are to be in conformity with the requirements of our order in Docket 79–105, although further accounting changes may be necessary to implement the policies adopted in both Docket 79–105 and this docket.

88. The staff and company experts continue to use the negative exponential curve as the basis for prescribing depreciation rates for investment in station connections. This results in a variant of retirement accounting and as such is inconsistent with our general depreciation policy that investment costs be spread in accordance with the straight-line concept over the service life of the asset. Absent further direction in Docket 79–105, the staff should promptly develop a different approach to the calculation of depreciation rates for this investment so that reasonably equal portions of investment will be charged to each of the expected years of the investment's life. This in turn should lead to the development of a positive reserve balance as opposed to the zero balance presently achieved.

XII. Conclusions—FCC Policy—Rules—Interpretations

89. It is important to attempt to measure as accurately as possible the consumption of capital in a capital intensive enterprise. Of necessity, however, the measurement process cannot be achieved with absolute precision. Because of this lack of absolute precision, the application of reasoned judgment is often necessary. In practice, there has been a tendency to interpret our rules more restrictively than the actual language requires.

90. With the exception of some modest adjustments, the Commission's

[6] See Final Decision in Docket No. 19129, para. 136. (64 FCC 2d, 1, 55 (1977)).

[7] See Initial Decision in Docket No. 19129, paras. 717, 718 and 722. (64 FCC 2d 131, 355–356 (1976)).

rules are for the most part more than adequate. The rules neither condone nor deny introduction of such further refinements as the ELG method, capital recovery schedule methods, or the corrective processes of calculating annual charges by use of the remaining-life concept. In fact, the Commission's rules call for the assignment or allocation of service values over service life, and absent fully compensating changes in life estimates, the use of something akin to remaining-life processes is necessary if those rules are to be satisfied.

91. We have discussed our long-standing preference for group procedures. We have noted that some parts of the rules explicitly provide for remaining-life techniques. The rules also indicate a preference, if not a requirement, that service values be spread over service lives by means of a straight-line method. Appropriate changes to the present rules will be ordered to permit more flexibility in the choice of particular procedures, methods, or techniques used and to correct any inconsistencies in the various parts of our rules. At the same time, we do not wish to foreclose reasonable considerations of alternative methods, applications and measures. To this end, the staff is directed to entertain and analyze such alternative proposals and to make recommendations to the Commission as to the appropriateness of the proposals and the resultant depreciation rates.

92. We recognize that any change in accounting methods is not without cost. The implementation of changes may require the companies and the commissions involved to devote more resources to the depreciation rate prescription process. Changes may result in increased revenue requirements and lead to rate increases. We do not find increased rates inconsistent, *per se*, with our mandate, under Section 1 of the Act, "to make available . . . a rapid efficient, nation-wide, and world-wide communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. We must balance the interests of all present and future customers in the preservation of adequate facilities at reasonable charges. On balance, we find it not unreasonable that present ratepayers incur some additional expense in order to preserve the integrity of the investment and to assure the continued and longer term satisfaction of the requirements of our congressional mandate. The only alternative, continued deferral of both recognition of current costs and initiation of corrective measures to rectify any past unrecovered costs, will require much larger adjustments to be made at some future date.

93. The unit summation (equal life group) process is nothing more than an extension or furtherance of the presently utilized straight-line vintage group method. Its adoption for new property additions would facilitate allocation of costs on a straight-line basis. Alternative methods may also achieve a similar pattern of cost assignment. These alternatives, including the capital recovery schedules concept, might be more appropriate for carriers lacking either the extensive data bases of the larger companies or the sophisticated data processing resources of those companies. Therefore, we will permit the utilization of ELG and alternative methods at the carrier's option, with the provision that implementation must be under the supervision of our staff. The staff will take such measures as may be necessary to insure that proper reporting, record keeping, underlying support data and ultimately measurability and accountability of results are attained.

94. As discussed above, corrective measures are necessary in order to match the recovery of the costs of assets with the service life of the assets themselves. These corrective measures are just as necessary for the present SLVG investments as they are for the prospective investments, whether to be treated under ELG, capital recovery schedules, or some other means. The staff, with the cooperation of the companies, should develop remaining-life rates for both present and prospective plant investments, and present the same to the Commission for consideration. As some carriers lack the requisite plant category of investment book reserves, the staff should proceed immediately to develop and implement such reserves by allocation of the present overall company reserves. Furthermore, in accordance with Part 31, Section 171 of the rules, these carriers will maintain their book reserves by accounts corresponding to the depreciable plant accounts.

95. Additionally, the Commission has reiterated its intentions regarding the depreciation of the investment in Account 232 as set forth in its decision in Docket 19129. The Commission finds that its intentions, that this account be depreciated in accordance with the straight-line concept as generally understood, are not being met. Absent further direction in Docket 79-105, the Commission directs the staff to proceed immediately to overcome this problem by developing appropriate means of assuring that the depreciation rates for this account will in fact apportion relatively equal amounts of investment to each of the several years during which the investment remains in service.

96. Lastly, the Commission chooses to address the proper role of staff in the analysis and assessment of carrier proposals for depreciation rates. Depreciation rate proposals and supporting data and analyses are submitted to the Commission by carriers who obviously have a significant financial interst in the rates which are ultimately prescribed. As a result, it is essential for the staff to review them with a healthy skepticism; however, the staff must not lose sight of the primary goal of the process which is to distribute the full cost of an asset in a reasonable manner over its service life. To achieve this goal the staff must aim at the most accurate measurement of lives and salvage values reasonably attainable. To do otherwise would be misleading to the regulators having to reach final ratemaking decisions, and could result in improper conclusions to the detriment of both customers and investors. In arriving at its reasoned judgments, however, the staff must analyze the probable consequences vis-a-vis our paramount public interest perspective.

97. In addition to reports regarding appropriate lives, salvage percentages, and depreciation rates, the staff should advise the Commission of any questionable carrier activities or practices affecting depreciation rates which come to light during the course of the staff investigations.

XIII. Ordering Clauses

98. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 220, of The Communications Act of 1934, as amended, that the policies and rules set forth herein ARE ADOPTED as a final decision in Docket No. 20188.

99. It is further ordered that Parts 31, 34, and 35 of the Commission Rules ARE HEREBY AMENDED, effective July 1, 1981, as reflected in the Appendix.

100. It is further ordered that the Final Report issued by Ernst & Ernst under contract to the Commission, which was dated July 29, 1977, together with comments thereon submitted under the aegis of FCC Public Notice No. 88859, dated September 8, 1977, are incorporated into the record of this proceeding.

101. It is further ordered that Docket No. 20188 is HEREBY TERMINATED.

102. It is further ordered that the Secretary shall cause a copy of this

decision to be published in the Federal Register.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

1. In Part 31, § 31.02–80, (a) is amended and (d) is added to read as follows:

§ 31.02–80 Computation of depreciation rates.

(a) Unless otherwise provided by the Commission, either through prior approval, or upon prescription by the Commission, depreciation percentage rates shall be computed in conformity with a group plan of accounting for depreciation and shall be such that the loss in service value of the property, except for losses excluded under the definition of depreciation, may be distributed under the straight-line method during the service life of the property.

* * * * *

(d) Companies, upon receiving prior approval from the Commission or, upon prescription by the Commission, shall apply such depreciation rate as will amortize the difference between the net book cost of a class or sub-class of plant and its estimated net salvage during the known or estimated remaining service life of that plant.

2. In Part 31, § 31.171, (c) is amended to read as follows:

§ 31.171 Depreciation Reserve.

* * * * *

(c) The company shall maintain this account broken down by accounts corresponding to the classes of depreciable telephone plant accounts itemized in Part 31, Section 31.02–82. These accounts shall show the current credits and debits to the reserve in complete detail.

3. In Part 34, § 34.04–2, (d) is added to read as follows:

§ 34.04–2 Computation of depreciation rates.

* * * * *

(d) The Commission's preference is that depreciation rates and charges be calculated by application of a generally accepted group method applied in a manner to accomplish a straight-line allocation of service value. However, a carrier, upon receiving prior approval from the Commission or, upon prescription by the Commission, may apply depreciation rates determined by use of other methods or allocation patterns.

4. In Part 35, § 35.04–2, (d) is added to read as follows:

§ 35.04–2 Computation of depreciation rates.

* * * * *

(d) The Commission's preference is that depreciation rates and charges be calculated by application of a generally accepted group method applied in a manner to accomplish a straight-line allocation of service value. However, a carrier, upon receiving prior approval from the Commission or, upon prescription by the Commission, may apply depreciation rates determined by use of other methods or allocation patterns.

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47 CFR Part 73

[BC Docket No. 80-146; RM-3356]

FM Broadcast Station in The Dalles, Oregon; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule; (Report and Order).

SUMMARY: Action taken herein assigns FM Channel 249A to The Dalles, Oregon, in response to a petition filed by Nugent Broadcasting Corporation. The proposed station could provide a second local aural broadcast service to the The Dalles.

DATE: Effective March 3, 1981.

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 § 73.202(b), Table of Assignments, FM Broadcast Stations, (The Dalles, Oregon), BC Docket No. 80–146, RM–3356.

Report and Order—Proceeding Terminated

Adopted: January 6, 1981.

Released: January 13, 1981.

By the Chief, Policy and Rules Division:

1. The Commission has before it a *Notice of Proposed Rule Making* 45 FR 28772, published April 30, 1980, proposing the assignment of Channel 249A to The Dalles, Oregon, as its second FM assignment. The *Notice* was issued in response to a petition filed by Nugent Broadcasting Corporation. Supporting comments were filed by the petitioner, in which it reaffirmed its intent to apply for the channel, if assigned.

2. The Dalles (population 10,980),[1] seat of Wasco County (population 20,300) is located on the Oregon-Washington border, approximately 113 kilometers (70 miles) east of Portland, Oregon. It is served locally by daytime only AM Station KACI (licensed to petitioner), full-time AM Station KODL and FM Station KCIV (Channel 283).

3. As stated in the *Notice*, the proposed station would bring much needed service to the underserved areas, thereby providing second FM service to 20,028 persons in a 1,750 square kilometer (660 square miles) area.

4. Madras, Oregon (population 1,910) is the only community that will be precluded as a result of the assignment of Channel 249A to The Dalles. However, Channels 224A, 240A, 244A and 272A are available for assignment to that community and there is a pending proceeding to assign Channel 243 to Madras (see BC Docket 80–491).

5. While the assignment would involve an intermixture of classes of channels at The Dalles, the Commission generally approves the assignment of a Class A with an existing Class C, when no other Class C channels are available, as here, and the petitioner is willing to apply for the Class A channel in spite of the unfavorable competitive situation. *Yakima, Washington*, 42 FCC 2d 548, 550 (1973), *Key West, Florida*, 45 FCC 2d 142, 145 (1974). Petitioner states that no Class C channels are available for assignment to The Dalles and has expressed a desire to apply for the Class A channel in spite of the intermixture. Therefore, particularly in view of the benefit of service to the underserved areas, we find the proposal justified.

6. The Canadian Government has given concurrence to the assignment of Channel 249A to The Dalles, Oregon.

7. Accordingly, it is ordered, that effective March 3, 1981, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the following community:

City: The Dalles, Oregon.
Channel No.: 249A, 283.

8. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

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[1] Population figures are taken from the 1970 U.S. Census.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632–9660.

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

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81–3269 Filed 1–27–81; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1111

[Ex Parte No. 282 (Sub-6)]

Railroad Consolidation Procedures, General Policy Statement

Decided: January 12, 1981.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; adoption of Policy Statement.

SUMMARY: By notice published in the **Federal Register** (45 FR 61335) the Commission requested comments on a proposed policy statement for rail consolidations. After considering the comments that were filed, the Commission has decided to adopt the proposed statement as final, with minor modifications.

The general policy statement discusses the importance of rail consolidations in furthering national policy to rationalize the Nation's rail facilities and reduce excess capacity. It explains the statutory factors the Commission must examine as well as the balancing test employed in determining whether the transaction is in the public interest. It also discusses Commission policy on: conditioning consolidations; inclusion of other carriers; labor protection; cumulative impacts and crossover effects; and public participation.

DATES: The policy statement will be effective on January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275–7245, or Ernest B. Abbott, (202) 275–3002.

SUPPLEMENTARY INFORMATION: In our notice of proposed policy statement [1] we stated that little, if any, of the statement went beyond previously articulated Commission policy. The comments received, which were limited in number and in the issues raised, reflect this fact.

Ten parties filed comments in this proceeding: four railroads—Burlington Northern, Inc. (BN), Consolidated Rail Corporation (Conrail), Green Bay & Western Railroad Company (GB&W) and Missouri-Kansas-Texas Railroad Company (MKT); two federal agencies—the Departments of Defense and Energy (DOD and DOE); two shippers—the Board of Trade of Kansas City, Missouri, Inc. (KC Board) and Quincy Soybean Company (Quincy); one labor representative—Patrick W. Simmons, Illinois Legislative Director for United Transportation Union (UTU); and a trade association—Water Transport Association (WTA).[2]

After we issued the notice of proposed policy statement, the Staggers Rail Act of 1980, Pub. L. No. 96–448 (October 14, 1980) was enacted. The Staggers Act contained two provisions which have a bearing on the policy statement.

First, the Staggers Act provides that the consolidation criteria listed in 49 U.S.C. 11344(b) are to be applied only to mergers or controls of at least two Class I railroads.[3] Separate criteria are enunciated for consolidations which do not fit within that definition.[4] Therefore, this policy statement has been renamed to apply only to proceedings in which we are considering the merger or control of at least two Class I railroads.

Moreover, Section 228(a)(2) of the Staggers Act adds a new paragraph to the statutory criteria listed in 49 U.S.C. 11343(b). We are now explicitly required to consider "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region." We will modify our proposed section 49 CFR 1111.10(b)(1), dealing with consolidation criteria accordingly.[5]

Section 101(a) of the Staggers Act creates a new rail transportation policy to be found at 49 U.S.C. 10101a. This policy is to take the place of the existing national transportation policy (49 U.S.C. 10101) when the policy has an impact on rail carriers. *See*, Staggers Act § 101(b). The new rail transportation policy lists 15 factors covering a broad range of issues including ratemaking, competition, regulation, labor, and environment. Because of this change, we have modified proposed section 49 CFR 1111.10(b) to refer to the rail transportation policy instead of the national transportation policy. In addition, we have deleted proposed section 49 CFR 1111.10(b)(2) because the national transportation policy is no longer an overlay to the public interest standard. The many factors listed in the rail transportation policy will be considered in future consolidations.

Given these changes made by the Staggers Act, it is no longer necessary to list as a specific consolidation criteria the Congressional policy revealed in the 4R Act [6] to foster competition among all modes of transportation. We believe that current Congressional intent is best revealed by the Staggers Act. Accordingly, proposed section 49 CFR 1111.10(b)(4) is deleted from the final policy statement.[7]

These changes eliminate some of the issues raised in the comments. In the following pages we discuss the comments on a section-by-section basis.

Section (a). General.—None of the comments suggested revisions in this section.

Section (b). Consolidation criteria.—We have already discussed certain changes in this section brought about by enactment of the Staggers Act. Two parties, WTA and MKT, raised additional points.

WTA suggests that the criteria specifically reflect the applicability in rail consolidations of the statutorily mandated policies with respect to water-rail coordination and competition. We see no need to add language concerning the relationship between water and rail carriers. The rail transportation policy, which governs our consideration of consolidations, requires that we consider the impact on other modes of transportation, including water carriers. *See*, 49 U.S.C. 10101a (4) and (5).

MKT takes issue with our statement that 49 U.S.C. 11344 directs the Commission to approve consolidations which are consistent with the public interest. It claims that this statement incorrectly suggests a presumption in favor of rail unifications. However, the

[1] Ex Parte No. 282 (Sub-No. 6), *Railroad Consolidation Procedures*, 363 I.C.C. 241 (1980).

[2] In addition, we received a letter on October 15, 1980, from Transportation Association of America requesting that it be considered a party and that its comments be considered when filed. Since we still have not received its comments, we cannot give consideration to its views.

[3] Section 228(a)(1). Class I railroads are carriers having annual carrier operating revenues of $50 million or more. *See*, 49 CFR 1201.

[4] Section 228(b). These criteria are now set forth in 49 U.S.C. 11344(d).

[5] The Staggers Act does not affect applications which have already been filed with the Commission. *See*, Section 228(e). For those applications, we will rely on the adopted policy statement without the provisions which reflect the enactment of the Staggers Act.

[6] Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210 (4R Act).

[7] We note, however, that we will consider the impact of a transaction on intermodal competition. *See*, section 1111.10(c)(2)(A).

statutory language is clear; when a transaction is consistent with the public interest it shall be approved. Neither the statute nor our policy statement raises a presumption in favor of rail unifications since we must affirmatively find a unification to be in the public interest to approve it.

Section (c). Public interest considerations.—This section discusses the factors we consider in deciding whether a transaction is in the public interest. The public interest test involves a balancing of the potential benefits to applicants and the public against the potential harms to the public. We noted that the public could be harmed by a consolidation either through the elimination of competition or through harm to essential services. The statement regarding the potential anticompetitive harm resulting from a consolidation was, perhaps, misleading. The impression may have been given that our concern was solely with the possible "elimination" of competition. However, we are necessarily also concerned about any significant "lessening" or "reduction" in competition caused by a consolidation. Obviously, this distinction is simply one of degree. However, we have modified the paragraphs on potential harm and elimination of competition to reflect our policy more clearly. In addition, we added a sentence to note that a consolidation can in certain circumstances lead to a reduction in potential competition in markets which the applicants do not both serve.

Other modifications in this section were suggested by DOD, DOE, UTU, and MKT. DOD, DOE, and UTU questioned our definition of essential services. In the proposed statement we said that "[a] service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available." 363 I.C.C. at 245.

Reflecting their particular concerns, DOD and DOE suggested that essential service be defined to include those services required by the national defense and necessary to achieve energy conservation. They point out that the existing regulations so define essential services. *See*, 49 CFR 1111.10(b)(1).

Our intention in altering the existing policy statement was not to infer that defense and energy concerns are irrelevant. On the contrary, we believe that our proposed public need standard is expansive and includes consideration of defense and energy matters *when* such consideration is required. It is unnecessary to specify every possible issue in a general policy statement for all rail mergers. Moreover, energy impacts are already listed as one of our specific consolidation criteria, in § 1111.10(b)(2). Thus, the concerns of DOD and DOE are addressed by the proposed regulations.

UTU contends, without explanation, that our use of the essential services criterion for evaluating the basic transaction is wrong as a matter of law and that our definition does not meet the statutory tests. We disagree. The United States Court of Appeals for the Fifth Circuit recently affirmed the essential service standard as a component of the "public interest."[8] Moreover, we believe that public need is the principal determinant of whether a service is essential.

MKT argues that the potential benefits from a transaction are often achieved at the expense of other carriers as well as shippers and the public. Obviously, there are instances in which a benefit to applicants and the public will cause a corresponding harm to other carriers and other segments of the public. This is precisely why we balance harm and benefits to determine whether a transaction is in the public interest.

Secondly, MKT notes that the public can be affected by a merger if a non-applicant carrier's ability to compete is reduced; total elimination of competition is not necessary. We agree and have modified § 1111.10(c)(2) and (2)(A) accordingly.

Finally, MKT questions our essential services standard. It claims that we have an obligation to ensure the viability of competing carriers, not just the existence of essential services.

We are clearly concerned with the public's access to economical and reliable service. However, we believe that competition, both intramodal and intermodal, is the surest way to achieve this service. We have long held that carriers do not have a proprietary right to traffic.[9] Because it is likely that a consolidation will result in some traffic diversion and some impact on service, we have stated that only where there is harm to essential services, not peripheral services, will we be concerned.[10]

We have seen that the bankruptcy, liquidation, or abandonment of lines by a carrier does not necessarily mean the cessation of rail service to the public. The emergence of short line carriers and community owned or subsidized lines has demonstrated that where there is a demand for a service that service can be provided. We will not artificially and unnecessarily restrict the action of the marketplace by placing too great an emphasis on the harm to individual carriers. The preservation of corporate entities is not the same as the preservation of competition or essential service.[11] In conclusion, we believe that this section is a proper articulation of the balancing test we have imposed in the past and will continue to use in the future.

Section (d). Conditions—Many of the comments addressed this section. GB&W, Quincy, and KC Board reiterate the arguments they have advanced in our ongoing rulemaking concerning traffic protective conditions.[12] We do not intend to decide that issue in this proceeding. As we stated in our notice, "This section [on conditions] is a general statement of our policy toward imposing conditions. It is not intended to prejudge our policy on the specific subject of traffic conditions. . ." -363 I.C.C. at 243.

The criteria listed in this section were first discussed in *Burlington Norther, Inc.—Control & Merger— St. L.*, 360 I.C.C. 784, 950–953 (1980) (*BN-Frisco*). We have eliminated the criterion dealing with windfalls because it is superfluous. Upon further reflection, we fail to see how a condition which meets all the other criteria could be considered a "windfall".

In *BN-Frisco* we stated that conditions would not be imposed "solely to compensate carriers for diversion or protect them from the risks of competition." 360 I.C.C. at 951. The merger's effect on essential services was to be the key factor in determining whether another carrier should be protected through conditions imposed for its benefit.

In its review of our *BN-Frisco* decision, the Fifth Circuit upheld this essential service standard. The Court noted that we have moved away from a liberal use of protective conditions "perhaps in response to the growing public consensus that the transportation industry should be shaped more by the realities of the marketplace and less by government regulation." *Missouri-Kansas-Texas R. Co.*, slip op. at 11.

BN is concerned that we might refuse to impose any conditions unless

[8] *Missouri-Kansas-Texas Railroad Company, et al. v. United States, et al.*, Nos. 80-1523, 80-1563, and 80-1682 (U.S.C.A. 5th Cir. November 24, 1980).

[9] *Great Northern Pac.—Merger—Great Northern*, 331 I.C.C. 228 (1967); *Detroit, T. & I. R. Co., Control*, 275 I.C.C. 445 (1950).

[10] *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 363 I.C.C. 518 (1980) (*See, slip op.* served September 25, 1980, at 50).

[11] *St. Louis S.W. Ry.—Pur.—Rock Island (Tucumcari)*, 363 I.C.C. 320 (1980). (*See, slip op.* served June 10, 1980, at 26).

[12] Ex Parte No. 282 (Sub-No. 5), *Rulemaking concerning Traffic Protective Conditions in Railroad Consolidation Proceedings*, served July 7, 1980. [45 FR 46461]

essential services are affected. It questions whether we would consider conditions to offset, reduce or mitigate anticompetitive features of a proposed consolidation. Our statement specifically includes conditions "that might be useful in ameliorating potentially anticompetitive effects of a consolidation." Section 1111.10(d). The essential services standard is tied to the showing an individual carrier must make in order to justify our imposition of conditions to protect that particular carrier. Conditions which are necessary to protect the public from anticompetitive consequences will not be limited by the essential services criteria listed in the section.

MKT challenges our views with respect to indemnification conditions. We have not imposed an indemnification condition in our recent cases and our proposed policy statement makes it clear that we believe it is ordinarily not an appropriate remedy. In its decision, the Fifth Circuit discussed and upheld our denial of special protective conditions, including a request by MKT for indemnification. *Missouri-Kansas-Texas R. Co.*, slip op. at 22-23.

While this policy statement indicates that we would give careful scrutiny to possible conditions before they are imposed, we are not ruling them out entirely. As a result, we believe that one of Conrail's suggestions has merit. Conrail suggests that the language in the proposed policy statement precluding imposition of a carrier protective condition which would "pose operating or other problems for the consolidated carrier" is too restrictive. Conrail's position is well taken, since any condition arguably poses some kind of problem, however slight, to the consolidated carrier. We agree with Conrail that we should rather express disfavor with conditions which cause *unreasonable* operating or other problems for the consolidated carrier. We will, therefore, add the word "unreasonable" to this clause in paragraph (d) of the final policy statement.

Section (e). Inclusion of other carriers—None of the comments suggested revisions in this section.

Section (f). Labor protection—None of the comments suggested revisions in this section.

Section (g). Cumulative impacts and crossover effects—Only BN commented on this section. Although it disagreed with our suggested approach of considering cumulative impacts and crossover effects in the later proceeding rather than reopening prior proceedings, BN could not suggest a suitable alternative approach. Neither can we. Our policy in this area was formulated only after a great deal of thought was given to the problem. We see nothing in the comments that calls for a modification in the proposed section.

Section (h). Public participation—The only comment on this section was offered by UTU, which noted that the proposal differed from the existing statement because it did not specifically discuss participation by our staff. In the text accompanying the proposed regulations, we stated that we were not changing the intent of the existing section, which refers to staff participation. Participation from all interested persons, including our staff, is encouraged.

Other Points—WTA suggests that we add a section dealing with "the problems stemming from the transfer by railroads to holding companies or non-carrier affiliates of assets without compensation or for an inadequate consideration." Although we are aware of the potential for these problems, we do not believe that it is necessary or wise for us to examine each merger proposal to determine whether there have been holding company abuses. Where evidence of such abuses is offered, we will consider it in the disposition of that case. WTA's suggestion, that we consider imposing a condition requiring holding companies to return assets or proper consideration to their carriers, is one that is best considered in light of the particular facts of specific cases.

In conclusion, we are adopting as final the proposed policy statement with modifications to reflect the recent enactment of the Staggers Act. The policy statement accurately reflects the policies we have followed in our recent proceedings, and offers guidance to parties planning and participating in consolidation proceedings. However, the policy statement adopted here is a statement of general policy only. Parties will have the opportunity to challenge these policies through appropriate evidence or argument in individual cases.

The rules in this appendix are adopted pursuant to 49 U.S.C. 11344(e) and 5 U.S.C. 553.

This decision is not a major Federal action significantly affecting the quality of the human environment or energy consumption.

It is ordered: Part 1111 of Title 49 of Chapter X of the Code of Federal Regulations is amended by revising § 1111.10 general policy statement, set forth in the appendix.

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

Agatha L. Mergenovich,

Secretary.

Appendix

Title 49 CFR Part 1111 is amended by revising § 1111.10 to read as follows:

1111.10 General policy statement for mergers or controls of at least two Class I railroads.

(a) *General.*—The Interstate Commerce Commission encourages private industry initiative that leads to the rationalization of the Nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation. However, the Commission does not favor consolidations through the exercise of managerial and financial control if the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand. Furthermore, the Commission does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

(b) *Consolidation criteria.*—The Commission's consideration of mergers or controls of at least two Class I railroads is governed by the criteria prescribed in 49 U.S.C. 11344 and by the rail transportation policy set forth in 49 U.S.C. 10101a.

(1) Section 11344 directs the Commission to approve consolidations which are consistent with the public interest. In examining a proposed transaction, the Commission must consider, at a minimum: (i) the effect on the adequacy of transportation to the public; (ii) the effect of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (iii) the total fixed charges that would result; (iv) the interest of affected carrier employees; and (v) the effect on competition among rail carriers in the affected region.

(2) The Commission must also consider the impact of any transaction on the quality of the human environment and the conservation of energy resources.

(c) *Public interest considerations.*—In determining whether a transaction is in the public interest, the Commission performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public. The Commission will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that pose fewer potential dangers.

(1) *Potential benefits.*—Both the consolidated carrier and the public can benefit from a consolidation if the result is a financially sound competitor better able to provide adequate service on demand. This

beneficial result can occur if the consolidated carrier is able to realize operating efficiencies and increased marketing opportunities. Since consolidations can lead to a reduction in redundant facilities and thereby to an increase in traffic density on underused lines, operating efficiences may be realized. Furthermore, other than contractual arrangements, such as for joint use of rail facilities or run-through trains, consolidations are the only feasible way for rail carriers to enter many new markets. In some markets where there is sufficient existing rail capacity the construction of new rail line is prohibitively expensive and does not represent a feasible means of entry into the market.

(2) *Potential harm.*—There are two potential results from consolidations which would ill serve the public—reduction of competition and harm to essential services. In analyzing these impacts, we must consider, but are not limited by, the policies embodied in antitrust laws.

(i) *Reduction of competition.*—If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. Even if the consolidating carriers do not serve the same market, there may be a lessening of potential competition in other markets. While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. The Commission recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers. The Commission's competitive analysis depends on the relevant market(s). In some markets the Commission's focus will be on the preservation of effective intermodal competition, while in other markets (such as long haul movements of bulk commodities) effective intramodal competition may also be important.

(ii) *Harm to essential service.*—Consolidations often result in shifts of market patterns. Sometimes the carrier losing its share of the market may not be able to withstand the loss of traffic. In assessing the probable impacts, the Commission's concern is the preservation of essential services, not the survival of particular carriers. A service is essential if there is a sufficient public need for the service and adequate alternative transportation is not available.

(d) *Conditions.*—The Commission has broad authority to impose conditions on consolidations, including those that might be useful in ameliorating potentially anticompetitive effects of a consolidation. However, the Commission recognizes that conditions may lessen the benefits of a consolidation to both the carrier and the public. Therefore, the Commission will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (1) is shown to be related to the impact of the consolidation; (2) is designed to enable shippers to receive adequate service; (3) would not pose unreasonable operating or other problems for the consolidated carrier; and (4) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. Moreover, the Commission believes that indemnification is ordinarily not an appropriate remedy in consolidation proceedings. Indemnification conditions can be anticompetitive by requiring the consolidated carrier to subsidize carriers who are no longer able to compete efficiently in the marketplace.

(e) *Inclusion of other carriers.*—The Commission will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(f) *Labor protection.*—The Commission is required to provide applicants' employees affected by a consolidation with adequate protection. Similarly situated employees on the applicants' system should be given equal protection. Therefore, absent a negotiated agreement, the Commission will provide for protection at the level mandated by law (49 U.S.C. 11347), unless it can be shown that because of unusual circumstances more stringent protection is necessary to provide employees with a fair and equitable arrangement. The Commission will review negotiated agreements to assure fair and equitable treatment of affected employees.

(g) *Cumulative impacts and crossover effects.*—The Commission recognizes that events can occur during its consideration of a consolidation that can have an effect on various of the concerned parties. However, the Commission is mindful of the need to meet its statutory deadline and make timely administratively final decisions. Therefore, the Commission will not reopen pending proceedings in order to assess the impact of potential or hypothetical combinations or transactions. The proper forum for considering cumulative impacts and crossover effects is in a later proceeding. In this manner, consideration will be limited to the impacts of transactions which have already been approved and are, therefore, reasonably certain to occur. Futhermore, the Commission will have the benefit of its findings from the prior proceeding to identify more precisely the impacts of that transaction. Proceedings will remain manageable in scope and size, statutory time limits will be met, and all parties will be assured of timely, administratively final decisions.

(h) *Public participation.*—To assure a fully developed record on the impacts of a proposed railroad consolidation, the Commission encourages public participation from Federal, State, and local government departments and agencies, affected shippers and carriers, and other interested persons.

[FR Doc. 81-3070 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1204, 1205, 1208, 1209, 1210, 1240, 1241, 1248, 1249, 1250, 1251, 1260, and 1261

[No. 37523]

Reduction of Accounting and Reporting Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule eliminates the Class III reports of all modes, Railroad Lessors Annual Report Form R–4, and Annual Report Form MP–2. Also, this rule eliminates both the Uniform Systems of Accounts (USOA) and reports of Refrigerator Car Lines, Maritime Carriers, Inland and Coastal Waterway Carriers, and Freight Forwarders under the Commission's jurisdiction. This rule transfers the USOA and other regulations of Pipeline Companies to Title 18. It has been determined that the use of the information by the Commission does not justify the accounting and reporting burden for these carriers. Approximately 15,000 carriers are affected by this rule, and the total reduction in reporting burden is estimated to be 69,200 hours per year. Affected carriers must file with the Commission any change in their legal address.

DATES: Effective for the accounting and reporting year beginning January 1, 1980. Comments are due on or before March 16, 1981.

ADDRESSES: An original and 15 copies of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275–7448.

SUPPLEMENTARY INFORMATION: The Commission's Policy Statement on Financial and Statistical Reporting states: "Periodical reports, annual or quarterly, will be required only for information needed by the Commission regularly and frequently. Information needed occasionally will be collected only when the specific need arises." As a result of the policy statement, it has been determined that the Commission no longer uses or needs information filed by Class III carriers, railroad lessors, Class II motor carriers of passengers, refrigerator car lines, maritime carriers, inland and coastal waterway carriers and freight forwarders. Because the reports of these carriers are eliminated by this rule, the applicable USOA's prescribed by the Commission, from which the reports are based, are also no longer necessary and

are eliminated by this rule (See Appendix A).

The Commission does not use the USOA and other regulations of pipeline companies, and, therefore, this rule transfers the applicable parts of Title 49 to Title 18 for use by the Federal Energy Regulatory Commission.[1]

The carriers affected by this rule must advise the Commission of any change in their legal address by notifying the Office of the Secretary.

We find that a rulemaking proceeding is not necessary to adopt this revision because it involves a reduction in accounting and reporting burden for carriers under the Commission's jurisdiction. However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting that the public study the rule and report, within 45 days, any suggested changes. Copies of the affected reporting forms may be obtained by writing the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or by calling, toll free (800) 424-5403.

If the Commission concludes after reviewing the comments, that it is necessary to reconsider this rule, a further notice will be published in the Federal Register. Otherwise, the provisions of this Final Rule are in effect.

The carriers relieved by this rule will still be required to submit information to the Commission when requested. This rule does not relieve carriers of their accounting and reporting responsibilities with other jurisdictions, such as state authorities, the Maritime Administration and the Federal Energy Regulatory Commission.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

Accordingly, we adopt the changes to Title 49 of the Code of Federal Regulations as set forth in Appendix A.

This rule is issued under the authority of 49 U.S.C. 11145 and 5 U.S.C. 553.

Decided: December 1, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum, joined by Vice-Chairman Gresham, dissenting with a separate expression.

Agatha L. Mergenovich,
Secretary.

[1] The authority over pipeline companies was transfered October 1, 1977, by sections 306 and 402(b) of the Department of Energy Organization Act (91 Stat. 581, 584, 42 U.S.C. 7155; 7172(b)).

Appendix A

Title 49 CFR is amended by making the following changes:

PART 1204—[REDESIGNATED AS 18 CFR PART 352]

1. Redesignate 49 CFR Part 1204—*Pipeline Companies* as 18 CFR Part 352.

PART 1205—[REMOVED]

2. Remove 49 CFR Part 1205—*Refrigerator Car Lines.*

PART 1208—[REMOVED]

3. Remove 49 CFR Part 1208—*Martime Carriers.*

PART 1209—[REMOVED]

4. Remove 49 CFR Part 1209—*Inland and Coastal Waterway Carriers.*

PART 1210—[REMOVED]

5. Remove 49 CFR Part 1210—*Freight Forwarders.*

PART 1240—CLASSIFICATION OF CARRIERS

Subpart B—[Existing Text Removed and New Text Redesignated from Subpart D] Subpart D—[Redesignated as Subpart B]

6. Remove the existing text of Subpart B—*Carriers by Water* (consisting of § 1240.2), redesignate Subpart D—*Motor Carriers* (consisting of §§ 1240.4 and 1240.5) as new Subpart B, and redesignate existing §§ 1240.4 and 1240.5 as new §§ 1240.2 and 1240.3, respectively.

7. In the newly redesignated § 1240.2, revise paragraphs (a) and (b)(1) to read as follows:

§ 1240.2 Classification of motor carriers of passengers.

(a) For the purpose of accounting and reporting regulations, common and contract carriers of passengers subject to the Interstate Commerce Act are grouped into the following two classes:

Class I—Carriers having average annual gross operating revenues (including interstate and intrastate) of $3 million or more from passenger motor carrier operations.

Other Than Class I—Carriers having average annual gross operating revenues (including interstate and intrastate) of less than $3 million from passenger motor carrier operations.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year or of 13 4-week periods, such annual carrier operating revenue is greater than the maximum for Other Than Class I carriers, the carrier shall adopt the accounting and reporting requirements of Class I carriers. The adoption of Class I shall be effective as of January 1 of the second succeeding year after the carrier meets the minimum revenue limit for Class I.

* * * * *

PART 1241—ANNUAL, SPECIAL OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

§ 1241.2 [Amended]

8. Remove the first paragraph beginning with "Annual reports of" and ending "the following rules:" from § 1241.2—*Reporting companies defined.*

9. Revise the heading and text of § 1241.12 as follows:

§ 1241.12 Annual reports of Class II railroad companies.

Commencing with reports for the year ended December 31, 1974, and thereafter, until further order, all line-haul railroad companies of Class II, as defined in § 1240.1 of this chapter, are required to filed annual reports in accordance with Railroad Annual Report Form R-2. Such annual report shall be filed in duplicate in the Bureau of Accounts, Interstate Commerce Commission, Washington, DC, 20423, on or before March 31 of the year following the year which is being reported.

§ 1241.13 [Removed]

10. Remove § 1241.13—*Annual reports of lessors to railroad companies.*

§ 1241.14 [Redesignated as § 1241.13]

11. Redesignate § 1241.14 as § 1241.13.

§ 1241.41 [Removed]

12. Remove § 1241.41—*Sleeping car companies: fiscal period.*

§ 1241.52 [Removed]

13. Remove § 1241.52—*Carriers by water: quarterly freight and passenger statistics.*

§ 1241.61 [Redesignated]

14. Redesignate 49 CFR 1241.61—*Annual reports of carriers by pipeline* as 18 CFR § 357.2.

§ 1241.70 [Removed]

15. Remove 49 CFR 1241.70—Annual reports of refrigerator car lines and persons furnishing cars to railroads.

PART 1248—FREIGHT COMMODITY STATISTICS

Subpart B—[Existing Text Removed and New Text Redesignated from Subpart D]

Subpart D—[Redesignated as Subpart B]

16. Remove the existing text of Subpart B—*Carriers by Water* (consisting of §§ 1248.21 through 1248.28), redesignate Subpart D—*Motor Carriers* (consisting of §§ 1248.51 through 1248.57) as Subpart B, and redesignate §§ 1248.51 through 1248.57 1248.21 through 1248.27, respectively.

Subpart C—[Existing Text Removed and New Text Redesignated from Subpart E]

Subpart E—[Redesignated as Subpart C]

17. Remove the existing text of Subpart C—*Electric Railways* (Consisting of §§ 1248.35 through 1248.44) and redeisgnate Subpart E—*Commodity Code* (consisting of and §§ 1248.100 and 1248.101) as Subpart C.

PART 1249—REPORTS OF MOTOR CARRIERS

§ 1249.4 [Removed]

18. Remove § 1249.4—*Annual reports of class III carriers of property.*

1249.6 [Removed]

19. Remove § 1249.6—*Annual reports of carriers of passengers other than class I carriers.*

§ 1249.5 [Redesignated as § 1249.4]

20. Redesignate 49 CFR 1249.5 as 1249.4

PART 1250—[REMOVED]

21. Remove 49 CFR Part 1250—*Reports of Water Carriers.*

PART 1251—[REMOVED]

22. Remove 49 CFR Part 1251—*Reports of Freight Forwarders.*

PART 1260—[REDESIGNATED]

23. Redesignate 49 CFR Part 1260—*Reporting of Data for Initial Pipeline Valuations* as 18 CFR Part 360.

PART 1261—[REDESIGNATED]

24. Redesignate 49 CFR Part 1261—*Regulations Governing the Reporting of Property Changes; Pipeline Carriers* as 18 CFR Part 361.

Commissioner Trantum, joined by Vice-Chairman Gresham, dissenting:

Although I fully support elimination of unnecessary reporting requirements I am not satisfied that the appropriate research or preparation has been conducted to warrant elimination at this time. A number of items contained in the eliminated reports are still needed at least for the time being (i.e. Class III switching and terminal expense information).

[FR Doc. 81-1221 Filed 1-13-81; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Part 1331

Section 5b Application Nos. 2, 3, and 6; Western, Eastern and Southern Railroads; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Removal of final rules.

SUMMARY: Final rules published by this Commission in Ex Parte No. 297 (Sub-No. 5) amended sections 1331.5 and 1331.6 to delete applicability to motor carrier rate bureaus. Consequently, both sections apply solely to rail rate bureaus. The requirements contained in both sections have been incorporated into the decision in this matter, a summary of which appears in the Notices section of this issue, and so will no longer be maintained as codified text.

EFFECTIVE DATE: This removal is effective January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: Ex Parte No. 297 (Sub-No. 5) *Motor Carrier Rate Bureaus—Implementation of Pub. L. 96-296,* served December 30, 1980 [45 FR 86736, December 31, 1980], amended sections 1331.5 and 6 to delete applicability to motor carrier rate bureaus. Consequently, both apply solely to rail rate bureaus. We have incorporated the requirements of both provisions in the decision in these proceedings and, thus, have no need to maintain them in the CFR.

This decision does not significantly affect the quality of the human environment, energy consumption, or have an adverse effect on small business. Issued under the authority of 49 U.S.C. 10321 and 10706(a).

§§ 1331.5 and 1331.6 [Removed]

Accordingly, Title 49 of the Code of Federal Regulations is amended by removing §§ 1331.5 and 1331.6.

Dated: January 14, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum and Gilliam. Commissioner Gilliam concurring with a separate expression. Commissioner Gresham concurring in part and dissenting in part with a separate expression. Commissioner Clapp concurring in part and dissenting in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Gilliam (Concurring)

Many of the questions which I raised at the oral arguments on December 11, 1980, still remain unanswered. These questions may never be answered satisfactorily without some practical experience. I believe this decision will give carriers and shippers the opportunity to test the feasibility of the practicably participate definition. By allowing the carriers to develop their own implementation plan, I think we can minimize the disruptive effects which may occur as a result of our decision.

Commissioner Gresham (Concurring in part and dissenting in part)

I am not convinced that the Staggers Rail Act of 1980 and the record in these proceedings warrant the precipitant action undertaken by the majority. While I agree with the revised definition of practically participate and the need for its gradual implementation, the options given the railroad industry do not contain the necessary flexibility for the orderly, phased elimination of antitrust immunity. A program of phased implementation over a longer period of time would allow for a smoother transition. I would also provide for the timely reconsideration of our decision if elimination of antitrust immunity proves infeasible.

The elimination of collective consideration of broad tariff changes as they affect single line rates will create substantial dislocations for bureaus, carriers and transportation users. I believe adoption of this prohibition is infeasible at this time. This process should be gradual. It should coincide with the implementation (by commodity) of the new definition of practically participate for independently set joint rates contained in section 10706(a)(3)(A) (ii) and (iii) of the Interstate Commerce Act.

Section 10706(a)(3)(A)(i) prohibits collective consideration of general increases as they affect single line rates unless the Commission makes a finding that implementation of this prohibition is not feasible. The majority would make no such finding: however, due to the somewhat anomalous language of the statute, I believe that such a finding must be made. Since the Commission may not take any action with respect to the elimination of general rate increases prior to April 1, 1982, it cannot prohibit collective consideration of general increases as they affect single line rates until this date or, at minimum, until implementation of some type of collective cost recovery mechanism for single line rates as noticed in Ex Parte No. 290 (Sub-No. 2).

Finally, other carriers should not be prohibited from joining a rate established by

independent action. The majority's treatment of this matter is opposite to the treatment accorded motor carriers in *Ex Parte No. 297 (Sub-No. 5)*, decided December 19, 1980. There would appear to be no statutory or factual basis for this differing treatment of the modes.

Commissioner Clapp (Concurring in part and dissenting in part)

This decision is a considerable improvement over the draft originally circulated. That draft would have implemented the direct connectors definition of "practical participation" in interline movements immediately for all rail traffic. In my opinion, that could have had serious consequences. A subsequent proposal would have imposed the definition immediately on coal, lumber, and transportation equipment and, six months later, on food, farm products, and chemicals, without further public notice. That too presented problems. I am glad to see that the Commission has adopted my suggestion that we consult with the carriers and shippers whose daily operations would be changed before implementing the definition. While the compromise decision is a step in the right direction, I am nonetheless disturbed that it still ignores or glosses over several important matters.

There is no justification for the finding that the direct connectors definition and the restrictions on single-line rates in broad tariff changes are feasible. The staff has made no study of these matters and the record contains no concrete supporting evidence. Admittedly, it may be difficult to judge the feasibility of the restrictions until some experience is gained.

By statute, the direct connectors definition cannot apply to general rate increases or broad tariff changes until 1984. The Commission may not take any action to eliminate general rate increases until at least April, 1982. Immediate implementation of the definition would only limit the manner in which the railroads may use the increased flexibility provided by the Staggers Rail Act for selective rate adjustements.

It can be argued very persuasively that now is not the time to impose this limitation on carrier ratemaking flexibility. Consider the present state of the economy, the generally poor financial condition of the railroad industry, the current uncertainty as to the future system configuration of Conrail and the potential impact of significant changes in that system on most of the Northeast, the substantial administrative expense of tariff readjustments, and the disruptive effect on existing rate structures. Should we be saddling the railroads with additional costs that may produce little or no tangible benefit?

We must give much closer attention to the competitive impact of the direct connectors definition. The net effect (as a result of the elimination of scale rates and other easily adjustable rate structures) may seriously impair many carriers' ability to compete effectively against other modes. I do not believe that we should be seeking to destroy the ability of bridge carriers and regional railroads to compete for traffic. Yet the decision seems to consign these carriers, many of whom are efficient, to the scrapheap—based on the misguided impression that this will increase efficiency.

In addition to determining whether the perceived benefits from the direct connectors definition are likely to appear, we must consider whether those benefits outweigh the costs to the railroads and the public. While the direct connectors approach has theoretical appeal, practical considerations cannot be tossed aside casually in the belief that the railroads will be able to conform to whatever the Commission mandates.

The "phase-in" proposal assumes that the railroad industry will be able to comply fully within one year. This time frame appears selected to permit the earliest possible end to general rate increases. Since the decision finds implementation feasible, there is no attempt to determine whether the one year frame is best suited to the preservation and stimulation of an efficient rail transporation system.

We will never know whether the direct connectors approach will work unless there is an experimental pilot project (i.e. a specific percentage of traffic studied for a statistically significant period) or a gradual phase-in. The Commission must be flexible and react quickly if implementation threatens the financial health of the transportation community. The greatest potential cause of failure would seem to be the expense associated with the transition phase. The costs should be spread over a reasonable period of time, and I question whether one year is sufficient. As the railroads submit new comments, we should not automatically disregard plans which would not be fully implemented by April, 1982.

The Commission is mistaken in finding that the restriction against single-line rate consideration in general rate increases or broad tariff changes currently is feasible. The restriction will be feasible for general rate increases once the Commission adopts a cost recovery index such as that proposed in Ex Parte No. 290 (Sub-No. 2). That has not yet taken place. Since the index will be based on national (or possible regional) rather than individual carrier costs, we have stated that rates set collectively may be increased at the same pace as other rates under the zone. This will obviate the potential uncertainty as to antitrust questions which is the primary reason why we cannot reasonably find the requirement feasible at present.

We do not know if implementation for broad tariff changes is feasible. Unless we implement the single-line restriction, there are no other restraints on broad tariff changes until 1984. Thus, in theory, carriers will be able to adjust their joint-line rates in a broad tariff change and make similar adjustments in their single-line rates, tempered by competitive considerations. However, this Commission's failure to establish joint antitrust guidelines with the Department of Justice may have a chilling effect on needed rate adjustments. The potential expense of defending an antitrust prosecution is enormous, even if that prosecution is unsuccessful. It is not enough to say that carriers need not fear "responsible, legitimate ratemaking" and that difficulties may be solved "on a case-by-case basis through consultation with competent antitrust counsel." Who is to judge what is "responsible and legitimate" and under what standards? The railroad industry *is* unique and does need particular guidelines. Carrier uncertainty must not paralyze management and defeat the Staggers Act's goals. In the absence of joint antitrust guidelines, scheduled implementation of the single-line restriction for broad tariff changes should parallel implementation of the direct connections approach.

[FR Doc. 81-3009 Filed 1-27-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Atlantic Mackerel Fishery of the Northwest Atlantic Ocean

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

ACTION: Notice allocating Atlantic mackerel from reserve to TALFF.

SUMMARY: Under the reserve allocation provisions of Amendment No. 1 to the fishery management plan (FMP) for the Atlantic Mackerel Fishery of the Northwest Atlantic Ocean, the Regional Director, Northwest Region, National Marine Fisheries Service (NMFS), decided to allocate the entire reserve of Atlantic mackerel (*Scomber scombrus*) to the total allowable level of foreign fishing (TALFF). Transfer of the Atlantic mackerel reserve of 6,000 metric tons (mt) to TALFF increases TALFF from 4,000 mt to 10,000 mt.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; or Frank Grice, Chief, Fisheries Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Telephone number for both individuals is (617) 281–3600.

SUPPLEMENTARY INFORMATION:

Summary of reserve allocation system

Regulations to implement the management measures of the FMP for Atlantic mackerel, as amended, were published in the **Federal Register** on July 3, 1980 (45 FR 45291) and on November 24, 1980 (45 FR 77445). These regulations established a reserve for Atlantic mackerel and provisions under which the Regional Director could allocate all or part of this reserve to TALFF. The

regulations require the Regional Director during October of each year to project the total amount of mackerel that will be harvested by U.S. fishermen during the entire fishing year. Two factors must be considered: (1) The amount of mackerel harvested through September 30, and (2) the ability and intent to the domestic industry to harvest and process this species during the remainder of the fishing year. If the Regional Director finds that the projected amount of mackerel to be harvested by U.S. fishermen exceeds the initial determination of domestic annual harvest (DAH), then the excess will be left in reserve to allow the fishery to continue without closure throughout the year. If it is determined that the DAH of 20,000 mt is adequate for the needs of the domestic industry for the fishing year, then the entire reserve of 6,000 mt shall be allocated to TALFF.

Review of Findings and Comments

On November 24, 1980, a notice was published (45 FR 77489) stating that the Regional Director proposed to allocate the entire 6,000 mt of mackerel reserves to TALFF based on findings that total mackerel landings by U.S. fishermen for the 1980–1981 fishing year would be 5,332 mt and that the remainder of DAH would be adequate to meet these needs.

Public comments on the proposed notice of Atlantic mackerel allocation were invited, as required, for a 15-day period ending December 10, 1980. No comments were received. The Regional Director also consulted with the Executive Director of the Mid-Atlantic Fishery Management Council as to the consistency of the allocation with the objectives of the FMP.

Allocation

Based on a review of catch statistics, consultation with the Executive Director of the Council, and the lack of opposing comment, the Regional Director decided to allocated 6,000 mt of reserve to TALFF, increasing it from 4,000 mt to 10,000 mt.

Signed at Washington, D.C. this 23rd day of January 1981.

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

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

For the reasons set out in the preamble, Part 611 is amended as follows:

Section 1.B of § 611.20, Appendix 1 is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing.

* * * * *

Appendix 1. Optimum yield (OY), domestic allowable harvest (DAH), domestic allowable processing (DAP), joint venture processing (JVP), domestic non-processed fish (DNP), reserve, and total allowable level of foreign fishing (TALFF), all in metric tons.

Species and species code	Areas	OY	DAH	DAP	JVP	DNP	Reserve	TALFF
1. Northwest Atlantic Ocean fisheries:								
A. * * *								
B. Mackerel fishery ..... Mackerel, Atlantic, 204 ...	.....	30,000	20,000	.....	See § 611.52(b)	.....	0	10,000

* * * * * * * *

[FR Doc. 81-3148 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 46, No. 18
Wednesday, January 28, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 108, 205, 211, 212, 214, 223, 235, 243, 245, 248, 249, 250, 252, 254, 256, 271, and 336

Factors To Be Considered in the Exercise of Administrative Discretion

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Cancellation of proposed rule.

SUMMARY: After careful consideration of the public comments received regarding the proposed rule to list the factors to be considered in the exercise of administrative discretion, published at 44 FR 36187 on June 21, 1979, the Service has decided not to publish a final rule. The proposed rule is cancelled because it is impossible to foresee and enumerate all of the favorable or adverse factors which may be relevant and should be considered in the exercise of administrative discretion. Listing some factors, even with the caveat that such list is not all inclusive, poses a danger that use of guidelines may become so rigid as to amount to an abuse of discretion.

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: Andrew J. Carmichael, Jr., Acting Associate Commissioner, Examinations, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-2982.

SUPPLEMENTARY INFORMATION: In the Notice of Proposed Rule Making published on June 12, 1979 at 44 FR 36187, concerning factors to be considered in the exercise of administrative discretion, it was proposed to list certain factors, both favorable and unfavorable, which should be considered in the exercise of discretion. Many responses were received and they have all been carefully considered.

Initially, the comments were separated into two general categories—those in favor of and, those in opposition to regulating discretion. However, in analyzing the comments, it became increasingly apparent that those who expressed general satisfaction with the basic idea of the proposed regulation also presented a proportionate share of opposition in their individual attempts to spell out suitable discretionary criteria. This served to highlight the overriding theme of the opponents, whose comments are best characterized by one writer who stated, "You must make every effort not to eliminate discretionary powers by converting discretionary powers into a body of law."

All would apparently agree that the power to exercise administrative discretion is an awesome authority which must be wielded carefully. The combination of open opposition by some commenters and disagreements by others regarding the proposed "appropriate discretionary criteria" has led to the conclusion that the responsibility to exercise this authority in an equitable manner cannot be assured by a regulation listing factors to be considered.

There is an inherent failure in any attempt to list those factors which should be considered in the exercise of discretion. It is impossible to list or foresee all of the adverse or favorable factors which may be present in a given set of circumstances. Listing some, even with the caveat that such list is not all inclusive, still poses a danger that the use of the guidelines may become so rigid as to amount to an abuse of discretion.

In the exercise of discretion, all relevant factors are considered. The adverse factors are weighed against the favorable factors in the judgment and conscience of the responsible officials. Service officials are required to prepare a record justifying their actions when they deny a benefit in the exercise of administrative discretion. Summary and stereotyped denials are not acceptable.

To avoid the possibility of hampering the free exercise of discretionary authority, the proposed rule is cancelled and a final rule will not be published.

Issued: January 21, 1981.

David Crosland,
Acting Commissioner of Immigration and Naturalization.

[FR Doc. 81-3149 Filed 1-27-81; 8:45 am]
BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

[Docket No. PRM-140-2]

Public Citizen Litigation Group Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Denial of Petition for Rule Making.

SUMMARY: The Nuclear Regulatory Commission (NRC) is hereby denying a petition for rule making (PRM-140-2) submitted by the Public Citizen Litigation Group in a letter to the General Counsel of the Commission dated December 20, 1979. The petition requested that the Commission amend its regulations relating to "Financial Protection Requirements and Indemnity Agreements," 10 CFR Part 140 to increase the amount of liability insurance required of persons licensed to operate large commercial nuclear power plants.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Utility Finance Branch, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission. Telephone (301) 492-8562.

SUPPLEMENTARY INFORMATION: On April 22, 1980, the Commission published a notice in the **Federal Register** (45 FR 26973) requesting public comment on a letter dated December 20, 1979 which was sent to the General Counsel of the Commission by the Public Citizen Litigation Group (PCLG). The letter requested that the Commission amend 10 CFR 140.11(a)(4) of its regulations to increase the amount of primary financial protection required of persons licensed to operate reactors with a rated capacity of 100 Mw(e) or more from $160 million to $460 million plus the amount available as secondard financial protection. The Commission directed that the letter be treated as a petition for rule making. Pertinent portions of the

General Counsel's response were also published.

PCLG suggests that the nuclear insurance industry should be required to combine the $300 million in property insurance that it sells to reactor operators with the $160 million in primary liability insurance it provides to utilities under the Price-Anderson Act (Act) to offer a combined level of liability insurance totaling $460 million. Eleven comment letters were received. Both the petition and the comments are available for public inspection and copying at the NRC Public Document Room at 1717 H Street, NW, Washington, DC.

The eighth comments received from utilities, trade groups or associations, and from the insurance pools disagree with the petitioner's arguments that the availability of $300 million in property insurance indicates that the $160 million prescribed by the Commission is not the "maximum amount available" required by the Act.

The ninth comment letter requested that the Commission institute a rule making proceeding on general Price-Anderson questions as well as the specific question of increasing the required financial protection amount. The Commission has considered the suggestion of a general Price-Anderson rule making proceeding but has rejected the suggestion for the time being in light of recent Congressional interest in modifying the basic Price-Anderson framework. The tenth comment letter did not address any of the issues presented in the petition and was not considered by the Commission. The final letter, submitted by a state energy commission, addressed a number of different issues relating to the Price-Anderson Act, but only one comment specifically related to the petition. The comments not specifically related to the petition requested that the NRC take a number of actions to increase the primary financial protection layer such as requiring licensees to offer to pay higher premiums to obtain greater amounts of insurance coverage and having a licensee subject a portion of its assets to liability that might arise from a nuclear incident. In response to another comment presented by the state energy commission that the Commission should require increased financial protection for away-from-reactor spent fuel storage facilities the Commission notes that it is presently considering the question of using its discretionary authority to extend Price-Anderson to fuel storage away from reactors in another rule making context. Other concerns raised by the final commenter relate to more general Price-Anderson questions. As stated above with respect to the ninth comment, the Commission does not believe it appropriate to hold a rule making proceeding at this time in light of Congressional interest in changing the basic Price-Anderson framework. In the one comment relating to the petition the commenter states that the Commission should not rely on the legislative history of the Act which indicates no dissatisfaction by Congress with the insurance program now in effect for not including property insurance as part of financial protection. The Commission does not agree with this commenter's statement. First, since the enactment of the Price-Anderson Act in 1957, Congress has closely followed the Commission's implementation of the Act, including specifically the setting of the financial protection level. Second, the Commission continues to inform the appropriate Congressional subcommittees concerned with nuclear power of significant matters relating to Price-Anderson. Hence, Congress could act if it was dissatisfied with the Commission's implementation of the financial protection levels mandated in the Act.

Based on an evaluation of the comments received and for the reasons set forth below, the Commission concludes that 10 CFR 140.11(a)(4) is consistent with the requirements of the Price-Anderson Act. Accordingly, the petition for rule making is denied.

Section 170b. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2210, provides that "The amount of financial protection required shall be the amount of *liability* insurance available from private sources * * * provided, that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources * * *." (emphasis added) As the General Counsel's February 19, 1980 letter to the petitioner states, NRC regulations implementing Subsection 170b. of the Price-Anderson Act have historically adopted the amount provided by the nuclear liability insurance pools as the "maximum amount available" from private sources at reasonable cost and on reasonable terms. The pools increased the amount of liability insurance available in January, 1979 from $140 million to its present level of $160 million. 10 CFR 140.11(a)(4) requires commercial operating reactor licensees to maintain primary financial protection of $160 million.

The Price-Anderson Act has been formally reviewed and extended twice over the last 20 years by the Congress and Congress has exercised continuous oversight over the Commission's implementation of the Price-Anderson Act. In two comprehensive studies of the Price-Anderson Act issued by the AEC staff in June, 1965 and January, 1974, the staff specifically described the method used by the Commission in determining the level of required financial protection.[1] The study on "Issues of Financial Protection in Nuclear Activities," December, 1973, prepared by the Legislative Drafting Research Fund of Columbia University also described the implementation of the Price-Anderson Act.[2] In the original enactment of the Price-Anderson Act, Congress recognized the difference between liability and property insurance and indicated that only liability insurance should be used in setting the level of financial protection. In the report of the Joint Committee on Atomic Energy reporting out the 1957 amendments to the Atomic Energy Act which became the Price-Anderson Act, the Committee stated:

> Because of the magnitude of insuring reactors, the insurance companies joined together in pools. The insurance field has been traditionally developed by stock companies and by mutual companies. These two types of companies, in turn, are split between those companies which insure against thrid-party liability (casualty companies) and those companies which issue property insurance on the reactor facility itself. These four segments of the insurance companies each formed their own pools to issue atomic insurance policies. The stock companies have two pools. One is the Nuclear Energy Liability Insurance Association (NELIA) and the other the Nuclear Energy Property Insurance Association (NEPIA). *To the extent that the latter merely insures the reactor and its buildings it is not concerned with the financial protection which is required under the statute.* (emphasis added) [3]

Reports of the Joint Committee on

[1] Selected Materials on Atomic Energy Indemnity and Insurance Legislation Joint Committee on Atomic Energy Print, March 1974, pp. 4 and 372.

[2] *Id.* at 78.

[3] JCAE Report, No. 296, 85th Congress, 1st Session, May 9, 1957, p. 10.

Atomic Energy for the 1965 and 1975 extensions of the Price-Anderson Act continued to equate the required level of financial protection with that dollar amount that represented the maximum *liability* insurance made available by the nuclear pools. There has been no clear legislative history indicating Congressional interest in including property insurance in the amount available "for liability insurance" provided by large reactor operator licensees. As the February 19, 1980 General Counsel letter states.

> Particularly during the 1974–1975 review, when the "secondary layer" of retrospective premiums was developed, this matter was under close Congressional scrutiny. Nevertheless, Congress did not amend Section 170b. as to primary insurance, nor did it require the Commission to alter its regulations implementing that section.

We can find no authority in the Act or our regulations which would allow the Commission to take into account other types of insurance in determining the amount of liability insurance available. Liability insurance provided by the insurance pools is furnished on a voluntary basis. The Commission has no authority to compel the insurance pools to increase their liability capacity or to require the pools to transfer part of the property loss capacity to liability coverage. The Commission believes that if the Congress had intended subsection 170b. of the Atomic Energy Act or Commission regulations to consider insurance other than liability insurance in the determination of the "maximum amount available," then the Price-Anderson Act (or its legislative history) would have been so modified.

In view of the foregoing, the Commission denies the petition for rule making filed by PCLG on December 20, 1979. Commissioner Bradford believes that a rulemaking on some Price-Anderson subjects raised in the comments would have been in order. A copy of the Commission's letter of denial is available for public inspection and copying at the NRC Public Document Room at 1717 H Street, NW, Washington, D.C.

Dated at Washington, DC, this 21st day of January 1981.

For the Nuclear Regulatory Commission.

Samuel Chilk,

Secretary of the Commission.

[FR Doc. 81-3218 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1215

Archaeological Resources Protection Act of 1979; Proposed Uniform Rulemaking and Notice of Public Hearings

Correction

In FR Doc. 81–1854 at page 5566 in the issue for Monday, January 19, 1981, make the following correction: on page 5570, in the first column, under the heading "Statement of Significance", in the second paragraph, the first sentence should read "The Secretaries of the Departments of Defense and Agriculture are expected to concur with the contents of this proposed rulemaking by publishing cross-referencing notices in the **Federal Register** to this effect in the immediate future.".

BILLING CODE 1505-02-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 3

Continuation-in-Part Application Oath or Declaration; Revised Notice of Proposed Rulemaking

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: Patent and Trademark Office agains proposes amendment of the rules of practice and forms for patent cases to specify certain additional requirements of an oath or declaration for continuation-in-part applications. The change is being proposed in view of various court decisions which have interpreted what material is available as references in continuation-in-part applications. The proposed change will clarify what matter must be disclosed by applicants in continuation-in-part applications.

DATES: Written comments by March 31, 1981.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. No additional hearing will be held since a hearing has already been held on February 7, 1979. Written comments and transcript of hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza, at 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Louis O. Maassel by telephone at (703) 557–3070, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This notice proposes to amend § 1.65 by revising paragraph (a) and by adding a new paragraph (d) and to revise forms 3.18 and 3.18a. Notice was previously given on November 28, 1978 in the **Federal Register** (43 FR 55417–55420) of a proposal to amend these sections of Title 37 of the Code of Federal Regulations. However, this proposal was not published in the Official Gazette. As stated in the proposal, the changes are intended to more clearly specify the requirements of an oath or declaration accompanying a continuation-in-part application.

The reasons for the change are set forth in the following discussion.

Any claim in a continuation-in-part application which is directed *solely* to subject matter adequately disclosed under 35 U.S.C. 112 in the parent application is entitled to the benefit of the filing date of the parent application. However, if a claim in a continuation-in-part application recites a feature which was not disclosed or adequately supported by a proper disclosure under 35 U.S.C. 112 in the parent application, but which was first introduced or adequately supported in the continuation-in-part application such a claim is entitled only to the filing date of the continuation-in-part application, *In re von Langenhoven*, 458 F.2d 132, at 136, 173 USPQ 426 at 429 (CCPA 1972) and *Chromalloy American Corp.* v. *Alloy Surfaces Co., Inc.*, 339 F. Supp. 859 at 874, 173 USPQ 295 at 306 (D. Del. 1972).

An illustration of the effects of these and other cases is as follows: An application is filed which discloses the combination AB. Within the priority year a foreign application to the combination AB is filed by applicant and later published. More than one year after the foreign publication, but still during the pendency of the parent United States application, a second United States application is filed by the same inventor which discloses and claims the combination AC and is therefor designated a continuation-in-part application.

Upon examination of the continuation-in-part application, the examiner concludes that C is in fact a known element in the art and that it would be obvious to substitute C for B in the combination AB.

A claim drawn to AC finds no support in the parent case and therefore carries an effective date only as early as the filing of the continuation-in-part

application. Therefore, the publication of AB in the foreign application more than one year prior to the filing of the continuation-in-part application is prior art under 35 U.S.C. 103 by reason of the provisions of 35 U.S.C. 102(b) and, together with a showing that C is old, may provide basis for rejection of a claim to AC for obviousness. Similarly, public use or sale of AB in the United States more than one year prior to the filing of the continuation-in-part application would be prior art under 35 U.S.C. 103 by reason of 35 U.S.C. 102(b). And the grant of a foreign patent or inventor's certificate on AB, based on a foreign application filed more than twelve months prior to and issued before filing the continuation-in-part application would be prior art under 35 U.S.C. 103 by reason of 35 U.S.C. 102(d). It is for these reasons that applicants must supply information concerning the common subject matter relative to the continuation-in-part filing date in those instances where any of the claims recite additional subject matter and are thereby only entitled to the continuation-in-part filing date. This proposed change would not require applicant to supply any kind of information in addition to that required by the current rules. Only the date relative to which the information must be supplied is being changed.

By way of further illustration, if the claims of a continuation-in-part application which are only entitled to the continuation-in-part filing date, "read on" such published, publically used or sold, or patented subject matter (e.g., as in a genus-species relationship) a rejection under 35 U.S.C. 102 would be proper. Cases of interest in this regard are *In re Steenbock*, 83 F.2d 912, 30 USPQ 45 (CCPA 1936); *In re Ruscetta*, 255 F.2d 687, 118 USPQ 101 (CCPA 1958); *In re Hafner*, 410 F.2d 1403, 161 USPQ 783 (CCPA 1969); *In re Lukach*, 442 F.2d 967, 169 USPQ 795 (CCPA 1971); and *Ex parte Hageman*, 179 USPQ 747 (Bd. App. 1971).

In addition, knowledge, use or patenting by another before the applicant's invention of additional subject matter claimed in the continuation-in-part application would also constitute prior art although such activity may not necessarily be known to the applicant.

In view of the above, § 1.65 is proposed to be amended by the addition of a paragraph (d) which requires the applicant in a continuation-in-part application, which both discloses and claims subject matter in addition to that disclosed in the prior copending application, to make an oath or declaration as of the filing date of the continuation-in-part application. Corresponding changes are being made in the oath and declaration forms in Part 3 of 37 CFR.

It is recognized that all of the information called for in the proposed forms would not be required by § 1.65(d) in some cases, such as where there is additional disclosure in the continuation-in-part application but where all claims are directed to the common subject matter disclosed in the parent application. In such an instance § 1.65(d) does not require any statements in the oath or declaration as to the common subject matter as of the continuation-in-part filing date, and the applicant may modify the forms, if desired, so that the statements referring to the common subject matter are made with reference to the filing date of the parent application. However, the use of the proposed forms in these cases would act as a safeguard for applicant, since he may later amend his claims to recite some of the additional disclosure. Similarly, the examiner might disagree with applicant's conclusion that additional subject matter is not being claimed in the continuation-in-part application. For this reason and the possibility that confusion might be generated by multiple forms, no specific forms are proposed for use in the case where all of the claims in the continuation-in-part application may be entitled to the filing date of the parent application.

Where activity has occurred in connection with an invention, but is not believed to constitute prior art within the meaning of Section 102 of Title 35, United States Code (such as a prior public use or sale of an experimental nature more than one year before the date of the application), such activity may be referred to in the continuation-in-part oath or declaration with any qualifications about its prior art status deemed warranted, or it need not be mentioned in the oath or declaration at all. If such activity is not mentioned in the continuation-in-part oath or declaration but is material to the examination under 37 CFR 1.56 it, of course, must be called to the Office's attention in a separate paper.

Response to Substantive Public Comments Received

Written comments have already been received from seven individuals and organizations. Two individuals presented oral comments at the hearing.

The many comments objecting to the best mode requirement acknowledgment are not mentioned here since this acknowledgment requirement has been deleted in this proposal. For the time being, no further action is being taken on this item.

Proposed paragraph (a) of 37 CFR 1.65 is being revised to provide for both masculine and feminine gender.

A number of comments were directed to the argument that the examiners would misapply the provided information. The response to this line of argument is that the proper application of references is something that must be decided currently by patent examiners in the normal course of patent examination. It is not seen that the adoption of this rule change would result in any new problems.

The proposed forms are examples of forms which would meet the requirements of proposed § 1.65(d). The forms could be modified by applicant to handle specific situations such as where no additional subject matter is being claimed.

This proposal is being republished to clarify the intent and scope of the proposed changes and to provide additional oportunity for comments to be received from the public.

Differences Between the Earlier Proposal and This Proposal.

Proposed paragraph (a) of § 1.65 differs from the earlier proposal in that the sentence acknowledging the requirement to disclose the best mode of the invention is not included. The best mode provision has also been deleted from the proposed forms of §§ 3.18 and 3.18a. *Classification.* Under the regulations of the Department of Commerce, this rulemaking proposal is deemed to be significant. *Regulatory Analysis.* The Patent and Trademark Office has determined that the proposed amendment of 37 CFR Parts 1 and 3 would not have major economic impact and therefor does not require a regulatory analysis.

For the foregoing reasons, and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, §§ 1.65, 3.18, and 3.18(a) of Title 37 CFR are proposed to be amended as follows.

In the texts of the following proposed amendments to § 1.65, additions are indicated by arrows and deletions are indicated by brackets. The changes to § 3.18 and § 3.18(a) are not noted in this manner because of numerous changes in wording.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. Section 1.65 is proposed to be amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 1.65 Oath or Declaration.

(a)(1) The applicant, if the inventor, must state that [he] ►the applicant◄ verily believes himself ►or herself◄ to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which [he solicits] a patent ►is solicited◄; that ►the applicant◄ [he] does not know and does not believe that the same was ever known or used in the United States before ►the applicant's◄ [his] invention or discovery thereof, and shall state of what country ►the applicant◄ [he] is a citizen and where ►the applicant◄ [he] resides and whether ►the applicant◄ [he] is a sole or joint inventor of the invention claimed in the application. In every original application the applicant must distinctly state that to the best of ►the applicant's◄ [his] knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to ►the◄ [his] application or patented or described in any printed publication in any country before ►the applicant's◄ [his] invention or more than one year prior to ►the◄ [his] application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of ►the◄ [his] application on an application filed by ►the applicant◄ [himself] or ►the applicant's◄ [his] legal representatives or assigns more than twelve months prior to ►the◄ [his] application in this country. ►The applicant◄ [he] must acknowledge ►the◄ [a] duty to disclose information ►the applicant◄ [he] is aware of which is material to the examination of the application. ►The applicant◄ [He] shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by ►the applicant◄ [himself] or ►the applicant's◄ [his] legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; ►the applicant◄ [he] shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (a) be sworn to (or affirmed) as provided in § 1.66 or (b) include the personal declaration of the applicant as prescribed in § 1.68. See § 1.153 for design cases and § 1.162 for plant cases.

* * * * *

►(d) An applicant in a continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, must identify the prior copending application and make an oath or declaration which includes the statements required by paragraph (a) of this section, or a list of the exceptions to the statements, (1) as to the common subject matter and (2) as to the non-common subject matter. The statements must be made in reference to the filing date of the continuation-in-part application in both cases (1) and (2).◄

PART 3—FORMS FOR PATENT CASES

2. Section 3.18 is proposed to be revised to read as follows:

§ 3.18 Oath in copending application containing additional subject matter.

[This form of oath may be used with an application disclosing additional subject matter to that disclosed in a prior copending application of the same inventor.]

As a below named inventor, I hereby state that:

My residence, post office address and citizenship are as stated below next to my name;

I verily believe that I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled: _____

described and claimed in the attached specification.

That I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application.

This application discloses subject matter in addition to that disclosed in my or our earlier filed pending application(s), Serial >No. ———, filed ———;

As to the claimed subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, except as —follows: _____

That the same was not in public use or on sale in the United States of America more than one year prior to this application, except as follows: ————, that said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, except as follows: ————, that as to applications for patent or inventor's certificate on the common subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America prior to this application,

☐ no such applications have been filed
☐ such applications have been filed, the filing date and country in which the earliest such application was filed are _____,

and that the filing date and country of filing of every other such foreign application filed more than twelve months prior to the filing of this application are as follows: _____

As to the additional claimed subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in a printed publication in any country before my or our invention thereof or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to the date of this application, and that said subject matter has not been patented or made the subject of an inventor's certificate in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; that as to applications for patent or inventor's certificate on said non-common subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America prior to this application,

☐ no such applications have been filed
☐ such applications have been filed, the filing date and country in which the earliest such application was filed are _____,

and that the filing date and country of filing of every other such foreign application filed more than twelve months prior to the filing of this application are as follows: ————.

I hereby appoint the following attorney(s) and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

_____ Telephone No. ____

Address all correspondence to _____

Inventor's full name _____
Inventor's signature _____
Date _____
Residence _____
Citizenship _____
Post Office Address _____

Inventor's full name _____
Inventor's signature _____
Date _____
Residence _____
Citizenship _____
Post Office Address _____

ss:

Sworn to and subscribed before me this — day of ———, 19—.

(Signature of notary or officer)

(Official character)

3. Section 3.18a is proposed to be revised to read as follows:

§ 3.18a Declaration in copending application containing additional subject matter.

(§§ 1.65 and 1.68 provide for a declaration in lieu or in place of an oath in certain instances.)

(This form of delcaration may be used with an application disclosing additional subject matter to that disclosed in a prior copending application of the same inventor.)

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I verily believe that I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the invention entitled:

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described and claimed in the attached specification.

That I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application.

This application discloses subject matter in addition to that disclosed in my or our earlier filed pending application(s), Serial >No. ———, filed ———,

As to the claimed subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application except as follows:

———,

that the same was not in public use or on sale in the United States of America more than one year prior to this application, except as follows:

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that said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application, except as follows:

———,

that as to applications for patent or inventor's certificate on the common subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America prior to this application,

- ● no such applications have been filed,
- ● such applications have been filed, the filing date and country in which the earliest such application was filed are———,

and that the filing date and country of filing of every other such foreign application filed more than twelve months prior to the filing of this application are as follows: ———

———.

As to the additional claimed subject matter of this application which is not common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in a printed publication in any country before my or our invention thereof or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to the date of this application, and that said subject matter has not been patented or made the subject of an inventor's certificate in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application; that as to applications for patent or inventor's certificate on said non-common subject matter filed by me or my legal representatives or assigns in any country foreign to the United States of America prior to this application,

- ● no such applications have been filed,
- ● such applications have been filed, the filing date and country in which the earliest such application was filed are

———,

and that the filing date and country of filing of every other such foreign application filed more than twelve months prior to the filing of this application are as follows: ———

———.

I hereby appoint the following attorney(s) and/or agents to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Telephone No. ———

Address all correspondence to:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor's full name ———
Inventor's signature ———
Date ———
Residence ———
Citizenship ———
Post Office Address ———

Inventor's full name ———
Inventor's signature ———
Date ———
Residence ———
Citizenship ———
Post Office Address ———

Dated: January 9, 1981.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Approved: January 15, 1981.

Francis W. Wolek,

Deputy Productivity, Technology and Innovation.

[FR Doc. 81-3256 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EN-FRL 1688-7]

Requirements for Preparation, Adoption and Submittal of Implementation Plans: Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: EPA proposes to amend its regulations for the Prevention of Significant Deterioration (PSD), and the Emission Offset Interpretative Ruling, and review of new sources and modifications under the State Implementation Plans, to eliminate uncertainty as to the date used in determining applicability of New Source Review requirements. EPA proposes that the determination as to whether a source will be subject to nonattainment or PSD review should be based on the attainment classification of the area on the date of submittal of a complete § 51.18 or PSD application. Where a construction application would not be required under § 51.18 or under PSD because there is no net emissions increase in an attainment area, and the area is subsequently redesignated nonattainment, construction must commence within 18 months of area redesignation in order to avoid nonattainment review.

DATES: The deadline for submitting written comments is March 30, 1981.

ADDRESSES: Comments: Comments should be sent (in triplicate if possible) to Central Docket Section, West Tower Lobby, Gallery I, 401 M Street, S.W., Washington, D.C. 20460.

Attention: Docket No. EN-80-17

Docket: The docket is an organized and complete file of all significant information submitted to or otherwise considered by EPA during this rulemaking. The contents of the docket will serve as the record in the case of judicial review under § 307(b) of the Act, 42 U.S.C. 7607(b). The docket is available for public inspection and

copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Richard Biondi, Compliance Monitoring Branch, (EN–341), Office of General Enforcement, Washington, D.C. 20406, (202) 755–2564, FTS 755–2564.

SUPPLEMENTARY INFORMATION: The January 16, 1979 version of the Offset Ruling provided that the determination as to whether a source or modification would cause or contribute to a violation of a NAAQS should be made based on the attainment status of the area as of the source's startup date. *See* Sections II C, II D, IV A, 44 FR 3283, 3284. Therefore, if a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by a new source's startup date, the source might not be subject to the requirements of the Offset Ruling (44 FR 3277). Moreover, if a state New Source Review program adopted pursuant to Section 173 of the Clean Air Act incorporated this provision of the Offset Ruling, the source could also be exempt for § 173 provisions.

EPA originally adopted this approach because it believed that air quality under these circumstances would be adequately protected under the June 19, 1978 PSD regulations. PSD applied even though the source was located in an area designated as nonattainment: "PSD applies irrespective of where a source would locate, except that it does not apply to any source which with respect to a particular pollutant is subject to the nonattainment requirements and would impact no clean air area" (43 FR 26389). Therefore, a source that might avoid review under Section 173 or the Offset Ruling would generally have been subject to PSD requirements.

However, on December 14, 1979, the United States Court of Appeals for the District of Columbia Circuit issued its final opinion in *Alabama Power Co. v. Costle*, 13 ERC 1993, and held that where a souce emits in major amounts any pollutant(s) for which the area in which the source would locate is designated nonattainment, Part C PSD review should not apply to those pollutants. This holding created a potential loophole in the regulatory structure, since under the present Offset Ruling a proposed source or modification could be exempt from nonattainment requirements as to a pollutant if the area in which it would locate was projected to be attainment for the nonattainment pollutant(s) by the source's startup date, and could also be exempt from PSD because the area was designated nonattainment for the pollutant(s).[1] See 40 CFR 52.21(i)(5) and 45 FR 52711 (August 7, 1980).

This potential loophole was not remedied by EPA's revisions to the Offset Ruling on May 13, 1980 (45 FR 31307), nor was it eliminated in the revisions to the nonattainment New Source Review and PSD regulations of August 7, 1980 (45 FR 52676). The regulations as revised generally state only that PSD review applies to sources locating in attainment or unclassifiable areas, and that nonattainment requirements (under both Section 173 and the Offset Ruling) apply to sources locating in nonattainment areas, without specifying the date of applicability in either case. Additionally, Section III C of the Interpretative Ruling, as revised on May 13, 1980, (45 FR 31311), continues the policy of determining whether a source would cause or contribute to a violation as of the source's startup date.

To resolve this problem, EPA proposes to base applicability of review under PSD, the Offset Ruling, and Section 173 of the Act on the attainment designation of the proposed location of the source on the date of submittal of a complete § 51.18 or PSD application. This change is needed to effectuate Congressional intent by overcoming the above-noted shortcoming in the present regulatory structure. The Clean Air Act generally requires that each new or modified major stationary source planning to locate in a nonattainment area must receive a permit to assure it will not interfere with efforts to attain and maintain national standards, and that it utilize suitable emissions control technology. In addition, sources locating in nonattainment areas must contribute to the drive towards attainment of standards by obtaining sufficient offsets so as to represent reasonable further progress. But under the present system, as noted above, a source may be exempt from both PSD and nonattainment review. EPA's proposed action would avoid this result by providing that a source is subject to nonattainment review if it locates in an area which is classified as nonattainment as of the date of submittal of a complete application, and is subject to PSD review if it locates in an area which is classified as attainment as of the date of submittal of a complete application. A complete application is defined at 40 CFR § 52.21(b)(22) and EPA today proposes adopting the same definition for purposes of 40 CFR 51.18(j) and Appendix S.

The approach outlined above has several advantages. It protects air quality by eliminating the aforementioned potential loophole. The approach also benefits a source, by enabling the source to know, at the time of permit application, what conditions must be met. A source will not be subjected to the uncertainty of anticipating future attainment status. Other potential applicability dates, such as date of commencement of construction or date of source startup, would have required a source to project future attainment status. Additionally, these other options could have forced a source, in cases where actual attainment status differed from that projected in the permit application, to re-examine engineering designs and control techniques at an advanced stage, in order to ensure meeting applicable requirements. This would involve time delays as well as additional expenses.

Basing applicability on date of submittal of a complete nonattainment, § 51.24, or § 52.21 permit application does create one problem. The problem is how to determine if nonattainment provisions would apply to a source which commences construction in an area after that area has been redesignated nonattainment, if no permit application would have originally been required under either the PSD regulations or § 51.18(a)–(i).[2] This situation could arise under EPA's revised PSD regulations (45 FR 52676), since source modifications in attainment or unclassified areas resulting in no net pollution increase do not require PSD permits. A source could claim that it would have submitted a complete application before the redesignation, but none was required, the EPA would be unable to confirm or deny this claim. This could result in the inequitable application of the Offset Ruling or Section 173 regulations to that source.

EPA proposes to deal with this problem by providing that any major source modification not requiring a PSD or § 51.18 permit will not become subject to nonattainment requirements if the area is reclassified as nonattainment, if the source commences construction, as defined at Section II A

[1] This exemption means that such sources will only be subject to state New Source Review programs adopted pursuant to 40 CFR 51.18(a)–(i). These programs generally are less stringent than nonattainment or PSD review, since they do not necessarily contain such requirements as offsets, LAER or BACT, statewide compliance, or monitoring.

[2] No other problems arise, since sources which file complete permit applications under PSD or nonattainment review regulations would remain subject to these regulations, even if the area is later redesignated. Additionally, sources which net out of review under nonattainment would obviously net out of PSD review if the area is redesignated attainment.

18 of the Emission Offset Interpretative Ruling (45 FR 52743) and at 40 CFR 51.18(j)(1) (xviii and xix), within 18 months area redesignation. EPA deems the 18 month time frame as a reasonable period for the commencement of construction in those cases where an area redesignation would otherwise have required a permit application. If construction is commenced later than 18 months after area nonattainment designation, EPA will consider the source subject to nonattainment or § 173 review. This assures that sources which are close to commencing construction are not delayed by the imposition of last minute permit requirements, but that sources still a considerable period of time away from commencing construction not be unnecessarily exempted from nonattainment review requirements.

As a final point, EPA notes that Section 173(1)(A) of the Act requires that offsets be obtained as of the date the source commences operation. EPA solicits comments on whether this means that Section 173 applicability as a whole must turn on the startup date, and, if such is the case, how the potential regulatory loophole could be eliminated.

Comments: EPA solicits written comments on the proposals in this notice. The period for comment ends March 30, 1981.

(Sec. 129(a) Pub. L. 95-95 (note under 42 U.S.C. 7502), and Sec. 110, 160-69, 170-73, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7470-79, 7501-3, and 7601)).

The Administrator finds that this clarification of the PSD regulations is not a substantial revision for the purpose of § 317 of the Clear Air Act, and an economic impact assessment is not required.

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.

Dated: January 19, 1981.

Douglas M. Costle,

Administrator.

State Plans for New Source Review for PSD Purposes

Section 51.24(i)(3) of Title 40 of the Code of Federal Regulations, as amended 45 FR 52729 (August 7, 1980), is proposed to be revised as follows:

§51.24 Prevention of significant deterioration of air quality.

* * * * *

(i) * * *

(3) The plan shall provide that requirements equivalent to those contained in paragraphs (j) through (r) of this section apply only to any major stationary source or major modification that would be constructed in any area which is designated as attainment or unclassifiable under section 107(a)(1)(D) or (E) of the Act, as of the date of submittal of a complete application under 40 CFR 51.18, 51.24, or 52.21; and

* * * * *

New Source Review for PSD Purposes

2. Section 52.21(i)(3) of Title 40 of the Code of Federal Regulations, as amended 45 FR 52735 (August 7, 1980), is proposed to be revised as follows:

§51.21 Prevention of significant deterioration of air quality.

* * * * *

(i) * * *

(3) The requirements of paragraph (j) through (r) of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act, as of the date of submittal of a complete application under 40 CFR 51.18, 51.24 or 52.21.

* * * * *

Appendix S—Emission Offset Interpretative Ruling

3. The Emission Offset Interpretative Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3274 (January 16, 1979), 45 FR 31307 (May 13, 1980), and 45 FR 52741 (August 7, 1980) is proposed to be amended as follows:

a. By adding a definition to Section II, subsection A, as follows:

A. *Definitions.* * * *

23. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the applicaiton.

b. By revising Section II, subsection C, to read as follows:

C. *Review of specified sources for air quality impact.* In addition, the reviewing authority must determine whether the majority stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et. seq.*, as nonattainment, as of the date of submittal of a complete application under 40 CFR 51.18, 51.24 or 52.21, for a pollutant for which the stationary source or modification is major. In the case of an area which has been redesignated nonattainment, any source which would not have been required to submit a permit application under PSD or § 51.18 regulations will not be subject to nonattainment provisions if construction commences within 18 months of area redesignation. A source that is major for volatile organic compounds is also major for ozone.

c. By deleting the last paragraph of Section III, subsection C. The first paragraph of Section III, subsection C is revised to read as follows:

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

d. By revising the first paragraph of Section IV, subsection A, to read as follows:

A. *Conditions for Approval.* If the reviewing authority finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq.*, as nonattainment, as of the date of submittal of a complete application under 40 CFR 51.18, 51.24, or 52.21, for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

* * * * *

Review of New Stationary Sources and Modifications

4. 40 CFR 51.18(j) is proposed to be amended by adding a definition ot (j)(1) and revising (j)(2) as follows:

§ 51.18 Review of new stationary sources and modifications.

* * * * *

(j) State Implementation Plan provisions satisfying sections 172(b)(6) and 173 of the Act must meet the following conditions:

* * * * *

(1) * * * (xxii) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

b. * * *

(2) Each plan shall adopt a preconstruction review program to satisfy the requirements of section 172(b)(6) and 173 of the Act for any area designated nonattainment for any National Ambient Air Quality Standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment as of the date of submittal of a complete application under 40 CFR 51.18, 51.24, or

52.21, if the stationary source or modification would locate anywhere in the area designated nonattainment. In the case of an area which has been redesignated nonattainment, any source which would not have been required to submit a permit application under PSD regulations or under this Section, will not be subject to nonattainment provisions if construction commences within 18 months of area redesignation. A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.

[FR Doc. 81-3182 Filed 1-27-81; 8:45 am]
BILLING CODE 6560-33-M

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40 CFR Part 52

[A-5-FRL 1740-1]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed Rule.

SUMMARY: The USEPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Naval Weapons Industrial Reserve Plant (NWIRP) in Franklin County, Ohio. The proposed revision adds an alternative emission limitation of 3.65 lbs SO_2/MMBTU that would become effective when proposed plant changes are operational. The existing regulation, 1.06 lbs SO_2/MMBTU, will remain effective and enforceable until such time. The USEPA solicits comments on this proposed revision to the SIP.

DATE: Comments must be received on or before Feburary 27, 1981. Request for a public hearing on this revision must be received no later than February 12, 1981.

ADDRESSES: Comments and requests for a hearing should be submitted to Gary Gulezian, Chief, Regulatory Analysis Section, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The docket #5A-80-15 for this revision is available for inspection and copying during normal business hours at the above address and at the Central Docket Section, West Tower Lobby, Gallery 1, USEPA, 401, M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Susanne Karacki, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6030.

SUPPLEMENTARY INFORMATION: On August 27, 1976, USEPA promulgated regulations for the control of sulfur dioxide in Ohio (41 FR 36323). On July 31, 1980, Rockwell International petitioned the USEPA to revise the federally promulgated emission limit for the Naval Weapons Industrial Reserve Plant (NWIRP) in Franklin County, Ohio, operated by Rockwell International Corporation. The submittal was endorsed by the Department of the Navy on August 6, 1980 and August 7, 1980. Supplementary information was submitted by Rockwell International on September 23, 1980 and endorsed by the Department of the Navy on September 29, 1980 and October 3, 1980. Rockwell International requested that the emission limit be changed from 1.06 lbs SO_2/MMBTU to 3.65 lbs SO_2/MMBTU based on non-simultaneous operation of the boilers and two proposed physical changes at the plant; first, the installation of a lock-out system on the boiler coal-feeders to permanently derate the maximum design capacity of the boilers and second, a stack height increase for the two existing stacks.

Rockwell International presently operates five coal-fired boilers [1] with a combined design capacity of 414 MMBTU/hr which exhaust through two identical 23.8 meter stacks. Under these conditions, the existing emission limitation is necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for SO_2.

Rockwell International has proposed that the emission limitation for the NWIRP be increased based on three proposed changes at the facility. First, Rockwell International proposed that the five boilers be operated in only one of three possible configurations at any one time. They are as follows:

a. Any two of boilers 1, 2, or 3 on; the remaining three boilers off.

b. Boilers 5a and 5b on; the remaining three boilers off.

c. Boiler 5a and any one of boilers 1, 2, or 3 on; the remaining three off.

Second, Rockwell International proposed that a lock-out system be installed on the boiler coal-feeders to permanently derate the powerhouse from a combined maximum design capacity of 414 MMBTU/hr to 177 MMBTU/hr. Third, Rockwell International proposed to increase the height of the existing two stacks from 23.8 meters to 44.5 meters pursuant to the Good Engineering Practice (GEP) stack height formula in USEPA's proposed stack height regulations (44 FR 2610, January 12, 1979).

Rockwell International's proposed revision utilized the RAM urban multipoint dispersion model, with five years (1973-1977) of representative Columbus/Dayton meteorological data and incorporated the three above cited proposed operation and configurational changes at the facility.

The USEPA has reviewed the modeling analysis and found that the proposed revision will attain and maintain the NAAQS for SO_2. Additionally, the USEPA has determined that the proposed lock-out system is an acceptable means to permanently derate the boilers and that the stack height increase is consistent with the stack height policy. A detailed discussion of the analysis can be found in the Technical Support Document in the docket.

However, since the Rockwell International submittal is based, in part, on physical changes at the facility which have not yet been constructed, the USEPA is proposing to approve the 3.65 lbs S02/MMBTU as an alternative emission limitation that will become effective when these changes are completed. NWIRP shall complete all changes that are necessary to comply with the alternate regulations specified in Section 52.1881(b)(27)(ix)(B) within 30 weeks from (the effective date of promulgation.) Until such point in time, the existing regulation, 1.06 lbs SO_2/MMBTU, is effective and enforceable.

Since the proposed alternative emission limitation is based on operating conditions that restrict the number of boilers that the source may operate at the same time (non-simultaneous operation), NWIRP is subject to the special monitoring and reporting provisions listed at 40 CFR 52.1882 (d), (44 FR 47769, August 15, 1979) when it elects to meet the 3.65 lbs SO_2/MMBTU emission limitation.

Additionally, since the proposed alternate emission limitation is based on a reduced operating load, NWIRP is subject to the special monitoring and reporting provisions proposed on September 9, 1980 (45 FR 59340) in Section 52.1882(g) when it elects to meet the 3.65 lbs SO_2/MMBTU emission limitation.

Final promulgation of this revision will follow analysis of the comments received and will depend on consistency with Section 110 of the Clean Air Act.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's

[1] Boilers 1, 2, 3, 5a, and 5b. For clarity, module 5a and 5b will be considered as separate boilers in this proposal.

response to Executive Order 12004 "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Pursuant to the provisions of 5 U.S.C. § 605(b) I hereby certify that the attached rule will not, if promulgated, have a significant impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. Moreover, due to the nature of the federal-state relationship, federal inquiry into the economic reasonableness of the state actions would serve no practical purpose and could well be improper. In addition, this action only applies to one facility.

(Secs. 110 and 123 of the Clean Air Act, as amended, (42 U.S.C. 7410 and 7423))

Dated: December 16, 1980.

John McGuire,

Regional Administrator.

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

Subpart KK—Ohio

1. Section 52.1881(b)(27)(ix) is revised as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio. * * *

(27) In Franklin County * * *

(ix)(A) The present or any subsequent owner or operator of the Naval Weapons Industrial Reserve Plant in Franklin County, Ohio shall not cause or permit the emission of sulfur dioxide from any stack at this facility in excess of 1.06 pounds of sulfur dioxide per million BTU actual heat input.

(B) In lieu of meeting § 52.1881(b)(27)(ix)(A), the present or any subsequent owner or operator of the Naval Weapons Industrial Reserve Plan may elect to comply with the alternate emission limitation and operating conditions specified below.

(*1*) The present or any subsequent owner or operator of the Naval Weapons Industrial Reserve Plant shall not cause or permit the emission of sulfur dioxide from any stack in excess of 3.65 pounds of sulfur dioxide per million BTU actual heat input provided that such stacks be greater than or equal to 44.5 meters in height and that the combined maximum boiler design capacity be limited to 177 million BTU per hour by installation of a lock-out system on the boiler coal-feeders.

(*2*) The present or any subsequent owner or operator of the Naval Weapons Industrial Reserve Plant shall be permitted to operate its five boilers (Nos. 1, 2, 3, 5a or 5b) in only one of the following three configurations at any given time:

(*i*) Any two of boilers 1, 2, or 3 on; the remaining three boilers off.

(*ii*) Boilers 5a and 5b on; boilers 1, 2, and 3 off.

(*iii*) Boiler 5b and any one of boilers 1, 2, or 3 on; the remaining three boilers off.

(*3*) In the event that the Naval Weapons Industrial Reserve Plant elects to comply with the alternative emission limitation and operating configurations in § 52.1881(b)(27)(ix)(B)(*1*) and (*2*) and vents its boilers through stacks greater than or equal to 44.5 meters in height and installs a lockout system on the boiler coal-feeders such that the combined maximum boiler design capacity is limited to 177 MMBTU/hr, all such action shall be taken within 30 weeks of (the effective date of promulgation). The Administrator must be notified in writing that all such action was taken within five working days of its completion.

[FR Doc. 81-3154 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-3-FRL-1739-8]

Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 3, 1978 (43 FR 8962) and September 2, 1978 (43 FR 40515), EPA designated a portion of Armstrong County, Pennsylvania as a nonattainment area for sulfur dioxide (SO_2). The nonattainment is due primarily to emissions from the West Penn Power Company (WPPC) Armstrong Power Plant, a 360 megawatt (MW) coal-fired facility. As a result of a physical modelling study and a dispersion modelling study it has been determined that the area can meet the National Ambient Air Quality Standards (NAAQS) for SO_2 by the end of 1982 if the stack height is increased to good engineering practice (GEP) height, as defined by EPA's proposed stack height regulations from 70 meters to 307 meters.

In a consent order and agreement between Pennsylvania and WPPC a schedule for construction of the taller stack is set out and interim emission limits are set which will provide reasonable further progress (RFP) towards meeting the NAAQS by the end of 1982. Final emission limits are to be the applicable limits in Pennsylvania Rules and Regulations, Section 123. EPA is proposing to approve the consent order and agreement as a revision to Pennsylvania's State Implementation Plan (SIP).

DATE: Comments must be submitted on or before March 27, 1981 (see supplementary information section for further information).

ADDRESSES: Copies of the proposed SIP revision and accompanying documentation are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: Patricia Sheridan.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, Fulton Bank Building, Third and Locust Streets, Harrisburg, PA 17120, ATTN: Gary L. Triplett.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before March 27, 1981 will be considered and should be directed to:

Ed Shoener (3AH11), U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, 6th & Walnut Streets, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Ed Shoener (3AH11), U.S. Environmental Protection Agency, Region III, Air Media & Energy Branch, 6th & Walnut Streets, Philadelphia, PA 19106. Telephone: 215/597-8174.

SUPPLEMENTARY INFORMATION: On March 3, 1978, EPA designated a portion of Armstrong County, Pennsylvania (Madison Township, Mahoning Township, Boggs Township, Washington Township, and Pine Township) as a nonattainment area for sulfur dioxide (SO_2). See 43 FR 8962 (1978). This designation was based primarily on an air diffusion modelling study performed for the Pennsylvania Department of Environmental Resources (DER) by a consultant, Geomet, Inc. The study predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO_2, resulting primarily

from the West Penn Power Company (WPPC) Armstrong Power Plant, a two-unit, coal-fired facility (180 mw each unit) located on the Allegheny River near the town of Reesedale in Washington Township in Armstrong County.

The predicted maximum ambient SO_2 concentrations assumed the limitations in DER rules and regulations, § 123.22(a):

4.8 lbs. $SO_2/10^6$BTU—daily average not to be exceeded at any time;
4.0 lbs. $SO_2/10^6$BTU—daily average not to be exceeded more than two days in any running 30-day period;
3.7 lbs. $SO_2/10^6$BTU—30-day running average not to be exceeded at any time.

The maximum ambient SO_2 concentrations resulting from these emission limitations as predicted by the Geomet Study are (in ug/m³): 161 (annual mean), 720 (24-hour maximum), 4095 (3-hour maximum).

The NAAQS are (in ug/m³): 80 (annual mean), 365 (24-hour maximum), 1300 (3-hour maximum).

On July 24, 1979, EPA published a Federal Register notice (44 FR 43306) describing the steps DER and WPPC agreed to in a draft Consent Order and Agreement to provide for attainment of the SO_2 NAAQS.

The draft Consent Order and Agreement contained three parts. Part I imposed a final emission limitation and interim emission limitations which are more stringent than the State's current emission limitation. The final emission limitation was based on the Geomet study and was to be effective December 31, 1982. Part II gave WPPC the option of performing an additional modelling study with the intent of showing that the final emission limitation required by the Geomet study is too stringent. The results of this additional modelling study could be used either to redesignate the affected area as "attainment" under the current SO_2 regulations, or to impose a different emission limitation which might be more or less stringent than the one required by the Geomet study. Part III set out the requirements for a plan to attain the NAAQS to be submitted in the event the additional modelling study of Part II fails to satisfy DER and EPA that the areas should be redesignated.

Pursuant to the option allowed WPPC in Part II of the Consent Order and Agreement, WPPC contracted with United Engineers and Constructors Inc. to do an additional modelling study to evaluate the 1976 Geomet study. The United Engineers study did not concur in every respect with the Geomet Study but still found nonattainment. WPPC then conducted a physical modelling study and a dispersion modelling study to determine the effect the terrain in the area had on ambient concentrations and to determine if a stack could be constructed to a height permitted by "good engineering practice" (GEP) to eliminate the SO_2 nonattainment.

DER and WPPC have re-negotiated the Consent Order and Agreement (as described below) in consideration of the predictions in these studies.

GEP Stack Height Determination

Section 123 of the Clean Air Act prohibits the source from receiving credit for a stack taller than GEP height in modelling for the purpose of setting an emission limitation. EPA has proposed regulations establishing three ways to determine the source's GEP stack height: a *de minimus* height, a formula height and a height demonstrated by fluid modeling or field studies (See Federal Register of January 12, 1979 (44 FR 2608 1979). The proposed regulations require that to approve a stack height above the proposed GEP formula height it must be demonstrated that a lower stack height than the GEP stack would result in exceedances of the NAAQS and that nearby terrain influences cause concentrations that are at least 40 percent in excess of the maximum concentrations occurring without the influence of nearby terrain.

A physical modeling study to determine a GEP stack height was conducted in accordance with EPA's proposed GEP regulations. To conduct the study a physical model of Armstrong and surrounding terrain at a scale reduction of 1:960 was constructed. Physical modelling was conducted in a wind direction sector of 104.5 degrees. Downwind terrain out to 12 km was included, as was upwind terrain within approximately one-half mile of Armstrong. The physical modelling was performed based on one single-shell multi-flue stack as a replacement for the two existing stacks (one per unit) with emission rates based on the DER regulatory limits currently applicable to the Armstrong region (listed earlier in this notice) and at load conditions of 50, 75, and 100 percent.

Stack heights of 190 meters, 250 meters and 310 meters were modelled in the wind tunnel. Once preliminary data indicated that a stack height in the range of 310 meters would permit exceedances of the NAAQS, additional stack heights of 292.7 and 316.1 meters were modelled.

An analysis of the data from these runs indicates that the maximum ground level concentration for the final tests at the 310 meter height (0.422 ppm) is in compliance with the 3-hour NAAQS for SO_2 (0.50 ppm) with upwind terrain present. This data also showed that the maximum concentration with the upwind terrain is 86% greater than the concentration without the upwind terrain. Furthermore, the next shorter maximum stack tested (292.7 meters) resulted in exceedances (0.525 ppm) of the 3-hour NAAQS for SO_2 (0.50 ppm), and concentrations with the upwind terrain remained more than 40% in excess of concentrations without the upwind terrain. Physical limitations associated with the model scale precluded further refinement of the GEP stack height within the above 17-meter range. Subsequent to the completion of these studies, it was determined that the stack gas temperature had been incorrectly specified. The net effect of this is that the recommended stack height had been overstated by 3 meters and should be 307 meters. Thus, it was predicted that 307 meters is the GEP stack height for the Armstrong plant under EPA's proposed regulations.

Dispersion Modelling of GEP Stack Emissions

As required by EPA policy, WPPC conducted a dispersion modelling study assuming a 307 meter stack in accordance with EPA's modelling guidelines. See guidelines on Air Quality Models, EPA–450/2–78–027, OAQPS No. 1.2–080, April 1978. The atmospheric dispersion model, RAMUEC1, was used to predict SO_2 impacts from Armstrong. RAMUEC1 is a hybrid of the rural version of the EPA's RAM and CRSTER atmospheric dispersion models. RAMUEC1 adopts the same basic modelling methodology as CRSTER, while retaining the RAM model's overall structure including its capability of treating multiple non-colocated sources. This latter feature is required in a modelling study of the Armstrong region in order to account for the impacts projected to occur from the proposed Lower Armstrong Power Station in conjunction with the Armstrong impacts. Therefore, RAMUEC1 computes the SO_2 concentrations which result from the simultaneous operation of the existing Armstrong plant and the projected Lower Armstrong plant. At any given receptor, the component of the total concentration due to each point source is essentially identical to that which would be computed by CRSTER.

Meteorological data used for this study was collected by WPPC at two sites in the Armstrong region from December 1, 1978 to November 30, 1979. Supplemental data recorded at the Greater Pittsburgh Airport National Weather Service Station were also used.

Background SO_2 data were collected from ten monitoring stations in the

Armstrong region. The ambient SO_2 data is concurrent with both the meteorological and emissions data. EPA considers this data on-site data and, as such, only one year is required.

The model input data for computation of the GEP stack impact were based on 50 percent, 75 percent, and 100 percent of full load conditions and actual load conditions over the period of December 1, 1978 through November 30, 1979 with an emission limit of 4.0 lbs. $SO_2/10^6$ BTU for the annual average and 4.8 lbs. $SO_2/10^6$ BTU for the 3-hr and 24-hr impact analysis.

Receptor sites were chosen to provide sufficient delineation of local high terrain and adequate spatial representation by distance and direction from Armstrong. More receptors were located in sectors to the east of Armstrong than the west. This is necessary because terrain is considerably higher to the east.

The study demonstrates that with the Armstrong GEP stack, and under all the load conditions just described, the NAAQS for SO_2 will be attained in the Armstrong study region. Worst case conditions were found when Armstrong is operating at full load. The analysis found that the annual average impact is approximately one-half of the primary annual standard for SO_2 of 80 ug/m^3 when Armstrong is operating at full load with an emission limitation of 4.0 lbs. $SO_2/10^6$ BTU heat input. Because DER's SO_2 regulations allow up to 4.8 lbs. $SO_2/10^6$ BTU heat input as a daily average for two days in any running 30-day period, the impact resulting from Armstrong GEP stack emissions at an average of 4.8 lbs. $SO_2/10^6$ BTU was also predicted for the 3-hour and 24-hour periods. It was shown that for this emission level, NAAQS for SO_2 will be attained.

EPA believes that this modelling demonstration provides sufficient assurance that the SO_2 NAAQS will be attained by December 31, 1982 in the Armstrong region with the use of a GEP stack and the DER emission limits referenced earlier in this notice.

DER/WPPC Consent Order and Agreement

In order to make the GEP stack requirement and the interim emission limits legally binding DER and WPPC negotiated a Consent Order and Agreement incorporating these requirements. DER submitted the Consent Order and Agreement to EPA as a SIP revision on December 17, 1980. The Consent Order and Agreement includes a detailed schedule for construction of the stack and interim emission limits which must be met prior to completion of the GEP stack. The interim limits are 3.6 and 3.3 lbs. $SO_2/10^6$ BTU, 30-day running average, by November 1, 1980 and January 1, 1982, respectively. These emission limits provide reasonable further progress (RFP) towards attainment of the SO_2NAAQS by the end of 1982 as required by Section 172 of the Clean Air Act.

Conclusion

Based on the physical modelling demonstration and the dispersion modelling demonstration, EPA is proposing approval of the schedule for construction of the GEP stack and the interim emission limits as agreed to by DER and WPPC in the Consent Order and Agreement.

In order to expeditiously process this proposed SIP revision, EPA is proposing this revision concurrently with Pennsylvania. DER informed the public of this SIP revision by placing ads in newspapers in the Armstrong area on January 19, 1980 and will hold a public comment period closing on March 27, 1981. Duplicates of comments received will be forwarded to EPA. EPA's public comment period begins today and will close on March 27, 1981, and all comments received by EPA will be forwarded to DER. As required by Section 123 of the Clean Air Act, DER will hold a public hearing on this proposal. The DER public hearing, which EPA will attend, will be held at the Armstrong County Courthouse, Kittanning, Pennsylvania. The public is invited to submit comments on whether this revision should be approved to DER at the public hearing or to the address listed earlier in this notice by March 27, 1981. Duplicates of comments received by DER will be forwarded to EPA. If the final SIP revision differs in any substantive manner from this proposed revision, EPA will repropose the revision and open another public comment period.

The Administrator's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the SIP revision meets the requirements of section 110(1)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action only approves State action. It imposes no new requirements. Moreover, due to the nature of the Federal-State relationship, Federal inquiry into the economic reasonableness of the State action would serve no practicable purpose and could well be improper. In addition, this action only applies to one facility.

Under Executive Order 12044 (44 FR 12661), EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401–642)

Dated: January 16, 1981.

A. R. Moriss

Acting Regional Administrator.

[FR Doc. 81-3156 Filed 1-27-81: 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 60

[AD FRL 1625-8]

Standards of Performance for New Stationary Sources; Industrial Surface Coating; Appliances

Correction

In FR Doc. 80-40137, appearing on page 85085, in the issue of Wednesday, December 24, 1980, make the following corrections:

1. On page 85092, second column, the eighth line should have read: "thickness, the mass of VOCs per unit of surface area coated per unit of film thickness, and the mass of VOCs per".

2. On page 85095, third column:

a. The last line in the column, should have read, "booth(s), or flow coating unit."

b. In the ninth line from the bottom of the column, the word "or" should have read "of".

c. In the eleventh line from bottom of the column, the first word in the line reading "of" should have read "or".

3. On page 85098, second column, the formula in § 60.453(d)(4) should have appeared as set forth:

"$N = G(1-R) < 0.90$ kg/*l*.".

4. On page 85097, middle column, the line reading "k denotes each application *solvent.*" should have read "k denotes each application *station*".

BILLING CODE 1505-01-M

40 CFR Part 60

[AD-FRL 1625-8a]

Standards of Performance for New Stationary Sources; Priority List; Amendment

Correction

In FR Doc. 80-40136, appearing on page 85099, in the issue of Wednesday, December 24, 1980, the twenty-eighth line of the "Summary" should have read: "from appliance surface coating."

BILLING CODE 1505-01

40 CFR Part 86

[EN-FRL 1742-1]

Applications for Waiver of Effective Date of Oxides of Nitrogen Emission Standards for Diesel Light-Duty Motor Vehicles—Cancellation of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Cancellation of Previously Scheduled Public Hearing.

SUMMARY: This notice cancels a public hearing scheduled for February 2, 1981 on an application submitted by Automobiles Peugeot (Peugeot) to EPA for waiver of the 1982 oxides of nitrogen (NO_x) emission standard for certain diesel light-duty vehicles pursuant to section 202(b)(6)(B) of the Clean Air Act (Act). The record for this waiver request will remain open for written submissions by interested parties until February 5, 1981.

DATES: The public hearing scheduled for February 2, 1981 is cancelled. Interested parties should submit written comments for the record by February 5, 1981, in order to ensure that the Administrator will consider them in deciding on this waiver request.

ADDRESSES: Parties may submit written information concerning Peugeot's request for a waiver of the 1982 NO_x emission standards for certain diesel light-duty vehicles to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460, by February 5, 1981. Copies of all material relevant to the waiver request will be available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460 (Docket Number EN-81-1).

FOR FURTHER INFORMATION CONTACT:: Mr. Jerry Schwartz, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 472-9421.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 202(b)(6)(B) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(6)(B) (1977), allows any light-duty diesel manufacturer to petition the Administrator of EPA for waiver of the statutory 1981-1984 model year NO_x standard of 1.0 grams per mile (g/mile). The Administrator, after notice and opportunity for public hearing, may waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 g/mile, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles. The waiver may be granted if the Administrator determines:

(i) That the waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and;

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

Guidelines for diesel NO_x waiver applications were published in the **Federal Register** at 43 FR 30341, July 14, 1978, in order to apprise manufacturers of the information deemed necessary to demonstrate that a waiver should be granted.

In a **Federal Register** notice (46 FR 5001 (January 19, 1981)) EPA announced that on December 16, 1980, it had received an application from Peugeot for waiver of the 1982 statutory NO_x emission standard for its XD2C diesel engine family to an interim standard of 1.2 g/mile instead of the statutory standard of 1.0 g/mile.

EPA stated in that notice that it had scheduled a public hearing for February 2, 1981, to consider this waiver request, but would cancel this hearing and make its waiver determination on the basis of written submissions if EPA failed to receive a *bona fide* request for such a hearing by January 22, 1981.

EPA has not received any requests for a public hearing. Therefore, EPA is cancelling the hearing scheduled for February 2, 1981. Interested parties may still submit written information relevant to Peugeot's request for a waiver from the 1982 NO_x emission standard.

II. Procedures for Public Participation

Although EPA will not hold a public hearing to consider Peugeot's waiver request, any party may still submit written data, views, and arguments which EPA will enter into the record upon which the Administrator bases his waiver decision. Interested parties who make written submissions should address the considerations set forth in detail by the guidelines for submission of waiver requests published in the **Federal Register**, 43 FR 30341, July 14, 1978. EPA is interested in comments on the following issues:

1. Whether a waiver is necessary to permit the use of diesel engine technology in the class or category of vehicles or engines for which an applicant requests a waiver;

2. Whether the waiver would endanger the public health;

3. Whether the waiver would result in significant fuel savings at least equal to the fuel economy standard applicable under the Energy Policy and Conservation Act ("EPCA");

4. Whether the technology utilized in the class or category for which a waiver is sought: (a) Has a potential for long-term air quality benefit, and (b) has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver, and;

5. The level of NO_x emissions, not to exceed 1.5 gpm, which an applicant's diesel vehicle class or category could meet in each of the model years for which an applicant requests a waiver.

EPA is requiring interested parties to submit any written comments on Peugeot's waiver request to the public docket by February 5, 1981, in order to ensure consideration by the Administrator in formulating his waiver decision. This information will be made available for public inspection at the EPA Central Docket Section. The Administrator will rely solely on the information contained in that docket in deciding on Peugeot's waiver request.

Dated: January 23, 1981.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81-3261 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-33-M

40 CFR Part 86

[EN-FRL 1742-2]

Applications for Waiver of Effective Date or Carbon Monoxide Emission Standards for Light-Duty Motor Vehicles—Cancellation of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation of Previously Scheduled Public Hearing.

SUMMARY: This notice cancels a public hearing scheduled for February 2, 1981, on new requests for reconsideration submitted by General Motors Corporation (GM), Volkswagen of America, Inc. (VW), and Ford Motor Company (Ford), for waiver of carbon monoxide (CO) emission standards for one engine family each for certain model years. The record for the GM and Ford requests will remain open for written submissions by interested parties until February 5, 1981. VW has withdrawn its waiver requests.

DATES AND ADDRESSES: The public hearing scheduled for February 2, 1981, is cancelled. The record for these waiver proceedings will remain open for written submissions by interested parties until February 5, 1981. Comments should be sent to the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Information submitted by the petitioners, as well as any comments received from interested parties, will be available for public inspection and copying in EPA Public Docket EN-80-16, located in EPA's Central Docket Section (A-130), Gallery I, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Varela, Waivers Section, Manufacturers Operations Division (EN-340), 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 472-9421.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 202(b)(5) of the Clean Air Act, as amended (Act), 42 U.S.C. 7521(b), authorizes EPA to waive application of the 1981 and 1982 model year statutory CO emission standard applicable to light-duty motor vehicles and engines upon the request of a manufacturer for a specific vehicle model if the Administrator makes certain findings specified under section 202(b)(5)(C) of the Act.

After holding previously announced public hearings, EPA denied earlier waiver requests from GM for its 1982 model year 1.6 liter (L) engine family on July 25, 1980 (45 FR 49877); from Ford, for its 1982 model year 2.3L/turbocharged family on August 11, 1980 (45 FR 53400); and from VW for its 1981 model year 1.46L engine family on September 9, 1980 (45 FR 59396).

In a **Federal Register** notice (46 FR 5063 (January 19, 1981)) EPA (January 19, 1981) announced that GM, VW, and Ford each have filed requests for reconsideration of earlier waiver denials and in those requests have raised the possibility that the engine families under consideration here (the GM 1.6L, VW 1.46L, and Ford 2.3L/turbocharged) may qualify for waivers under the same rationale used to grant waivers for other engine families in EPA's eleventh consolidated CO waiver decision (46 FR 1590 (January 6, 1981)).

EPA stated in that notice that it had already held public hearings regarding these three engine families for the model years in question, but would schedule a hearing if EPA received a *bona fide* written request for such a hearing by January 22, 1981. In the event that no such request was made, EPA stated it would publish a **Federal Register** notice cancelling the February 2 hearing and reconsider the previous waiver denials for these three engine families on the basis of written information submitted to the record.

On January 13, 1981, VW withdrew its request for reconsideration for a 1981 model year waiver for its 1.46 liter engine family. EPA has not received any requests for a public hearing on either the GM or Ford request for reconsideration. Therefore, EPA is cancelling the hearing scheduled for February 2, 1981. Interested parties may still submit written information relevant to either the GM or Ford requests for waiver of the CO emission standard.

II. Procedures for Public Participation

Although EPA will not hold a public hearing to consider the GM, Ford requests, EPA is requesting public comment on the concerns that these requests have raised for the purpose of reevaluating the original waiver deicisions. EPA recognizes the need to reconsider these decisions quickly, in light of the sixty-day statutory deadline which section 202(b)(5) of the Act establishes for responding to CO waiver requests and in light of these manufacturers' needs to finalize plans to begin production of these vehicles. Thus, EPA is requiring that all comments be submitted to EPA by February 5, 1981 to ensure that the Administrator will consider them in deciding on these requests for reconsideration.

EPA will place all information which it receives by that date in public docket EN-80-16. The Administrator will rely solely on the information contained in that docket in deciding whether or not to reverse his original denial of waiver requests for the two engine families for which requests for reconsideration still are pending.

Dated: January 23, 1981.

Jeffrey Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81-3262 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-33-M

40 CFR Part 249

[SWH-FRL 1739-2]

Guideline for Federal Procurement of Cement and Concrete Containing a Fly Ash; Reopening of Comment Period on Proposed Guideline

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Reopening of comment period on proposed guideline.

SUMMARY: This notice reopens the comment period on EPA's November 20, 1980, proposed guideline to Federal procuring agencies, encouraging procurement of cement and concrete containing fly ash, implementing Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). EPA has just recently received two requests for an extension of the comment period deadline (originally January 15, 1981) on the grounds that the holiday season reduced the number of meaningful working days in which to develop responses, and that the large number of potentially affected parties in the construction industry did not have adequate opportunity to respond to the proposal.

DATES: Comments on this proposed guideline are now due no later than January 30, 1981.

FOR FURTHER INFORMATION CONTACT: John Heffelfinger, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone (202) 755-9206.

SUPPLEMENTARY INFORMATION: On November 20, 1980 (45 FR 76906-76921), EPA proposed a guideline to implement Section 6002 of RCRA, titled Federal Procurement. Section 6002 directs all procuring agencies which use appropriated Federal funds to procure items containing the highest percentage of recovered materials practicable, given

that reasonable levels of competition, cost, availability, and technical performance are maintained. The guideline designated fly ash used in cement and concrete as a product area for which affirmative procurement actions are required on the part of procuring agencies.

EPA is reopening the comment period, due to the interference of the holiday season, as cited by the commenters. Comments on the proposed guideline are now due no later than January 30, 1981. Because the recently passed Solid Waste Disposal Act Amendments of 1980 require EPA to prepare final guidelines for at least three product categories by May 1981, and because no indication was given that any new or additional information would be forthcoming due to further extention of the comment period, no additional extensions of the comment period for this proposed guideline will be granted.

Dated: January 19, 1981.

Merna Hurd,

Acting Assistant Administrator, Water and Waste Management.

[FR Doc. 81-3187 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Docket No. 21499; FCC 80-719]

American Telephone and Telegraph Co. and Associated Bell System Cos., Offer of Facilities for Use by Other Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry and Proposed Rulemaking.

SUMMARY: The Commission will determine whether the American Telephone and Telegraph Company should provide wideband circuits to other communications companies and to the public. These circuits were requested by several communications companies, who stated that they would be able to provide more efficient and economic service to the public if they were available.

DATES: Comments must be filed on or before March 2, 1981, and reply comments on or before April 3, 1981.

ADDRESS: Comments in response to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kent Nakamura, Tariff Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6917.

In the matter of American Telephone and Telegraph Company and Associated Bell System Companies, Offer of Facilities for Use by Other Common Carriers, Docket No. 21499.

Adopted: December 4, 1980.

Released: January 19, 1981.

1. The Commission has for some time had the above-captioned proceeding under consideration.[1] It embraces a broad spectrum of issues related to the offering of facilities by the American Telephone and Telegraph Company and associated Bell System operating companies (AT&T and BSOCs) to non-Bell communications common carriers. Because of the many complex issues in this proceeding and the pendency of related proceedings which are likely to have some impact on the scope and subject matter of this investigation, we have determined to go forward with only one portion of this proceeding for the time being.[2] Specifically, we presently consider requests by three carriers that we order AT&T to interconnect with them at the group and supergroup level and provide them with group and supergroup facilities—*i.e.*, contiguous bandwidth of 48 kHz and 240 kHz, respectively.[3] It also appears that the public interest may be served by making these facilities available not only to these other carriers, but to the general public as well. Therefore, we ask for comment on various AT&T tariff provisions which presently restrict the availability of groups and supergroups by tying these facilities to AT&T-provided terminal equipment.

Background

2. We began this proceeding in 1977 to investigate the lawfulness of AT&T's offering of facilities by tariff to other common carriers (hereafter OCCs). In *American Telephone and Telegraph Company, et al., (AT&T II)* 69 FCC 2d 724 (1978), *review pending sub nam. Western Union Telegraph Company* v. *F.C.C.*, Case No. 78-1955, District of Columbia Circuit, we decided to add to our investigation AT&T tariff revisions which replaced prior contracts for the provision to the Western Union Telegraph Company (Western Union) of telegraph grade and other facilities. See also *American Telephone and Telegraph Company*, 70 FCC 2d 1294 (1978). And in *American Telephone and Telegraph Company (AT&T III)*, 70 FCC 2d 1905 (1979), we said that we would also examine in this proceeding AT&T's provision of certain interchange facilities to the international record carriers (IRCs) pursuant to contract.

3. In *AT&T III*, we addressed, *inter alia*, RCA Global Communications, Inc.'s (RCA) request that we order AT&T and certain BSOCs to provide group and supergroup bandwidth between and among the IRC's operating centers and the overseas cable stations and satellite earth stations through which overseas traffic is transmitted. In brief, RCA argued that our intent in our Docket No. 20452 order [4] was that AT&T provide group and subgroup facilities to the IRCs, and that the denial violated several provisions of the Communications Act. ITT World Communications, Inc. (ITT) had also filed a petition requesting increments of bandwidth greater than that afforded by individual voice grade circuits.

4. On consideration of these matters in *AT&T III*, we found that while most of the arguments were without merit, AT&T's practice of denying group and supergroup facilities to the IRCs raised questions of possible unlawful discrimination as well as other policy questions necessitating investigation. Since this issue had general significance for the industry, we decided that we would investigate it and related questions in Docket No. 21499.

5. Next, in *Western Union Telegraph Company*, 74 FCC 2d 293 (1979), *review pending sub nom. Western Union Telegraph Company* v. *FCC*, Case No. 80-1045, District of Columbia Circuit, we considered a petition filed by Western Union asking that we order AT&T to continue providing it with group and supergroup facilities after termination by AT&T of the contracts under which such facilities had been furnished for some years. We determined that we

[1] The proceeding was instituted in American Telephone and Telegraph Company, 66 FCC 2d 1018 (1977).

[2] Related matters which are likely to affect other issues in this docket are discussed herein.

[3] A group or base group has a normal bandwidth of 48 kHz for use as a single wideband channel or as channels of lesser bandwidth which may carry up to twelve 4 kHz voice grade channels. Supergroups or basic supergroups have a nominal bandwidth of 240 kHz which may carry up to 60 voice-grade channels. Group and supergroup facilities may be utilized to carry voice-grade, subvoice-grade, high and low speed data, or any combination of these signals.

[4] AT&T Interconnection Facilities Provided to the International Record Carriers, 63 FCC 2d 766 (1976), *recon. den.* 66 FCC 2d 517 (1977), *aff'd sub nom.* Western Union International Inc., v. FCC, 568 F.2d 1012 (2d Cir 1977), *cert. den.* 436 U.S. 956 (1978). Docket No. 20452 was an investigation into the use of AT&T facilities by the IRCs. The Commission held that AT&T should eliminate the discrimination that existed as a result of AT&T's practice of offering the same facilities to the IRCs under contract and to other common carriers under tariff.

would resolve this question as well in Docket No. 21499.

6. Finally, in two recent orders treating complaints filed by ITT and Western Union International Inc., (WUI),[5] we considered, *inter alia*, allegations that AT&T and certain BSOCs had refused to provide unchannelized group (i.e. 48 kHz) capacity. Here again, we stated that we would consider these matters in Docket No. 21499.

Discussion

7. As a preliminary matter, some explanation is warranted as to why we shall continue to defer consideration of certain issues which, at one time or another, have been set for investigation in this proceeding. It is apparent from our review of the history of this proceeding, there are many complex issues to be resolved. Limitations on Commission resources, however, make it difficult to proceed with all of these issues at once. The preferable course, as we see it, is to segregate and address various issues as resources permit. In this manner, some issues may be brought to resolution prior to completion of the investigation as a whole. This is our primary reason for conducting this proceeding in piecemeal fashion. With particular regard to questions growing out of the interim OCC rates established under Docket No. 20099 [6] which have been in effect for several years, we believe that the pendency of certain other proceedings is another reason for not taking up all issues at this time. For example, we have recently instituted a wide-ranging proceeding looking towards a basic restructuring and overhaul of all of AT&T's private line service offerings including the so-called "Facilities for Other Common Carriers." [7] AT&T has submitted a proposal by which it would revise virtually all of its private line tariffs. Restructuring of the private line tariffs could eliminate the need to investigate aspects of the tariff provisions by which AT&T and the BSOCs presently make facilities available to the OCCs and in any event should provide new information concerning AT&T's rates and rate structures which is likely to make any investigation more productive.

8. On the other hand, we believe that we can and should act now upon the issues raised by Western Union and the two IRCs concerning AT&T's provision of unchannelized group and supergroup facilities to other common carriers, and it is to these questions which we now turn.[8]

Carrier Interconnection

9. Section 201(a) of the Communications Act, 47 U.S.C. 201(a), explicitly grants this Commission the power to order interconnection among carriers subject to our jurisdiction.[9] The Commission has on many occasions ordered such interconnection among carriers, oftentimes specifying the types of facilities which the interconnecting carrier or carriers must provide.[10]

10. Significantly for present purposes, in *Bell Telephone Company of Pennsylvania, supra*, the Third Circuit held that Section 201(a) does not require the Commission to hold an evidentiary hearing prior to ordering such interconnection, 503 F.2d 1263–68. It pointed out that contrary to AT&T's contention that an evidentiary hearing was necessary to resolve issues concerning possible harm to the network that would result from interconnection, AT&T stood in the best position to resolve issues of (1) possible impairment to the operation of AT&T's switched network, (2) possible substantial costs to the public, and (3) possible jeopardy to the operation of all telephonic communications in the event of faulty performance in the specialized carriers' lines without having to hold an evidentiary hearing. *Id.* at 1268.

11. Where, as is the case in the instant proceeding, AT&T now offers group facilities in its Tariff FCC No. 260, Series 8000 (albeit tied to AT&T-provided terminal equipment), and has formerly offered supergroups to Western Union, it seems to us that AT&T is similarly in the best position to show why interconnection between AT&T and other carriers on the group and supergroup level could harm the network, if indeed any such concerns are present on AT&T's part. As we explain below, there appears to be ample evidence that other common carriers as well as end users would benefit from the availability of these facilities and be able to more efficiently provide service to the public.[11] Therefore, because of the amount of time which has elapsed since we began this proceeding, we will allow any interested party to submit further comments on the question of whether the public interest would be served by requiring AT&T to interconnect with other common carriers at the group and supergroup level.

Provision of Group/Supergroup to Other Users

12. In addition to the narrow question for decision concerning interconnection with other carriers at the group and supergroup level, it seems, on the basis of the comments filed to date in this proceeding, that not only carriers, but members of the public, including private industrial firms, could be well served by having such facilities made available to

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[5] ITT World Communications, Inc. v. American Telephone and Telegraph Company, FCC 80-227, File No. TS 6-80, released June 3, 1980, and ITT World Communications, Inc. v. American Telephone and Telegraph Company, FCC 80-226, File Nos. TS 5-78 and TS 1-79, released June 6, 1980. We are aware that substantive action on these complaints has been delayed. It is our intent to issue a decision in Docket 79-246 early next year, which should clear the way for final action on the complaints.

[6] American Telephone and Telegraph Company Offer of Facilities for Use by Other Common Carriers, 52 FCC 2d 727 (1975).

[7] American Telephone and Telegraph Company—Private Line Rate Structure and Volume Discount Practices, 74 FCC 2d 226 (1979).

[8] We recognize that Western Union suffered major financial impact as a result of termination of contract arrangements which pre-dated the existence of this Commission. AT&T's initial attempt to file cost-supported rates for other common carriers in its Bell System Operating Companies Tariff FCC No. 6 was withdrawn, possibly in response to Docket No. 79-246. Upon completion of that Docket, we will be in a much better position to determine the reasonableness of the rates negotiated under Docket 20099. In the meantime, it appears that favorable action in this portion of Docket 21499 could afford Western Union some interim measure of relief. The unavailability of 48 kHz groups and 240 kHz supergroups under the Docket 20099 tariffs was apparently one of the factors that adversely affected Western Union.

[9] That section provides, in pertinent part, that

> It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

[10] *See, e.g.* Bell System Tariff Offering, 46 FCC 2d 413 (1974), *aff'd sub nom.* Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (3d Cir.), *cert. den.* 422 U.S. 1026 (1975), *rehearing den.* 432 U.S. 886 (1975) (AT&T ordered to furnish Foreign Exchange (FX) and Common Control Switching Arrangment (CCSA) facilities and services to certain specialized common carriers); ITT World Communications, Inc. v. Puerto Rico Communications Authority, File No. TS 11-79, FCC 80-225, released April 29, 1980, (Puerto Rico Communications Authority ordered to provide ITT with telex trunk lines); Lincoln Telephone and Telegraph Company, 72 FCC 2d 724, *review pending sub nom.* Lincoln Telephone and Telegraph Co. v. FCC, Case No. 79-1467, District of Columbia Circuit (Lincoln Telephone ordered to interconnect with MCI Telecommunications Corp. so as to allow the latter to provide Execunet service.)

[11] We also note that in the comments that have been submitted in Docket No. 79-246, *supra*, two carriers, Western Union and the Southern Pacific Communications Company, as well as two users, the Air Transport Association of America and Aeronautical Radio, Inc., request that wideband analog facilities be made available. See, e.g., the Reply Comments and Counterproposal of Southern Pacific Communications Company, May 7, 1980 at pages 7-9, Comments of Aeronautical Radio, Inc. and the Air Transport Association of America on Counterproposals, June 9, 1980 at 3-6.

them, for the very same reasons put forth by the requesting carriers.

13. The commentors who have participated in this proceeding to date have cited a number of technical advantages that would flow from the availability of group/supergroup facilities. These include, according to RCA, the customer's ability to channelize the raw bandwidth provided by group and supergroup facilities into channels suited to the specific needs of the customer. For example, the bandwidth could be channelized by the user into data channels, voice/data channels, or voice channels. According to an affidavit submitted by RCA, voice grade channels, which are nomially of 4 kHz or 5 kHz bandwidth, are usable for data transmission purposes only at speeds up to 4.8 kilobits per second (kbps) or, in some cases, only 2.4 kbps. Thus, according to RCA, users are currently limited to those data speeds which can be accommodated on a voice channel or they must incur the significantly higher cost of a 50 or 56 kbps channel. Implicit in RCA's comments is the conclusion that analog 48 kHz and 240 kHz groups and supergroups could be subdivided into channels of varying bandwidths for use in transmitting either digital or analog signals.[12]

14. RCA further states that the modulation/demodulation process which must be performed in order to use analog voice channels for digital transmission introduces distortion into the data transmission process and that every modulation/demodulation function which can be avoided improves the quality of digital transmission. It asserts that the availability of group and supergroup facilities will allow users to mix channels of varying bandwidths and implies that such groups and supergroups will minimize the need for modulation and demodulation. RCA also contends that it cannot utilize AT&T's 50 and 56 kbps offerings as a substitute for group/supergroup facilities because those two offerings can only be used for subdivision into digital channels.

15. While AT&T responds that its 50 and 56 kbps offerings can be submultiplexed into lower speed data channels, our understanding is that in most cases the 50 and 56 kbps offerings are nothing more than 48 kHz groups to which a modulator/demodulator (modem) has been added by AT&T to permit data transmission over analog facilities.[13] We also know, as explained, that these 48 kHz groups are available on a nationwide basis because they are already offered on a nationwide basis in Series 8000 albeit tied to AT&T—supplied terminal equipment. There appears to be no reason why these groups cannot be offered on an unbundled basis so that the customer is able to provide his own modem if he so chooses rather than have AT&T provide one.

16. AT&T also contends that it does not hold itself out as providing group and supergroup facilities to other common carriers. However, its current tariffed offering of supergroups to the Domestic Satellite Common Carriers (DSCCs) under its Tariff FCC No. 265, the historic availability of supergroup (Telpak C) facilities under Tariff FCC No. 260 for use in connection with specific data transmission services, the present use of wideband facilities, presumably supergroups, to provide high speed data service under Tariff 258, as well as the availability of 48 kHz bandwidth Series 8000 (again tied to an AT&T—supplied modem) in Tariff 260 and under Section 3.7 of Tariff 258[14] illustrate that there are already some significant exceptions to this purported policy.[15] [16]

17. As noted, RCA's concerns have been echoed by ITT. ITT observes that by having access to group and supergroup facilities, it could segregate voice and data circuits and thereby insulate circuits used for data transmission from power surges which cause interference with data transmission but have little or no effect on voice communications. ITT also points out that the representatives of the British Post Office have stated that certain technical advantages would accrue from users having access to group and supergroup facilities, namely, fewer problems with level, background and impulse noise. Finally, ITT notes that, contrary to AT&T's contentions, AT&T's 50 kbps and 56 kbps offerings are not directly substitutable for group facilities. It points out that Honeywell Corporation now provides modems which are more efficient and economical than AT&T's. A Honeywell H–153 modem, when connected to a 48 kHz group, is said to be capable of transmitting at speeds of up to 170 kbps.

18. As we see it, the capability of transmitting data at speeds faster than those attainable with an AT&T—provided moden (*i.e.* 50 and 56 kbps) would result in more efficient use of AT&T facilities, and would prove beneficial to users of all kinds who need to move large amounts of data at high speed. Since, as noted above, AT&T offers wideband channels only in association with AT&T-provided terminal equipment, data transmission capacity is accordingly limited to such equipment capabilities. Yet it seems to us that all users should have the opportunity to use more efficient modems or similar terminal equipment rather than having to rely solely upon AT&T.[17]

19. Western Union's petition to require AT&T to provide it with group and supergroup facilities raises many of the same concerns as the IRCs' petitions. The same can be said of ITT's complaint in File No. TS 6–80. AT&T's comments to date do not dispute the apparent advantages that would accure to all users if group and supergroup facilities were made available, and we perceive no reason why the carrier could not make these facilities available to all upon demand. We are struck, too, by the fact that throughout the many pleadings on this particular subject AT&T at no point has ever contended that it was unable for technical or economic reasons to provide groups and

[12] Digital channels with speeds of 2.4, 4.8 and 9.6 kbps are available to OCCs under Tariff FCC No. 266, Digital Facilities for Other Common Carriers. Channels operating at these same digital speeds may also be obtained under Tariff FCC No. 260 using standard voice-grade channels in conjunction with modems supplied either by AT&T or independent suppliers. Thus, for exclusively digital applications, any requirement for speeds generally beyond 9.6 kbps requires that procurement of channels operating at speeds up to 50 kbps or at the specific rate of 56 kbps.

[13] See AT&T Tariff FCC No. 260, Sections 3.2.8(A)(4)(a)(i). Although the tariff is not specific on this point, it would appear that these modems may be located either at the customer's premises or on telephone company premises.

[14] AT&T there offers group spectrum capacity to ITT World Communications, Inc. under Section 3.7.

[15] Under AT&T's Tariff FCC No. 260, Series 5000 (Telpak), Type 5700 (Telpak C, equivalent to one supergroup) and Type 5800 (Telpak D, equivalent to four supergroups) were made available for use in connection with high speed data transmission service. The highest speed offered on a single supergroup was 230.4 kbps service, which has since been transferred to Tariff No. 258. See Aeronautical Radio, Inc. v. FCC, Case No. 77–4057, D.C. Cir., decided June 24, 1980, *rehearing* November 5, 1980. This should not be taken to mean that supergroup capacity is technologically limited to 230.4 kbps. Just as group (48 kHz) bandwidths are capable of handling speeds well in excess of 56 kbps, so too are supergroups capable of handling speeds will in excess 230.4 kbps. The speeds are essentially a product of the modems used.

[16] AT&T argues that RCA's only motivation for seeking group and supergroup facilities is to obtain the advantage of reduced bulk rates. RCA states that it would take group and supergroup facilities even in the absence of discounted rates. In any event, even if AT&T's argument were wholly correct, a finding we do not make here, interconnection restrictions are an inappropriate method of preventing a customer from accomplishing that purpose. *See* Resale and Shared Use, 60 FCC 2d 261 (1976), *recon.* 62 FCC 2d 588, *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. den.* 439 U.S. 875 (1978).

[17] Even if the customer-provided modem could only transmit at the same speeds as an AT&T-provided modem, the customer should have the option of choosing between AT&T-supplied and customer-supplied equipment. *See, e.g.*, Carterfone, 13 FCC 2d 420 (1968), *recon. den.* 14 FCC 2d 605 (1969), and our proceedings in Docket No. 19528.

supergroups to those who requested such facilities. Indeed, in light of the contracts which AT&T had with both Western Union and the IRCs, as well as the fact that similar facilities are available under Tariffs 260 and 265 and were available with Telpak, we find it difficult to see how AT&T could argue otherwise.

20. Moreover, the fact that current AT&T tariff offerings bundle facilities and terminal equipment, and these facilities are otherwise unavailable to the public, brings into play the fundamental principle first established in *Hush-A-Phone Corporation* v. *United States and F.C.C.*, 238 F.2d 266 (D.C. Cir. 1956) that a user has a right to use his telephone service in ways which are privately beneficial so long as they are not publicly detrimental. 238 F.2d at 269.

21. AT&T's Tariff 260, Series 8000 and its Tariffs FCC Nos. 265 and 258 seem to be appropriate procedural vehicles in which to examine the question of the provision of group and supergroup facilities to all users. Under its Series 8000 offering, AT&T already offers wideband channels with a maximum equivalent carrier spectrum of 48 kHz, *i.e.* a group facility. AT&T represents that these channels may be arranged for use as individual voice grade channels up to a maximum of twelve, for 50 kbps switched foreign exchange service, or high speed data or facsimile transmission. It also requires that AT&T provided "service terminals" and "terminal control arrangements"—that is, terminal or interface equipment provided under the Series 8000 tariff—be used unless the customers are using the Type 8800 interexchange channels for voice-grade only purposes and they are less than 250 miles in length.[19] No justification for this practice is provided, however. Curiously, different rates also apply when a single wideband interexchange (IXC) channel is configured for use as individual voice-grade-only private line channels where the IXC mileage is less than 250 miles. Here again, no explanation is provided.

22. There are also many restrictions on the manner in which the customer may interconnect his Series 8000 channel. Sections 3.2.8(B)(1)(b) (i) and (ii), for example, forbid the customer from interconnecting with other services furnished under Series 8000 or other series with five rather stringent exceptions. For example, one such exception provides that

> Type 8800 channels may be extended to any of the "points of connection" with facilities of Connecting or Other Participating Carriers listed in 5. and to "points of connection" with facilities of Canadian and Mexican Carriers or Administrations provided all of the channels arranged for use are offered by the other carrier at the point of connection and the channels are connected to the facilities of only one other carrier at any single point of connection.

23. We recently considered restrictive tariff provisions similar to those here at issue in *American Telephone and Telegraph Company et al.—Restrictions on Interconnection of Private Line Services.*, 60 FCC 2d 939 (1978). There, AT&T had provided that, as a general rule, it would connect its private line service to a communications system provided by one of its customers or by another participating carrier only where the customer had "a regular and continuing requirement to originate or terminate communications." 60 FCC 2d at 940. Finding these provisions unlawful under Sections 201 and 202 of the Communications Act, we enunciated a test for determining the reasonableness of such restrictive tariff provisions:

> (The carrier) has an affirmative obligation to show (a) that restrictions are necessary to achieve a permissible end; (b) that particular restrictions reasonably accomplish that end; and (c) that the restrictions are not so broad as to infringe unduly on protected customer conduct. *Id.*

Applying these principles here, we will require AT&T to justify the noted tariff restrictions on use of these Series 8000 channels on the basis of the above standards as well as Section 201 of the Act.[19] The particular justifications which AT&T will be required to provide are set forth below.

24. AT&T's Tariff FCC No. 265 provides so-called "Entrance Facilities for Domestic Satellite Common Carrier". In *AT&T III*, AT&T argued that it offered supergroup facilities to the DSCCs only because of the unique circumstances of the Commission's "open entry" policies in the field of domestic satellite communications, a contention which we rejected. 70 FCC 2d at 1912. Under Tariff 265, AT&T offers not only supergroup (240 kHz) facilities, but mastergroup and television facilities only to a DSCC's earth station and its terminal location.[20] Use of AT&T's facilities is strictly limited to use by DSCCs in furnishing their domestic common carrier communications services via satellite. Section 2.2.1(a). Violation of any tariff provision may result in discontinuance of service to the DSCC. Section 2.4.2. Section 2.7.1. of Tariff 265, unlike the Series 8000 tariff provisions, allows liberal interconnection with other than Bell-provided terminal equipment or communication systems so long as certain technical criteria are met.[21]

25. Since many of the facilities—*i.e.* groups, supergroups and mastergroups—are available for use for the provision of Series 8000 service or for "Entrance Facilities to Domestic Satellite Common Carriers," no apparent justification exists for the differing regulations governing the permissibility of interconnection. This is a matter which we seek to examine in the instant proceeding. Moreover, while AT&T admittedly is obligated to provide a broad spectrum of facilities to the DSCCs pursuant to our orders in *Domestic Communication-Satellite Facilities*, 35 FCC 2d 844, *Recon.* 38 FCC 2d 665 (1972), and *American Telephone and Telegraph Company*, 42 FCC 2d 654 (1973), *recon. den.* 45 FCC 2d 93 (1974), including interexchange channels, there is no apparent reason why these so-called "entrance facilities" could not be provided on a nationwide basis as would be the case if group facilities were unbundled from the current Series 8000 tariff offering.

26. Our determination that supergroups could be offered in unbundled form by AT&T is reinforced by the fact that supergroups, (Telpak C, or Series 5000, Type 5700) along with AT&T supplied modems, were formerly provided as a general broadband offering under AT&T's Tariff FCC No. 260, Series 5000 (Telpak) until June, 1977. At that time, AT&T, which had been offering broadband data service under various names including "230.4 kilobit wideband data service", stated that it did not believe that the Commission's order directing termination of Telpak in Docket No. 18128 [22] was intended to eliminate offerings such as the 230 kilobit service. Adhering to this view, in Transmittal No. 12729 dated April 8, 1977, AT&T advised that it was transferring these offerings to its Tariff FCC No. 258, "Private Line Services for Miscellaneous or Experimental Purposes." That filing never became effective because of a stay entered by the court in *Aeronautical Radio, Inc.* v. *FCC*. Subsequently, when AT&T refiled tariff revisions on September 21, 1980 to terminate Telpak it also filed revisions relocating the 230.4 kbps offering to Tariff 258. These latter revisions became effective on November 29, 1980.

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[19] *See* AT&T Tariff FCC No. 260, Section 3.2.8(A)(1), (2); Section 3.2.8(B)(1)(a).

[19] A similar requirement was placed on AT&T by the Commission in Resale and Shared Use, *supra*.

[20] *See* AT&T Tariff FCC No. 265, Section 2.1.4(a).

[21] Thus, Section 2.7.1 provides minimum standards of compliance such as those for power applied to Telephone Company lines.

[22] American Telephone and Telegraph Company, 61 FCC 2d 587 (1976). The Commission on reconsideration vacated its order directing termination of Telpak, 64 FCC 2d 971 (1977), *aff'd in part sub nom.* Aeronautical Radio, Inc. et al. v. FCC, Case No. 77-1333, decided June 24, 1980, *rehearing* November 5, 1980.

27. Section 1 of Tariff 258 states that

> This tariff contains schedules of rates and specified regulations applicable to interstate private line services, channels or equipment as specified herein for use on private line services for miscellaneous or experimental purposes of a unique or evolutionary nature
> • • •

Section 2.2.b. of the tariff states that

> These services are not to be used for any purpose for which services are offered in other tariffs of this Company.

Thus, they effectively preclude customer subdivision of this broadband data offering into lower speed data channels that would compete with AT&T's own data offerings.[23] These wideband offerings can be found in Section 3.5.6 of Tariff 258, and are described as "miscellaneous private line services."

28. Thus, assuming that a public need exists for supergroup facilities, we will consider whether the restrictions on current supergroup facilities which are now available only under special conditions under Tariff Nos. 258 and 265 and which were previously offered generally under Telpak as well as under contract to Western Union should be removed, thus making supergroups available to any user on a general basis. Specifically, it appears that the public interest could be served by making the facilities generally available on this basis.

Issues to be Addressed

29. With respect to carrier interconnection, we request comments on the following:

(a) Is there a need among carriers (other than AT&T) for group and supergroup facilities?

(b) Would the public interest be served by ordering interconnection between these other carriers and AT&T at the group and supergroup levels?

30. With respect to AT&T's Series 8000 offering in Tariff FCC No. 260 and its Tariff FCC No. 265:

(a) Other than for carriers, is there a public need for 48 kHz group and 240 kHz supergroup facilities?

(b) Are the various restrictions requiring use of AT&T-provided terminal equipment to Series 8000 Interexchange channels and restrictions on the use of groups and supergroups available under Tariff 264, just, reasonable and not unreasonably discriminatory within the meaning of Sections 201 and 202 of the Communications Act?

(c) Are the restrictions on interconnection of Series 8000 Interexchange channels to other types of private line services offered by AT&T just, reasonable, and not unrreasonably discriminatory within the meaning of Sections 201 and 202 of the Communications Act?

31. With respect to AT&T's 230 kbps broadband offering in its Tariff FCC No. 258:

(a) Telpak C, a supergroup equivalent in the wideband mode, was previously made available on a general, nationwide basis for use in connection with high speed data transmission. It was on this basis that 230.4 kbps service, now appearing in Tariff 258, was offered. Should AT&T be required to revert to a general offering as opposed to the current offerings which are limited to specific occasions of use and specific speeds on a customer-by-customer basis?

(b) Other than for carriers, is there a public need for the broadband offering currently found in Tariff 258 without the AT&T-provided modem *i.e.*, for supergroups?

(c) Are the tariff provisions which currently tie use of AT&T modems to the broadband offering in Tariff 258 just, reasonable, and not unreasonably discriminatory within the meaning of Sections 201 and 202 of the Communications Act?

(d) Are the tariff provisions which now prohibit the use of the 230 kbps offering in Tariff 258 for any purpose for which services are offered in other AT&T tariffs just, reasonable and not unreasonably discriminatory within the meaning of Sections 201 and 202 of the Communications Act?

32. In the event that group and supergroup services were to be provided as a standard tariff offering, would technical standards be necessary? Would equipment registration be necessary? What should be the nature of such standards and/or registration?

33. Consistent with our decision in *AT&T—Restrictions on Interconnection of Private Line Services, supra*, AT&T and, inferentially, those who support AT&T's views, will have the burden of justifying these restrictive tariff provisions. The Commission is aware that the provisions of Part 68 of our Rules and Regulations and its other ongoing interconnection proceedings do not necessarily contemplate the provision by a customer of terminal equipment that is usable with broadband facilities. It may be that the number and type of customers who would take these broadband offerings if they were available would be relatively few and thus could work out interconnection arrangements for these offerings informally with AT&T. Alternatively, it might be desirable for AT&T to work with Commission staff to develop technical interconnection standards that would be published in its tariff, as is the case with the supergroup facilities now offered to the DSCCs under Tariff 265. A final possibility is that Part 68 be amended to reflect the availability of broadband facilities and standards for interconnection developed in that context pursuant to rulemaking. These are matters upon which we have requested comment.

34. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201–205 and 218 of the Act, 47 U.S.C. 154(i), (j), 201–205 and 218, and Section 553 of the Administration Procedure Act, 28 U.S.C. 553 that a rulemaking is hereby initiated with respect to the issues discussed herein. Comments in this proceeding are due on March 2, 1981. Reply comments are due on April 3, 1981.

35. It is further ordered that in reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

36. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary

[23] *Cf.*, however, Resale and Shared Use, *supra*.

has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

37. It is further ordered That the Secretary shall cause a copy of this order to be published in the Federal Register.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 81-3172 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 63

[CC Docket No. 80-767; FCC 80-780]

Elimination of the Telephone Company—Cable Television Cross-Ownership Rules for Rural Areas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission adopted rules in 1970 which prohibited telephone companies from providing cable television service within their service areas. The rules did provide for waivers in those communities where it could be demonstrated that service could not exist except through affiliation with the local telephone common carrier or upon other showing of good cause. In 1979, the Commission determined that in communities with a density of less than thirty homes per route mile of coaxial cable and feeder line independent cable television operation generally is not economically feasible. Based on this finding, a rebuttable presumption was established that cable systems in those areas could not exist without affiliation with the local telephone common carrier. The presumption generally was applied on a franchise area basis. This notice seeks to establish a rule which will exempt telephone companies proposing to provide cable television to the rural area they serve from having to obtain waivers of the cross-ownership ban. A major aspect of the rulemaking is determining what is a rural area for purposes of the cross-ownership rules. The FCC expects that the exemption would make cable television service available to rural areas sooner than if the cross-ownership rules remain in effect as is.

DATES: Comments must be filed on or before March 30, 1981 and reply comments on or before April 29, 1981.

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

FOR FURTHER INFORMATION CONTACT: Linda M. Trochim, Common Carrier Bureau (202) 632-6920.

In the matter of elimination of the Telephone Company—Cable Television Cross-ownership rules, §§ 63.54-63.57, for Rural Areas, CC Docket No. 80-767.

Adopted: December 19, 1980.

Released: January 22, 1981.

By the Commission: Commissioner Fogarty issuing a separate statement; Commisisoner Jones absent.

1. Notice is hereby given that we are inquiring into the need for, and the standards to utilize in implementing, an exemption from our telephone company—cable television cross-ownership rules [1] for telephone companies in rural areas. We also are proposing a number of alternatives which we believe may be appropriate standards for such an exemption.

2. In October 1980, we directed the staff to investigate the applicability of the cross-ownership rules to rural areas. At that time, we were considering the petitions for reconsideration of the Report and Order in Docket No. CC 78-219.[2] In reaching a determinination in that matter, we realized that the rules might be unnecessarily burdening telephone companies in rural areas. Our fear, based on the large number of applications for waiver we have received, is that there may be many other situations where local telephone companies would provide cable service but for the rules. We believe that the service to rural areas is less likely to occur as long as our rules hold out only the possibility of grant of a waiver. Given a number of significant developments which have occurred since the rules were adopted, we believe it appropriate to reassess the countervailing interests of service to rural areas and our earlier espoused desire for diversification in the control of broadband media.[3] At present we are inclined to think that a rural area should have cable television service regardless of whether the provider is the local telephone company or an independent cable entrepreneur.

Background

3. The cross-ownership rules were originally adopted in 1970.[4] These rules were occasioned by a belief that local telephone companies which had effective control of telephone poles or conduit space could preempt the market for cable television service in their communities. The telephone company in a community was in a position to favor its cable television affiliate to the exclusion of independent entrepreneurs. The Commission wanted to prevent any such abuse of monopoly power. The Commission also foresaw that telephone company preemption of cable television in a community would result in concentration of control of the broadband cable facilities in that community. The Commission did not want this to occur because telephone company control over the medium by which new and different services would be available was thought to pose unacceptable risks to the fullest realization of cable's potential.[5] As a result of its inquiry, the Commission ordered divestiture of cable television systems affiliated with local telephone common carriers within four years of the adoption of the cross-ownership prohibition. A waiver of the prohibition was contemplated in those communities where independent cable television service demonstrably could not exist.[6] On reconsideration, the Commission expanded the basis for waiver to include a showing of other good cause.[7]

4. The Commission received a number of waiver requests for existing systems after adoption of the cross-ownership rules. In a Memorandum Opinion and Order released December 17, 1974, it dealt with thirty-five of the waiver requests.[8] The waiver requests were divided into three groups. One group was required to divest within twenty-four months, another group was given 180 days to supplement their original showings before final disposition of their petitions, and the largest group was granted waivers. In granting the waivers, the Commission evaluated: (1) The size, location and population trends of each community; (2) the size, nature of the operations and affiliation of the cable television system; (3) the efforts toward divestiture; and (4) whether

[1] Sections 63.54-63.57 of the Commission's rules, 47 CFR 63.54-63.57.

[2] Report and Order in Docket No. CC 78-219, 44 FR 75156 (December 19, 1979), (hereinafter Report and Order in Docket No. CC 78-219), *recons.* FCC 80-589, (adopted October 9, 1980), 45 FR 82944 (December 17, 1980).

[3] Applications of Telephone Companies for Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems, 21 FCC 2d 307 (hereinafter Section 214 Certificates), *recons. in part*, 22 FCC 2d 746 (1970), *aff'd sub nom.* General Telephone Co. of the Southwest v. U.S., 449 F.2d 846 (5th Cir. 1971).

[4] *Id.*

[5] Section 214 Certificates, 21 FCC 2d at 324-325.

[6] *Id.* at 326.

[7] Section 214 Certificates, 22 FCC 2d at 750-751.

[8] Petitions from Telephone Common Carriers and Cable Television System Operators for Waiver of § 63.54 and/or § 64.601 of the Commission's rules and regulations, 50 FCC 2d 150 (1974).

cable television service would continue absent affiliation. Analysis of these considerations resulted in individual determinations of whether, without continued affiliation, cable television systems would continue to exist in those communities.[9]

5. The rules and their implementation continued in this vein until 1978. In response to a request for a general waiver in rural areas, the Commission issued a Clarification and Notice of Proposed Rulemaking in Docket No. CC 78-219.[10] The Commission rejected the request for a general waiver for two reasons. The first reason was that a grant of the requested "general waiver" would in fact amount to a rule change and, thus, should be considered in a notice and comment proceeding consistent with the requirements of the APA. The Commission also stated that it needed to acquire "a more comprehensive understanding of the likely consequences of" the issuance of a general waiver.[11] However, the Commission did institute a proceeding, procedural in nature, which would determine the population density below which it could assume that "independent rural cable television operation is not economically feasible."[12] The Commission wanted to reduce the heavy burden of demonstrating the infeasibility of independent cable television operation in those areas where such service clearly was infeasible.[13]

6. The Commission modified its rules to achieve this result.[14] The new rules established a rebuttable presumption that independent cable television operation is not feasible in a community (franchise area) that has a density of less than thirty homes per route mile of coaxial cable and feeder line. In such an area, a local telephone company does not have to show that independent cable television service is not feasible. This presumption can be rebutted by a showing either (a) that the density level is thirty homes per route mile or greater or (b) that an opposing cable entrepreneur has a present intention to offer essentially the same service to the area on a non-affiliated basis.

[9] *Id.* at 161.

[10] Revision of the processing policies for waivers of telephone company-cable television "cross-ownership rules," §§ 63.54 and 64.601 of the Commission's rules and regulations, 69 FCC 2d 1097 (1978).

[11] *Id.* at 1109.

[12] *Id.* at 1113.

[13] *Id.* at 1114.

[14] Report and Order in Docket No. CC 78-219.

Discussion

7. Local telephone companies have demonstrated considerable interest in providing cable television service in their local service areas since we adopted the Clarification and Notice of Proposed Rulemaking in Docket No. CC 78-219. Between December 1, 1974, when we acted on petitions for waiver of the divestiture requirement, and August 1978, when the Clarification was issued, only 12 waiver petitions were filed. From the issuance of the Clarification, which liberalized somewhat the waiver standard, to the action of November 1979, which created a presumption of waiver where the density is less than thirty homes per mile, 20 waiver applications were filed. In the past year, 61 petitions for waiver have been filed. Most of these are for areas which have less than 30 homes per route mile or for communities having populations of fewer than 1500 residents.[15]

8. The number of filings indicates, we believe, an increasing interest on the part of local telephone companies to serve rural areas. Lowering the barrier that prevents rural telephone companies from providing cable television services in their telephone service areas is related to the increase in interest. It appears that lowering the barrier further, or eliminating it, would lead to still more service.

9. It is not at all clear that requiring waiver in these areas has provided benefits which outweigh the costs. As noted, most of the waivers have been for rural areas, and most have been unopposed. In such cases, when it appeared that service would not otherwise be provided, waiver has been granted routinely. Indeed, of the 93 petitions filed since 1974, only one waiver petition has been denied; two petitions were dismissed without prejudice; and 44 waivers have been granted. In the great majority of cases, then, the waiver process becomes more ministerial than substantive, engendering delays in service until it is completed. We believe the administrative delays attendant to obtaining waiver constitute a barrier that has prevented local telephone companies from offering, and consumers from receiving, cable television service in rural areas.

10. The increase in filings by telephone companies also has increased the number of oppositions filed by cable television systems. Of the 46 cases now pending, 19 are opposed. The disputes are, more often than not, heated, with little attention being paid to regular pleading requirements. In many cases the telephone company has prevailed over the cable system at the franchising stage. Although the Commission has determined, as a general proposition, that telephone companies ought not provide cable television services in their telephone service areas, the process of overruling local officials as to who best should serve their communities is not a welcome one. The process also imposes a considerable burden on the Commission's limited resources. Finally, and most signficantly, service to the community is delayed until the administrative processes at the Commission are concluded.

11. It is our tentative belief that the costs of these burdens in rural areas outweigh the benefits. Restrictions against entities supplying goods and services for which consumers are willing to pay must be imposed cautiously and for no greater duration than necessary. While particular problems are raised where the entity supplying the services is a monopoly, we believe it important to reassess our policies over time to insure that restrictions imposed are no more restrictive than necessary to achieve a public interest purpose.

12. One of the strong public interest purposes that was identified when the rules were adopted was a desire on the part of the Commission to preserve a competitive environment for the supply of broadband services.[16] It is appropriate today, 10 years after the rules were adopted, to ask whether the desires of viewers in rural areas for additional television service should take precedence over those broader goals.

13. In early 1970, 2400 cable systems were serving 4.5 million subscribers. One year ago (January 1980), 16.3 million cable subscribers were receiving service from a total of 4250 systems. At the same time cable television's penetration rate nationwide has increased from 7.6 percent to 20 percent, and 50 percent is predicted in the foreseeable future. This and other evidence suggests a healthy industry, whose considerable growth since 1970 appears to be continuing.[17]

[15] Fifty-two of the eighty-one waiver petitions filed since August, 1978, are for areas that contain no community larger than 1500 population. Fifteen of the remaining twenty-nine petitions claim that their overall density level is less than thirty homes per route mile.

[16] "We believe that the public interest in modern and efficient means of communications will best be served, at this time, by preserving, to the extent practicable, a competitive environment for the development and use of broadband facilities and services * * *" 21 FCC 2d 307, 325.

[17] Memorandum Opinion and Order in Docket No. CC 78-219, FCC 80-589 (released December 5, 1980), Separate Statement of Commissioner Joseph R. Fogarty, at 4-5. *See also* "Cable TV: The Race to Plug In," Business Week, December 8, 1980, at 62.

14. Given the size and vigor of the industry, we are not convinced that it need be protected from competition from local telephone companies in rural areas any longer, especially when we consider the potential benefits of faster provision of cable television by telephone companies in rural areas.

15. It also is appropriate to note that despite this growth, other government agencies have identified rural areas as still being in need of assistance to receive service. The Rural Electrification Administration, for example, provides grants and loans to telephone companies offering cable television service to rural areas. We believe that REA's efforts to stimulate telephone companies to provide cable television service in rural areas may well be frustrated by the Commission's bar on such activity.

16. Another premise underlying the rules was that, absent the restrictions, telephone companies would abuse their monopoly position regarding the rates, terms, and conditions of pole attachment. In 1978, Congress acted in this area by adopting Section 224 of the Communications Act Amendments of 1978, Pub. L. No. 95-234. Congress directed the Commission to regulate these matters.[18]

17. The Commission has adopted rules to implement this mandate.[19] Although jurisdiction is withdrawn from the Commission when a state certifies it regulates pole attachments, a major part of such certification by a state is that the state "does consider the interests of the subscribers of cable television services." This regulation by the Commission and certification by 19 states has ameliorated, to some extent, concerns with respect to possible abuses of the monopoly position of telephone companies.

18. Another detriment feared in 1970, closely related to the monopoly ownership of broadband facilities, was that media supplied over these facilities would be limited if supplied by a single source:

> However, there is, at present, ample basis for regarding the provision of CATV service within a community as, at least, one important gateway to entering the yet undeveloped market for these other wide spectrum services. Thus, it is our purpose to insure against any arbitrary blockage of this gateway.

21 FCC 2d at 325. Wideband services have developed significantly since 1970. Moreover, the rules seem to serve as a blockage to the development of wideband services in rural areas where no such services now exist. Competition generally is assumed to increase the sources and amount of services available, and it seems that opening the cable television market to more competition in rural areas would have the same effect.[20]

19. Whenever a monopoly telephone company enters a non-monopoly business, we are concerned that monopoly revenues might subsidize the non-monopoly activity. We believe it appropriate to examine whether this concern (a) is relevant as to rural areas and (b) is sufficiently serious to withhold cable service from rural residents. Many rural telephone companies are cooperatives, and the cross-subsidies, if present, would be paid to and flow from what in many cases would be the same individual. Finally, considerations of size and the likelihood of independent cable operations have supported waivers throughout our 10 year experience with the rules. The considerations frequently support individual waivers in rural areas.

20. This review leads us to believe that the policies our rules are designed to promote no longer outweigh the burdens imposed on rural areas. We therefore propose a number of standards to identify rural areas more precisely. Waiver no longer would be required for such areas. Local telephone companies could compete freely with cable television systems to acquire franchises and provide service. We seek comment on each proposal, and we invite parties to propose other definitions;

1. *Less than 30 Homes per Route Mile, Franchise Area.* This is the level (measured within a franchise area), established in Docket No. CC 78-219, at which we found that cable television systems generally are not viable. No party challenged that determination, on reconsideration,[21] with evidence to the contrary.

2. *Less than 30 Homes per Route Mile, Service Area.* This standard is broader than (1), in that a telephone company could determine the density of the entire area it proposes to serve, regardless of ranchise area boundaries. Although we rejected this approach in the reconsideration of Docket 78-219, we believe it appropriate to reevaluate this standard and propose it for focused coment.

3. *No Community of Greater than 1500 Persons.* The Rural Electrification Administration (REA) administers financing for cable television services and facilities. The REA gives priority consideration to:

> Low density rural areas, particularly those outside the boundaries of incorporated or unincorporated cities, villages, or boroughs having a population in excess of 1500 inhabitants.[22]

We seek comment whether the factors which lead REA to adopt this standard obtain for our purposes.

4. *Areas Outside the Top 100 Major Television Markets.* For administrative ease, we propose using the specified zone and major market concepts found in our cable television rules, 47 CFR 76.5(f), 76.51. Thus, any area more than 35 miles from the center of a city to which stations in the top 100 television markets are licensed would be considered rural. Our objective is to increases the viewing options for rural residents; the top 100 markets have at least three over-the-air signals available, and 35 miles, we believe, represents a reasonable area within which to presume good service.[23] The standard also would be convenient to administer.

5. *Areas Outside the Top 200 Television Markets.* This standard would further exclude the second 100 television markets' 35 mile zones from being considered rural.

6. *Combined measure.* The most reasonable approach may be some combination of the above. Thus, it may be appropriate to eliminate the rules for those areas outside the specified zone of all major markets where the community size is less than 1500 or where there are fewer than 30 homes per mile.

We seek comment on the above. We specifically invite comment on the effect any or all of these proposals would have on consumers. We also invite other proposals. Parties are encouraged to submit empirical evidence as to the effects the various proposals may have.

21. We also seek comment on the following questions, as they relate to exemptions for telephone companies providing cable service in rural areas:

1. Should waiver be required for a telephone company to compete with an existing independent cable company at franchise renewal time?

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[18] Jurisdiction was not vested with the Commission where a state regulatory agency regulates the rates, terms, and conditions or where the utility is a railroad, is cooperatively organized, or is owned by a government entity.

[19] Notice of Proposed Rulemaking in Docket No. CC 78-144, 68 FCC 2d 3 (1978). First Report and Order, 66 FCC 2d 1586 (1978). Memorandum Opinion and Second Report and Order, 72 FCC 2d 59 (1979), *recon.* denied, 77 FCC 2d 187 (1980). *See* §§ 1.1401-1.1415 of the Commission's rules, 47 CFR 1.1401-1.1415.

[20] *See* Statement of Commissioner Fogarty, *supra*, at note 17.

[21] Note 2, *supra* at 7-9.

[22] Interim REA Bulletin 328-1, Sec. VI, A.1., page 5, June 28, 1979.

[23] *See* Reconsideration of Cable Television Report and Order, 36 FCC 2d 326, 344 (1972).

2. Should a waiver be required for telephone company acquisition of existing independent systems?

3. How should the cross-ownership situation be handled when and if the growth of an area makes it non-rural?

4. Will the provision of cable services by telephone companies have any effect on the provision of non-video, non-voice communications services in rural areas?

5. Are most of the telephone companies that might seek to offer cable television service in rural areas cooperative companies, and what is the implication of that with respect to the possibility of cross-subsidies between cable television and telephone service?

6. Do REA policies affect the relative competitive position of independent cable companies compared to telephone companies in providing cable television service in rural areas?

7. Should cable television service offered by telephone companies be treated any differently from independent cable television service with respect to rules concerning separate subsidiaries, access to the cable, channel capacity, etc.?

Ordering Clauses

22. Accordingly, it is ordered, that, pursuant to Section 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, there is issued a notice of proposed rulemaking. Members of the public are on notice that policies which may be established in this proceeding may be embodied in the Commission's Rules and Regulations.

23. It is furthered ordered, that all interested persons may file comments on the matters discussed in this Notice on or before March 30, 1981. Reply comments shall be filed on or before April 29, 1981. In accordance with § 1.419 of the Commission's rules, 47 CFR 1.419, an original and five copies of all filings shall be furnished to the Commission. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

24. For further information concerning procedures to follow with respect to this proceeding, contact Linda M. Trochim (202) 632-6920. Members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral argurments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

25. It is further ordered, that the Secretary shall cause this Notice of Proposed Rulemaking to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico

Secretary.

Separate Statement of Commissioner Joseph R. Fogarty

In re:

Elimination of the Telephone Company—Cable Television Cross-ownership Rules for Rural Areas—Notice of Proposed Rulemaking;

Petition and Application of Shenandoah Telephone Company; and

Application and Petition of Salina-Spavinaw Telephone Company and Lakeside Cable Company.

I have previously set forth in detail my views calling for a Commission re-examination of the original basis for the cable/telco cross-ownership prohibition and determination of whether this rule serves the public interest.[1] The *Notice of Proposed Rulemaking* we adopt today is clearly aimed at removing an unnecessary and repressive obstacle to the provision of cable television service by telephone companies in rural areas. As this *Notice* observes, the Commission's existing rule and waiver procedures have served primarily, if not exclusively, to obstruct or delay the timely and efficient offering of cable TV service to areas of the country which arguably need it the most, with no tangible countervailing public interest benefit. The Commission should move as expeditiously as possible to remedy this egregious example of over-regulation.

In deciding two individual waiver application cases, the Commission today also establishes sound precedent for the disposition of rural cable/telco cross-ownership proposals pending completion of this rulemaking proceeding. Our decision in *Shenandoah* stands for the principle that where a lack of commitment and performance on the part of an independent cable operator is demonstrated, the Commission will favor the alternative of telephone company-cable TV cross-ownership. Similarly, in *Salina-Spavinaw* we have determined that where a cable/telco cross-ownership rule waiver request is unopposed after public notice, such lack of independent cable industry interest is indicative that the waiver should be granted as the only alternative for providing cable TV service. Taken together, these precedents give some assurance that a rational and pragmatic approach to cable/telco cross-ownership in rural areas can be implemented during the rulemaking interim.

[FR Doc. 81-3288 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Revision of the Processing Policies for Waivers of Telephone Company-Cable Television "Cross Ownership Rules," On Reconsideration, Separate Statement of Commissioner Joseph R. Fogarty—1 FCC 2d 1—FCC 80-589 (Adopted October 9, 1980); See also Sugar Land Telephone Company, Concurring Statement of Commissioner Joseph R. Fogarty, 76 FCC 2d 237-38 (1980); Concord Telephone Exchange, Inc., Concurring Statement of Commissioner Joseph R. Fogarty, 78 FCC 2d 683 (1980).

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47 CFR PART 73

[BC Docket No. 80-782; RM-3643]

FM Broadcast Station in Norton, Kansas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class C FM channel to Norton, Kansas, in response to a petition filed by Norton Broadcasting, Inc. The proposed channel would provide for a first local FM broadcast

service to Norton, and substantial first and second FM service to outling areas.

DATES: Comments must be filed on or before March 2, 1981, and reply comments on or before March 23, 1981.

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 § 73.202(b), Table of Assignments, FM Broadcast Stations (Norton, Kansas); BC Docket No. 80-782, RM-3643.

Adopted: December 31, 1980.

Released: January 12, 1981.

1. The Commission herein considers a petition for rule making [1] filed by Norton Broadcasting, Inc. ("petitioner"), requesting the assignment of Channel 294 to Norton, Kansas, as that community's first FM assignment. Supporting letters from residents and organizations in Norton were attached to the petition. Petitioner expressed an interest in applying for the channel, if assigned.

2. Norton (pop. 3,627),[2] seat of Norton County (pop. 7,279) is located approximately 328 kilometers (205 miles) northwest of Wichita, Kansas. It is served locally by daytime only AM Station KQNK, licensed to the petitioner.

3. Petitioner states that Norton's economy is based primarily on agriculture. It is the principal community within 80 miles and recognized as the trade center of the area. Petitioner claims that a Class C channel at Norton would provide substantial FM service to unserved and underserved areas.

4. *Preclusion Considerations:* Petitioner claims that the assignment of Channel 294 to Norton will cause preclusion on Channel 291 within 65 miles, on Channel 292A within 65 miles, on Channel 293 within 150 miles, on Channel 294 within 180 miles, on Channel 295 within 150 miles, on Channel 296A within 65 miles, and on Channel 297 within 65 miles. Petitioner states that other channels are available to the precluded areas. Petitioner should submit a list of the alternate channels available to the precluded areas, in the comments to this proposal.

5. Although it has been general Commission policy to assign Class C channels only to large communities, exceptions have been made when the assignment of a Class C channel would provide first or second FM services to outlying areas. While no *Roanoke Rapids/Anamosa* showing was submitted, petitioner states that the assignment will provide a first and second FM service to a substantial area and population.

6. In view of the fact that the proposed FM channel assignment would provide for a first fulltime local aural broadcast service to Norton, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Norton, Kansas		294

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before March 2, 1981, and reply comments on or before March 23, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 80-782 RM-3643]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (Sec § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-3267 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on April 25, 1980, Report No. 1226.

[2] Population figures are taken from the 1970 U.S. Census.

47 CFR Part 90

[PR Docket No. 81-2; RM-3538; FCC 81-5]

Authorization of Additional Systems on the Frequency 152.0075 MHz in the Special Emergency Radio Service on a Secondary Basis

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The FCC is proposing to amend Part 90 of its Rules to provide that all new stations authorized after June 1, 1981, on 152.0075 MHz in the Special Emergency Radio Service shall operate, because of interference potential, on a secondary basis to Radio Common Carrier operations on 152.03 MHz. Existing licensees will be permitted to retain use of the frequency on a primary basis.

DATES: Comments must be filed on or before February 23, 1981 and replies on or before March 10, 1981.

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

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Adopted: January 8, 1981.

Released: January 22, 1981.

By the Commission: Chairman Ferris absent.

1. The Telocator Network of America (Telocator) has filed a Petition for Rule Making (RM-3538) to amend Part 90 of the Rules to delete the frequency 152.0075 MHz from the Table of Frequencies available for assignment to the Special Emergency Radio Service (SERS).[1] In addition, Telocator has requested that a moratorium on further SERS licensing of this frequency be imposed pending the final resolution of this proceeding.

2. In support of its petition, Telocator notes this frequency is only 22.5 kHz removed from 152.03 MHz, which is utilized by the Radio Common Carrier (RCC) industry.[2] Telocator claims that because of the close spacing between these two frequencies, SERS paging operations on 152.0075 MHz threaten to cause harmful interference to RCC mobile and paging receivers operating on RCC Channel 1. Telocator also presents calculations showing that potential interference may result when RCC mobile units are operating in close proximity to a SERS paging base station, and cites four instances in which it alleges interference between RCC and SERS systems has resulted. Telocator notes that there is no inter-service coordination for the use of these frequencies and states that the present informal Commission procedures are not effective in preventing such interference.[3]

3. Comments on Telocator's petition were received from eighty-six (86) parties. Only the American Telephone and Telegraph Company (AT&T) supported the petition. The remainder of the comments, mainly submitted by hospitals presently utilizing 152.0075 MHz for paging operations, requested that the petition be denied. Reply comments were submitted only by Telocator.

Background

4. On July 2, 1974, new rules were adopted in Docket 19880.[4] This proceeding made several changes in the SERS. One of these changes was the requirement that all one-way paging systems in this service operating on two-way communications channels vacate those frequencies by January 1, 1980.[5] To accommodate this frequency shift for medical paging systems, seven new, one-way paging-only frequencies were made available, four in the VHF low band, and three in the VHF high band.[6] The frequency in question, 152.0075 MHz, was one of the VHF high band frequencies. It was indicated in the comments submitted on Telocator's petition, that in the time that has elapsed since the decision in Docket 19880, hospitals and other SERS users have been rapidly moving to 152.0075 MHz, because this frequency is one of only two frequencies in the VHF high band available for wide-area paging systems.

Proposal

5. We have carefully reviewed the Telocator petition and the comments which have been submitted, and we have decided to deny the Telocator petition. Telocator has argued that because there is only a 22.5 kHz separation between the SERS and RCC frequencies, paging operations on 152.0075 MHz threaten to cause harmful interference to RCC Channel 1 services. To support this proposition, it has submitted a brief technical analysis indicating the calculated extent of the potential interference. We have reviewed these calculations and it appears that a theoretical possibility of interference does exist, when there is a conjunction of simultaneous factors:

(1) the RCC mobile unit must be in the interference area of the SERS base station;

(2) the SERS and RCC base stations must be transmitting simultaneously; and

(3) the interfering SERS signal must be 6 dB higher at the mobile unit than the desired RCC signal.

On the other hand, as the opposing comments have pointed out, practical experience over the years since 1974 has not indicated any extensive interference problem between SERS and RCC operations. These comments also note that certain design features employed in some RCC systems utilize tones to "busy out" the mobile unit, and thus reduce the possibility of adjacent channel interference. While Telocator states that it is aware of at least four cases of interference between users of the two frequencies, and that the cases have either not been resolved, or have been resolved at great expense to the parties concerned, we have searched our records on this point and found only one documented instance of such interference, and in that case it was determined that the RCC receiver was of the older, wide-band variety, making it highly susceptible to such interference. Nonetheless, even though there does not appear to be any significant likelihood of interference between RCC and SERS stations, at the present time, we are concerned that, as more and more SERS systems move to 152.0075 MHz, interference to RCC mobile units in the immediate vicinity of a high power SERS paging base station could occur depending on the circumstances. We are also concerned that high level paging signals could desensitize RCC receivers in the area of the paging base station, making them unaware that they are being called, and therefore unaware of the existence of interference. Of course, many of these problems could also be minimized by utilizing improved RCC receivers.

6. The major argument against the petition raised in the comments was that the deletion of the SERS frequency would require existing licensees on 152.0075 MHz to move to another

[1] This petition was filed December 10, 1979.

[2] 152.03 MHz is commonly called RCC Channel 1.

[3] Each authorization for 152.0075 MHz is accompanied by a letter stating that operation on the frequency may cause or be subject to adjacent channel interference from other stations in the area. The licensee is urged to contact the other adjacent channel users in his area to resolve any potential interference problems before paging operations begin.

[4] See *Report and Order, Docket No. 19880*, 47 F.C.C. 2d 670 (1974).

[5] This date has been extended to January 1, 1981, by action in PR Docket 79-192, adopted February 13, 1980.

[6] Of the three high band frequencies, one, 157.450 MHz, is limited in power to 30 watts, making it generally unsuitable for wide-area operations. The other two, 152.0075 MHz, and 163.250 MHz do not have any power limitation.

frequency, and that the only other high-band VHF frequency available for wide-area paging is 163.250 MHz.[7] Changing to this frequency from 152.0075 MHz would not be possible with just a crystal replacement, and it was estimated by those parties who commented on this point, that the cost to the present licensees to change equipment could range from $3.6 to $5 million. It was stated that this would place an unnecessary economic burden upon the hospitals which are the licensees on this frequency.

7. After weighing the various arguments, we have concluded that the need for deletion of 152.0075 MHz from the SERS Table of Frequencies has not been demonstrated, that it would work a hardship on existing licensees on this frequency, and that it would not serve the public interest. However, we are also mindful that under certain circumstances, there is a potential for interference between users of the respective SERS and RCC frequencies. While the record indicates that the number of reported interference cases has been minimal, the growth of SERS paging systems being reflected by the increased nationwide usage of 152.0075 MHz could alter this. We are therefore proposing to authorize future SERS systems on 152.0075 on a secondary basis.[8] This will protect RCC licensees insofar as their operations are affected and at the same time will not work a hardship on existing licensees. For future SERS licensees who desire primary status, the Commission has recently made four additional one-way paging frequencies available to the SERS service at 450 MHz.[9] Further, the allocation of additional paging channels at 900 MHz is also being considered.[10] These actions will minimize the potential for interference while imposing no hardship on existing SERS licensees.

8. We are therefore denying Telocator's petition in full and are proposing to adopt the rules set out in the attached Appendix.

9. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

10. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to procedures set out in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before February 23, 1981, and reply comments on or before March 10, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

11. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

12. The Commission has determined that Section 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. Law 96-354) do not apply to this rule making proceeding, because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

13. For further information concerning this document, contact Eugene Thomson (202) 632-6497.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

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

1. In § 90.53(b) the Special Emergency Radio Frequency Table is amended as follows:

§ 90.53 [Amended]

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
* *	* *	*
152.0075	Base	(4)(26)(27)
* *	* *	*

(26) Authorizations for this frequency issued after June 1, 1981 will be on a secondary basis to adjacent channel operations on 152.03 MHz. Stations authorized previous to this date will be allowed to continue operations and to expand their systems as required on a primary basis.

(27) Shared with U.S. Government in accordance with footnote US 216 to the Table of Frequency Allocations and does not require coordination with the Interdepartmental Radio Advisory Committee (IRAC).

[FR Doc. 81-3283 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

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[7] The frequency 163.250 MHz is within the band 163.2375–163.2625 MHz which, in accordance to footnote 216 of the Table of Frequency Allocations, is authorized for Government/non-Government operations in medical radio communications systems. The only other available high band paging frequency is 157.450 MHz which is limited to low power operations.

[8] Secondary operation is defined in 47 CFR 90.7 as radio communications which may not cause interference to operations authorized on a primary basis and which are not protected from interference from those primary operations.

[9] See *Report and Order, Docket No. 79-192*, FCC 80-65, adopted February 13, 1980, released February 28, 1980.

[10] See *Notice of Proposed Rulemaking, Docket No. 80-183*, FCC 80-231, adopted April 24, 1980, released May 8, 1980.

47 CFR Part 73

[BC Docket No. 80-774, RM-3513, RM-3627, RM-3671]

TV Broadcast Stations in New Smyrna Beach, Orlando, and Winter Park, Florida; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In response to petitions filed by Astro Enterprises, Inc., Palmer Communications Incorporated and WTWV, Inc., this action proposes alternative UHF television assignment plans for the communities of New Smyrna Beach, Orlando and Winter Park, Florida.

DATES: Comments must be filed on or before February 23, 1981, and reply comments must be filed on or before March 16, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: December 23, 1980.

Released: January 7, 1981.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.606(b), Table of Assignments, television broadcast stations (New Smyrna Beach, Orlando, and Winter Park, Florida) (BC Docket No. 80-774; RM-3513, RM-3627, RM-3671) notice of proposed rule making.

1. The Commission has before it three petitions requesting changes in the television Table of Assignments at Orlando, Winter Park and New Smyrna Beach, Florida. The first (RM-3513), filed on September 10, 1979, by Astro Enterprises, Inc. ("Astro Enterprises"),[1] requests that Channel 65 be assigned to Winter Park as that community's first commercial television channel. The second (RM-3627), filed on February 25, 1980, by Palmer Communications Incorporated ("Palmer"),[2] seeks to delete Channel *15 from New Smyrna Beach, adding it to Orlando without the noncommercial educational reservation, and to substitute Channel *46 for Channel *15 at New Smyrna Beach. The final petition (RM-3671) filed on April 30, 1980, by WTWV, Inc. ("WTWV")[3] as an opposition and counterproposal to the Palmer petition, seeks the assignment of Channel *46 to New Smyrna Beach for noncommercial Education purposes and the de-reservation and retention of Channel *15 at New Smyrna Beach, so that it may be made available for commercial purposes.

2. In response to these petitions, comments were filed for and on behalf of the University of Central Florida, by its Board of Regents, supporting the reassignment of Channel *15 from New Smyrna Beach to Orlando, but opposing the other proposal for commercial use of that channel. In addition, comments were filed by Omega Communications, Inc. ("Omega"), licensee of independent UHF television Station WOFL, Channel 35, Orlando, opposing both the deletion of the noncommercial educational reservation for Channel *15 and the assignment of an additional commercial channel to either Orlando or New Smyrna Beach. Reply comments were filed by Palmer, and WTWV, Inc.

3. Orlando (population 99,006),[4] seat of Orange County (population 344,311), is located in central Florida. All four television channels currently assigned to Orlando are occupied: *viz.*, Channel 6 (WDBO-TV); Channel 9 (WFTV); Channel *24 (WMFE-TV); and Channel 35 (WOFL).

4. New Smyrna Beach (population 10,580) is located in Volusia County (population 169,487), in east central Florida, approximately 65 kilometers (45 miles) northeast of Orlando and 25 kilometers (15 miles) south of Daytona Beach. Channel *15, the only television channel currently assigned to New Smyrna Beach, is unoccupied with no applications pending for it.

5. Winter Park (population 21,895) is located in Orange County in central Florida, adjacent to the northern city limits of Orlando. It currently has no television channels assigned to it.

6. The Astro Enterprises petition for rule making requests that the Commission add UHF television Channel 65 to Winter Park, Florida. In support of its petition, Astro Enterprises notes that Winter Park is presently without a television assignment and that the proposed channel assignment could be accomplished without requiring any other changes to the Table of Assignments. Petitioner submitted economic and demographic data in order to show that Winter Park is a separate and independent community from its larger neighbor, Orlando, as well as to establish the need for the assignment at Winter Park. Astro Enterprises states that it will actively seek the channel should it be assigned to Winter Park as requested.

7. Petitioner Palmer proposes that the Commission reassign reserved Channel *15 from New Smyrna Beach, where it is unoccupied, to Orlando for use as a commercial channel and substitute Channel *46 as a noncommercial educational channel at New Smyrna Beach. In support of its proposal, Palmer asserts that the reassignment of Channel 15 to Orlando is justified because no interest has been demonstrated for its use at New Smyrna Beach since it was originally assigned to that community in 1962. Moreover, it asserts, substituting Channel *46 for Channel 15 provides for the future noncommercial educational programming needs at New Smyrna Beach. Palmer states that should Channel 15 be assigned to Orlando, as requested, it could be used to initiate a subscription television service.

8. Petitioner WTWV has proposed that the Commission delete the noncommercial educational reservation from Channel *15, but that the assignment be retained at New Smyrna Beach. It further proposed that Channel *46 could be substituted for Channel *15 at New Smyrna Beach as a reserved channel assignment.[5] WTWV argued that retaining Channel 15 on an unreserved basis at New Smyrna Beach has several advantages over Palmer's proposal to move the channel to Orlando. It pointed out that Orlando already has three unreserved channels available to it and that retaining Channel 15 at New Smyrna Beach would leave Channel 26 available to Daytona Beach, as originally assigned and where applications are pending for it.[6] In addition, it argued that keeping Channel 15 at New Smyrna Beach on an unreserved basis would permit a first local commercial service to that community. WTWV states that if the

[1] The Commission issued a Public Notice of the Astro Enterprises petition on October 31, 1979, Report No. 1198.

[2] The Commisson issued a Public Notice of the Palmer petition on March 31, 1980, Report No. 1221.

[3] The Commission issued a Public Notice of the WTWV petition on May 28, 1980, Report No. 1230.

[4] Population figures are taken from the 1970 U.S. Census.

[5] WTWV is one of several applicants for a new television station on Channel 26, a channel presently assigned to Daytona Beach but available to New Smyrna Beach pursuant to § 73.607(b) (the "15 mile rule") of the Commission's Rules. However, WTWV has indicated that technical problems with Channel 26, namely, co-channel interference and transmitter site limitations make operation on Channel 15 (which is not subject to those problems), more desirable.

[6] The other applicants are Comark Television, Inc., BPCT 791214KE; Metrovision, Inc., BPCT 800708KF; WTWV, Inc., BPCT 800808KF; Life Style Broadcasting, Inc., BPCT 800811KF; Daytona Broadcasting Company, Inc. BPCT 800811KE; Daytona Beach Family TV, Inc., BPCT 800811KG; Daytona Beach Television Corporation, BPCT 800811 KH.

reservation is removed from Channel *15, it will amend its application for Channel 26 to specify operation on Channel 15 at New Smyrna Beach.

9. The Board of Regents' comments took the position that Channel *15 should be reassigned from New Smyrna Beach to Orlando as a reserved channel. It asserted that a comparatively greater need exists in Orlando for a new noncommercial educational television service than for another commercial service. It argued that the Commission's policy of refusing to de-reserve noncommercial educational assignments, in the absence of any "reasonably feasible alternative," [7] requires that Palmer first demonstrate that no unreserved television channel is available for assignment to Orlando.

10. Palmer's reply comments responded both to the Board of Regents' comments and the WTWV opposition and counterproposal. With regard to the comments of the Board of Regents, Palmer asserted that the Board opposes its petition only insofar as it would assign Channel 15 to Orlando on an unreserved basis. It pointed out that Orlando is already served by an educational television station (which it deemed adequate to meet the city's noncommercial educational programming needs), and that the comparative hearing process would be available for commercial and noncommercial applicants alike, in the event that the Commission assigned the channel to Orlando on an unreserved basis. Thus, Palmer concluded, the Commission would not be justified in prejudging Orlando's needs by reserving a second educational channel at this stage.

11. With regard to the WTWV proposal for a New Smyrna Beach commercial station, Palmer questioned whether the lack of a suitable transmitter site for WTWV's Channel 26 had been established. It also asserted that WTWV failed to provide authoritative economic, demographic and other data sufficient to justify an assignment to New Smyrna Beach. This omission, it argued, is especially significant since the proximity between New Smyrna Beach and Daytona Beach raises a suburban community issue. [8]

[7] Citing *State College, Pennsylvania*, 30 FCC 2d 301, 302 (1971).

[8] See, *TV Channel Assignment at Baytown, Texas*, 11 FCC 2d 941, 12 RR 2d 1581 (1968). In that case, the Commission refused to assign a UHF television channel to Baytown, a suburb of Houston, fearing that it could result in making a *de facto* assignment to Houston before the channels assigned to Houston had been utilized. The needs of Baytown, the Commission felt, could be more accurately assessed after all authorized stations in the area were in operation.

Finally, Palmer submitted an engineering statement indicating that Channel 68 could be assigned to New Smyrna Beach in compliance with all mileage separation requirements and with no site restrictions.

12. Omega's comments on WTWV's opposition and counterproposal to the Palmer petition took the position that the public interest would be served neither by deleting the educational reservation from Channel *15 in New Smyrna Beach nor by assigning Channel 15 or 46 to Orlando. Rather, it argued, Channel *15 should be retained at its present location, as a reserved assignment, for two basic reasons: (1) the growing needs for service in New Smyrna Beach; and (2) the Commission's policy of preserving noncommercial educational reservations. Omega also opposed the assignment of a new commercial channel at Orlando because it would threaten the economic viability of its own station, WOFL (Channel 35, Orlando), and thereby erode its ability to provide local service.

13. WTWV's reply comments were also directed to Palmer's suggestion that Channel 68 could be assigned to New Smyrna Beach in full compliance with the Commission's technical standards. WTWV countered that suggestion by offering an affidavit indicating that there are no restrictions on an assignment of Channel 68 at Orlando, rather than at New Smyrna Beach. It added that if the Commission assigns Channel 65 to Winter Park, as proposed in RM-3513, Channel 68 would still be available for use in Orlando (although not without some site restrictions for either Channel 65 or 68). If the Commission did not wish to assign Channel 65 and 68 with such site restrictions, assignment of Channel 65 to Orlando, it asserted, would provide another means by which Palmer could serve Orlando without moving Channel 15 from New Smyrna Beach. Finally, WTWV criticized Omega's allegations of adverse economic impact as being of the sort which the Commission consistently declined to consider in rule making proceedings to assign channels.

14. From a careful review of the foregoing, it appears that Channel 15 and one channel in the 60's are the last television channels which can be assigned initially or reassigned to the Orlando area. We believe the availability of replacement channels for New Smyrna Beach warrants a proceeding to examine the possible reassignment of Channel 15. We take no position on which proposal should be favored at this point and therefore state no tentative conclusions. Rather, alternate proposals will be considered, with a remaining question being whether to assign Channel 65 to Winter Park or Orlando, allowing a Winter Park application under § 73.607(b) of the Commission's Rules. Additional information concerning the separate needs at Winter Park is needed and will weigh heavily on this issue. Should Channel 65 be assigned to Orlando, it may also be desirable to consider reserving Channel 15 at Orlando for noncommercial educational use, as the Board of Regents suggests. Comments on these issues are expressly requested.

15. Accordingly, IT IS PROPOSED TO AMEND § 73.606(b) of the Commission's Rules, the Television Table of Assignments, as it concerns the following communities:

Plan I

City	Channel No.	
	Present	Proposed
New Smyrna Beach, Fla.	*15+	*46, 68 *or* 46, *68.
Orlando, Fla.	6–, 9, *24–, 35+.	6–, 9, 15+, *24–, 35+.
Winter Park, Fla.		65.

Plan II

City	Channel No.	
	Present	Proposed
New Smyrna Beach, Fla.	*15+	*46, 68 *or* 46, *68.
Orlando, Fla.	6–, 9, *24–, 35+.	6–, 9, *15+, *24–, 35+. 65.

Plan III

City	Channel No.	
	Present	Proposed
New Smyrna Beach, Fla.	15+	15, *46.
Orlando, Fla.	6–, 9, *24–, 35+.	6–, 9, *24–, 35+, 65.

16. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

17. Interested parties may file comments on or before February 23, 1981, and reply comments on or before March 16, 1981.

18. For further information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a notice of proposed rule making is issued until the

matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments offically filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-3276 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 46, No. 18
Wednesday, January 28, 1981

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Land and Resource Management Plan, Willamette National Forest; Clackamas, Douglas, Lane, Linn, Marion, and Jefferson Counties, Oregon; Intent to Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement for the Willamette National Forest Land and Resource Management Plan. This Forest Plan will be developed in accordance with direction established in the regulations for National Forest System Land and Resource Management Planning (36 CFR 219).

The Forest Plan will be responsive to public issues, management concerns, as well as resource use and development opportunities. A range of alternative proposals for the Forest Plan will be considered. One alternative will be a no-action alternative. Other alternatives will present different land and resource allocation possibilities along with a range of resource outputs and expenditure levels. Each alternative will be technically feasible and cost efficient.

Tentative public issues have been identified by the Forest Interdisciplinary Team. Sources for the issues included previous planning actions and public involvement activities. They were presented to other Federal, State, and local agencies, and interested individuals for review and comment in December 1980. Participation has been in the form of cooperative interagency meetings, open houses and through the use of response forms. The same agencies and interested public are being invited to participate in the scoping process which includes: (a) identification of issues to be addressed in the development of the Forest Plan; (b) identification of issues to be analyzed in depth; and (c) elimination of insignificant issues. The scoping process will be conducted in January 1981 by the Forest Interdisciplinary Team.

Public meetings will be scheduled during the formulation of alternatives. The meetings are planned to occur during the winter of 1981–82. They will be held at various locations in the vicinity of the Willamette National Forest. The draft environmental impact statement is expected to be available for public review about December 1983. The final environmental impact statement is scheduled to be completed in September 1984.

R. E. Worthington, Regional Forester, Pacific Northwest Region, is the responsible official. Questions regarding the proposed action and environmental impact statement should be addressed to James M. Morris, Land Management Planning Staff Officer, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440. Written comments and suggestions concerning the Forest Plan should be directed to Michael A. Kerrick, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440.

Dated: January 20, 1981.

Claude R. Elton,

Acting Regional Forester.

[FR Doc. 81-3166 Filed 1-27-81; 8:45 am]
BILLING CODE 3410-11-M

Office of the Secretary

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Wild and Scenic Rivers System; Draft Revised Guidelines for Eligibility, Classification and Management of River Areas

LEAD AGENCY: Heritage Conservation and Recreation Service.

ACTION: Publication of draft revised joint guidelines for public comment.

SUMMARY: The Department of Agriculture and the Department of the Interior are publishing for public review and comment draft revised joint guidelines for eligibility, classification and management of river areas included in the National Wild and Scenic Rivers System.

DATE: Comments must be received on or before March 16, 1981.

ADDRESS: Comments may be mailed to Chief, Division of Natural Resource Systems Planning, Heritage Conservation and Recreation Service, Room 203, 440 G Street, NW, Washington, D.C. 20243.

FOR FURTHER INFORMATION CONTACT: Bob Brockwehl, (202) 343–4793.

SUPPLEMENTARY INFORMATION: These guidelines were originally issued jointly by the Department of Agriculture and the Department of the Interior in 1970. The Heritage Conservation and Recreation Service, Department of the Interior, is the lead agency for the revision effort. Other affected agencies are the National Park Service, Fish and Wildlife Service and Bureau of Land Management in the Department of the Interior; the U.S. Forest Service in the Department of Agriculture and States administering or proposing inclusion of rivers as components of the National Wild and Scenic Rivers System. Further information is included in the preface to the draft guidelines, printed below. The draft guidelines were approved for publication by the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior and the Acting Assistant Secretary for Natural Resources and Environment, Department of Agriculture.

Dated: January 22, 1981.

Chris Therral Delaporte,

Director, Heritage Conservation and Recreation Service.

Department of Agriculture—Department of the Interior

Draft

National Wild and Scenic Rivers System

Guidelines for Eligibility, Classification and Management of River Areas—Revised January 1981

Contents

Preface:
- The National Wild and Scenic Rivers System
- The Guidelines
- Revision of the Guidelines

Section I: Definitions
Section II: Policy
Section III: The River Study
- The Study Process
- The Study Report
- Description of the Study Area

Determination of Eligibility
Classification
Analysis of Alternatives
Findings and Recommendations
Section IV: Management
The Management Plan
Management Principles
Land Acquisition
Water Resource Development
Mining
Hunting and Fishing
Federal Reserved Water Rights
Rights-of-Way
General Management Principles

Tables

Table 1. Accelerated Study Schedule
Table 2. Classification Criteria for Wild, Scenic and Recreational River Areas

Preface

The National Wild and Scenic Rivers System

The Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, established a method for providing Federal protection for certain of our country's remaining free-flowing rivers, preserving them for the use and enjoyment of present and future generations. Rivers are included in the system so that they may benefit from the protective management and controlled development for which the Act provides.

The objective for designating a river as wild, scenic, or recreational is twofold: first, to preserve and maintain existing resource values associated with our Nation's free-flowing rivers with outstandingly remarkable values; and second, to make accessible to the public through appropriate development the river and those values which have been preserved. Any land or water use which is compatible with this objective and any land uses in existence at the time of inclusion in the system are permitted to continue.

Addition of Rivers to the System

The Wild and Scenic Rivers Act provides two methods for adding a river to the National Wild and Scenic Rivers System. The first method is by an act of Congress. Congress can designate a river directly or it can authorize a river for study as a potential wild, scenic or recreational river. Upon completion of a study conducted by the Department of the Interior or the Department of Agriculture, a study report is prepared and transmitted to the president who, in turn, forwards it with his recommendations to Congress for action.

The second method for inclusion of a river in the national system is through the authority granted to the Secretary of the Interior in section 2(a)(ii) of the Act. Upon application by the Governor or Governors of the State or States involved, the Secretary can designate a river as part of the national system provided that the river has been designated as a wild, scenic or recreational river pursuant to an act of a State legislature.

To be eligible for inclusion in the system through either method, rivers must meet certain criteria set forth in section 2(b) of the Act. Procedures for proposing State-administered rivers for designation have been issued and are contained in the Department of the Interior Manual, Part 800, Chapter 3, "Procedures for State-Administered Rivers."

The Guidelines

Subsequent to enactment of the Wild and Scenic Rivers Act in October 1968, the Departments of Agriculture and the Interior initiated studies of twenty-seven rivers which the Act designated for study as potential additions to the National Wild and Scenic Rivers System. As these studies progressed, it became evident that specific requirements of the Act concerning the evaluation, classification and management of these rivers were subject to differing interpretations within and between the two Departments.

It was therefore agreed that a uniform evaluation and management approach should be formulated for use by the two agencies, and through a cooperative efforts, *Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90-542* was prepared and promulgated in February 1970.

The guidelines not only provide guidance for the congressionally mandated studies under section 5(a) of the Act, but are also useful for evaluations conducted by water resource development agencies under section 5(d) and for States applying for inclusion of State-designated rivers in the national system.

Revision of the Guidelines

While these guidelines were effective throughout a decade, it became clear that revision was necessary to incorporate changes identified through use and to reflect requirements of new laws and regulations. Therefore, on August 2, 1979, the President directed in his Environmental Message that "the Secretary of Agriculture and the Secretary of the Interior shall jointly revise their guidelines for evaluating wild, scenic and recreational rivers to ensure consideration of river ecosystems and to shorten the time currently used to study rivers for designation."

This revision of the guidelines has been prepared in response to the President's 1979 directive and includes:

- A Statement of the primary intent of the Act.
- Provision for inclusion in the system of rivers that contain outstandingly remarkable ecological values.
- Clarification of the fact that free-flowing urban and near urban river segments that possess outstandingly remarkable values are eligible for addition to the national system.
- Elimination of the 25-mile minimum length requirement. This is not a statutory requirement.
- Revision of the definition of sufficient river flow or volume of water in the river. Sufficient flow was not defined in the Act and the definition in the existing guidelines was unnecessarily limiting.
- Revised water quality guidelines to allow inclusion in the system of rivers where restoration to high water quality is planned.
- A revised and expanded section on management of designated river areas.
- A study schedule to accelerate completion of the river studies authorized by Congress.

Section I—Definitions

The following definitions are provided for the purposes of these guidelines only.

Access easement: The acquired right to pass over land for the purpose of entering or leaving the river or adjacent public lands.

Administration: The carrying out of all responsibilities and the exercise of all authorities vested in the administering Secretary or his designee by the Wild and Scenic Rivers Act for a particular component of the National Wild and Scenic Rivers System.

Administering agency: The agency to which the responsibility for administration and management of a component of the national system has been delegated by the administering Secretary. Components may be administered by a single State or Federal agency, or jointly by two or more agencies.

Administrating Secretary: The Secretary charged by Congress with the responsibility for administering a component of the national system, either the Secretary of the Interior or, where National Forest lands are involved, the Secretary of Agriculture.

Carrying capacity: The quantity of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river area, the quality of recreation experience, and public health and safety. Carrying

capacity also depends to some extent on the quality of recreation experience desired and would be altered by installation of facilities.

Classification criteria: Criteria specified in Section 2(b) of the Act for determining the classification (wild, scenic or recreational) of eligible river segments.

Classify: To evaluate a river area in terms of the classification criteria and determine which set of criteria best describes the river area: wild, scenic, or recreational.

Component: A river area or group of river areas designated as a unit of the National Wild and Scenic Rivers System.

Conceptual plan: A plan presented in the study report for each alternative which gives the general boundaries and classification of the proposed river area and describes general land acquisition, development and management strategies which would apply if the alternative were to be implemented.

Designation: Inclusion of a river area in the national system either by act of Congress or by authority of the Secretary of the Interior; inclusion of a river area in a State or local river preservation system; (*study designation*) authorization for study by Act of Congress. See *study authorization.*

Development: Any manmade structure or modification of the natural or existing river environment.

Diversion: The diverting by means of any manmade structure or man induced action of part or all of the flow of a waterway from its natural course.

Eligibility: Qualification of a river area for inclusion in the national system through determination that it is free-flowing and with its adjacent land area possesses at least one outstandingly remarkable value.

Estuary: A semienclosed coastal body of water which has a free connection with the open sea. Estauries are strongly affected by tidal action and the mixing of seawater with freshwater from land drainage. Examples are river mouths, coastal bays, tidal marshes, and bodies of water behind barrier beaches.

Feature: An esthetic, scenic, historic, archeologic, scientific or other unique resource context of a river area.

Fee simple title: Full title to real property including all rights of use and occupancy.

Flow: The volume of water in a river passing a given point in a given period of time, usually expressed in terms of cubic feet per second or cubic meters per second.

Free flowing: "Existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided,* That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system." (Section 15(b) of the Act.)

Impoundment: A slack water pool formed by any manmade structure.

Intrusion: Manmade development in a river area which detracts from the naturalness of the area and is considered in applying the classification criteria.

Less-than-fee techniques: Methods of controlling land use by acquisition of easements, zoning, taxation, regulation or other methods other than fee-simple acquisition.

Management measure: A specific action designed to achieve a management objective.

Management objective: A standard or goal which management measures and strategies are designed to achieve.

Management plan: A detailed development plan required under section 3(b) of the act to be prepared within one year of designation of a component of the national system except where a different date is provided by law which states the boundaries and classification of the river area and presents a plan for its public use, development and administration.

Management principle: A general statement which guides management agencies in choosing management measures and strategies; part of a management policy.

Organic authority: An authority granted to an agency in its enabling legislation or other legislation applying to all of its programs.

Outstandingly remarkable value: A value of the river area which is of sufficient merit in the opinion of the study team to justify inclusion of the river area in the national system. See *Value.*

Perfected claim: The perfection of a mining claim as referred to in section 9(a) of the Act means the discovery of a valuable mineral deposit after a mining claim is located, and the claimant's achievement thereby of possessory right to the claim. As long as the claimant continues to comply with the mining laws, he retains his possessory right and may receive a patent. For the purposes of section 9(a), the date of perfection of the claim is the date which determines whether a particular claim is subject to regulation.

Primary contact recreation: Activities in which there is prolonged and intimate contact with the water, (e.g., swimming, water skiing, surfing, kayaking, "tubing," and wading or dabbling by children.

Recreational river area: One of three classifications for components of the national system, defined in section 2(b) of the act as "those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past."

Rip-rapping: Any type of manmade protection of a river bank from erosion.

River: "A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes. (Section 15(a) of the Act.)

River area (river corridor): A river segment and its immediate environment.

River segment: A portion of a river.

Scenic easement: "The right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement." (Section 15(c) of the Act.)

Scenic river area: One of three classifications for components of the national system, defined in section 2(b) of the Act as "those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads."

Secondary contact recreation: Activities in which contact with the water is either incidental or accidental, e.g., boating, fishing and limited contact with water incident to shoreline activities.

Selective timber harvest: For the purposes of river corridor classification and management, selective timber harvest is defined as uneven-aged silviculture using single-tree selection cutting or small group selection cutting to harvest trees and obtain regeneration in order to maintain or restore a natural appearing forest stand.

Special attribute: Particular characteristic of a river area, e.g., access, flow fluctuation, ecologically fragile area, terrain, soil erodability, hazzard, etc., taken into consideration in developing management plans.

State-administered river: A component of the National Wild and Scenic Rivers System administered by a State. State protected rivers may be included in the national system upon application of the Governor of the State and approval by the Secretary of the Interior.

Straightening: The diverting of the entire flow of part or all of a waterway to a straighter channel or course.

Study: See *wild and scenic river study.*

Study agency: The agency within the Department of Agriculture or the Department of the Interior delegated the responsibility for a wild and scenic river study.

Study area (study corridor): For the purposes of determining eligibility and classification, study segment (q.v.) and its immediate environment or related adjacent lands, normally defined as an area extending the length of the study segment and extending in width one quarter mile from each bank of the river.

Study authorization (study designation): Addition by Congress of a river area to the list of potential additions to the national system under section 5(a) of the Act. Study authorization requires that a study of the river area be made by either the Department of Agriculture or the Department of the Interior within a specified time period and places a moratorium through section 7(b) on water resource projects adversely affecting the values of the river area for certain specified periods of time provided for the study and for its consideration by Congress.

Study report: The report on the suitability or nonsuitability of a study river for inclusion in the national system, which section 4(a) requires the Secretary of Agriculture, or the Secretary of the Interior, or both jointly to prepare and submit to the President. The President transmits the report with his recommendation to the Congress.

Study river: See *study segment.*

Study segment: A river segment authorized by Congress for study. See *study authorization.*

Study team: A team of professionals and citizens from interested local, State and Federal agencies and citizens' groups invited by the study agency and participating in the study.

Unit: See *component.*

Value: Any aspect of the river area which is of benefit to man. Wild, scenic and recreational river areas are designated to protect all their values, outstandingly remarkable or otherwise. The Act cites "scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values as values which, if "outstandingly remarkable," can qualify free-flowing rivers for inclusion in the national system.

Water resource project: For the purpose of section 7 of the Act, any human activity affecting the free-flowing characteristics of a river. See *free-flowing.*

Wild and scenic river: A component of the National Wild and Scenic Rivers System or a State or locally protected river (may be classified wild, scenic or recreational in the national system and the same or variously in State and local systems).

Wild and scenic river study: The study or evaluation of a river area as to eligibility and suitability for inclusion in the national system as required by, section 4(a) of the Act. See *value.*

Wild and scenic values (wild, scenic and recreational values): The values of a wild, scenic or recreational river or potential wild, scenic or recreational river as defined in section 1(b) of the Act.

Wild river area: One of three classifications for components of the national system, defined in section 2(b) of the Act as "those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America."

Section II—Policy

Sections 1(b) and 10(a) of the Wild and Scenic Rivers Act, taken together, state the primary intent of the Act, natural resource preservation and appropriate public use.

Section 1(b):

It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

Section 10(a):

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

Section III—The River Study

The Study Process

Section 4(a) mandates that all rivers designated as potential additions to the system in section 5(a) be studied as to their suitability for inclusion in the system:

The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this Act.

The purpose of a wild and scenic river study is to provide information upon which the President and Congress can base decisions. Procedures for developing the necessary information and preparing the study report will vary depending on the agency which conducts the study, but generally will include the steps shown on Table 1, Accelerated Study Schedule.

Wild and scenic river studies will comply with all applicable statutes, executive orders and regulations, including but not limited to: the National Environmental Policy Act, Pub. L. 91–190; the National Historic Preservation Act, Pub. L. 89–665; the Endangered Species Act, Pub. L. 93–205; the Fish and Wildlife Coordination Act, Pub. L. 85–264; the Principles and Standards for Water and Related Land Resources Planning—Level C issued by the Water Resources Council; the Floodplain and Wetlands Executive Orders (E.O. 11988 and E.O. 11990); National Forest Management Act of 1976, Pub. L. 94–588; and the Wild and Scenic Rivers Act, Pub. L. 90–542, as amended.

The Study Report

Each river study report will be a concise presentation of the information required in section 4(a) of the Act as augmented by the National Environmental Policy Act (Pub. L. 91–190) and the Principles and Standards for Planning Water and Related Land Resources. For the purposes of the Principles and Standards, wild and scenic river studies are Level C—implementation studies.

Section 4(a):

Each report, including maps and illustrations, shall show among other things the area included within the report; the

characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system.

In addition, section 5(c) requires that:

The study of any of said rivers * * * shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

Study reports may be combined with draft and final environmental impact statements (EIS) as permitted by section 1506.4 of the Council on Environmental Quality Regulations. Although there may be some variation in format, reports will contain the elements required by sections 4(a) and 5(a) of the Wild and Scenic Rivers Act quoted above section 1502.10 of the Council on Environmental Quality Regulations and the Water Resources Council'sPrinciples and Standards for Water and Related Land Resources Planning-Levels issued by the Water Resources Council. Each of the following subsections describes the way in which the information is generated, analyzed and presented in the report.

Description of the Study Area

Each report will contain a description of the area included in the report. For the purpose of a river study, a study area will cover as a minimum, a corridor extending the length of the study segment as designated in the Act, and extending in width one half mile from each bank of the river.

Adjacent river areas not included in the congressional mandate may be studied if their inclusion could facilitate management of the resources of the river and adjacent land areas. For example, there may be sensitive historic, archeological or ecological resource areas which may reach beyond the boundaries of the mandated study area, but could be better managed by inclusion in the river area. Also, management of the river area may be facilitated by extension to include established or available access points not included in the mandated study segment. Expansion beyond the extent of the mandated study segment may require approval of the appropriate Secretary.

The study area as defined above is intended for use in the study process only and is not intended to define the geographical limits of applicability of any other provision of the Wild and Scenic Rivers Act or any other provision of law.

For the purposes of determining eligibility and classification, the study segment may be divided into subsegments.

The description of the study area will identify the outstandingly remarkable values and the extent of man's intrusion in the river environment to provide a clear basis for the determinations of eligibility and classification. While only one outstandingly remarkable value is necessary for eligibility, the study report should carefully document all values of the river area.

In addition to the information required by Section 4(a) of the Act, this section of the report will describe any existing zoning ordinances or other provisions of law governing land use in the study area.

If the study report and the environmental impact statement are combined, the same chapter may describe both the study area and the affected environment. For EIS purposes and for general information, a brief description of the regional setting will also be included.

Determination of Eligibility

Each report will contain a determination as to the eligibility of all portions of the authorized study area.

Section 2(b) of the Act states that "a river area eligible to be included in the system is a free-flowing stream and related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b)." The terms "river" and "free-flowing" are defined in section 15 of the Act. (See Definitions.)

The fact that a river segment may flow between large dams will not preclude its designation. Such segments can qualify and will be considered free-flowing if conditions will prevail which will maintain the outstandingly remarkable values for which they are being proposed for designation.

The values referred to in section 1(b) are:

* * * Outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values.

River segments can qualify because they contain outstandingly remarkable ecological values that are primarily valuable as scientific and educational resources. Likewise, rivers in or near urban areas which possess one or more outstandingly remarkable values may qualify. Only one outstandingly remarkable value is needed for eligibility. If the outstandingly remarkable value found to justify inclusion is not listed in the Act, it must be shown to be a value similar to those listed in the Act.

To qualify a river for inclusion, a resource value need be judged as outstandingly remarkable in its regional context only, not necessarily in the context of the entire country.

The determination of whether a river area contains "outstandingly remarkable" values is a professional judgement on the part of the study team. Therefore, the basis for this informed judgement should be well documented in the study report.

There are no specific requirements concerning the length or the flow of an eligible river segment. A river segment is of sufficient length if, when managed as a wild, scenic or recreational river area, it would protect the outstandingly remarkable values. Flows are sufficient if, during years of normal precipitation, they sustain the outstandingly remarkable values for which the river would be designated.

Classification

Study reports will indicate the classification of all eligible river segments. Section 2(b) of the Act states that rivers which are found eligible for inclusion in the National Wild and Scenic Rivers System shall be classified as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

These criteria are interpreted as follows:

a. "Free of impoundments." Wild river areas shall be free of impoundments. (See Definitions.) The existence of a few unobstrusive low dams, diversion works, and other minor structures at the time of study will not preclude wild classification if such structures are sufficiently small in size and few in number that they meet the "essentially primitive" criterion described under "c." below.

b. "Generally inaccessible except by trail." Wild river areas will not contain roads, railroads, or other provisions for

vehicular travel within the river corridor. The existence of a few inconspicuous roads leading to the river area at the time of study will not necessarily bar wild river classification.

c. "Watersheds or shorelines essentially primitive." Wild river areas will show little or no evidence of man's intrusion. Shorelines and watersheds within the boundaries should be essentially free of structures and other evidence of human activity including such things as buildings, pipelines, powerlines, dams, pumps, generators, diversion works, rip-rap and other modifications of the waterway or adjacent land within the river corridor. The existence of few inconspicuous structures at the time of study need not necessarily bar wild classification.

Historic or cultural structures shall be taken as positive values of the river area rather than intrusions. A limited amount of domestic livestock grazing or hay production may be considered "essentially primitive." There should be no ongoing timber harvest and the river area should show little or no evidence of past logging activities.

d. "Waters unpolluted." The water quality of a wild river will meet or exceed Federal criteria or federally approved State standards for aesthetics, for propagation of fish and wildlife normally adapted to the habitat of the stream, and for primary contact recreation except where exceeded by natural conditions.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

These criteria are interpreted as follows:

a. "Free of impoundments." Scenic river areas will be free of impoundments. (See Definitions.) The existence of low dams, diversion works, and other minor structures, at the time of study will not preclude scenic classification if such structures are sufficiently small in size and few in number that they meet the criteria of "still largely primitive" and "largely undeveloped" described under "b." below.

b. "Shorelines or watersheds still largely primitive and shorelines largely undeveloped." To qualify for scenic classification, the river segment's shorelines and immediate environment should not show substantial evidence of man's intrusion. The portion of the watershed within the boundaries of the scenic river area may have some discernible existing development. The existence of some diversion, straightening, riprapping, or other modification of the waterway at the time of study will not preclude a river from being considered for scenic classification. Rowcrops not requiring highly mechanized or intensive agricultural techniques will be considered as meeting the test of "largely primitive," as will ongoing selective timber harvest if it is accomplished without disturbing the naturalness of the forest as viewed from the river bank. "Largely undeveloped" means that small rural communities or concentrations of habitations must be limited to relatively short reaches of the segment and that individual dwellings or farms should be well dispersed. Buildings of historic or cultural value will be taken as positive features of the river area rather than intrusions.

c. "Accessible in places by roads." Roads or railroads may occasionally reach or bridge the river. Scenic river areas will not include long stretches of conspicuous and well-traveled roads closely paralleling the riverbank. The presence of short stretches of conspicuous or longer stretches of inconspicuous roads or railroads will not necessarily preclude scenic river designation provided.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

These criteria are interpreted as follows:

a. "Readily accessible by road or railroad." The Act requires that rivers classified as recreational are readily accessible by road or railroad. Such ready access may be provided by existing parallel roads or railroads in close proximity to one or both banks of the river as well as bridge crossings and roads fording or ending at the river.

b. "Some development along their shorelines." Lands may have been developed for the full range of agricultural uses, may show evidence of past and ongoing timber harvest, and may include some residential, commercial or light industrial development.

c. "Some impoundment or diversion in the past." There may be some existing impoundments, diversions and other modifications of the waterway having an impact on the river area greater than that described for the wild and scenic categories. Existing dams, diversion works, rip-rap and other structures will not bar recreational classification, provided the waterway remains generally natural and riverine in appearance.

The classification criteria are summarized in Table 2, appended to these guidelines.

There are several points which all participants and observers of the study process should bear in mind when reading and applying the classification criteria:

- It is important to understand each criterion, but it is more important to understand their collective intent. Each river segment and its immediate environment should be considered as a unit. The basis for classification is the degree of naturalness, or stated negatively, the degree of evidence of man's intrusion in the river area. The most natural rivers will be classified wild; those somewhat less natural, scenic; and those least natural (or most developed), recreational.
- Despite apparent similarities, a wild river area is not equivalent to a wilderness area, a scenic river area does not necessarily provide a sight-seeing experience, and a recreational river area does not necessarily possess high recreation use or potential.
- Only conditions within the study corridor are relevant for classification. Thus, river segments which pass through highly developed areas, but meet the criteria within the study corridor will qualify for designation as components of the national system.
- Each river segment will be evaluated by the study team and placed in the classification (wild, scenic, or recreational) which most accurately describes its existing condition. Past or projected future conditions are irrelevant.
- For the purpose of classification, a river area may be divided into segments. Each segment, considered as a whole, will conform to one of the classifications. In segmenting the river the study team should take into account the management strategies necessary to administer the entire river area.
- The Wild and Scenic Rivers Act provides no specific guidance on water quality for the scenic and recreational rivers. However, the Federal Water Pollution Control Act Amendments of 1972 have made it a national goal that all waters of the United States be made fishable and swimmable by July 1, 1983, and provide the legal means for upgrading water quality in any river which would otherwise be suitable for inclusion in the system. Therefore, rivers will not necessarily be excluded from the system because of poor water quality at the time of their study, provided a water quality improvement plan exists or is being developed in compliance with applicable State and Federal laws.
- Although each classification permits certain existing inconsistent development, the criteria do not imply that additional inconsistent development is permitted in the future. The basic management objective for any component of the system, whether classified wild, scenic or recreational, is to maintain the river area in the same

condition as when studied, or to enhance its condition.
- Finally, the classification criteria provide uniform guidance for professional judgment, but they are not absolutes. It is not possible to formulate criteria so as to mechanically or automatically classify river areas.

Analysis of Alternatives

To provide for decisionmaking and to satisfy the requirements of the National Environmental Policy Act and the Water Resources Councils Principles and Standards for water and related land resources planning—level C study reports will include an examination of alternatives. The study team will develop an array of alternative plans encompassing all reasonable proposals for use of the river area including uses which may be incompatible with designation as a component of the national system. Where appropriate, alternative plans for the river area may be based on:

- Alternative boundaries for the river area recommended for designation as a component of the national system;
- Alternative managing agencies for the river area recommended for national designation—Federal, State, local, private or combinations thereof;
- Alternative protective measures other than national designation; and
- Alternative uses of the area incompatible with designation as a component of the national system.

In order to comply with the intent of Congress in designating the river area for study, the study report will present at least one alternative plan calling for national designation of all eligible segments of the congressionally authorized study area.

If the study team finds a segment ineligible for designation as a component of the National Wild and Scenic Rivers System, but still worthy of protection, alternatives for State, local or private preservation will be presented, as well as protection under other Federal programs.

If areas adjacent to the congressionally authorized study area have been studied and found eligible, the report may present, alternatives which incorporate such areas into the river area proposed for designation. Such expansion of the proposed area either in length or in width may be desirable to preserve and facilitate management of river ecosystems, historic or archeological areas or other special areas which may reach beyond the river corridor.

Plans calling for designation and administration of a river area in any classification other than the one for which it qualifies when studied will not be presented except to allow consideration of authorized projects which, if constructed, would cause the river area to be reclassified. Designation and administration of a river segment in any classification other than the one for which it qualifies when studied is inconsistent with the Act.

Each alternative will be developed into a conceptual plan identifying the proposed administering agency or agencies; showing the classification of the river or river segments; delineating a generalized river area boundary; describing proposed acquisition and development and setting forth broad management objectives and strategies.

The alternative plans and their effects will be evaluated and compared according to the National Environmental Policy Act and the Water Resources Council's Principles and Standards for Water and Related Land Resources Planning—Level C, and a preferred alternative will be selected.

Findings and Recommendations

The study report will present findings as to the eligibility and classification of the river and recommendations as to the suitability of the river area for inclusion in the national system.

Findings as to eligibility and classification will be based on the evaluation of the resource in its existing condition at the time of study. If a river area is found ineligible at the time of study, but could be made eligible through restoration, this may be reported as an additional finding, and the river area in question may be recommended for inclusion in the system at such time as it may be restored to eligible condition.

Likewise, if an authorized project or alternative use of the river is planned which would disqualify or change the classification of an eligible segment of the river and the appropriate Secretary finds that such development or use would be more in the national interest than designation of the affected segment in its existing condition, then nondesignation or reclassification of the affected segment to accommodate the authorized development or use may be recommended.

Section IV—Management

The Management Plan

Section 3(b) states:

The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of this Act, (except where a different date is provided in subsection (a)) establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the **Federal Register** and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

In addition, management plans will state: general principles for any land acquisition which may be necessary; the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated; and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features.

The classification of the river area stated in the management plan will agree with that stated in the study report except where conditions within the river area have changed sufficiently since the study report was written to require reclassification.

Management objectives and measures will be in accordance with the statutory requirements of the Act and the general management principles stated in these guidelines. Management plans and amendments to plans will be reviewed by other Federal agencies and the public.

Management Principles

The following management principles are found in or stem from the Act.

Land Acquisition. Section 6 authorizes the administering Secretaries to acquire lands and interests in lands within the boundaries of components of the system, including fee title to up to 100 acres per mile on both sides of the river. State lands may be acquired only by donation. Lands owned by an Indian tribe or political subdivision of a State may not be acquired without consent, if a management plan acceptable to the administering Secretary is being followed. Land and Water Conservation Fund monies may be used for Federal acquisition. Condemnation for fee title is authorized unless 50% of the land within the boundaries of a river area is in public ownership. There are no restrictions on the use of condemnation for scenic or access easements. Condemnation is prohibited within incorporated communities with zoning ordinances that conform to the purposes of the Act as determined by the

administering Secretary. The administering Secretary may accept donated property and exchange any Federal property under his jurisdiction within the same State for lands within a designated river area. Other Federal agencies may transfer lands to the administering agency. Certain rights of use and occupancy are provided for owners of lands acquired by the Federal Government, provided such rights are not exercised in conflict with the purposes of the Act. Under section 14A the administering Secretary may lease acquired land within the river area with appropriate restrictive covenants, offering it first however to the person from which it was acquired.

The intent of this section is that existing patterns of land use and ownership should be maintained, provided they remain consistent with the purposes of the Act. A full range of land use control measures including less-than-fee as well as fee acquisition will be utilized in protecting the river values. In selecting methods for application in each specific situation, managers will take into account effectiveness in preservation of the resource values, cost, and acceptability to individual landowners involved.

Water Resource Development. Sections 7(a) and 7(b) specifically prohibit the issuance by the Federal Energy Regulatory Commision (FERC) of a license or preliminary permit to build any impoundment, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river designated under section 3, or 2(a)(ii) of the Act as part of the system, or proposed for inclusion in the system pursuant to Section 5(a). These sections also direct that other Federal agencies shall not assist by loan, grant, license, or otherwise in the construction of any water resources project (see Definitions) which would have both a direct and adverse effect on the values of such designated river. The Secretary administering the designated river or responsible for its study or approval must determine whether such project would directly affect the designated river, in the case of an FERC license, and whether such project would have a direct and adverse effect on the river, in the case of projects constructed with the assistance of another Federal agency or under such agency's license or permit. The prohibitions of Section 7(a) and 7(b) do not apply to upstream or downstream projects which will not unreasonably diminish the values of the river in existence on enactment. In some cases, these developments could be permitted if the applicant for the license, etc., includes some safeguards or other features in the project to prevent such adverse effects.

Mining. Mining on lands within wild, scenic and recreational river areas to which the Federal Government holds the mineral rights is subject to the provisions of section 9 of the Act. Under this section all prospecting, mining and other activities on claims not perfected prior to inclusion of the river in the system are subject to the regulation by the administering Secretary. Therefore, managers will identify activities which should be regulated in order to protect the values for which the river was designated. Subject to valid existing rights, mining within one quarter mile of any river designated wild is prohibited. Section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87) prohibits surface coal mining in wild, scenic and recreational river areas. Federally regulated mining within the river bed is also subject to section 7(a) of the Wild and Scenic Rivers Act.

Note.—Regulations implementing Section 7 of the Wild and Scenic Rivers Act and Section 522(e) of the Surface Mining Control and Reclamation Act are currently under development. Regulations implementing Section 9 of the Wild and Scenic Rivers Act are planned.

Hunting and Fishing. Section 13(a) of the Act permits hunting and fishing, subject to applicable State and Federal laws, on all public lands within wild, scenic and recreational river areas except those within a national park or monument. Managers may regulate hunting for reasons of public safety, administration, or public enjoyment, and may issue appropriate regulations after consultation with affected State wildlife agencies.

Federal Reserved Water Rights. Section 13(c) as interpreted in the Department of the Interior Solicitor's Opinion #M–36914 (June 25, 1979), provides the authority for managing agencies to secure unappropriated waters reasonably necessary for protection of the values for which river areas are designated as components of the national system. Consistent with their authority, managing agencies will seek to maintain river flows sufficient to support such values. The section also provides the authority to purchase water rights necessary to protect a given river resource.

Rights-of-Way. Section 13(g) authorizes the administering Secretary to grant easements over, under, across or through any component of the system provided that the conditions of such easements are related to the policy and purpose of the Act.

General Management Principles. Section 10(a) states:

> Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development based on the special attributes of the area.

This section is interpreted as stating a nondegradation and enhancement policy for all designated river areas, regardless of classification. A river area is managed to protect all the values which caused it to be designated. Each component will be managed to protect and enhance those values, while providing for public recreation and resource uses which do not adversely impact or degrade those values. Specific management strategies will vary according to classification but will always be designed to protect the values of the river area as they existed when the river was designated. Any land use and developments on private lands within the river area which were in existence when the river was designated will be permitted to continue. New land uses which are compatible with the purposes of the Act will also be permitted.

This section does not imply that managing agencies should encourage public use of wild, scenic and recreational river areas by developing additional public use and access facilities. Rather, additional facilities are to be provided only to protect the values of the river area from the impacts of existing and anticipated public use.

In some cases, depending on the classification of the river area and the nature of its resource values, it may be preferable to protect those values by restricting access and use to levels at which user impacts can be absorbed by the environment in its natural state, rather than by developing the area with facilities to accommodate higher usage rates. Generally, limited development will be acceptable in recreational river areas, while restricted access will be most appropriate for wild river areas. In scenic river areas a combination of the two methods may be most appropriate.

The management principles which follow stem from section 10(a).

Managing agencies will implement the principles to the fullest extent possible under their organic authorities and existing Federal, State and local laws.

Because of these limitations, however, implementation of the principles may differ among and within components of the system depending on whether the land areas involved are federally, State, locally or privately owned.

Carrying Capacity. Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Use, development and management of the river can then be planned accordingly.

Public Use and Access. Public use will be regulated and distributed where necessary to maintain or enhance (by allowing natural recovery where resources have been damaged) the resource values of the river area. Where necessary, public use will be controlled by limiting access to the river, by issuing permits, or by other means available to the managing agency through its organic authorities.

Basic Facilities. The managing agency may provide basic facilities to absorb user impacts on the resource. Wild river areas will contain only the basic minimum facilities in keeping with the "essentially primitive" nature of the area. If facilities such as toilets and refuse containers are necessary, they will be located at access points or at a sufficient distance from the river bank to minimize their intrusive impact. In scenic and recreational river areas, simple comfort and convenience facilities such as toilets, shelters, fireplaces, picnic tables and refuse containers are appropriate. These, when placed within the river corridor, will be judiciously located to protect the values of popular areas from the impacts of public use.

Major Facilities. Major public use facilities such as developed campgrounds, major visitor centers and administrative headquarters generally will not be located within wild, scenic and recreational river corridors.

If such facilities are necessary to provide for public use on recreational rivers, and location outside the corridor is infeasible, such facilities may be located within the river corridor provided they are visually consistent with the types of structures already existing in the river area and provided they do not have an adverse effect on the values for which the area was designated.

Motorized Travel. Motorized travel on land or water is generally permitted in wild, scenic and recreational river areas, but will be restricted or prohibited where necessary to protect the values for whioh the river area was designated.

Resource Management Practices. Resource management practices will be limited to those which are necessary for preservation or enhancement of natural resources. Such features as trail bridges, fences, small water divisions and drainage ditches, flow measurement devices and other minor structures or mangement practices are permitted when compatible with the classification of the river area and provided that the area remains natural in appearance and the practices or structures harmonize with the surrounding environment.

Agricultural Practices. Agricultural practices will be limited in nature and intensity to those present in the area at the time of designation. Generally, uses more intensive than grazing and hay production are incompatible with wild river classification. Rowcrop production and selective timber harvest may be practiced in scenic river areas. Recreational river areas may contain a larger range of agricultural uses.

Water Quality. The Federal Water Pollution Control Act Amendments of 1972 have made it a national goal that all waters of the United States be made fishable and swimmable by July 1, 1983. Therefore, water quality in wild, scenic and recreational river areas will be maintained or, where necessary, improved as rapidly as possible and to the fullest extent possible. Activities within the river corridor which are degrading or would degrade existing water quality will be terminated. Water quality in all wild, scenic and recreational river areas will be maintained at or brought up to levels which meet Federal criteria or federally approved State standards for aesthetics and fish and wildlife propagation. Wild river ares will be maintained at Federal or federally approved State standards for primary contact recreation, except where exceeded by natural background conditions. Scenic and recreational river segments will be maintained at or brought up to at least secondary contact recreation standards and primary contact standards if possible.

Other legislation applicable to the various managing agencies may also apply to wild and scenic river areas. Where conflicts exist between the provisions of the Wild and Scenic Rivers Act and other acts applicable to lands within the system, section 10 of the Act states that the more restrictive provisions shall apply.

Approved:

Dated: Janaury 19, 1981.

Bob Herbst,

Department of the Interior, Assistant Secretary for Fish and Wildlife and Parks.

Dated: Janaury 19, 1981.

R. Max Peterson,

Department of Agriculture, Acting Assistant Secretary for Natural Resources and Environment.

BILLING CODE 4310-03-M

TABLE 1.

ACCELERATED STUDY SCHEDULE

River Study Tasks	MONTHS 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1. Organize study team Prepare study plan Public information meetings Scope critical issues																														
2. Resource Inventories (a) Study Bndry. locations (b) River eligibility and classification evaluation (c) Literature search (d) Other agency contacts (e) Resource maps																														
3. Develop alternatives (a) Prepare alternatives display (b) Public meetings on findings and alternatives (c) Analyze Public Input (d) Evaluate alternatives																														
4. Complete Preliminary Report/DEIS																														
5. Review of Draft (a) Internal review (b) Revise preliminary as needed (c) Prepare camera ready copy. (d) Print Draft Report/EIS (e) Distribute for 90-day review (a) Public meetings or formal hearings during review.																														
6. Analyze Review Input Revise draft as needed. Internal Review																														
7. Print Final Report																														
8. Secretary's decision and transmittal of report w/recommendations to OMB																														
9. Executive review and transmittal to the Congress																														

This schedule does not take into account the possibility of delays due to Congressional concern, interagency or intradepartmental concerns or other possible outside influences that cannot be planned for.

TABLE 2.

CLASSIFICATION CRITERIA FOR WILD, SCENIC AND RECREATIONAL RIVER AREAS *

ATTRIBUTE	WILD	SCENIC	RECREATIONAL
Water Resources Development	Free of impoundment. The existence of a few unobtrusive low dams, diversion works and other minor structures is acceptable, provided the structures meet the criterion of "essentially primitive."	Free of impoundment. The existence of a few low dams, diversion works and other minor structures is acceptable, provided the structures meet the criterion of "largely primitive and undeveloped."	Some existing impoundment or diversion. The existence of impoundments, diversions or other modifications of the waterway is acceptable, provided the waterway remains generally natural and riverine in appearance.
Shoreline Development	Essentially primitive. Little or no evidence of man's intrusion. The presence of a few inconspicuous dwellings or farm structures is acceptable. Structures of historic or cultural value are not counted as intrusions. A limited amount of domestic livestock grazing or hay production is acceptable. Little or no evidence of past timber harvest. No ongoing timber harvest.	Largely primitive and undeveloped. No substantial evidence of man's intrusion. The presence of a few small rural communities or dispersed dwellings or farm structures is acceptable. Structures of historic or cultural value are not counted as intrusions. The presence of grazing, hay production or row crops not requiring highly mechanized agricultural techniques is acceptable. Evidence of past or ongoing selective timber harvest is acceptable, provided the forest appears natural-like from the riverbank.	Some development. Substantial evidence of man's intrusion. The presence of extensive residential development and a few commercial or light industrial structures is acceptable. Structures of historic or cultural value are not counted as intrusions. Lands may have been developed for the full range of agricultural uses. May show evidence of past and ongoing selective timber harvest.
Accessibility	Generally inaccessible except by trail. No roads, railroads or other provision for vehicular travel within the river corridor. A few existing roads leading to the boundary of the river area is acceptable.	Accessible in places by road or railroad. Roads or railroads may occasionally reach or bridge the river. The existence of short stretches of conspicuous or longer stretches of inconspicuous roads or railroads is acceptable.	Readily accessible by road or railroad. The existence of parallel roads or railroads on one or both banks as well as bridge crossings and other river access points is acceptable.
Water Quality	Meets or exceeds Federal criteria or federally approved State standards for aesthetics, for propagation of fish and wildlife normally adapted to the habitat of the river, and for primary contact recreation (swimming) except where exceeded by natural background conditions.	No criteria prescribed by the Wild and Scenic Rivers Act. The Federal Water Pollution Control Act Amendments of 1972 have made it a national goal that all waters of the United States be made fishable and swimmable by July 1, 1983. Therefore, rivers will not be precluded from scenic or recreational classification because of poor water quality at the time of their study, provided a water quality improvement plan exists or is being developed.	

* Table to be used only in conjunction with text.

[FR Doc. 81-3036 Filed 1-27-81; 8:45 am]
BILLING CODE 4310-03-C

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 5:00 p.m., on February 9, 1981, at the Federal Building, Room 117, 709 West Ninth, Juneau, Alaska 99802. The purpose of the meeting is to introduce new members; followup on Alaska employment in State government study and planning for seafood processing study.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Richard J. Stitt, Sealaska Plaza, Suite 400, Juneau, Alaska 99801, (907) 586-1512, of the Regional Office, Northwestern Region, U.S. Commission on Civil Rights, 915 Second Avenue, Room 2852, Seattle, Washington 98174, (206) 399-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 23, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-3161 Filed 1-27-81; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 10:00 p.m. on February 20, 1981; convene at 9:00 a.m. and end at 2:00 p.m. on February 21, 1981, at the St. Anthony Hotel, Room 357, 300 East Travis, San Antonio, Texas 78205. The purpose of the meeting is planning for the newly rechartered Advisory Committee.

Persons wishing additional information or planning a presentation to the Committee, should contact the Chairperson, Dr. Denzer Burke, 1421 Pine Street, Texarkana, Texas 75501, (214) 794-9741, or the Regional Office, Southwestern Region, U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, San Antonio Texas 78204, (512) 730-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 23, 1981.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 81-3162 Filed 1-27-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Viscose Rayon Staple Fiber From Italy; Preliminary Results of Administrative Review of Antidumping Finding

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

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Italy. The scope of the review is limited to the only known exporter, Italviscosa, and to the period November 1, 1979 through May 31, 1980. The review disclosed no shipments to the United States of this merchandise during this time period. There are no known unliquidated entries.

As a result of the review, the Department has preliminarily decided to require cash deposits equal to the calculated margins on the last known shipments for which margins have been found. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: J. Linnea Bucher or Michael Galbraith, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2704).

SUPPLEMETARY INFORMATION:

Procedural Background:

On June 13, 1979, a dumping finding with respect to viscose rayon staple fiber from Italy was published in the Federal Register as Treasury Decision 79-168 (44 FR 33878). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the Federal Register of March 28, 1980 (45 FR 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on viscose rayon staple fiber from Italy.

Scope of the Review

This review covers imports of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). These fibers are currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated (TSUSA).

The only known Italian exporter to the United States is Italviscoa. The review covers the period, November 1, 1979 through May 31, 1980. There are no known shipments to the United States during this time period and there are no known unliquidated entries.

Preliminary Results of the Review

As required by § 353.48(b) of the Commerce Regulations, we preliminarily determine that a cash deposit of estimated duties of 18.6%, based on the fair value weighted-average margin for Intalviscosa, shall be required on all shipments of viscose rayon staple fiber from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on this preliminary determination on or before February 27, 1981 and may request disclosure and/or a hearing on such determination on or before February 12, 1981. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and # 353.53 of the Commerce Regulations (19 CFR 353.53).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

January 21, 1981.

[FR Doc. 81-3663 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit

On December 23, 1980, Notice was published in the **Federal Register** (45 FR 84841), that an application had been filed with the National Marine Fisheries Service by the National Museum of Natural History, Smithsonian Institution, Washington, D.C. 20560, to import the skeleton of one (1) Heaviside's dolphin *(Cephalorhynchus heavisidii)* for the purpose of scientific research.

Notice is hereby given that on January 23, 1981, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above import to the National Museum subject to certain conditions set forth therein.

The Permit is available for review in the following office:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: January 23, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-3180 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Chief, Intellectual Prop. Division OTJAG, Department of the Army, Room 2D 444, Pentagon, Washington, D.C. 20310

Patent application 906,186: Prestressed Article, filed May 15, 1978.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Admin. Ser. Div., Federal Building, Science & Education Administration, Hyattsville, Md. 20782

Patent application 6-171,625: Log Handling Machine; filed July 23, 1980.

Patent application 6-171,626: Dyeing of Cellulose-Containing Textiles in Glycol and Glycol Ester Solvents; filed July 23, 1980.

Patent application 6-171,627: Method of Preparing Citrus Fruit Sections with Fresh Fruit Flavor and Appearance; filed July 23, 1980.

Patent 4,219,469: Extraction of Cottonseed and Concentrates to Improve the Color of Protein Isolate; filed September 19, 1978, patented August 26, 1980, not available NTIS.

Patent 4,224,030: Durable Press Finishing Treatment for Cellulose Textiles Employing an Aluminum Acetate Catalyst Solution, filed January 5, 1979, patented September 23, 1980, not available NTIS.

Patent 4,228,196: Process for Preparing Precooked Potato Products; filed October 2, 1979, patented October 14, 1980, not available NTIS.

U.S. Department of the Navy, Director, Navy Patent Program/Patent Counsel for the Navy, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent application 6-011,821: Method for Determining the Compensation Density in N-Type Narrow-Gap Semiconductors; filed February 13, 1979, patented August 12, 1980.

Patent application 6-148,856: Rocket Motor Arming-Firing Device FSU12/B; filed May 12, 1980.

Patent application 6-153,811: Blazed Surface Relief Holographic Optical Elements; filed May 27, 1980.

Patent application 6-156,157: Holographic Corrector Element; filed June 3, 1980.

Patent application 6-162,351: Gas Pressurizer; filed June 23, 1980.

Patent application 6-165,000: Near Infrared Polarizers; filed July 1, 1980.

Patent application 6-165,913: Improved Booster; filed July 3, 1980.

Patent application 6-172,585: Instrument for Measuring Dynamic Viscoelastic Properties, filed July 28, 1980.

Patent application 6-176,376: Helicopter Extractable Cold Weather Water Liferaft; filed August 8, 1980.

Patent application 6-176,426: Smoke Generating Apparatus; filed August 8, 1980.

Patent application 962,854: End-Butt Optical Fiber Coupler, filed November 22, 1978, patented August 12, 1980.

Patent 4,213,198: Method for Classification of Sonar Echoes; filed June 20, 1955, patented July 15, 1980, not available NTIS.

Patent 4,216,720: Rod-Fragment Controlled-Motion Warhead; filed May 30, 1974, patented August 12, 1980, not available NTIS.

Patent 4,216,766: Treatment of Body Tissue by Means of Internal Cavity Resonance; filed Sept 7, 1979, patented August 12, 1980, not available NTIS.

Patent 4,220,195: Ion Drag Pumped Heat Pipe; filed May 24, 1979, patented Sept 2, 1980, not available NTIS.

Patent 4,222,173: Shaft and Bore Misalignment Measurement Tool; filed December 22, 1978, patented September 16, 1980, not available NTIS.

Nat. Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent application 6-171,928: Digital Demodulator; filed July 18, 1980.

Patent application 6-178,192: Synthesis of Dawsonites; filed August 14, 1980.

Patent application 6-183,707: An Improved Synthesis of 2,4,8,10-Tetroxaspiro (5.5) Undecane; file September 3, 1980.

[FR Doc. 81-3185 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Down-Filled Apparel from Taiwan

January 23, 1981

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Permitting, until further notice, entry 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, produced or manufactured in Taiwan, which are visaed in dozens and which show in place of the category designation on the visa the words, "down-filled jackets/coats/vests".

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On November 3, 1980, there was published in the **Federal Register** (45 FR 72731) a letter dated October 24, 1980, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which prohibited entry into the United States for consumption, or 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 and after November 7, 1980, which were not accompanied by an export visa. In place of the textile category designation on the visas the following description was to be used until January 1, 1981: Down-filled jackets/coats/vest. The appropriate unit of measure was "dozens". The letter published below to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements extends the exemption for correct category designation and correct quantity in dozens until further notice.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

January 23, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 24, 1980, which established an export visa requirement for 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 and after November 7, 1980.

Effective on January 26, 1981, and until further notice, the final sentence of paragraph 2 of the directive of October 24, 1980, is amended to delete "until January 1, 1981".

The action taken with respect to the authorities in Taiwan and with respect to imports of the designated feather-filled apparel products from Taiwan has been determined by the committee for the Implementation of Textile Agreement 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. 81-3138 Filed 1-27-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Federal Radionavigation Plan; Availability

Notice is hereby given that the Federal Radionavigation Plan (FRP), a joint publication cosponsored by the Department of Defense and the Department of Transportation, has been released to the public. It supersedes the former Department of Transportation National Plan for Navigation (NPN).

The Federal Radionavigation Plan is a joint DOD/DOT management planning document for those radionavigation systems that are commonly used by both military and civil communities alike. It supports planning, programming and implementation of air, maritime and terrestial radionavigation systems. The Plan is the official source of common civil/military radionavigation policy and planning for both the Department of Defense and the Department of Transportation. The Plan has been prepared with the assistance from other federal agencies such as the Department of Commerce and the National Aeronautics and Space Administration and has their concurrence. The FRP will be updated annually and is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. Stock numbers and prices are listed below:

VOL 1, ADA 093774, Price $9.50
VOL 2, ADA 093775, Price $6.50
VOL 3, ADA 093776, Price $6.50
VOL 4, ADA 093777, Price $14.00

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

January 23, 1981.

[FR Doc. 81-3208 Filed 1-27-81; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

Review of Section 404 Permit Requests by the Assistant Secretary of the Army (Civil Works) and the Secretary of the Army

AGENCY: Department of the Army.

ACTION: Notice of review procedure.

SUMMARY: This notice describes for the public and for other agencies the actions to be taken by the Office of the Assistant Secretary of the Army (Civil Works) and the Office of the Secretary of the Army to inform the public when permit requests are referred to those offices for public interest review and determination. This notice also describes the procedure and time period available for interested parties to request that the official permit review record be reopened for inclusion of new, relevant, and previously unavailable information for consideration by the Assistant Secretary and the Secretary in making a final public interest determination.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Rogers or Major James P. King, Office of the Assistant Secretary of the Army (Civil Works), Washington, D.C. 20310 (202-697-4671).

SUPPLEMENTARY INFORMATION: In March 1980, the Secretary of the Army signed Memoranda of Agreement (MOA) with five other Federal agencies to implement provisions of Section 404(q) of the Clean Water Act. Full texts of the MOA were published in the **Federal Register** on September 19, 1980 (45 FR 62761 through 62772).

Under the MOA, final determination on Class I (EIS) permit referrals are made by the Secretary of the Army. The Assistant Secretary of the Army (Civil Works) has final authority on Class II referrals.

Experience gained to date in permit review has highlighted the importance of standard procedures to insure that all relevant data are available and *ex parte* communications are minimized. The procedures outlined in this notice will apply equally to permits referred to either the Office of the Assistant Secretary of the Army (Civil Works) or to the Office of the Secretary of the Army.

As soon as a permit case is referred, a notice will be published in the **Federal Register** and, where appropriate, in newspapers in the area of the proposed permit activity. The notice will advise the public that:

(1) The case is in the Assistant Secretary's or the Secretary's office for review (or final determination) and will be decided primarily on the record previously developed; therefore, the record is essentially closed.

(2) However, in the interest of sound decision-making, the Assistant Secretary (or Secretary) will consider written communications regarding the proposed permit if submitted within 20 (calendar) days from the publication of the notice if communications consist of evidence that is—

(a) new (not previously available or known);

(b) relevant;

(c) significant and verifiable (by reference to reliable data or other expert opinion).

(3) The communications must be in writing; oral communications will not be accepted.

(4) At the close of the 20-day period, an additional ten calendar days will be permitted for the public to file rebuttal comments to the material submitted during the 20-day public comment period.

(5) The record, including the newly admitted material, will be available for inspection both at the District Engineer's office and at the Office of the Assistant Secretary of the Army (Civil Works).

The material that is received will be screened initially by a person other than the decision-maker or his primary

advisor or deputy to determine if it meets the four criteria mentioned in paragraph (2) above. All doubtful cases will be forwarded to the decision-maker for his evaluation. He will give those documents what weight he considers appropriate and they will be place in the official record. Documents received that do not satisfy the criteria will be placed in the case file but not in the administrative record upon which the decision will be based. Regarding admissibility to the record, no distinction will be made between so-called factual data and expert opinion provided that in each instance the four criteria are satisfied. As new material meeting the criteria is received, copies will be forwarded simultaneously to the District Engineer's office. Allowing thirty calendar days (20 days comment and 10 days rebuttal) for this process from the date an objecting agency requests the matter be referred for review should not lengthen the decision-making time defined by MOA.

The procedure described by this notice will be periodically reviewed and any changes will be published in the **Federal Register.**

EFFECTIVE DATE: This review procedure shall be effective as of February 1, 1981.

Dated: January 19, 1981.

Edward Lee Rogers,

Deputy Assistant Secretary of the Army (Civil Works).

[FR Doc. 81-3062 Filed 1-27-81; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education; Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: Public Hearings, State Departments of Education: February 17, 1981, 1:30 to 3:30 p.m., contact Bob W. Walden, Adult Education program, Montgomery, Alabama; February 17, 1981, 1:00 to 3:00 p.m., contact Glenn Gossett, Adult Education Program, Baton Rouge, La; February 16, 1981, 1:30 to 3:30 p.m., contact William Box, Adult Education Program, Jackson, Miss.; February 17, 1981, 9:00 to 11:30 a.m., contact Luke Easter, Adult and Continuing Education, Nashville, Tennessee. All hearings are on reauthorization of the Adult Educ. Act.

February 16–17, 1981, State Visitations.

February 18–19, 1981, 9:00 a.m. to 5:00 p.m., Council Meeting.

ADDRESS: Hyatt Regency Nashville, 623 Union Street, Nashville, Tenn.

FOR FURTHER INFORMATION CONTACT: Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376–8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The council shall review the administration and effectiveness of programs uinder this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council is open to the public. The proposed agenda includes:

Discussion of state public hearings.

Local program visitations.

Reauthorization procedures.

Committee reports.

Future Council meetings.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C. on January 23, 1981.

Gary A. Eyre,

Executive Directory, National Advisory Council on Adult Education.

[FR Doc. 81-3137 Filed 1-27-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant (WIPP); Record of Decision

This Record of Decision has been prepared on the Waste Isolation Pilot Plant (WIPP) Project pursuant to Regulations of the Council on Environmental Quality, 40 CFR 1505.

Decision

The U.S. Department of Energy (DOE) has decided to proceed with the WIPP project at the Los Medanos Site in the Delaware Basin of southeast New Mexico as directed by the U.S. Congress in Public Law 96–164 "Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980". The WIPP project, which is described as Alternative 2 in the Final Environmental Impact Statement (FEIS), DOE/EIS–0026, October, 1980, will be developed "as a defense activity of the DOE for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States" Public Law 96–164. Construction of permanent surface and underground facilities will proceed on a phased basis consistent with the evaluation of data obtained during the Site and Preliminary Design Validation (SPDV) program as defined in the FEIS. If significant new environmental data results from the SPDV program or other WIPP project activities, the FEIS will be supplemented as appropriate to reflect such data, and this decision to proceed with phased construction and operation of th WIPP facility will be reexamined in the light of that supplemental National Environmental Policy Act (NEPA) review.

The WIPP facility will dispose of defense transuranic (TRU) waste stored retrievably at the Idaho National Engineering Laboratory (INEL). By approximately 1990 all existing waste stored at INEL will have been removed to WIPP, and the WIPP facility would be in a position to receive and dispose of TRU waste from other defense waste generating facilities. In addition, WIPP will include an experimental facility for conducting experiments on defense wastes, including small volumes of defense high-level waste. The high-level waste used for experiments will be retrieved and removed from the site prior to decommissioning of the WIPP facility.

Description of Alternatives

The following alternatives were considered by the DOE for demonstrating the safe disposal of TRU waste resulting from United States defense programs that is currently stored or planned for storage at INEL:

Alternative 1

This no action alternative would permit the TRU waste presently stored in a retrievable fashion at the INEL to remain there in surface storage for an indeterminate period; waste would continue to be shipped there and held in storage throughout the same indeterminate period. No action would be taken at the Los Medanos Site or any other site relative to demonstrating the safe disposal of TRU waste from defense programs.

Alternative 2

This alternative involves the development of the authorized WIPP facility, consisting of both surface and underground facilities at the Los Medanos site in southeast New Mexico, designed to retrievably emplace approximately 6.2 million cubic feet of contact-handled TRU waste and as much as 250,000 cubic feet of remotely handled TRU waste in a mined repository. This facility also would include a 20 acre underground area for short-term experiments on all types of radioactive defense wastes to answer technical questions about the potential disposal of waste, particularly high-level waste, in salt. All the high-level waste used for the research would be removed at the completion of the experiments.

In order to provide final site validation and to verify the analyses used in the design of the underground facility, the construction of the WIPP facility would be preceded by the construction of two deep shafts and an underground geological experimentation facility at the Los Medanos site. The shafts and underground area would be instrumented to measure rock response and various non-radioactive experiments conducted to observe waste-package performance under repository conditions. If significant new environmental data results from these site and design validation activities (or other WIPP project activities), the FEIS will be supplemented as appropriate by a further NEPA review and the decision to proceed with phased construction and operation of the WIPP facility will be reexamined in the light of that supplemental NEPA review.

Alternative 3

This alternative consists of the disposal of stored INEL TRU waste in the first available repository for high-level radioactive waste. In this alternative there would be no separate facility for demonstration of the safe disposal of defense TRU waste. A number of potential sites for repositories for both TRU waste and high-level waste would be located, characterized and evaluated in accordance with the procedure and schedule outlined in the DOE Statement of Position in the Nuclear Regulatory Commission Waste Confidence Rulemaking, PR 50, 51 (44 FR 61372). In this alternative, defense TRU waste would remain stored in a retrievable fashion at the INEL until the first high-level waste repository becomes available in the period now scheduled between 1997 and 2006.

Alternative 4

This alternative involves selection of a WIPP facility but the decision on the site for such a facility would be delayed until at least 1984 when two or three sites in addition to the Los Medanos site should be available for detailed consideration. During the evaluation of additional sites, TRU waste would remain in retrievable storage at the INEL. Additional sites in salt domes and basalt would be examined as potential facility locations.

Additional Alternatives

Alternative disposal methods to mined geological disposal for defense TRU waste were also evaluated by DOE and rejected as either impractical or infeasible due to the lack of necessary technology. These alternate disposal methods included emplacement in deep ocean sediments, emplacement in very deep drillholes, transmutation, and ejection into space.

Basis for Decision

In compliance with NEPA, DOE has analyzed the environmental impacts of the authorized WIPP project and alternatives thereto in the FEIS. Comments on the draft statement were considered in preparing the FEIS. Comments on the FEIS are evaluated in WIPP/DOE–81 and were considered in preparation of this Record of Decision.

DOE has determined that the long term impact on the human environment resulting from Alternative 1 (no action) is unacceptable. Leaving the TRU waste in surface storage at the INEL could lead to very high radiation exposures both to individuals and the general population as a result of future volcanic action or human intrusion after government control of the site is lost. There are no suitable geologic environments for disposal of the waste permanently on the INEl site. Consequently, none of the options for leaving the waste at INEL indefinitely are environmentally acceptable.

Alternatives 2, 3 and 4 are each predicted to have environmental impacts that are acceptably small both in the short term during construction and operation and in the more distant future. None of these alternatives is so clearly superior environmentally to the others that it can be identified as environmentally preferable.

Alternative 3 was identified in the FEIS as DOE's preferred alternative. This preference was based on its consistency with the comprehensive radioactive waste management program described in the Presidential Statement of February 12, 1980. Alternative 3 would delay the removal of the INEL stored TRU waste until 1997 at the earliest.

Alternative 4 would result in delay in removal of the stored TRU waste from INEL until 1991 at the earliest. Otherwise, its environmental impacts would be identical to alternative 2 if the Los Medanos site were selected after comparison with other sites for construction of a WIPP-like facility.

In contrast, implementation of Alternative 2 could result in an operational facility by 1987 and thus solve the unacceptable long-term environmental problem of storing TRU waste at INEL in the shortest amount of time and avoid the inflationary costs attributable to dalay in constructing the facility. More importantly, the WIPP project provides an opportunity for an early demonstration of the safe disposal of defense TRU waste and for experimentation on bedded salt as a disposal medium for defense high-level wastes.

The environmental impacts predicted for Alternative 2 are generally small and the Los Medanos site appears acceptable for long-term disposal of TRU waste with minimal risk of any release of radioactivity to the environment. There is no indication that an alternate site for the demonstration would pose reduced risks. Nevertheless, the use of the Los Medanos site in southeastern New Mexico would deny access to 3% to 10% of the known U.S. reserves of the mineral langbeinite for the operating life of the repository and may require controls on its extraction thereafter.

The consequences of extremely unlikely accidents during the transportation of transuranic and high-level waste to the Los Medanos site

could induce moderate radiation exposures and significant decontamination costs, but they would be similar regardless of when or where an experimental facility or combined repository is built. The probabilities and the overall population doses would change depending on the location of the repository, but the radiation doses received by the maximally exposed individual would be the same.

Mitigation

DOE will mitigate adverse impacts of the WIPP project on the quality of the human environment by implementing the proposed mitigation activities as described in Section 9.6 of the FEIS.

In addition to the active mitigation measures to be taken, the monitoring activities described in Section 2, Appendix J of the FEIS will be implemented. Some modifications of these programs may occur based upon data acquired during the Preoperational Environmental programs (Section J.1). DOE also intends to implement the Postoperational Monitoring Program described in Section J.3.

Conclusion

DOE has weighed the benefits of proceeding with the authorized WIPP project against its potential environmental impacts and costs, and after consideration of the benefits, impacts and costs of reasonably available alternatives, has determined to proceed with the phased construction and operation of the authorized WIPP project. Should the SPDV program or any other WIPP project activity result in significant new environmental information, a supplemental NEPA review will be undertaken as appropriate to reflect such information, and this decision to proceed with phased construction and operation will be reexamined in the light of this supplemental NEPA review.

Dated: January 22, 1981.

For the United States Department of Energy.

Duane C. Sewell,

Assistant Secretary for Defense Programs.

[FR Doc. 81-3209 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

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. On or before February 12, 1981, 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 22nd day of January, 1981.

Robert D. Gerring,

Director, Division, Economic Regulatory Administration.

Proposed Remedial Orders
Southwest District

Station and address	Date	Violation amount	Cents per gallon in violation
Sheffield's Highland Texaco, 3103 Highland Avenue, Shreveport, LA 70104	11/05/80	$2,162.73	1.6
Crow Brothers, Inc., 1540 Gause Boulevard, Slidell, LA 70458	12/08/80	13,617.80	11.9
Plaza Service Center, 1625 South Pacific St., Las Vegas, NM 87701	11/10/80	24,297.92	7.9

[FR Doc. 81-3210 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3633-000]

Alternative Energy Associates; Application for Preliminary Permit

January 21, 1981.

Take notice that Alternative Energy Associates (Applicant) filed on October 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3633 to be known as the Brighton Dam Project located on the Patuxent River in Montgomery County, Maryland. The application is on file with the Commission and is available for public inspection. The Brighton Dam is owned by the Washington Suburban Sanitary Commission. Correspondence with the Applicant should be directed to: Mr. James A. Federline, Alternative Energy Associates, 26 West Diamond Avenue, Gaithersburg, Maryland 20760. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) the existing Brighton Dam, 995-feet long and 85 feet high; (2) a spillway 250 feet long with thirteen 15 by 18 feet taintor crest gates; (3) an existing powerhouse built between two buttresses on the northern bank; (4) two 30-inch diameter penstocks; (5) two 240-kW horizontal turbine/generator units; (6) a reservoir maintained at elevation 363.4 feet m.s.l., three feet below the top of flashboards; and (7) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 2,685,000 kWh.

Purpose of Project—Project energy would be sold to the Baltimore Gas and Electric Company.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of one year, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of 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 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 April 6, 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 June 5, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). 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 of 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 received on or before April 6, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these findings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3633. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Coimmission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3102 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-30-000]

Amendt Oil Co.; Filing of Petition for Review Under 42 U.S.C. 7194

Issued: January 21, 1981.

Take notice that Amendt Oil Company on December 1, 1980, filed a Petition for review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before February 4, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before February 4, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3103 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-108-000]

Boundary Gas, Inc.; Application

January 21, 1981.

Take notice that on December 19, 1980, Boundary Gas, Inc. (Applicant), Eight Arlington Street, Boston, Massachusetts 02116, filed in Docket No. CP81-108-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the resale of imported Canadian natural gas to its fourteen stockholders, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a precedent agreement with TransCanada PipeLines Limited (TransCanada), Applicant would import up to 185,000 Mcf of gas daily from Canada for a period of ten years and immediately resell the gas to its stockholders with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. providing transportation of the gas in the United States. Applicant proposes to sell the subject gas to the following fourteen stockholders:

Company	Ownership percentage
The Brooklyn Union Gas Company	27.54
Consolidated Edison Company of New York, Inc.	22.54
Long Island Lighting Company	12.97
Bay State Gas Company	10.27
New Jersey Natural Gas Company	7.85
Boston Gas Company	7.52
Connecticut Gas Company	5.11
National Fuel Gas Supply Corporation	4.87
Haverhill Gas Company	1.74
Manchester Gas Company	1.16
Valley Gas Company	1.15
Berkshire Gas Company	1.14
Gas Service, Inc.	.57
Fitchburg Gas and Electric Light Company	.57

Pursuant to the terms of the gas sales agreements, Applicant states that each stockholder would be entitled to purchase gas from Applicant in proportion to its percentage of stock ownership. Applicant asserts that each stockholder's scheduled daily delivery would be equal to the product of its percentage entitlement and the daily contract quantity provided in the gas purchase contract with TransCanada unless the stockholder has notified Applicant at least one day in advance of its intent not to take its full volumes. Applicant states that volumes not taken by a stockholder would be made available to other stockholders in proportion to their percentage entitlements and that each would be entitled to take excess gas in the proportion that its percentage

entitlement bears to the percentage entitlements of all stockholders taking such excess gas.

Applicant purports that each stockholder's minimum annual quantity would be equal to its percentage entitlement multiplied by 75 percent of the daily contract quantity times the number of days in the contract year less any contract volumes requested by that stockholder but not delivered. Moreover, it is stated, to the extent that a stockholder accepts volumes released by another stockholder, that stockholder's minimum annual quantity would be reduced by the same amount. Applicant states that a stockholder would be obligated to pay for gas not taken only if (1) that stockholder did not take its minimum annual quantity and (2) Applicant did not take its minimum annual quantity.

Pursuant to the gas sales agreements, it is asserted that each stockholder would be entitled to take delivery of take or pay gas equal in volume to the gas which that stockholder paid for but did not take. Each stockholder would be entitled to other make-up gas equal to the total contract volume under the agreement with TransCanada times the stockholder's percentage entitlement less the sum of all deliveries to the stockholder, all volumes released by the stockholder and all undelivered volumes of take or pay gas for that stockholder. Applicant states that each stockholder would be entitled to take delivery of make-up gas whenever Applicant is entitled to delivery of such gas from TransCanada. It is further stated that to the extent that any gas remains undelivered at the end of the ten year primary contract term, the stockholders would be entitled to take delivery of make-up gas during the one year succeeding the primary contract term.

It is stated that TransCanada would invoice Applicant on a monthly basis and that Applicant would allocate each TransCanada invoice among the stockholders in the same proportion as the gas received by such stockholder based on the gas delivered to all stockholders in the billing month. Applicant states that with regard to take or pay gas, each stockholder's obligation to pay for gas not taken would be determined according to a volume deficiency formula and when take or pay gas is actually delivered to a stockholder that stockholder would pay the current contract price on the day the take or pay gas is delivered less the amount previously paid to Applicant for such gas.

In addition, Applicant states that under the gas sales agreements, Applicant is entitled to collect from each stockholder a proportionate share of the monthly costs and expenses actually incurred by Applicant in performing the importation and resale of the Canadian gas which Applicant estimates would not exceed $300,000 per annum.

Applicant states that the imported gas is needed in the northeastern United States which has high gas consumption and limited access to pipeline gas supplies. Moreover, Applicant contends that without additional gas supplies the stockholders would be unable to meet current customer commitments beginning in the early 1980's. While the Canadian gas in itself does not assure delivery of sufficient supplies, it is stated that Applicant's gas would substantially increase the flexibility of the stockholders' capability of meeting resale requirements and lessen further reliance on imported No. 2 heating oil. Moreover, Applicant asserts that the liberal minimum purchase and make-up provision of the gas purchase contract together with the firm transportation arrangements resonably assures that Applicant would be able to take gas when the stockholder can independently judge when gas supplies from Canada are needed to serve their respective markets under acceptable terms and conditions.

Applicant specifically requests express authorization to pass through, charge and collect from each stockholder all gas acquisition costs and other costs related to Applicant's performance. In addition, Applicant requests that National Fuel Gas Supply Corporation (National Fuel) be authorized to flow through to its customers on a rolled-in basis the cost incurred, because National Fuel unlike the thirteen other stockholders can recover such costs only if authorized to do so. Further, Applicant requests on behalf of National Fuel permission to include in the costs to be recovered from the latter's customer the pre-certification expenses incurred by National Fuel after October 14, 1980.

Applicant further request that the proposed sale of Canadian gas be exempt from the incremental pricing provisions of Title II of the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3104 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-107-000]

Boundary Gas, Inc.; Application

January 21, 1981.

Take notice that on December 19, 1980, Boundary Gas, Inc. (Applicant), Eight Arlington Street, Boston, Massachusetts 02116, filed in Docket No. CP81-107-000 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas near Niagara, Ontario, from TransCanada PipeLines Limited (TransCanada), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to purchase from TransCanada up to 185,000 Mcf of natural gas per day for resale to the fourteen stockholders of Applicant all of which are located in the northeastern United States. It is stated that Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) would provide transportation of the gas in the United States to the following fourteen stockholders:

The Brooklyn Union Gas Company.

Consolidated Edison Company of New York, Inc.
Long Island Lighting Company.
Bay State Gas Company.
New Jersey Natural Gas Company.
Boston Gas Company.
Connecticut Gas Company.
National Fuel Gas Supply Corporation.
Haverhill Gas Company.
Manchester Gas Company.
Valley Gas Company.
Berkshire Gas Company.
Gas Service, Inc.
Fitchburg Gas and Electric Light Company.

Applicant states that it and TransCanada have entered into an October 14, 1980, precedent agreement with an attached gas purchase contract which would be executed after receipt and acceptance of all necessary government authorizations. It is stated that the primary term of the contract is ten years which would commence on the day of first delivery of gas but no later than November 1, 1982, with one additional year for the delivery of contract quantities of gas not delivered during the primary contract term but paid for under Applicant's take or pay obligation.

Pursuant to the gas purchase contract, it is stated that TransCanada may sell and deliver on a best-efforts basis gas in excess of the 185,000 Mcf daily contract quantity but in no event would sell a total volume of gas in excess of the daily contract quantity times the number of days in the ten year primary contract term or approximately 675,250,000 Mcf of natural gas.

Applicant states that it would take and pay for or nevertheless pay for a minimum annual quantity of gas equal to 75 percent of the product of the daily contract quantity and the number of days in the contract year less any contract volumes requested by Applicant but not delivered by TransCanada. Applicant asserts that its obligation to pay for gas not taken would be determined annually at the end of each contract year.

In addition, it is asserted that if for any reason Applicant does not take gas to which it is entitled under the contract, Applicant would have the right, subject to the daily contract quantity and the excess gas provisions, at any time during the primary contract term and for one year thereafter to make up such gas regardless of whether the gas was paid for (take or pay gas) or any other gas not taken and not paid for.

Applicant states that the contract price of gas delivered to Applicant would be the price per million Btu's determined by the Government of Canada for gas exported to the United States. It is further stated that if Applicant becomes obligated to pay for gas not taken in any contract year, Applicant's payment would be based upon the weighted average price and weighted average Btu of the gas actually delivered in that contract year. Moreover, Applicant maintains that when take or pay gas is ultimately delivered to Applicant, Applicant would pay the difference between the then current contract price and the amount previously paid for such gas and that the price for make up gas (other than take or pay gas) would be the contract price in effect at the time the make up gas is delivered.

Applicant states that the point of deliveries for contract volumes would be the existing interconnection of TransCanada's and Tennessee's pipelines at the international border near Niagara, Ontario. Applicant contends that upon delivery of the gas by TransCanada it would immediately resell the gas to its stockholders pursuant to gas sales agreements.

Applicant states that on November 21, 1980, TransCanada applied to the National Energy Board of Canada for a license to export gas in accordance with the precedent agreement and gas purchase contract. It is stated that TransCanada has under contract sufficient quantities of gas to meet its previous commitments along with the proposed export to Applicant. Applicant states that TransCanada has never curtailed deliveries to a United States customer and that Canadian gas would be a secure and stable source of supply for its stockholders. The importation along with the resale to Applicant's stockholders would open the northeastern United States gas markets to Canadian gas supplies meaning a broader distribution of Canadian gas across the nation enhancing both national and regional energy security, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3105 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1928-000]

Byron O. McCoy; Filing

January 21, 1981.

Take notice that on December 8, 1980, Byron O. McCoy submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

Director, Vermont Electric Power Co., Inc., Public Utility.
Director, Allied Power and Light Company, Public Utility.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 11, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3106 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER76-819]

Central Illinois Light Co.; Filing

January 21, 1981.

The filing Company submits the following:

Take notice that on January 7, 1981, Central Illinois Light Company (CILCO) submitted for filing a response to a letter of deficiency, issued by the Office of Electric Power Regulation, concerning CILCO's filing in compliance with Commission Opinion No. 81.

A copy of this filing has been served upon the parties to this proceeding.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 10, 1981. Comments will be considered by the Commission in

determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3107 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-119-000]

Colorado Interstate Gas Co.; Application

January 22, 1981.

Take notice that on December 29, 1980, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP81-119-000 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 the Sweetwater Compressor Station, Sweetwater County, Wyoming, 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 new 3,000-horsepower compressor station in Sweetwater County, Wyoming, and minor connecting facilities to increase Applicant's delivery capacity of its Wyoming pipeline system in the 1982-1983 heating season and thereafter. Operation would commence in mid-September 1982, it is stated.

The estimated cost of the facilities would be $8,486,800, it is stated. Such costs would be financed from funds on hand, internally generated cash from operations and such additional funds from external sources as may be required including short-term borrowings or long-term financing, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 12, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3108 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-11]

Columbia Gas Transmission Corp.; Third Party Protest [1]

Issued: January 19, 1981.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rulemaking of Order 23-B" [3] the Associated Gas Distributors (AGD) filed a third-party protest on December 23, 1980 contesting the assertion by Columbia Gas Transmission Corporation (Columbia) and certain producers that contracts identified in its protest [4] constitute authority for the producers to charge and collect any applicable maximum lawful price under the Natural Gas Policy Act of 1978 (NGPA).

Any person, other than the pipeline and the seller, desiring to be heard or to make any responses with respect to these protests should file with the Commission, on or before January 31, 1981 a petition to intervene; in accordance with 18 C.F.R. § 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Lois D. Cashell,

Acting Secretary.

[1] The term "third party protest" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protested Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

[4] Included in the Appendix.

Appendix

1. AGD adds the following contracts to Type 1 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests them accordingly:

Seller and Date

Allegheny Land & Mineral, 9/24/80
Envirogas, Inc., 10/4/80
Oilmark & Co., Inc. *et al.*, 9/11/80
Oilmark & Co., Inc. *et al.*, 10/9/79
R&R Associates, 8/13/80
Union Drilling, Inc., 9/3/80
Watson & Swanson, 7/14/80

2. AGD adds the following contracts to Type 2 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests them accordingly:

Seller and Date

Joseph L. & Betty Dunn, 11/18/26
Roy G. Hildreth, Jr., 1/8/73

3. AGD adds the following contract to Type 3 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests them accordingly:

Seller and Date

Priest Oil & Gas Corp. & Crocker Investment Corp., 5/22/74

4. AGD adds the following contracts to Type 5 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests them accordingly:

Seller and Date

Dry Creek Oil & Gas Co., 1/16/30
Jacks Creek Oil & Gas Co., 7/10/29
Keystone Gas Co., 1/30/45
Keystone Gas Co., 12/14/37
Keystone Gas Co., 10/14/33
Keystone Gas Co., 5/8/47
Keystone Gas Co., 5/8/47
Keystone Gas Co., 9/28/26
Keystone Gas Co., 10/14/33
Keystone Gas Co., 1/24/30
Keystone Gas Co., 11/23/33
Keystone Gas Co., 11/14/45
Keystone Gas Co., 1/1/24
W. W. Lindsey, Trustee, 3/2/48
W. W. Lindsey, Jr., 12/21/49
W. W. Lindsey W. E. Elliott, Partners d.b.a. Lindsey & Elliott, 12/5/52
Ranuff Oil & Gas Co., 1/26/80
Lyle V. Smith, 9/3/43
Star Gas Co., 2/4/35

5. AGD adds the following contracts to Type 13 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests them accordingly:

Seller and Date

Alco Oil Co., 6/2/65
Stout Gas Co., 1/23/68
Durham Gas Co., 12/6/46
Estate of Clint Litton, 7/8/43
Star Gas Co., 1/1/42
Star Gas Co., 5/16/27
Star Gas Co., 6/10/42
Star Gas Co., 7/9/41
Star Gas Co., 8/20/37
Star Gas Co., 8/17/50
Star Gas Co., 8/10/37
Star Gas Co., 8/14/37
Star Gas Co., 9/13/37
Delany Gas Co., 6/28/38
Star Gas Co., 7/7/37
Ruffner Gas Co., 10/13/47
Star Gas Co., 11/24/17
Star Gas Co., 3/15/20
Star Gas Co., 2/4/35
Wilson Gas Co., 7/27/43

6. AGD adds the following contract to Type 15 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests it accordingly:

Seller and Date

W. W. Lindsey & W. E. Elliott, Partners, d.b.a. Lindsey & Elliott, 7/18/56

7. AGD adds the following contract to Type 23 in the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production, and protests it accordingly:

Seller and Date

Kenneth P. Milliken, 12/23/43
Arthur L. Huffman, 10/11/50

8. AGD added to the contracts included in Part X of its November 14, 1979 Protest of Columbia's Appalachian production all contracts containing area rate clause Type 26, and adds to the Appendix to that Protest the following list of all contracts containing area rate clause Type 26:

Seller and Date

Allegheny Land & Mineral Co., 10/20/80
Blue Creek Gas Co., 9/9/80
Alton Skinner, d.b.a. Chase Petroleum, 9/26/80
Aldor, 9/19/80
Fox Oil & Gas, Inc., 9/2/80
Bob Hurt, 9/10/80
W. J. Lydic, Inc. *et al.*, 9/25/80
Natural Resouce Management Corp., Algonquin Limited Partnership, MCO Resources, Inc., 9/26/80
Natural Resource Management Corp., NRM 1978-1, Oppenheimer Oil & Gas, Inc., Cambridge Oil Co., 9/16/80
Union Drilling, Inc., 10/20/80
Union Drilling, Inc., 10/20/80

9. AGD adds to the contracts included in Part X of its November 14, 1979 Protest of Columbia's Appalachian production all contracts containing area rate clause Type 27, and adds to the Appendix to that Protest the following list of all contracts containing area rate clause Type 27:

Seller and Date
Amoco Production Co., 9/2/80

10. AGD protests the following contracts, which it designates as Type 28, and adds the following list of all contracts containing Clause Type 28 to the Appendix to its November 14, 1979 Protest of Columbia's Appalachian production:

Seller and Date

James E. Burden, Lionel T. Aiken, and Jeffrey P. Mansuy, Trustees, 7/28/77

Each of these contracts contains the following contractual provision:

> Upon the issuance by the Commission, or any governmental authority * * * of a final valid order, decision or policy, not subject to suspension or appeal, establishing a rate or rates which would be applicable to the gas being sold hereunder if contractual authority existed * * *.

AGD submitted that this contract language is inconsistent with the conclusion that the contracts in which it appears authorize the seller to collect the filed-for NGPA rate. As reasons therefor, AGD stated the following:

(1) The clause authorizes escalation only to rates that are established by "final valid order, decision or policy, not subject to suspension or appeal." This phrase describes rates that are set by agency action; rates established by Congressional action are not included in this description.

[FR Doc. 81-3109 Filed 1-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA80-40]

Commodities Exchange Center, Inc.; Concerning Appeal

January 21, 1981.

On December 15, 1980, an appeal was filed in this proceeding by the Secretary of Energy of the Presiding Officer's Order Denying Request for Reference to the Commission, issued December 11, 1980.

Notice is hereby given that the designated Commissioner under Section 1.28(c)(4) of the Commission's Rules (18 CFR 1.28(c)(4)) has not determined that extraordinary circumstances exist and therefore the appeal will not be referred to the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3110 Filed 1-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ID-1932-000]

David R. Newcomb; Filing

January 21, 1981

Take notice that on December 29, 1980, David R. Newcomb submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

Director, New York State Electric & Gas Corporation, Public Utility;
Director, President and Chief Executive Officer, Buffalo Forge Company, Supplying electrical equipment.

In the alternative, Applicant states that the above-named positions are not within the purview of section 305(b) of the Federal Power Act.

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 February 13, 1981. 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 are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3111 Filed 1-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ID-1931-000]

Donald E. Rose; Filing

January 21, 1981.

Take notice that on December 19, 1980, Donald E. Rose submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

Treasurer, Massachusetts Electric Company, Public Utility;
Treasurer, New England Power Company, Public Utility;
Treasurer, Yankee Atomic Electric Company, Public Utility.

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 February 11,

1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3112 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-217-000]

Duke Power Co.; Filing

January 21, 1981.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on January 12, 1981 a supplement to the Company's Electric Power Contract with York Electric Cooperative, Inc. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 146.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increases in designated demand: Delivery Point No. 1 from 3,700 kW to 4,000 kW, Delivery Point No. 3 from 5,500 kW to 6,000 kW, Delivery Point No. 6 from 10,200 kW to 12,000 kW, Delivery Point No. 7 from 3,500 kW to 3,800 kW, Delivery Point No. 8 from 1,700 kW to 2,000 kW, Delivery Point No. 9 from 2,600 kW to 2,800 kW, and Delivery Point No. 11 from 6,000 kW to 7,000 kW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of March 19, 1981.

According to Duke Power copies of this filing were mailed to York Electric Cooperative, Inc., and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before February 10, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3113 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-19-000]

Gulf States Utilities Co.; Supplemental Application

January 19, 1981.

Take notice that on December 31, 1980, Gulf States Utilities Company (Applicant) filed a supplemental application with the Federal Energy Regulatory Commission (the Commission) seeking an order pursuant to Section 204(a) of the Federal Power Act authorizing the issuance of up to 500,000 shares of New Preferred Stock having a Par Value of $100 per share and/or up to 2,000,000 Shares of New Preference Stock, having a Stated Value of $25.00 per share, via negotiated placement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 30, 1981, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3144 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1930-000]

Harry W. Spell; Filing

January 21, 1981.

Take notice that on December 15, 1980, Harry W. Spell submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

Senior Vice President-Finance Northern States Power Company (Minnesota), Public Utility;

Director, Northern States Power Company (Wisconsin), Public Utility.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 11, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3115 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1609]

James C. Nesbitt; filing

January 21, 1981.

Take notice that on December 1, 1980, James C. Nesbitt submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

President-Finance, Massachusetts Electric Company, Public Utility;

President-Finance, the Narragansett Electric Company, Public Utility;

President-Finance Director, New England Power Company, Public Utility.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before February 11, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3116 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-759]

Kansas Power and Light Co.; Filing

January 21, 1981.

The filing company submits the following:

Take notice that on or about December 1, 1980, Kansas Power and Light Company (KPL) submitted for filing an amendment to its Interconnection and Interchange Agreement with Sunflower Electric Cooperative. Said amendment is being submitted for filing in compliance with the requirements of Commission Order No. 84. Said amendment also contains language that is substantially different from that contained in KPL's filing of September 10, 1980, in the above-referenced proceeding.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 9, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3117 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-11161, et al. Docket Nos. CI71-85 et al.]

MCOR Oil and Gas Corp. (Successor to McCulloch Oil and Gas Corporation); MCR Oil Corp. of Texas (Successor to McCulloch Oil Corporation of Texas; Corporate Name Change

January 19, 1981.

Take notice that on July 11, 1980, MCOR Oil and Gas Corporation filed in Docket Nos. G-11161, *et al.*, a notice of corporate name change advising the Commission that MCOR is the successor in interest to all of the gas sales of McCulloch Oil and Gas Corporation, effective June 5, 1980, and requesting amendment of the certificates currently held by McCulloch Oil and Gas Corporation and redesignation of all the FERC Gas Rate Schedules.

Take notice also, that on July 11, 1980, MCR Oil Corporation of Texas filed in Docket Nos. CI71-85, *et al.*, a notice of corporate name change advising the Commission that MCR is the successor in interest to all of the gas sales of McCulloch Oil Corporation of Texas, effective June 11, 1980, and requesting amendment of the certificates currently held by McCulloch Oil Corporation of Texas and redesignation of all the FERC Gas Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 2, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice, that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3118 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CP66-110-016, et al., CP66-121-002, CP79-161-003]

Midwestern Gas Transmission Co.; Petition To Amend

January 22, 1981.

Take notice that on December 23, 1980, Midwestern Gas Transmission Company (Petitioner), P.O. Box 2511, Houston Texas 77001, fined in Docket Nos. CP66-110-016, *et al.*, CP66-121-002, CP79-161-003 a petition to amend the order issued October 1, 1980, in the instant dockets pursuant to Section 3 and to Section 7(c) of the Natural Gas Act so as to authorize an increase in the volume of imported gas purchased from TransCanada Gas PipeLines Limited (TransCanada) and an increase in the volume of gas resold to Tennessee Gas Pipeline Company, a Division of Tenneco Inc., (Tennessee), Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) and Natural Gas Pipeline Company of America (Natural), 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 by order issued October 1, 1980, it was authorized to continue until October 31, 1981, the importation of up to 114,000,000 Mcf of natural gas from Canada at daily volumes of up to 350,000 Mcf and to resell to Tennessee, Northern and Natural up to 350,000 Mcf of natural gas per day.

Petitioner states that TransCanada has informed it that it has increased quantities available for export from time to time. Petitioner believes an increased daily maximum quantity with no firm contractural obligation could be valuable and necessary for itself and its resale customers in the upcoming winter months. Petitioner therefore proposes to import up to 600,000 Mcf of gas per day from TransCanada and to resell this quantity to Tennessee, Northern and Natural. Petitoner states that no change is contemplated in the total volumes of 114,000,000 Mcf to be imported by Petitioenr up to and including October 31, 1981.

Petitioner states that TransCanada presently has volumes of up to 600,000 Mcf per day available but that this availability is dependent upon the requirements of TransCanada's customers and that TransCanada would offer the extra gas strictly on a best-efforts basis.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 9, 1981, 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 approprate action to be taken but will not serve to make the

protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3119 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP72-224-001]

Northern Natural Gas Co., Division of InterNorth, Inc.; Petition to Amend

January 21, 1981.

Take notice that on December 30, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP72-224-001 a petition to amend the order issued December 16, 1972,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the sale of overrun volumes of natural gas to Southern Union Gas Company (Southern Union), 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 pursuant to its Rate Schedule X-46, it sells to Southern Union up to 150,000 Mcf of gas per month and up to 834,234 Mcf of natural gas per year. It is stated that Petitioner operates certain minor sales measuring stations in the state of Oklahoma through which the sale and delivery of natural gas is made to Southern Union for resale to Petitioner's right-of-way grantors and others for use as irrigation engine fuel, residential and other high priority uses.

Pursuant to a September 1, 1980, amendment, Petitioner states that it would provide Southern Union with authorized overrun volumes in addition to those volumes currently authorized.

The rate to be charged Southern Union would be in accordance with Sheet No. 1c of Petitioner's FERC Gas Tariff, Original Volume No. 2, it is stated.

It is further asserted that Petitioner retains the right to curtail or interrupt the overrun service proposed herein when necessary and with reasonable advance notice and that Southern Union would resell the gas primarily to Petitioner's right-of-way grantor customers located in Oklahoma.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 12, 1981, 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 that 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 interverne in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3120 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-113-000]

Northern Natural Gas Co., Division of InterNorth, Inc., Application

January 22, 1981.

Take notice that on December 23, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-113-000 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 certain facilities to accommodate the delivery of natural gas to Peoples Natural Gas Company, Divison of InterNorth, Inc. (Peoples), 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 five new delivery points to Peoples. Applicant states that the location of the Peoples' customer delivery points is a follows:

Customer location	Type service	Estimated volume (Mcf)	
		Daily	Annual
1. Cities Service Co., Haskell County, Kans.	Commercial	7	420
2. Powell Addition, Dumas, Tex.	Residential	67	5,250
3. James, Dolan, Dubuque, Iowa.	Residential	1	160
4. Rock Creek Home Estates, Kellogg, Iowa.	Residential	225	22,950
5. Garden City Town Border Station, Garden City, Kans.	Residential/ Commercial.	[1]5,700	[1]836,500

[1] 1979 actual usage.

Applicant estimates a total daily delivery of 6,000 Mcf of natural gas with annual deliveries of 865,280 Mcf of gas. Moreover, it is stated, additional volumes to be delivered to Peoples through the proposed facilities are within its present entitlements and would be delivered pursuant to the effective service agreement.

Applicant estimates the cost of the proposed facilities to be $226,799. Applicant would be reimbursed by Peoples for the cost of constructing facilities necessary to accommodate such new or expanded deliveries.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, 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 certiciate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3121 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

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[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. CP81-114-000]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application

January 22, 1981.

Take notice that on December 24, 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. CP81-114-000 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 the account of Northern Natural Gas Company, Division of InterNorth, Inc., and authorizing Trunkline to transport gas purchased by Panhandle from 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 for Northern volumes of natural gas purchased by Northern from Grand Isle Block 83, offshore Louisiana. It is stated that pursuant to a transportation and sales agreement dated October 30, 1980, Trunkline would receive the gas from Northern at the point of receipt in Grand Isle Block 82, offshore Louisiana. It is further stated that Northern has constructed the necessary pipeline facilities to connect Grand Isle Block 83 to an existing side tap on Trunkline's Terrebonne systems in Grand Isle Block 82. Trunkline would redeliver said gas for Northern's account at Trunkline's Longville, Louisiana, compressor station in Beauregard Parish, Louisiana, for further transportation under a blanket transportation agreement, it is stated.

Applicants propose to transport an initial volume of up to 10,000 Mcf per day. It is further stated that Northern has agreed to sell to Panhandle up to 20 percent of such volumes and that Panhandle may purchase additional volumes of gas which in Northern's sole discretion may become available.

Applicants state that for the proposed transportation service, Northern would pay Panhandle a monthly charge of $33,600 subject to adjustment based on firm transportation for Northern of 8,000 Mcf per day. Moreover, it is asserted, that an upward or downward adjustment of 13.82 cents per Mcf would be applied to any deficiency or excess in quantities taken and that Panhandle would pay Trunkline for its *pro rata* share of the transportation service from the amounts paid by Northern. It is also stated that Northern would reimburse Trunkline 3.0 percent of the volume received for fuel usage and line losses.

The purchase price of the gas bought by Panhandle from Northern would be Northern's actual weighted average purchase price per Mcf for the respective month for such gas plus the associated cost of service charges applicable to facilities Northern installs or causes to be installed to provide service to effect deliveries herein, it is stated.

Applicants also assert that they have entered into a December 19, 1980, transportation agreement by which Trunkline would transport Panhandle's gas from the aforesaid point of receipt to an existing point of interconnection between Applicants' facilities in Douglas County, Illinois. It is stated that Panhandle would pay Trunkline a monthly charge of $21,640 based on a firm transportation quantity of 2,000 Mcf per day. It is stated that an upward or downward adjustment of 35.57 cents per Mcf would be applied to any deviation from the 2,000 Mcf per day in quantities taken. It is further stated that Trunkline would retain 7.0 percent of the volumes received as reimbursement for fuel and line losses.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3122 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-109-000]

Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.; Application

January 22, 1981.

Take notice that on December 22, 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. CP81-109-000 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 InterNorth, Inc. (Northern) and authorizing Trunkline to transport gas for Panhandle, 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 volumes of natural gas purchased by Northern from South Marsh Island Block 265, offshore Louisiana. It is stated that pursuant to a transportation and sales agreement dated November 25, 1980, between Applicants and Northern, Trunkline would receive the gas at the existing point of receipt at the interconnection between the facilities of Columbia Gulf Transmission Company (Columbia Gulf) and Trunkline in Acadia Parish, Louisiana, through arrangements made by Northern with Columbia Gulf. Applicants state that Trunkline would redeliver said gas for Northern's account at Trunkline's Longville, Louisiana, compressor station in Beauregard Parish, Louisiana, for further transportation and delivery to Northern under previously approved blanket transportation agreement.

Applicants assert that the quantity of gas to be transported would be an initial volume of up to 1,200 Mcf per day and that Northern would have the option to reduce said quantity six months prior to the end of the first five years to no less than fifty percent of the initial volumes. It is stated that Northern has agreed to sell to Panhandle up to twenty percent of such volumes and that Panhandle

may purchase additional volumes of gas which in Northern's sole descretion may become available.

Applicants assert that for the transportation service between the Acadia Parish, Louisiana, point of receipt and Trunkline's Longville, Louisiana, compressor station Northern would pay Panhandle a monthly charge of $2,170, subject to adjustment based on firm transportation volumes for Northern of 960 Mcf per day. It is stated that an upward or downward adjustment of 7.42 cents per Mcf would be applied to any deficiency or excess in quantities taken. It is further stated that Panhandle would pay Trunkline for its *pro rata* share of the transportation service from the amounts paid by Northern and that Northern would reimburse Trunkline 1.0 percent of the volumes received for fuel usage and line losses.

It is stated that the purchase price for any gas purchased by Panhandle from Northern would be Northern's actual weighted average purchase price per Mcf for the respective month 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 herein.

Applicants state that they have entered into a transportation agreement dated December 5, 1980, which provides for Trunkline to transport Panhandle's gas from the aforesaid points of receipt to an existing point of interconnection between Applicants' facilities in Douglas County, Illinois. It is stated that in consideration for said transportation, Panhandle would pay Trunkline a monthly charge of $2,165 based on a firm transportation quantity of 240 Mcf per day. Applicants assert that Panhandle would have the option to reduce said quantity in the sixth and subsequent years to no less than 50 percent of the initial volume. Moreover, it is asserted, that an upward or downward adjustment of 29.64 cents per Mcf would be applied to any deviation from said 240 Mcf per day in quantities taken and that Trunkline would retain 5.0 percent of the volumes received from the Acadia Parish, Louisiana, point of receipt as reimbursement for fuel and line losses.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, 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's to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3123 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ST81-113-000]

Tejas Gas Corp.; Application for Approval of Rates

January 22, 1981.

Take notice that on December 17, 1980, Tejas Gas Corp. (Applicant), P.O. Box 2806, Corpus Christi, Texas 78401, filed in Docket No. CT81-113-000 an application pursuant to Section 284.123(b)(2) of the Commission's Regulations for approval of proposed rates to be charged for transporting natural gas for United Gas Pipe Line Company (United), 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 United have entered into an agreement dated November 3, 1980, whereby Applicant is to provide a transportation service for United for a term of two years from the date of initial delivery. Applicant further states that it would provide such service in connection with a gas exchange agreement between United and Panhandle Eastern Pipe Line Company (Panhandle). Applicant states it would transport the subject gas through its facilities located in Ellis County, Oklahoma, with the gas transported by Applicant to be redelivered to United at a point on Panhandle's existing interstate pipeline system, it is said. It is further asserted that the transported volumes would become a part of United's system supply.

Applicant proposes a base transportation charge of 12.0 cents per Mcf as a fair and equitable charge for the service rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3126 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-23-007]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

January 22, 1981.

Take notice that on December 23, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-23-007, a petition to amend the order issued March 7, 1977,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the establishment of two new natural gas receipt points from Tenneco Oil Company (TOC), 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 authorization granted in this proceeding it receives from TOC specified volumes

[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.

of natural gas at specified receipt points and transports such volumes to a point of interconnection with Creole Gas Pipeline Corporation (Creole) near Yscloskey, Louisiana, and delivers such volumes to Creole for ultimate delivery to Air Products and Chemicals, Inc.

Petitioner proposes herein to establish new receipt points from TOC at interconnections with United Gas Pipe Line Company (United) at Cocodrie, Terrebonne Parish, Louisiana (Cocodrie) and at Bayou Sale, St. Mary Parish, Louisiana (Bayou Sale). It is stated that TOC would deliver gas to United at the Haynesville Field, Claiborne Parish, Louisiana, and at the Lake Bistenea Field, Bienville Parish, Louisiana, delivery points and that United would deliver such gas less fuel and use to Petitioner at the existing Cocodrie and Bayou Sale delivery points.

Petitioner states that it does not propose to construct any additional facilities or to alter the volumes or terms set forth in the original transportation agreement.

TOC would pay Petitioner 5.07 cents per Mcf and 7.93 cents per Mcf for the transportation of gas received at the Cocodrie and Bayou Sale points, respectively.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 9, 1981, 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 Procedures (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3127 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-117]

Transcontinental Gas Pipe Line Corp.; Informal Settlement Conference

January 21, 1961.

Take notice that an informal settlement conference of all interested parties to this proceeding will be held at 10:00 a.m. on February 17, 1981, in Hearing Room F of the Interstate Commerce Commission, 12th Street and Constitution Avenue, N.W., Washington, D.C. Staff counsel is attemption to obtain a room at the FERC for the conference. Those parties planning on attending should contact Staff counsel at (202) 357-9088, a day before the conference for the exact location.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3128 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-03-M

[Docket No. RP80-11]

Transcontinental Gas Pipe Line Corp.; Technical Conference

January 21, 1981.

Take notice that a conference of technical representatives from Transcontinental Gas Pipe Line Corporation and the Commission Staff will be held at 10:00 a.m. on February 10, 1981, in Room 3200 of the Federal Energy Regulatory Commission, 941 North Capitol Street, N.W., Washington, D.C. 20426. Any interested party to this proceeding wishing to send a technical representative to the conference may do so.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3129 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-122-000]

United Gas Pipe Line Co.; Application

January 22, 1981.

Take notice that on December 30, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-122-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas for the account of Louisiana Power and Light Company (Louisiana Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to abandon the transportation of natural gas for Louisiana Power authorized by order issued May 19, 1979, in Docket No. CP70-171. Applicant states that it was authorized to transport up to 17,000 Mcf of natural gas per day under a gas transportation agreement dated December 2, 1969, as amended. It is stated that Louisiana Power acquired such gas from the Antioch Field, Claiborne Parish, Louisiana, attributable to the interest of Pan American Petroleum Corporation.

Pursuant to a letter dated September 19, 1980, Louisiana Power has given notice of its intention to terminate the gas transportation agreement, it is asserted. By letter dated October 15, 1980, it is stated that Applicant has agreed to terminate the gas transportation service effective as of January 1, 1981.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, 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 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 Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3132 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-111-000]

United Gas Pipe Line Co.; Application

January 22, 1981.

Take notice that on December 22, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-111-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the compression of natural gas for United Texas Transmission Company (UTTCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a two-year gas compression agreement between Applicant and UTTCO dated November 26, 1980, Applicant proposes to use its Needville Compressor Station, Fort Bend County, Texas, to render gas compression service to UTTCO. Applicant states that because of UTTCO's pressure problems on its existing Tom O'Connor 30-inch pipeline such a service would facilitate maintenance of adequate service to UTTCO's existing customers.

UTTCO would deliver up to 300,000 Mcf of natural gas per day to Applicant on the suction side of the Needville Compressor Station, it is asserted. Applicant would compress and redeliver equivalent volumes of such gas less fuel and company usage to UTTCO on the discharge side of the Needville Compressor Station, it is stated.

Applicant proposes to charge UTTCO 0.57 cent per Mcf of gas compressed and redelivered. The subject agreement would be effective for a primary term of two years beginning on the date that initial deliveries commence.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3131 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-215-000]

Utah Power and Light Co., Filing

January 21, 1981.

The filing Company submits the following:

Take notice that on January 9, 1981, Utah Power and Light Company (Utah) submitted for filing (1) certain amendments to Utah's F.E.R.C. Electric Tariff, Original Volume No. 1, (2) a resale electric service agreement between Utah and CP National Corporation (CP), and (3) a petition for emergency relief pursuant to 18 CFR § 1.17(a).

Utah states that service to CP will be made under Utah's Resale Service Schedule RS-3, which is the subject of the proceeding in Docket No. ER79-21. Utah agrees that the rates collected from CP under Rate Schedule RS-3 are subject to refund, or other orders, issued in Docket No. ER79-121.

Utah requests that the notice requirements of the Commission be waived. Utah further requests that this submittal be accepted for filing as of January 9, 1981.

Copies of this filing have been served on CP, the United States Department of Energy, the Western Area Power Administration, Garkane Power Association, Inc., and the Utah Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 10, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3130 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1929-000]

William G. Meese; Filing

January 21, 1981.

Take notice that on December 9, 1980, William G. Meese submitted an application, pursuant to Section 305(b) of the Federal Power Act, to hold the following positions:

Director and Chief Executive Officer, The Detroit Edison Co., Public Utility.

Director, Eaton Corp., Supplying Electrical Equipment.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 11, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 3133 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC U WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION						
=JOHNSON-MITCHEL OIL COMPANY			RECEIVED: 12/01/80 JA: KS			
810,598	K-79-1925	1507530031 108	1411 STARKEY #1	BRADSHAW	18.2	KANSAS-NEBRASKA NATU
=K R M PETROLEUM CORPORATION			RECEIVED: 11/26/80 JA: KS			
810,528	K-80-0138	1503320301 102	LEMON #7	LEMON RANCH POOL	73.0	
NORTH DAKOTA GEOLOGICAL SURVEY						
=NORTHWEST EXPLORATION COMPANY			RECEIVED: 12/01/80 JA: ND			
810,578	295	3310500808 102	SUNDHAGEN #1	WILDCAT	300.0	AMINOIL USA
=SOUTHLAND ROYALTY CO			RECEIVED: 12/01/80 JA: ND			
810,577	294	3300700341 103	STATE OF NORTH DAKOTA #1-16	TREE TOP	60.0	WESTERN GAS PROCESSO
=TEXACO INC			RECEIVED: 12/01/80 JA: ND			
810,581	299	3305301061 102	SILURIAN UNIT S WELL NO 1X	CHARLSON	184.0	MONTANA DAKOTA UTILI
=WILLIAM HERBERT HUNT TRUST ESTATE			RECEIVED: 12/01/80 JA: ND			
*810,580	298	3300700448 102	EGLY #1	BIG STICK	37.0	KOCH HYDROCARBON CO
*810,579	297	3300700460 102	EGLY #6	TREETOP	37.0	KOCH HYDROCARBON CO
*810,576	289	3300700445 102	FRITZ A #1	TREETOP	64.0	KOCH HYDROCARBON CO
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION						
=BOUNTY OIL & GAS INC			RECEIVED: 12/01/80 JA: NY			
810,594	A48	3101314297 102	C ANDERSON UNIT #1	BUSTI	45.0	NATIONAL FUEL GAS DI
810,589	A20	3101314310 102	E ANDERSON UNIT #1	BUSTI	15.0	NATIONAL FUEL GAS DI
810,588	A19	3101314381 102	J MORRISON #1	BUSTI	90.0	NATIONAL FUEL GAS DI
810,591	A36	3101314298 102	M MCINTYRE #1	BUSTI	35.0	NATIONAL FUEL GAS DI
810,587	A18	3101314307 102	M AHLGREN UNIT #1	BUSTI	60.0	NATIONAL FUEL GAS DI
810,593	A43	3101314151 102	D BECK #1	BUSTI	110.0	NATIONAL FUEL GAS DI
810,595	A49	3101314309 102	S VANDEMARK UNIT #1	BUSTI	75.0	NATIONAL FUEL GAS DI
810,592	A42	3101314430 102	T OOUD UNIT #1	BUSTI	35.0	NATIONAL FUEL GAS DI
810,590	A35	3101314382 102	W CARLSON #1	BUSTI	35.0	NATIONAL FUEL GAS DI
=ENYEDGAS INC			RECEIVED: 12/01/80 JA: NY			
810,586	A17	3101314429 102	#1 R NABBINK	WILDCAT	18.0	NATIONAL FUEL GAS SU
810,582	A14	3101314358 102	#2 E MCCUTCHEAN	LAKESHORE	18.0	NATIONAL FUEL GAS SU
810,584	A15	3101314179 102	#2 ELSIE NELSON	PANAMA	18.0	NATIONAL FUEL GAS SU
810,585	A16	3101314294 102	#2 J SULLIVAN	PANAMA	18.0	NATIONAL FUEL GAS SU
=TRAHAN PETROLEUM INC			RECEIVED: 12/01/80 JA: NY			
810,597	A52	3101314284 102	D H & L L HIDRIG = NY 68 31-013-14*	PANAMA	36.0	COLUMBIA GAS TRANSMI
810,583	A11	3101314302 102	GAIL A JOHNSON = NY 60 31-013-14302	PANAMA	36.0	COLUMBIA GAS TRANSMI
810,596	A51	3101312523 102	JOHN J MEREDITH = NY 10 31-013-125*	PANAMA	36.0	COLUMBIA GAS TRANSMI
WEST VIRGINIA DEPARTMENT OF MINES						
=TUG FORK CORP			RECEIVED: 12/01/80 JA: WV			

JD NO	JA DKT	API NO	SEC U	WELL NAME	FIELD NAME	PROD	PURCHASER
*810?540		4704300893	107	ELWOOD RUNYAN 1-788		4.6	TENNESSEE GAS PIPELI
*810?575		4704300694	107	F F STARCHER 1-749		6.0	TENNESSEE GAS PIPELI
*810?545		4704300709	107	F F STARCHER 2-751		8.5	TENNESSEE GAS PIPELI
*810?534		4704300982	107	ISLAND CREEK MINERAL CO 3-818		6.1	TENNESSEE GAS PIPELI
*810?533		4704300613	107	ISLAND CREEK MINING 1-711		5.6	TENNESSEE GAS PIPELI
*810?551		4704300952	107	ISLAND CREEK MINING 2-808		7.7	TENNESSEE GAS PIPELI
*810?542		4704301005	107	ISLAND CREEK MINING 4-825		3.6	TENNESSEE GAS PIPELI
*810?541		4704301009	107	ISLAND CREEK MINING 5-826		4.9	TENNESSEE GAS PIPELI
*810?535		4704301032	107	ISLAND CREEK MINING 6-843		13.7	TENNESSEE GAS PIPELI
*810?531		4704301006	107	KOONTZ REALTY CO 10-822		6.0	TENNESSEE GAS PIPELI
*810?547		4704301007	107	KOONTZ REALTY CO 12-830		15.9	TENNESSEE GAS PIPELI
*810?549		4704301015	107	KOONTZ REALTY CO 13-833		3.5	TENNESSEE GAS PIPELI
*810?552		4704301039	107	KOONTZ REALTY CO 14-835		5.5	TENNESSEE GAS PIPELI
*810?553		4704301040	107	KOONTZ REALTY CO 15-836		4.5	TENNESSEE GAS PIPELI
*810?543		4704301014	107	KOONTZ REALTY CO 16-837		2.4	TENNESSEE GAS PIPELI
*810?529		4704301033	107	KOONTZ REALTY CO 17-838		5.5	TENNESSEE GAS PIPELI
*810?544		4704301053	107	KOONTZ REALTY CO 18-849		12.8	TENNESSEE GAS PIPELI
*810?532		4704301054	107	KOONTZ REALTY CO 19-850		6.1	TENNESSEE GAS PIPELI
*810?546		4704305750	107	KOONTZ REALTY CO 2-705		9.1	TENNESSEE GAS PIPELI
*810?560		4704300612	107	KOONTZ REALTY CO 3-710		26.8	TENNESSEE GAS PIPELI
*810?550		4704300935	107	KOONTZ REALTY CO 4-776		16.0	TENNESSEE GAS PIPELI
*810?548		4704300940	107	KOONTZ REALTY CO 5-802		6.5	TENNESSEE GAS PIPELI
*810?530		4704300946	107	KOONTZ REALTY CO 6-803		7.8	TENNESSEE GAS PIPELI
*810?572		4704309740	107	KOONTZ REALTY CO 7-816		10.4	TENNESSEE GAS PIPELI
*810?537		4704300987	107	KOONTZ REALTY CO 8-820		6.2	TENNESSEE GAS PIPELI
*810?536		4704300992	107	KOONTZ REALTY CO 9-821		4.0	TENNESSEE GAS PIPELI
*810?539		4704300767	107	LINCOLN LAND & MINING CO 3-762		2.6	TENNESSEE GAS PIPELI
*810?538		4704307110	107	LINCOLN LAND & MINING 2-735		1.0	TENNESSEE GAS PIPELI
*810?565		4704300983	107	P M PORTER 10-817		12.3	TENNESSEE GAS PIPELI
*810?563		4704300541	107	P M PORTER 3-683		10.8	TENNESSEE GAS PIPELI
*810?561		4704300478	107	PATTIE PORTER 1-677		3.6	TENNESSEE GAS PIPELI
*810?566		4704305630	107	PATTIE PORTER 4-693		7.3	TENNESSEE GAS PIPELI
*810?564		4704300618	107	PATTIE PORTER 6-713		7.3	TENNESSEE GAS PIPELI
*810?562		4704300967	107	PATTIE PORTER 9-811		5.9	TENNESSEE GAS PIPELI
*810?559		4704300671	107	STEIN & MCCOMAS 1-744		11.5	TENNESSEE GAS PIPELI
*810?558		4704300953	107	STEIN & MCCOMAS 10-805		6.4	TENNESSEE GAS PIPELI
*810?571		4704300964	107	STEIN & MCCOMAS 11-806		2.0	TENNESSEE GAS PIPELI
*810?573		4704309680	107	STEIN & MCCOMAS 12-812		8.5	TENNESSEE GAS PIPELI
*810?557		4704300988	107	STEIN & MCCOMAS 13-813		13.3	TENNESSEE GAS PIPELI
*810?556		4704300994	107	STEIN & MCCOMAS 15-823		2.7	TENNESSEE GAS PIPELI
*810?554		4704301010	107	STEIN & MCCOMAS 16-824		2.6	TENNESSEE GAS PIPELI
*810?570		4704301059	107	STEIN & MCCOMAS 17-832		5.4	TENNESSEE GAS PIPELI
*810?569		4704301030	107	STEIN & MCCOMAS 18-847		22.2	TENNESSEE GAS PIPELI
*810?567		4704307530	107	STEIN & MCCOMAS 3-758		2.8	TENNESSEE GAS PIPELI
*810?574		4704300777	107	STEIN & MCCOMAS 4-763		11.6	TENNESSEE GAS PIPELI
*810?568		4704300937	107	STEIN & MCCOMAS 8-797		6.0	TENNESSEE GAS PIPELI
*810?555		4704300963	107	STEIN & MCCOMAS 9-804		8.9	TENNESSEE GAS PIPELI
**********							
** U.S. GEOLOGICAL SURVEY - DENVER,CO							
**********							
-AMERICAN RESOURCES MANAGEMENT CORPO		RECEIVED: 12/01/80		JA: CO 1			
810?599	FC82-0	0510308053	103	T C 819-3 C-22938	TRAIL CANYON FIELD	25.6	NORTHWEST PIPELINE C

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107600	FC 81-0	0510308084	103		T C #27-1 C-22939	TRAIL CANYON FIELD	25.6	NORTHWEST PIPELINE C
8107602	FC 74-0	0510308304	103		TC #1-2A C-3640	TRAIL CANYON FIELD	240.0	NORTHWEST PIPELINE C
8107601	FC 75-0	0510308159	103		TC #10-3 C-3636-A	TRAIL CANYON FIELD	25.6	NORTHWEST PIPELINE C
8107603	FC 73-0	0510308217	103		TC #12-1X C-3640	TRAIL CANYON FIELD	84.7	NORTHWEST PIPELINE C
8107604	FC 72-0	0510307988	103		TC #12-3 C-3640	TRAIL CANYON FIELD	11.9	NORTHWEST PIPELINE C
*EL PASO EXPLORATION CO					RECEIVED: 12/01/80 JA: CO 1			
8107624	FDA086480	0506705302	108		IGNACIO 33-8 30 #11	IGNACIO BLANCO-MESAVERDE	20.0	NORTHWEST PIPELINE C
*FUEL RESOURCES DEVELOPMENT CO					RECEIVED: 12/01/80 JA: CO 1			
8107605	FC 50-0	0510362680	103		0-27-3-101-8	CATHEDRAL	80.0	MOUNTAIN FUEL SUPPLY
*DELCO PETROLEUM CORPORATION					RECEIVED: 12/01/80 JA: UT 1			
8107623	HC 52-0	4304730434	103		DUCK CREEK 2-10S 30434	DUCK CREEK	106.0	NORTHWEST PIPELINE C
*COTTON PETROLEUM CORPORATION					RECEIVED: 12/01/80 JA: UT 1			
8107622	HC 138-0	4304730617	102		LOVE UNIT #11-1	WILDCAT	300.0	MESA PIPELINE CO
*DIAMOND SHAMROCK CORPORATION					RECEIVED: 12/01/80 JA: UT 1			
8107625	HC 126-0	4301330396	103		UTE 1-6C6	CEDAR RIM	15.0	
*ENSERCH EXPLORATION INC					RECEIVED: 12/01/80 JA: UT 1			
8107613	HC 141-0	4304730378	103		CANYON FEDERAL 1-9	CANYON FEDERAL 1-9	234.0	NATURAL GAS PIPELINE
8107630	HC 145-0	4304730379	103		CANYON VIEW FEDERAL ND 1-18	BONANZA	250.0	NATURAL GAS PIPELINE
8107612	HC 142-0	4304730461	103		CLIFF EDGE FEDERAL 1-15	BONANZA	540.0	NATURAL GAS PIPELINE
8107610	HC 144-0	4304730369	103		CROOKED CANYON FEDERAL 1-17	BONANZA	396.0	NATURAL GAS PIPELINE
8107631	HC 151-0	4304730365	103		FLAT MESA FEDERAL 1-7	BONANZA	180.0	NATURAL GAS PIPELINE
8107607	HC 148-0	4304730423	103		JACK RABBIT FEDERAL 1-11	BONANZA	36.0	NATURAL GAS PIPELINE
8107614	HC 140-0	4304730560	103		NBU FEDERAL ND 1-12	BONANZA	49.0	NATURAL GAS PIPELINE
8107609	HC 146-0	4304730558	103		PETES FLAT FEDERAL ND 1	BONANZA	0.0	NATURAL GAS PIPELINE
8107615	HC 139-0	4304730383	103		SAGE BRUSH FEDERAL 1-8	BONANZA	273.0	NATURAL GAS PIPELINE
8107608	HC 147-0	4304730382	103		SAGE HEN FEDERAL 1-6	BONANZA	135.0	NATURAL GAS PIPELINE
8107606	HC 149-0	4304730559	103		SHEEPHERDER FEDERAL 1-10	BONANZA	297.0	NATURAL GAS PIPELINE
8107611	HC 143-0	4304730461	103		WHITE RIVER FEDERAL ND 1-14	BONANZA	414.0	NATURAL GAS PIPELINE
*NP ENERGY CORPORATION					RECEIVED: 12/01/80 JA: UT 1			
8107616	HC 103-0	4301930575	103		FEDERAL #25-3	CISCO DOME AREA	476.0	NORTHWEST PIPELINE C
8107620	HC 98-0	4301930484	103		FEDERAL 1-10	CISCO DOME AREA	4.4	NORTHWEST PIPELINE C
8107619	HC 101-0	4301930488	103		FEDERAL 14-3	CISCO DOME AREA	1190.0	NORTHWEST PIPELINE C
8107618	HC 101-0	4301930530	103		FEDERAL 24-2	CISCO DOME AREA	247.0	NORTHWEST PIPELINE C
8107617	HC 102-0	4301930432	103		FEDERAL 24-3	CISCO DOME	187.0	NORTHWEST PIPELINE C
8107621	HD 0008 80	4301930356	108		NP ENERGY FEDERAL 24-1	CISCO DOME	8.0	NORTHWEST PIPELINE C
*TENNECO OIL COMPANY					RECEIVED: 12/01/80 JA: UT 1			
8107627	HC 119-0	4301930516	103		FEDERAL #6-7	SAN ARROYO	700.0	
8107629	HC 117-0	4301930517	103		FEDERAL #7-4	SAN ARROYO	500.0	SOUTHWEST GAS CORP
8107626	HC 120-0	4301930521	103		FEDERAL 3-8	BRYSON CANYON	500.0	SOUTHWEST GAS CORP
8107628	HC 118-0	4301930538	103		FEDERAL #35-10	BRYSON CANYON (DAKOTA)	500.0	SOUTHWEST GAS CORP

OTHER PURCHASERS	VOLUME NO 1336
81015?9	INDUSTRIAL GAS CORPORATION
81015?0	INDUSTRIAL GAS CORPORATION
81015?1	INDUSTRIAL GAS CORPORATION
81015?2	INDUSTRIAL GAS CORPORATION
81015?3	INDUSTRIAL GAS CORPORATION
81015?4	INDUSTRIAL GAS CORPORATION
81015?5	INDUSTRIAL GAS CORPORATION
81015?6	INDUSTRIAL GAS CORPORATION
81015?7	INDUSTRIAL GAS CORPORATION
81015?8	INDUSTRIAL GAS CORPORATION
81015?9	INDUSTRIAL GAS CORPORATION
81015?0	INDUSTRIAL GAS CORPORATION
81015?1	INDUSTRIAL GAS CORPORATION
81015?2	INDUSTRIAL GAS CORPORATION
81015?3	INDUSTRIAL GAS CORPORATION
81015?4	INDUSTRIAL GAS CORPORATION
81015?5	INDUSTRIAL GAS CORPORATION
81015?6	INDUSTRIAL GAS CORPORATION
81015?7	INDUSTRIAL GAS CORPORATION
81015?8	INDUSTRIAL GAS CORPORATION
81015?9	INDUSTRIAL GAS CORPORATION
81015?0	INDUSTRIAL GAS CORPORATION
81015?1	INDUSTRIAL GAS CORPORATION
81015?2	INDUSTRIAL GAS CORPORATION
81015?3	INDUSTRIAL GAS CORPORATION
81015?4	INDUSTRIAL GAS CORPORATION
81015?5	INDUSTRIAL GAS CORPORATION
81015?6	INDUSTRIAL GAS CORPORATION
81015?7	INDUSTRIAL GAS CORPORATION
81015?8	INDUSTRIAL GAS CORPORATION
81015?9	INDUSTRIAL GAS CORPORATION
81015?0	INDUSTRIAL GAS CORPORATION
81015?1	INDUSTRIAL GAS CORPORATION
81015?2	INDUSTRIAL GAS CORPORATION
81015?3	INDUSTRIAL GAS CORPORATION
81015?4	INDUSTRIAL GAS CORPORATION
81015?5	INDUSTRIAL GAS CORPORATION
81015?6	WESTERN GAS PROCESSORS LTD
81015?9	WESTERN GAS PROCESSORS LTD
81015?0	WESTERN GAS PROCESSORS LTD

BILLING CODE 6450-85-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 proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons 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 February 12, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3124 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION								
*A NELSON MCCARTER INC					RECEIVED: 12/02/80 JA: TX			
810462	04751	4232130977	103		WOODSON ESTATE 67758	TIDEHAVEN N (UPPER FRIO	292.0	TENNESSEE GAS PIPELI
*ALLEN & SHUMATE INC					RECEIVED: 12/02/80 JA: TX			
810396	04352	4224931093	103		A J BAKER HEIRS WELL NO 6	TEPEBA (3110) FIELD	110.0	VAL GAS CO
*AMERADA HESS CORPORATION					RECEIVED: 12/02/80 JA: TX			
810210	02303	4216531217	103		SEMINOLE SAN ANDRES UNIT #3119	SEMINOLE SAN ANDRES	60.0	PHILLIPS PETROLEUM C
*AMERICAN QUASAR PETROLEUM CO					RECEIVED: 12/02/80 JA: TX			
810233	02692	4243532276	103		SHURLEY RANCH WELL #1-A	SHURLEY RANCH CANYON	10.0	EL PASO NATURAL GAS
810217	02379	4243532264	103		SHURLEY RANCH WELL 1-35	SEC 35 A-757 TT RR CO SU	40.0	EL PASO NATURAL GAS
*AMOCO PRODUCTION CO					RECEIVED: 12/02/80 JA: TX			
810166	01054	4207130970	103		CHAMBERS COUNTY AGR CO NU 91	BARBERS HILL	5.5	HOUSTON PIPE LINE CO
810239	022747	4240130895	102		CLYDE B GREEN GAS UNIT NO 1	DIRGIN (COTTON VALLEY)	176.0	LONE STAR GAS CO
810314	03901	4213533196	103		DAVID FASKEN /BG/ #1	FASKEN SOUTH /ATOKA/	115.7	PIONEER NATURAL GAS
810208	02228	4220130586	103		DRILLING DISTRICT 22 #7	HOUSTON SOUTH (OLIGOCENE	1.5	AMOCO GAS CO
810207	02227	4220130641	103		DRILLING DISTRICT 8 #5	HOUSTON SOUTH (OLIGOCENE	3.6	AMOCO GAS CO
810045	13599	4203931159	103		E J CONDON NO 2	HASTINGS WEST	31.0	AMOCO GAS CO
810520	04990	4223300000	108		E J MOORE #10	PANHANDLE	1.3	GETTY OIL COMP
810518	04988	4223300000	108		E J MOORE #2	PANHANDLE	0.8	GETTY OIL CO
810519	04989	4223300000	108		E J MOORE #3	PANHANDLE	1.3	GETTY OIL COMP
*810512	04906	4216730750	103		E KER CADE B R/A A #80	HIGH ISLAND	15.7	JOHN W MECOM
*810434	04624	4216730765	103		GEORGE SMITH B R/A A #52	HIGH ISLAND	4.0	WINNIE PIPELINE CO
810251	02990	4224531231	103		KEITH B DOWLEN #28	BEAUMONT WEST	37.6	AMOCO GAS CO
810165	01053	4217531001	103		L W OCONNOR A #69	LIVE OAK LAKE/5000/	11.3	AMOCO GAS CO
810050	15868	4239330686	103		LIPS RANCH B WELL #23	LIPS RANCH CLEVELAND (NE	183.0	NORTHERN NATURAL GAS
810311	03897	4213533187	103		MIDLAND FARMS /AJ/ #4	FASKEN/WOLFCAMP NORTH/	58.5	PIONEER NATURAL GAS
810313	03900	4200332210	103		MIDLAND FARMS /X/ #3	FASKEN /PENN/	33.9	PIONEER NATURAL GAS
810110	19398	4200331898	103		MIDLAND FARMS UNIT #404	MIDLAND FARMS	1.0	PIONEER NATURAL GAS
810274	03478	4221932760	103		MONTGOMERY DAVIES /B/ #1	LEVELLAND	62.8	EL PASO NATURAL GAS
810521	05038	4222731960	103		MRS CORA LEE ECHOLS /B/ #24	IATAN EAST/HOWARD/	0.4	GETTY OIL CO
810047	15183	4203931314	103		NORA MAE REICHARDT #5	HASTINGS WEST	31.0	AMOCO GAS CO
810315	03902	4249531041	103		SEALY SMITH FOUNDATION /A/ #45	MONAHANS E /PENN LO/	22.3	PIONEER NATURAL GAS
810316	03903	4249531055	103		SEALY SMITH FOUNDATIONS /A/ #46	MONAHANS E/PENN LO/	64.6	PIONEER NATURAL GAS
810522	05039	4200332208	103		UNIVERSITY CONSOLIDATED XII #42	FUHRMAN-MASCHO	21.9	EL PASO NATURAL GAS
810523	05040	4200332265	103		UNIVERSITY CONSOLIDATED XII #43	FUHRMAN-MASCHO	7.3	EL PASO NATURAL GAS
*810391	04335	4221932830	103		W G FRAZIER #117	SLAUGHTER	6.6	AMOCO PRODUCTION CO
*810390	04334	4221932831	103		W G FRAZIER #118	SLAUGHTER	10.9	AMOCO PRODUCTION CO
810312	03899	4221932837	103		W G FRAZIER #124	SLAUGHTER	28.8	AMOCO PRODUCTION CO
810433	04623	4224531370	103		W P H MCFADDIN NO 262	SPINDLETOP	2.0	WINNIE PIPELINE CO
810513	04907	4224531367	103		W P H MCFADDIN NO 263	SPINDLETOP	5.0	WINNIE PIPELINE CO
*ANADARKO PRODUCTION COMPANY					RECEIVED: 12/02/80 JA: TX			
810065	17004	4221131094	103		BROCK A NO 4063	HEMPHILL (GRANITE WASH)	920.0	PANHANDLE EASTERN PI

JD NO	JA DKT	API NO	SEC	U	WELL NAME	FIELD NAME	PROD	PURCHASER
8107214	p2341	a2211131188	103		FLOWERS "C" NO 3048	CANADIAN SE (DOUGLAS)	360.0	PANHANDLE EASTERN PI
8107071	i7361	a2211131130	103		FLOWERS B NO 5047	HEMPHILL (GRANITE WASH)	0.0	PANHANDLE EASTERN PI
8107106	i9342	a2211131154	103		FLOWERS C NO 2048	HEMPHILL (GRANITE WASH)	0.0	PANHANDLE EASTERN PI
8107187	p1975	a2211131179	103		GEORGE B NO 4028	HEMPHILL	300.0	PANHANDLE EASTERN PI
8107079	i7654	a2211131131	103		WALSER A NO 2046	HEMPHILL (GRANITE WASH)	800.0	PANHANDLE EASTERN PI
=ANGEL T FULLER					RECEIVED: 12/02/80 JA: TX			
8107086	i7836	a2469311250	102		JULIA F PETTEY ET AL UNIT #1 WELL	ELOISE S W (5500)	274.0	UNITED GAS PIPELINE
8107085	i7835	a2469311461	102		WILLIS PETTEY ET AL GAS UNIT #1 WE=	ELOISE S W (6100)	274.0	UNITED GAS PIPELINE
=ANDERSON PETROLEUM INC					RECEIVED: 12/02/80 JA: TX			
8107330	p4005	a2435322341	103		PAULINE FRIESS A #2=101	SANYER (CANYON) FIELD	75.0	SUTTON COUNTY PIPELI
8107329	p4004	a2435322471	103		PAULINE FRIESS B #1=102	SANYER (CANYON) FIELD	0.0	SUTTON COUNTY PIPELI
=APACHE CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107103	i9292	a2483305751	102		STILES #3=3T	STILES RANCH (MORROW)	328.5	ARKANSAS=LOUISIANA G
8107104	i9293	a2483306021	102		STILES #4=18	STILES RANCH (GRANITE WA	255.5	ARKANSAS=LOUISIANA G
8107105	i9294	a2483306171	102		STILES #5=16	STILES RANCH (ATOKA)	328.5	ARKANSAS=LOUISIANA G
=ARCO OIL AND GAS COMPANY					RECEIVED: 12/02/80 JA: TX			
8107511	p4898	a2413306341	103		A B THOMERSON EST NO 1=X	TOENAIL (STRAWN)	0.0	ARCO OIL AND GAS CO
8107283	p3644	a2215309911	103		EVERETT BELL GAS UNIT 1 WELL #5	TABASCO (R)	200.0	TENNESSEE GAS PIPELI
8107284	p3645	a2215309631	103		EVERETT BELL GAS UNIT 1 WELL #4=L	TABASCO (U)	300.0	TENNESSEE GAS PIPELI
8107362	p4206	a2495311721	103		J B WALTON A NO 17	KEYSTONE (COLBY)	30.0	SID RICHARDSON CARBO
*8107421	p4499	a2501317871	103		WILLARD UNIT #330A	WASSON	14.4	SHELL OIL CO
=ARKLA EXPLORATION COMPANY					RECEIVED: 12/02/80 JA: TX			
8107169	p1226	a2365309331	102		M MCJIMSEY #2	CARTHAGE (COTTON VALLEY)	365.0	ARKANSAS LOUISIANA G
=ART MACHIN & ASSOCIATES INC					RECEIVED: 12/02/80 JA: TX			
8107297	p3763	a2401308671	102		L PIPES NO 1 WELL	POD (COTTON VALLEY)	365.0	UNITED GAS PIPE LINE
=ATAPCO					RECEIVED: 12/02/80 JA: TX			
8107072	i7362	a2301302321	107		ARNO GAS UNIT #1	WILDCAT	0.0	
=B D K PRODUCTION CO INC					RECEIVED: 12/02/80 JA: TX			
8107250	p2914	a2123310351	102		REIFFERT BLACKWELL WELL NO 1	REIFFERT = PROPOSED	60.0	
=BASS ENTERPRISES PRODUCTION CO					RECEIVED: 12/02/80 JA: TX			
*8107440	p4635	a2495311841	103		BEN JENKINS ET AL A NO 18	KEYSTONE (COLBY)	18.0	TRANSWESTERN PIPELIN
8107441	p4636	a2495311871	103		BEN JENKINS ET AL A NO 19	KEYSTONE (COLBY)	12.0	TRANSWESTERN PIPELIN
*8107307	p3834	a2495311541	103		M J HILL A/C 7 NO 35	HALLEY (GLORIETA)	55.0	TRANSWESTERN PIPELIN
=BELCO PETROLEUM CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107062	i6863	a2235314021	102		SUGG 07768 114 2	SUGG (ELLENBURGER)	5.0	EL PASO NATURAL GAS
=BEN HOGAN					RECEIVED: 12/02/80 JA: TX			
8107317	p3909	a2093306541	103		DEAN POUNDS #1	MITTIE (MARBLE FALLS)	1.0	
8107318	p3911	a2093306821	103		J W POUNDS #1	MITTIE (MARBLE FALLS)	1.0	
8107319	p3912	a2093306761	103		WENDELL POUNDS #2	MITTIE (MARBLE FALLS)	365.0	
8107320	p3913	a2093306881	103		WENDELL POUNDS #3	MITTIE (MARBLE FALLS)	1.0	
=BETTIS BOYLE & STOVALL					RECEIVED: 12/02/80 JA: TX			
8107092	i6596	a2483000001	108		T H ATKINS ET AL #1	PANHANDLE EAST	20.0	WARREN PETROLEUM
=BLAIR OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107063	i6864	a2065307011	103		GREG WELL #2	PANHANDLE CARSON	0.0	PANHANDLE EASTERN PI
=BLANKS ENERGY CORP					RECEIVED: 12/02/80 JA: TX			
8107381	p4303	a2227317361	103		BLASSINGAME #1	LUTHER SE (PENN REEF)	54.0	
=BOB WALLACE OIL INC					RECEIVED: 12/02/80 JA: TX			
8107364	p4223	a2065000001	103		BURNETT NO 4	PANHANDLE CARSON COUNTY	120.0	PANHANDLE EASTERN PI
=C L GAGE JR					RECEIVED: 12/02/80 JA: TX			
8107125	p0046	a2497315831	103		LEO ATKINS NO 1	BOONSVILLE (BEND CONGL)	73.0	NATURAL GAS PIPELINE
8107167	p1156	a2497000001	103		M B DINNIDDIE NO 1=A	BOONSVILLE (BEND CONGL)	218.3	NATURAL GAS PIPELINE
=EUROPEAN SOUTHWEST CO					RECEIVED: 12/02/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
810,423	04558	4204931851	103		EUROPEAN BK CO-CARMICHAEL 1	DELRAY (DUPPER)	60.0	ODESSA NATURAL CORP
-CABOT CORPORATION					RECEIVED: 12/02/80 JA: TX			
810,403	04410	4223330811	103		MERCHANT INA C #10	PANHANDLE HUTCHINSON	9.0	PANHANDLE EASTERN PI
810,401	04408	4223330812	103		MERCHANT INA C #11	PANHANDLE HUTCHINSON COU	0.0	PANHANDLE EASTERN PI
810,402	04409	4206530792	103		MARE R C ET AL #62	PANHANDLE CARSON COUNTY	24.0	NORTHERN NATURAL GAS
-CAG PETROLEUM CORP					RECEIVED: 12/02/80 JA: TX			
810,273	03466	4205130599	103		KNESER ET AL UNIT NO 1	GIDDINGS (AUSTIN CHALK)	54.0	CLAJON GAS CO
-CALDWELL OIL & GAS CO INC					RECEIVED: 12/02/80 JA: TX			
810,051	16044	4250700000	102		B M WHITE GAS UNIT NO 2 (80419)	J A SPILLER (OLMOS)	124.1	C B T & B PIPELINE C
-CAMBRIDGE & NAIL					RECEIVED: 12/02/80 JA: TX			
810,260	03130	4239300000	102		NO 1 MILL WELL	PARSELL (MORROW LOWER SU	730.0	TRANSWESTERN
-CANTEX ENERGY CORP					RECEIVED: 12/02/80 JA: TX			
*810,226	02511	4223732907	103		RICHARDS #1	OMEGA 4950 CONGLOMERATE	150.0	TEXAS UTILITIES FUEL
-CARTER FOUNDATION PRODN CO					RECEIVED: 12/02/80 JA: TX			
810,417	04495	4249531166	103		PURE-WALTON #36	KEYSTONE (COLBY)	86.0	BID RICHARDSON GASUL
810,416	04494	4249531167	103		PURE-WALTON #37	KEYSTONE (COLBY)	28.0	BID RICHARDSON GASUL
-CENTURA INCORPORATED					RECEIVED: 12/02/80 JA: TX			
810,040	12211	4212700000	103		MCLEAN BONHAM C #3	GOOD LUCK (SAN MIGUEL)	4.0	ESPERANZA TRANSMISSI
-CHAMPLIN EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
810,322	03949	4214930331	103		A ROACH #1	GIDDINGS (AUSTIN CHALK)	22.0	PHILLIPS PETROLEUM C
810,323	03950	4214930322	103		HULDA EPHRAIM #1	GIDDINGS (AUSTIN CHALK)	10.0	PHILLIPS PETROLEUM C
810,325	03958	4214930339	103		HULDA EPHRAIM #2	GIDDINGS (AUSTIN CHALK)	10.0	PHILLIPS PETROLEUM C
810,324	03957	4228730552	103		MCCOY #1	GIDDINGS (AUSTIN CHALK)	36.0	CLAJON GAS CO
-CHAPARROSA OIL CO					RECEIVED: 12/02/80 JA: TX			
810,038	11274	4250731036	102		B K JOHNSON #8	NORTE (OLMOS) FIELD	28.9	LOVACA GATHERING CO
810,038	11274	4250731036	103		B K JOHNSON #8	NORTE (OLMOS) FIELD	28.9	LOVACA GATHERING CO
-CHARLES L WALKER					RECEIVED: 12/02/80 JA: TX			
810,367	04226	4200332254	103		FISHER 3 #3	BLOCK A-34 (SAN ANDRES)	54.0	PHILLIPS PETROLEUM C
810,366	04225	4200332255	103		FISHER 8 #2	BLOCK A-34 (SAN ANDRES)	30.6	PHILLIPS PETROLEUM C
-CHEVRON U S A INC					RECEIVED: 12/02/80 JA: TX			
810,176	01541	4249531050	103		W E BAIRD 18-44E	KERMIT	365.0	TRANSWESTERN PIPELIN
-COASTAL OIL & GAS CORP					RECEIVED: 12/02/80 JA: TX			
810,447	04703	4237530687	103		BIVINS 5-6RD	PANHANDLE (RED CAVE)	4.0	COLORADO INTERSTATE
810,448	04704	4237530688	103		BIVINS 5-8RD	PANHANDLE (RED CAVE)	25.0	COLORADO INTERSTATE
810,446	04701	4237530696	103		BIVINS 8-37RD	PANHANDLE (RED CAVE)	19.0	COLORADO INTERSTATE
-COLA PETROLEUM INC					RECEIVED: 12/02/80 JA: TX			
*810,524	05047	4238331531	103		ROACH 138 #1	CALVIN (DEAN)	33.8	UNION TEXAS PETROLEU
-COLORADO INTERSTATE GAS CO					RECEIVED: 12/02/80 JA: TX			
810,151	00398	4237530660	108		MASTERSON 105R	WEST PANHANDLE (RED CAVE	18.0	COLORADO INTERSTATE
-CONOCO INC					RECEIVED: 12/02/80 JA: TX			
810,117	19783	4243300000	108		ARTHUR BRINKLEY JR A #9 ID #04263	FLOWERS	0.3	CITIES SERVICE OIL C
810,425	04560	4243331014	103		BRINKLEY JR A 40 04263	FLOWERS	1.0	CITIES SERVICE CO
810,080	17687	4215100000	108		DOROTHY DECKER #7 ID #13303	ROUND TOP	4.2	LONE STAR GAS CO
810,034	10227	4210300000	108		E A HALL B #2 41547	ABELL CLEAR FORK 32001	16.5	PENRY GAS PROCESSING
810,424	04559	4213533306	103		E CONDEN GRAYBURG 58 #22927	CONDEN NORTH	2.9	AMOCO PRODUCTION CO
810,200	02085	4238900000	108		FORD GERALDINE UNIT #183 ID #21021	GERALDINE FORD	0.1	EL PASO NATURAL GAS
810,201	02086	4210900000	108		FORD GERALDINE UNIT #200 ID #21021	GERALDINE FORD	0.1	EL PASO NATURAL GAS
810,202	02087	4210900000	108		FORD GERALDINE UNIT #235 ID #21021	GERALDINE FORD	0.1	EL PASO NATURAL GAS
810,198	02083	4238900000	108		FORD GERALDINE UNIT #46 ID #21021	GERALDINE FORD	2.1	EL PASO NATURAL GAS
810,199	02084	4238900000	108		FORD GERALDINE UNIT #53 ID #21021	GERALDINE FORD	0.2	EL PASO NATURAL GAS
810,181	01681	4238900000	108		FORD GERALDINE UNIT #75 ID #21021	GERALDINE FORD	1.5	EL PASO NATURAL GAS
810,107	19382	4213533243	103		GIST UNIT #120 ID #19373	FOSTER	0.7	ODESSA NATURAL GASUL

JD NO	SA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
810108	19383	4213533233 103	GIST UNIT #121 ID #19373	FOSTER	1.8	ODESSA NATURAL CORP
810121	20014	4213533238 103	GIST UNIT #122 ID #19373	FOSTER	1.5	ODESSA NATURAL CORP
810109	19384	4213533230 103	GIST UNIT #126 ID #19373	FOSTER	1.1	ODESSA NATURAL CORP
810152	20419	4213533229 103	GIST UNIT #127 ID #19373	FOSTER	0.4	ODESSA NATURAL GAS C
810190	22040	4231700000 108	GRISHAM & GREEHAN #16 ID #22261	SPRAGERRY (TREND AREA)	0.2	AOUBE OIL CO
810195	22078	4231700000 108	GRISHAM & GREEHAN #39 ID #22261	SPRAGERRY (TREND AREA)	0.2	AOUBE OIL CO
810191	22042	4231700000 108	GRISHAM & GREEHAN #8 ID #22261	SPRAGERRY (TREND AREA)	0.3	AOUBE OIL CO
810124	20028	4231700000 108	GRISHAM & GREEHAN A #4 ID #22878	SPRAYBERRY (TREND AREA)	1.0	AOUBE OIL CO
810194	22076	4243300000 108	GUEST CANYON BAND UNIT #48 ID #108*	GUEST	0.2	CITIES SERVICE OIL C
810116	19780	4222700000 108	H R CLAY A #10 ID #02691	HOWARD GLASSCOCK	0.2	PHILLIPS PETROLEUM C
810115	19779	4222700000 108	H R CLAY A #49 ID #18992	HOWARD GLASSCOCK	0.1	PHILLIPS PETROLEUM C
810192	22043	4215100000 108	J B TERRELL A #13 ID #13657	ROUND TOP	1.3	LONE STAR GAS CO
810154	20431	4213533289 103	J L JOHNSON #21 ID #01554	FOSTER	3.0	ODESSA NATURAL GAS C
810189	22039	4210500000 108	J M SHANNON-A-827 ID #00435	ELKHORN	0.4	PERMIAN CORP
810153	20430	4200332126 103	J W BONER B #26 ID #01664	FUHRMAN - MASCHO	24.9	PHILLIPS PETROLEUM C
810155	20432	4200332128 103	J W BONER B #33 ID #01664	FUHRMAN - MASCHO	35.8	PHILLIPS PETROLEUM C
810118	19784	4213500000 108	KLOH A #6 ID #00818	COWDEN NORTH	0.2	AMOCO PRODUCTION CO
810096	18851	4213533183 103	L E WIGHT B-21 #4 ID #25419	COWDEN NORTH	3.7	AMOCO PRODUCTION CO
810081	17751	4215100000 108	MERRY BROS & PERINI #12 ID #01912	ROUND TOP	15.7	LONE STAR GAS CO
810177	021544	4247500000 108	NED WILSON -133- #4 ID #24900	RHODA WALKER	6.4	CLAJON GATHERING CO
810178	021549	4247500000 108	NED WILSON -133- #6 ID #24900	RHODA WALKER	0.3	CLAJUN GATHERING CO
810082	17755	4215100000 108	ROUND TOP PALO PINTO UNIT #158 ID *	ROUND TOP	3.4	LONE STAR GAS CO
810197	22081	4215100000 108	ROUND TOP PALO PINTO UNIT #3 ID #1*	ROUND TOP	0.8	LONE STAR GAS CO
810123	20026	4215100000 108	ROUND TOP PALO PINTO UNIT #36 ID #*	ROUND TOP	1.0	LONE STAR GAS CO
810083	17756	4203300000 108	T J GOOD 38 #2	GOOD	1.9	GETTY OIL CO
810093	18708	4210532443 103	TODD CRINOIDAL UNIT #40 ID #02014	TODD/DEEP CRINOIDAL/	6.6	THE PERMIAN CORP
810112	19409	4238900000 108	TXL A-35 #4 ID #12713	SABRE	1.0	EL PASO NATURAL GAS
810084	17757	4213500000 108	TXL 44-43 #3	LANSON	2.9	PHILLIPS PET CO
810162	20969	4200331933 103	W H BONER A #24 ID #01663	FUHRMAN - MASCHO	67.2	PHILLIPS PETROLEUM C
810122	20015	4200331879 103	W H BONER A #26 ID #01663	FUHRMAN-MASCHO	29.2	PHILLIPS PETROLEUM C
810426	24561	4200332235 103	W H BONER A #28 01663	FUHRMAN-MASCHO	32.1	PHILLIPS PETROLEUM C
810427	24562	4200332237 103	W H BONER A #30 01663	FUHRMAN - MASCHO	39.4	PHILLIPS PETROLEUM C
810196	22080	4200300000 108	W T FORD #11 ID #01665	FUHRMAN-MASCHO	0.2	PHILLIPS PETROLEUM C
810111	19408	4213533282 103	WIGHT A-19 #1 ID #25690	COWDEN NORTH	116.0	AMOCO PRODUCTION CO
810179	21552	4213533294 103	WIGHT A-19 #2 ID #25690	COWDEN NORTH	16.8	AMOCO PRODUCTION CO
810059	16738	4213533157 103	WIGHT UNIT #134 ID #20661	NORTH COWDEN	11.0	AMOCO PRODUCTION CO
810066	16741	4213500000 103	WIGHT UNIT #136	NORTH COWDEN	8.2	AMOCO PRODUCTION CO
810203	22121	4213500000 108	WIGHT UNIT #63 ID #20661	COWDEN NORTH	1.4	AMOCO PRODUCTION CO
-COTTON PETROLEUM CORPORATION			RECEIVED: 12/02/80 JA: TX			
810054	16141	4229530625 103	WILLIAMSON NU 1-L	FOLLETT (MORROW)	730.0	NORTHERN NATURAL GAS
-CURTIS HANKAMER			RECEIVED: 12/02/80 JA: TX			
810412	24489	4214930405 103	A J ROD NO 2 WELL ID 12478	SIDDINGS (AUSTIN CHALK)	0.0	PHILLIPS PETROLEUM C
-DALLAS PRODUCTION INC			RECEIVED: 12/02/80 JA: TX			
810526	25056	4250333655 103	ALLEN NO 1 ID NO 20102	GFB (CONGLOMERATE)	56.0	LONE STAR GAS CO
810265	23297	4236731736 103	LAKE HEATHERFORD NU 1	LAKE HEATHERFORD	108.0	SOUTHWESTERN GAS PIP
810515	24964	4236700000 108	SANDLIN NO 1 66890	TOTO (BEND CONGL LOWER)	7.0	LONE STAR GAS CO
-DELAWARE NELSON PETROLEUM CO			RECEIVED: 12/02/80 JA: TX			
810397	24369	4218330424 103	J A MCLENDON ESTATE UNIT NO 1	WILLOW SPRINGS-MACKEY (T	0.0	ARKANSAS LOUISIANA G
-DIAMOND SHAMROCK CORPORATION			RECEIVED: 12/02/80 JA: TX			
810505	24873	4221932740 103	B C HAMILTON NO 1	HAMILTON	125.0	
810510	24896	4235730962 103	CARL ELLIS H NO 3	ELLIS RANCH	48.0	NATURAL GAS PIPELINE
810349	24162	4235730972 103	CLARENCE H NEUFELD ET AL A NO 1	ELLIS RANCH	100.0	

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107504	p4872	a2221932843	103		EULA MCCORKLE ESTATE NO 1-24	HAMILTON	1.0	
8107254	p3051	a2393307491	103		FRANK CHAMBERS C NO 5	MENDOTA NW	60.0	
8107150	p0352	a2357000000	108		INEZ ROLLETTE NO 2	TWIN	0.0	NORTHERN NATURAL GAS
8107149	p0351	a2357000000	108		INEZ ROLLETTE NO 4	TWIN	0.0	NORTHERN NATURAL GAS
8107148	p0350	a2357000000	108		INEZ ROLLETTE NO 6	TWIN	0.0	NORTHERN NATURAL GAS
8107140	p0302	a2233000000	108		LOGAN-DUNIGAN NO 14	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107139	p0301	a2233000000	108		LOGAN-DUNIGAN NO 17	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107138	p0300	a2233000000	108		LOGAN-DUNIGAN NO 18	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107137	p0299	a2233000000	108		LOGAN-DUNIGAN NO 19	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107136	p0298	a2233000000	108		LOGAN-DUNIGAN NO 22	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107135	p0297	a2233000000	108		LOGAN-DUNIGAN NO 25	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107134	p0296	a2233000000	108		LOGAN-DUNIGAN NO 27	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107133	p0295	a2233000000	108		LOGAN-DUNIGAN NO 28	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107132	p0294	a2233000000	108		LOGAN-DUNIGAN NO 29	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107131	p0293	a2233000000	108		LOGAN-DUNIGAN NO 31	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107130	p0292	a2233000000	108		LOGAN-DUNIGAN NO 36	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107392	p4345	a2393307441	103		NORMAN C BLANKINSHIP ET AL NO 1	LARD RANCH	3.0	
8107509	p4895	a2357310211	103		ODC A NO 2-759	ELLIS RANCH	48.0	NATURAL GAS PIPELINE
8107503	p4871	a2295307931	103		OLA O PIPER NO 7-720	BRADFORD	1022.0	TRANSWESTERN PIPELIN
8107147	p0349	a2233000000	108		PARKS NO 1	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107143	p0345	a2233000000	108		PARKS NO 10	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107146	p0348	a2233000000	108		PARKS NO 3	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107145	p0347	a2233000000	108		PARKS NO 4	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107144	p0346	a2233000000	108		PARKS NO 9	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107141	p0315	a2233000000	108		STEWART NO 20	PANHANDLE	1.0	NORTHERN NATURAL GAS
8107142	p0316	a2233000000	108		STEWART NO 24	PANHANDLE	1.0	NORTHERN NATURAL GAS
*DINERO OIL CO					RECEIVED: 12/02/80 JA: TX			
8107408	p4473	a2273314453	103		KING RANCH INC #1	KINGSVILLE (5100)	275.0	VALERO TRANSMISSION
*DISCOVERY OPERATING INC					RECEIVED: 12/02/80 JA: TX			
*8107222	p2481	a2413000000	103		M J CASE #1	GWYN (CANYON) FIELD	28.0	CRA INC
*DYNAMIC OF TEXAS INC					RECEIVED: 12/02/80 JA: TX			
8107301	p3784	a2361303361	102		MILLER-VIDOR #1	PINE FOREST HACKBERRY	560.0	SOUTHWEST GATHERING
*DYNE OIL & GAS INC					RECEIVED: 12/02/80 JA: TX			
8107400	p4394	a2233307371	103		LUGINBYHL B NO 8 ID 01180	PANHANDLE - HUTCHINSON	0.0	PHILLIPS PETROLEUM C
*E G RICE					RECEIVED: 12/02/80 JA: TX			
8107268	p3398	a2429000000	108		#1C ID #18525 WALKER	WALKER-DAVIS(MARBLE)	3.6	LONE STAR GAS CO
8107267	p3397	a2429000000	108		WELL NO 1T ID #18339 WALKER EST	WALKER-DAVIS(3960)	6.8	LONE STAR GAS CO
8107269	p3399	a2429000000	108		1D ID #18517 WALKER	WALKER-DAVIS(CADDO)	5.4	LONE STAR GAS CO
*EDWIN L COX					RECEIVED: 12/02/80 JA: TX			
8107422	p4501	a2215309731	103		C & K PETROLEUM CORP FEE #1	MERCEDES (3-N-1)	180.0	VALERO TRANSMISSION
*EL PASO NATURAL GAS COMPANY					RECEIVED: 12/02/80 JA: TX			
8107099	j8948	a2087260191	108		BERGMAN #3	PANHANDLE EAST BROWN DUL	19.0	EL PASO NATURAL GAS
8107472	p4804	a2413188771	108		SHEEN S #1	FORT MCKAVITT (PALO PINT	10.0	EL PASO NATURAL GAS
*ELDORADO OIL & GAS INC					RECEIVED: 12/02/80 JA: TX			
*8107030	n8306	a2429000000	102		#1 M ROBERTSON 14084	EAST CRYSTAL FALLS	70.0	BRECKENRIDGE GASOLIN
8107031	n8536	a2429000000	102		#3 M ROBERTSON 79346	EAST CRYSTAL FALLS	46.0	BRECKENRIDGE GASOLIN
*ENERGY RESERVES GROUP INC					RECEIVED: 12/02/80 JA: TX			
8107257	p3092	a2355000000	108		J A THOMPSON #1	RIVERSIDE EAST	11.4	TENNESSEE GAS PIPELI
8107255	p3065	a2355000000	108		J A THOMPSON #16	RIVERSIDE EAST	16.8	TENNESSEE GAS PIPELI
*ENSERCH EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
8107171	p1324	a2203000000	108		M K WILLIAMS NO 1	WHELAN	15.9	TEXAS EASTERN GAS PI
*ENTERPRISE RESOURCES INC					RECEIVED: 12/02/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107339	p4097	4229131317	103		#1 CHAMPION INTERNATIONAL CORP (86*	QUINN (7525)	350.0	TRUNKLINE GAS CO
8107272	p3465	4246931552	102		OTTO P DENTLER #2	HEYENSVILLE E (3010)	180.0	VALERO TRANSMISSION
*EXXON CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107048	j5504	4233930419	103		CONROE FIELD UNIT #308	CONROE	200.0	MORAN UTILITIES
8107073	j7432	4233930449	103		CONROE FIELD UNIT #435	CONROE	75.0	MORAN UTILITIES
8107215	p2342	4216531740	103		EXXON FEE EUBANKS C #13	ROBERTSON N (CLFK 7100)	11.0	PHILLIPS PETROLEUM C
8107305	p3799	4200332167	103		FULLERTON CLEARFORK UNIT #1525	FULLERTON	5.0	PHILLIPS PETROLEUM C
8107306	p3800	4200332188	103		FULLERTON CLEARFORK UNIT #2527	FULLERTON	11.0	PHILLIPS PETROLEUM C
*8107285	p3665	4200332196	103		FULLERTON CLFK UNIT #1627	FULLERTON	42.0	PHILLIPS PETROLEUM C
8107454	p4734	4215731054	103		LOCKWOOD & SHARP A #90	THOMPSON	22.0	
8107175	p1483	4226130505	102		MRS B K EAST 103 (86305)	RITA (11-8 III)	547.0	NATURAL GAS PIPELINE
8107304	p3798	4216531739	103		ROBERTSON CLEARFORK UNIT #2402	ROBERTSON N (CLEARFORK 7	16.0	PHILLIPS PETROLEUM C
8107303	p3797	4216531758	103		ROBERTSON CLEARFORK UNIT #4950	ROBERTSON N (CLEARFORK 7	3.0	PHILLIPS PETROLEUM C
8107302	p3796	4216531679	103		ROBERTSON CLEARFORK UNIT #902	ROBERTSON N (CLEARFORK 7	2.0	PHILLIPS PETROLEUM C
8107507	p4880	4216531728	103		ROBERTSON/CLEARFORK/UNIT #1042	ROBERTSON N (CLEARFORK 7	30.0	PHILLIPS PETROLEUM C
8107506	p4879	4216531723	103		ROBERTSON/CLEARFORK/UNIT #7750	ROBERTSON N (CLEARFORK 7	25.0	PHILLIPS PETROLEUM C
8107369	p4244	4204730786	103		SANTA FE RANCH 55-F (87651)	SANTA FE EAST (ZONE 3)	365.0	NATURAL GAS PIPELINE
8107370	p4245	4226130533	103		SARITA FIELD OIL & GAS UNIT 131-F *	SARITA (5-8 M)	800.0	NATURAL GAS PIPELINE
8107358	p4184	4213134741	103		V KOHLER A-130 06096	VIGGO (QUEEN CITY #1)	62.0	TENNESSEE GAS PIPELI
8107357	p4182	4213134742	103		V KOHLER A-131 #06096	VIGGO (QUEEN CITY #1)	35.0	TENNESSEE GAS PIPELI
*FISHER-WEBB INC					RECEIVED: 12/02/80 JA: TX			
8107113	j9734	4208130815	103		MALONE B NO 1	MEADOW CREEK (CANYON)	150.0	SUN GAS CO
*GENE ROBERTSON OIL CO					RECEIVED: 12/02/80 JA: TX			
8107224	p2501	4223700000	103		PRESTON WOOD NO 1	JACK COUNTY REGULAR	97.8	NATURAL GAS PIPELINE
*GETTY OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107365	p4224	4210332252	103		NORTH MCELROY UNIT WELL NO 2745	MCELROY	23.0	PHILLIPS PETROLEUM C
8107404	p4432	4210300000	103		NORTH MCELROY WELL NO 2753	MCELROY	47.0	PHILLIPS PETROLEUM C
8107344	p4145	4236500000	103		ROSS-HAMILTON #2	CARTHAGE (COTTON VALLEY)	57.0	TEJAS GAS CORP
8107488	p4855	4217900000	108		SCHAFER RANCH NO 105	PANHANDLE GRAY	1.7	NORTHERN NATURAL GAS
8107489	p4856	4206500000	108		SCHAFER RANCH NO 112	PANHANDLE CARSON	3.0	NORTHERN NATURAL GAS
8107490	p4857	4206500000	108		SCHAFER RANCH NO 114	PANHANDLE CARSON	2.5	NORTHERN NATURAL GAS
8107491	p4858	4206500000	108		SCHAFER RANCH NO 142	PANHANDLE CARSON	7.0	NORTHERN NATURAL GAS
8107492	p4859	4206500000	108		SCHAFER RANCH NO 143	PANHANDLE CARSON	1.0	NORTHERN NATURAL GAS
8107493	p4860	4206500000	108		SCHAFER RANCH NO 144	PANHANDLE CARSON	2.3	NORTHERN NATURAL GAS
8107494	p4861	4206500000	108		SCHAFER RANCH NO 145	PANHANDLE CARSON	1.7	NORTHERN NATURAL GAS
8107495	p4862	4206500000	108		SCHAFER RANCH NO 163	PANHANDLE CARSON	2.3	NORTHERN NATURAL GAS
8107496	p4863	4206500000	108		SCHAFER RANCH NO 164	PANHANDLE CARSON	1.0	NORTHERN NATURAL GAS
8107497	p4864	4206500000	108		SCHAFER RANCH NO 181	PANHANDLE CARSON	0.5	NORTHERN NATURAL GAS
8107498	p4865	4206500000	108		SCHAFER RANCH NO 246	PANHANDLE CARSON	1.3	NORTHERN NATURAL GAS
8107499	p4866	4206500000	108		SCHAFER RANCH NO 254	PANHANDLE CARSON	0.7	NORTHERN NATURAL GAS
8107500	p4867	4206500000	108		SCHAFER RANCH NO 255	PANHANDLE CARSON	0.3	NORTHERN NATURAL GAS
8107476	p4839	4217900000	108		SCHAFER RANCH NO 40	PANHANDLE GRAY	1.3	NORTHERN NATURAL GAS
8107477	p4844	4217900000	108		SCHAFER RANCH NO 65	PANHANDLE GRAY	0.6	NORTHERN NATURAL GAS
8107478	p4845	4217900000	108		SCHAFER RANCH NO 72	PANHANDLE GRAY	0.4	NORTHERN NATURAL GAS
8107479	p4846	4217900000	108		SCHAFER RANCH NO 77	PANHANDLE GRAY	1.7	NORTHERN NATURAL GAS
8107480	p4847	4217900000	108		SCHAFER RANCH NO 78	PANHANDLE GRAY	0.4	NORTHERN NATURAL GAS
8107481	p4848	4206500000	108		SCHAFER RANCH NO 81	PANHANDLE CARSON	2.0	NORTHERN NATURAL GAS
8107487	p4854	4206500000	108		SCHAFER RANCH NO 82	PANHANDLE CARSON	0.8	NORTHERN NATURAL GAS
8107483	p4850	4206500000	108		SCHAFER RANCH NO 85	PANHANDLE CARSON	0.6	NORTHERN NATURAL GAS
8107484	p4851	4217900000	108		SCHAFER RANCH NO 88	PANHANDLE GRAY	0.4	NORTHERN NATURAL GAS
8107485	p4852	4206500000	108		SCHAFER RANCH NO 92	PANHANDLE CARSON	0.2	NORTHERN NATURAL GAS
8107486	p4853	4206500000	108		SCHAFER RANCH NO 96	PANHANDLE CARSON	2.9	NORTHERN NATURAL GAS
8107482	p4849	4206500000	108		SCHAFER RANCH NO 99	PANHANDLE CARSON	7.1	NORTHERN NATURAL GAS

JC NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107445	04697	4207931181	103		SOUTHWEST LEVELLAND UNIT NO 106	LEVELLAND - SAN ANDRES	2,2	CITIES SERVICE CO
8107449	04707	4216300000	103		W L HENDERSON #1	PEARSALL	8,0	CACAMUATE GAS CORP
*GILLRING OIL CO					RECEIVED: 12/02/80 JA: TX			
8107090	18486	4235531441	102		INGRAM A WELL NO 3 - 84904	AGUA DULCE/INGRAM A/FIEL	20,0	TENNESSEE GAS PIPELI
*GOLDSTON OIL CORP					RECEIVED: 12/02/80 JA: TX			
8107342	04140	4229732134	103		ELMS GAS UNIT WELL NO 1 (87560)	ELMS (SLICK UPPER)	275,0	TENNESSEE GAS PIPELI
8107508	04888	4215731096	103		HELEN J FARMER A WELL NO 1 13052	NEEDVILLE (PRIO 6200)	81,0	PHILLIPS PETROLEUM C
*GRACE PETROLEUM CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107053	16115	4236530803	103		CHADWICK #1-T	CARTHAGE (COTTON VALLEY)	264,0	UNITED GAS PIPELINE
*GULF COAST MINERALS CO INC					RECEIVED: 12/02/80 JA: TX			
8107068	17135	4213133366	102		RENE MARTINEZ NO 2	CADENA (2800)	134,0	UNITED GAS PIPELINE
*GULF OIL CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107042	02410	4217900000	108		ARNOLD #1	PANHANDLE GRAY	5,0	GETTY OIL CO
8107407	04435	4247531983	103		C W EDWARDS ET AL TR B NO 15	JANELLE B E (TUBB)	42,0	H & T GATHERING
*8107374	04273	4210332169	103		CRAWAR FIELD UNIT	CRAWAR (TUBB)	68,0	TRANSWESTERN PIPELIN
8107453	04727	4250531136	103		E T MARTINEZ NO 4 ID #86371	LAREDO (LOBO)	900,0	VALERO TRANSMISSION
8107328	04000	4250531118	103		G B VERGARA ET AL NO 4 ID #86805	J C MARTIN(LOBO)	700,0	TENNESSEE GAS PIPE L
8107398	04378	4221131159	103		GULF-MESA SAPPINGTON NO 3	MEMPHILL/GRANITE WASH	360,0	CITIES SERVICE GAS C
8107094	18756	4223300000	108		HAILE #16	PANHANDLE HUTCHINSON	3,0	GETTY OIL CORP
8107180	01600	4247531536	107		J W CADENHEAD WELL NO 1	G-M (PENN)	242,0	INTRATEX GAS CO
8107292	03718	4247500000	103		JACK EDWARDS H NO 2	JANELLE SE (TUBB)	7,0	H & T GATHERING
8107469	04766	4207130563	103		O C DEVILLIER ET AL NO 5 #73262	DEVILLIER (VICKSBURG)	1500,0	
8107452	04726	4215731031	103		R A WOLTERS ET AL B #27 #86453	THOMPSON	150,0	UNITED TEXAS TRANSMI
8107043	12473	4217900000	108		R B THOMPSON ETAL #9	PANHANDLE GRAY	5,0	GETTY OIL CO
8107276	03491	4250531117	102		R VIDAURRI ET AL 7	VIDAURRI (WILCOX 8200)	600,0	TENNESSEE GAS PIPELI
8107276	03491	4250531117	103		R VIDAURRI ET AL 7	VIDAURRI (WILCOX 8200)	600,0	TENNESSEE GAS PIPELI
8107371	04247	4206530607	103		S B BURNETT #109	PANHANDLE CARBON	8,0	PHILLIPS PETROLEUM C
8107193	02051	4247531939	107		UNIVERSITY 16-31 WELL NO 2	QUITO EAST (RUSSELMAN)	252,0	VALERO TRANSMISSION
8107246	022857	4210332108	103		W N WADDELL ET AL NO 1131	SAND HILLS (JUDKINS)	240,0	H & T GATHERING
8107331	04008	4210332190	103		W N WADDELL ET AL TR A NO 1132	SAND HILLS (JUDKINS)	173,0	H & T GATHERING
8107372	04248	4221131101	103		WEBB MARY ETAL #1-125	NW CANADIAN/L MORROW	286,0	EL PASO NATURAL GAS
*HANKEYE OIL & GAS CORP					RECEIVED: 12/02/80 JA: TX			
8107230	02598	4223700000	103		CAMPSEY NO 1 RRC#	CAMPBELL (ATOKA CONGLOME	428,4	LONE STAR GAS CO
*HILLIN PRODUCTION CO					RECEIVED: 12/02/80 JA: TX			
8107382	04306	4237133046	103		ATKINS #1	PECOS VALLEY B (ELLEN)	150,0	INTRATEX GAS CO
8107470	04790	4237132705	103		B L SMITH #2	PECOS VALLEY (WOLFCAMP)	150,0	EL PASO NATURAL GAS
*HNG OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107286	03679	4247932054	102		BRUNI MINERAL C #1 82814	JUANITA (LOBO)	448,0	HOUSTON PIPE LINE
8107286	03679	4247932054	103		BRUNI MINERAL C #1 82814	JUANITA (LOBO)	448,0	HOUSTON PIPE LINE
8107334	04027	4247531883	103		TEXFEL 103 #4 25375	PITZER B (DELAWARE)	26,0	CLAJON GAS CU INC
*HOLLY ENERGY INC					RECEIVED: 12/02/80 JA: TX			
8107282	03622	4217500000	103		A L ROLF NO 2	DALLAS HUSKY NE (HET)	110,0	TRANSCONTINENTAL GAS
*HOUSE BROTHERS OIL CO					RECEIVED: 12/02/80 JA: TX			
8107029	07712	4223300000	108		THOMPSON (01015) NO 2	PANHANDLE HUTCHINSON CUU	0,6	PHILLIPS PETROLEUM C
*HOUSTON OIL & MINERALS	CORPORATION				RECEIVED: 12/02/80 JA: TX			
8107213	02338	4247931948	102		FLOYD BILLINGS A #5-T	LOPEZ WEST (QUEEN CITY)	158,4	LAVACA GATHERING CU
8107056	16587	4270330170	102		STATE TRACT 526-L SW/4 #5	CAVALLO (7000) FIELD	1460,0	VALLEY PIPE LINE OPF
*HUGHES & HUGHES					RECEIVED: 12/02/80 JA: TX			
8107438	04629	4228730631	103		EDWARDS #1 UNIT	GIDDINGS (AUSTIN CHALK)	41,0	CLAJON GAS CU
8107437	04628	4228730629	103		EDWIN MENZEL #1 UNIT	GIDDINGS (AUSTIN CHALK)	46,0	CLAJON GAS CU
8107439	04630	4228730642	103		MAE #1 UNIT	GIDDINGS (AUSTIN CHALK)	210,0	CLAJON GAS CU
8107435	04626	4228730583	103		S W MANTZEL #1 UNIT	GIDDINGS (AUSTIN CHALK)	46,0	CLAJON GAS CU

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107436	p4627	4228730613	103		STELLA #1 UNIT	GIDDINGS (AUSTIN CHALK)	439.0	CLAJON GAS CO
=IKE LOVELADY INC					RECEIVED: 12/02/80 JA: TX			
8107333	p4026	4207931128	103		MABEL FIELD NO 3 WELL 62570	BUCKSHOT (4950)	21.6	WARREN PETROLEUM CO
8107332	p4025	4207931131	103		MABEL FIELD NO 4 WELL 62570	BUCKSHOT (4950)	32.8	WARREN PETROLEUM CO
=INDEPENDENT EXPLORATION CO					RECEIVED: 12/02/80 JA: TX			
8107164	p0999	4236731520	102		CARTWRIGHT #2 83218	BUCKNER (STRAWN)	73.0	JAMES P DUNIGAN INC
=INDIAN WELLS OIL CO					RECEIVED: 12/02/80 JA: TX			
8107252	p3008	4245130537	103		PROBANDT 55-1	PROBANDT (CANYON SAND)	146.0	NORTHERN NATURAL GAS
=J M HUBER CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107023	n2404	4234130531	103		PRITCHARD A #1A	PANHANDLE WEST	90.0	COLORADO INTERSTATE
=JAMES K ANDERSON INC					RECEIVED: 12/02/80 JA: TX			
8107161	p0880	4244131504	102		ALEX SEARS 159 #1	ALICE MARY	120.0	UNION TEXAS PETROLEU
=JOHN G MIDDLETON					RECEIVED: 12/02/80 JA: TX			
8107241	n22820	4208930899	103		L D MORRISON UNIT 1 NO 2 WELL 75077	ROCK ISLAND N (WILCOX 97	204.0	HOUSTON PIPE LINE CO
=JOHN H HENDRIX CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107170	p1243	4237132699	107		ROXIE NEAL #1	GOMEZ (ELLENBURGER)	0.0	
=JOSEPH I O'NEILL JR					RECEIVED: 12/02/80 JA: TX			
8107278	p3589	4200300000	108		UNIVERSITY A #1 = 64977	BLOCK 12 (YATES)	12.6	NORTHERN NATURAL GAS
=JS OIL CO INC					RECEIVED: 12/02/80 JA: TX			
8107035	10812	4208930915	102		H R HOUCK #1 ID #77890	ROCK ISLAND (FRIO UPPER)	31.9	LOVACA GATHERING CO
8107035	10812	4208930915	103		H R HOUCK #1 ID #77890	ROCK ISLAND (FRIO UPPER)	31.9	LOVACA GATHERING CO
8107414	p4490	4239131351	103		HYNES MINERAL TRUST #2	REFUGIO-FOX (6400)	0.0	UNITED GAS PIPELINE
8107413	p4488	4239131374	103		HYNES MINERAL TRUST B #1-T	REFUGIO-FOX (5850)	85.4	UNITED GAS PIPELINE
=KAISER-FRANCIS OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107184	p1920	4237100000	108		HELEN MARSCHALL UNIT	PECOS VALLEY FIELD	16.0	EL PASO NATURAL GAS
8107119	19874	4235700000	108		S R GEORGE	PERRYTON	8.0	NORTHERN NATURAL GAS
=KERR-MCGEE CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107309	p3850	4223330800	103		COCKRELL NO 23	PANHANDLE	3.0	GETTY OIL CO
8107457	p4745	4223330779	103		PITTS WELL NO 100	PANHANDLE	14.0	GETTY OIL CO
8107456	p4744	4223330774	103		PITTS WELL NO 101	PANHANDLE	16.0	GETTY OIL CO
8107455	p4742	4223330777	103		PITTS WELL NO 102	PANHANDLE	4.0	GETTY OIL CO
8107461	p4749	4223330770	103		PITTS WELL NO 96	PANHANDLE	14.0	GETTY OIL CO
8107460	p4748	4223330771	103		PITTS WELL NO 97	PANHANDLE	6.0	GETTY OIL CO
8107459	p4747	4223330772	103		PITTS WELL NO 98	PANHANDLE	10.0	GETTY OIL CO
8107458	p4746	4223330767	103		PITTS WELL NO 99	PANHANDLE	11.0	GETTY OIL CO
=KETAL OIL PRODUCING CO					RECEIVED: 12/02/80 JA: TX			
8107298	p3767	4208130769	103		I A BIRD C #5	MEADOW CREEK (CANYON)	26.0	SUN OIL CO
8107299	p3768	4208130800	103		I A BIRD C #6	MEADOW CREEK (CANYON)	26.0	SUN OIL CO
=KILLAM & HURD LTD					RECEIVED: 12/02/80 JA: TX			
8107077	17571	4217531265	102		A PREISS WELL NO 1	SCHRUEDER (3380)	54.0	TRANSCONTINENTAL GAS
8107078	17644	4247932407	102		LILIA BRUNI SLAUGHTER WELL NO 2	LILIA (WILCOX 8700)	182.0	TRANSCONTINENTAL GAS
8107249	p2884	4247932605	103		PUIG BROS WELL NO 1-74	DAVIS HINNANT (1ST)	183.0	VALERO TRANSMISSION
=KIMBALL PRODUCTION COMPANY					RECEIVED: 12/02/80 JA: TX			
8107060	16802	4206500000	108		BURNETT A NO 6	PANHANDLE	15.6	PHILLIPS PETROLEUM C
8107061	16803	4206500000	108		BURNETT A NO 7	PANHANDLE	15.6	PHILLIPS PETROLEUM C
=LAGUNA PETROLEUM CO					RECEIVED: 12/02/80 JA: TX			
*8107471	p4792	4211531269	103		MYERS #1	GIN NORTH (8000)	36.0	PHILLIPS PETROLEUM C
=LINGEN EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
8107399	p4386	4224931120	103		R TELLER NO 1 ID #85550	QUINTO CREEK (8600)	145.0	VALERO INTERSTATE TR
=M HIXON & R LITTLE					RECEIVED: 12/02/80 JA: TX			
8107024	n3931	4230100000	108		REGAN-MCELVAIN #1	WHEAT - DELAWARE SAND	1.8	PHILLIPS PETROLEUM C
8107049	15750	4230100000	108		REGAN-MCELVAIN #2 NRC NO 07973	WHEAT-DELAWARE SAND	1.8	PHILLIPS PETROLEUM C

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
=M J BRANNON					RECEIVED: 12/02/80 JA: TX			
8107032	09214	4208300000	102		J C BOYLE #1	BURKETT S (DUFFER)	75.0	WEST CEN-TEX GAS CO
=M D RIFE JR					RECEIVED: 12/02/80 JA: TX			
8107028	07216	4236300000	103		MAURINE L OLAUGHLIN #9 RRC 80546	OLAUGHLIN (2800)	85.0	BRAZOS ELECTRIC POWE
=MARSHALL AND WINSTON INC					RECEIVED: 12/02/80 JA: TX			
8107415	04493	4208100000	103		BILLIE MANKS NO 1	BLOODWURTH N E (5750 CAN	138.0	SUN GAS CO
=MARSHALL EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
8107025	04522	4220300000	103		W K FURRH #1	WILDCAT	200.0	NATURAL GAS PIPELINE
=MCCULLOCH OIL CORP OF TEXAS					RECEIVED: 12/02/80 JA: TX			
8107163	00978	4221131183	103		LITTLE S-30	HEMPHILL GRANITE WASH	512.0	PIONEER NATURAL GAS
8107120	09959	4221131165	103		MATHERS RANCH NO 37	HUMPHREYS-DOUGLAS	400.0	ARKANSAS LOUISIANA G
8107126	00092	4221131164	103		MATHERS RANCH NO 39	HUMPHREYS-DOUGLAS	330.0	ARKANSAS LOUISIANA G
=MCMORAN EXPLORATION CO					RECEIVED: 12/02/80 JA: TX			
8107248	02875	4221531021	102		COOK WELL #2-L	MCALLEN SOUTH (CARD SAND	600.0	TRANSCONTINENTAL GAS
=MEADCO PROPERTIES					RECEIVED: 12/02/80 JA: TX			
8107336	04054	4223531495	103		#1 A BUGG 3079 RRC #87137	ELA BUGG (WOLFCAMP)	73.0	NORTHERN NATURAL GAS
=MEMBOURNE OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107359	04203	4229530753	103		PEERY #8 ID #04432	PEERY (HARMATON)	38.0	TRANSWESTERN PIPELIN
=MGF OIL CORP					RECEIVED: 12/02/80 JA: TX			
8107389	04330	4231732130	103		LINNIE #1 (25944)	SPRABERRY (TREND AREA)	28.2	PHILLIPS PETROLEUM C
8107300	03769	4207130980	102		M E MAYES NO 1 RRC #12721	MAYES WEST (F-2)	73.0	
8107405	04433	4232930855	103		STINSON BURLEY A #1	SPRABERRY (TREND AREA)	14.5	NORTHERN NATURAL GAS
8107337	04085	4247531963	103		UNIVERSITY 32 WELL NO 3	WAR-WINK (DELAWARE 5085)	3.0	LONE STAR GAS CO
8107338	04088	4231732131	103		WAINWRIGHT WELL NO 1	SPRABERRY (TREND AREA)	18.1	NORTHERN NATURAL GAS
=MITCHELL ENERGY CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107238	022700	4249700000	108		BOLEY-HENDERSON #1 21222	BOLEY (STRAWN) 21222	4.2	CITIES SERVICES CO
8107235	022697	4249700000	108		D B FERGUSON #1 78466	BOONESVILLE (BEND CONGL	11.2	NATURAL GAS PIPELINE
8107026	05133	4223730223	108		EDNA SOUTHERLAND #1 49306	BOONSVILLE BEND CONG	20.6	NATURAL GAS PIPELINE
8107074	17458	4236731645	103		GLADYS JACKSON #2 84560	RENO (CONGLOMERATE)	500.0	NATURAL GAS PIPELINE
8107237	022699	4249700000	108		J F MIDDLETON #1 42591	BOONESVILLE (BEND CONGL	4.9	NATURAL GAS PIPELINE
8107052	16066	4249700000	108		MAY MIKIRK #1 15665	ALVORD (ATOKA CONGL)	11.0	NATURAL GAS PIPELINE
8107091	18551	4229330469	103		PRESLEY BADLER #1	WILDCAT	150.0	TEXAS UTILITIES FUEL
8107236	022698	4249700000	108		R J ALEXANDER #1 28553	BOONESVILLE (BEND CONGL	11.3	NATURAL GAS PIPELINE
8107234	022694	4237300000	108		SOUTHLAND PAPER MILL A-4 71772	MORTENSE (WOODBINE)	5.6	HOUSTON PIPELINE CO
8107022	01345	4236731028	102		VERNELL MABON #1-L 80211	LAKE MINERAL WELLS (4000	330.0	NATURAL GAS PIPELINE
=MOBIL PROD TEXAS & NEW MEXICO INC					RECEIVED: 12/02/80 JA: TX			
8107271	03450	4221932806	103		CENTRAL LEVELLAND NO 328	LEVELLAND	4.4	AMOCO PRODUCTION CO
8107209	02259	4213133155	108		DUVAL RANCH SEC 2628 NO 1	DCR 79 (SOUTH 1400)	5.0	NATURAL GAS PIPE LIN
*8107263	03165	4224900000	108		LAGLORIA GAS UNIT #47-T	LAGLORIA (LOS OLMOS)	16.1	TRANSCONTINENTAL PIP
8107211	02313	4221932797	103		NORTH CENTRAL LEVELLAND UNIT NO 327	LEVELLAND	6.0	AMOCO PRODUCTION CO
8107212	02314	4221932787	103		NORTH CENTRAL LEVELLAND UNIT NO 329	LEVELLAND	2.9	AMOCO PRODUCTION CO
*8107308	03841	4232930858	103		PRESTON SPRABERRY UNIT NO 4007	SPRABERRY (TREND AREA)	13.9	EL PASO NATURAL GAS
8107450	04718	4216531599	103		RUSSELL (7000 CLEARFORK) UNIT #218	RUSSELL (CLEARFORK 7000)	31.0	PIONEER NATURAL GAS
8107451	04720	4216531596	103		RUSSELL (7000 CLEARFORK) UNIT #222	RUSSELL (CLEARFORK 7000)	4.4	PIONEER NATURAL GAS
8107228	02526	4207330347	102		SUMMERS UNIT NO 1	SYM-JAC WEST (HOBBSTON) F	2.0	
8107321	03945	4202531255	103		WILL ERP ESTATE NO 6	PLUNKER-WILCOX (8500)	304.8	
=MOLE OPERATING COMPANY INC					RECEIVED: 12/02/80 JA: TX			
8107227	02517	4200100000	102		B O WYLIE NO 1	CAROL JEAN (JAMES LIME)	947.0	LONE STAR GAS CO
=MONSANTO COMPANY					RECEIVED: 12/02/80 JA: TX			
8107159	00727	4221100000	108		CLEMENT NO 1	HANSFORD (MORROW UPPER)	16.3	NORTHERN NATURAL GAS
=MORAN EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
8107409	04480	4238331525	103		ROCKER B #86	SPRABERRY (TREND AREA)	0.0	NORTHERN NATURAL GAS

JT NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
=MORNAC OIL & GAS CO.					RECEIVED: 12/02/80 JA: TX			
8107037	j1158	4228330642	102		C N COOKE B NO 4	COOKE (WILCUX 4100 WEST)	55.0	TRANSCONTINENTAL GAS
=MWJ PRODUCING COMPANY					RECEIVED: 12/02/80 JA: TX			
8107380	p4301	4238331559	103		FOUCH #1	CALVIN (DEAN)	60.0	PHILLIPS PETROLEUM C
8107376	p4296	4238331584	103		FOUCH #2	CALVIN (DEAN)	62.0	PHILLIPS PETROLEUM C
8107429	p4601	4232930893	103		OBRIEN B #1	SPRABERRY TREND AREA	64.0	EL PASO NATURAL GAS
8107377	p4297	4217331029	103		TXL 25 A #1	SPRABERRY TREND AREA	64.0	TEXACO INC
8107378	p4298	4217331030	103		TXL 25 A #2	SPRABERRY TREND AREA	107.0	TEXACO INC
8107379	p4300	4217331027	103		TXL 25-#2	SPRABERRY TREND AREA	79.0	TEXACO INC
8107430	p4602	4217331046	103		TXL 39 A #1	SPRABERRY TREND AREA	60.0	TEXACO INC
8107373	p4266	4238331478	103		VERLIE #1	SPRABERRY TREND AREA	60.0	
=N L KOIN					RECEIVED: 12/02/80 JA: TX			
8107100	j0132	4243900000	108		R A ELLISON NO 1 #239518	LAKE WORTH (PENN 5590)	5.0	LONE STAR GAS CO
=NATOMAS NORTH AMERICA INC					RECEIVED: 12/02/80 JA: TX			
8107058	j6707	4208130780	102		HIGGINS NO 5	HILDCAT	61.0	LONE STAR GAS CO
=NORMAN P VANVALKENBURGH					RECEIVED: 12/02/80 JA: TX			
8107348	p4149	4213332152	103		RSTF FEE #1 16013	MANGUM WEST (3100)	54.8	ODESSA NATURAL CORP
=NORTHERN NATURAL GAS CO					RECEIVED: 12/02/80 JA: TX			
8107097	j8915	4238931007	107		HADDOX-HILLBANKS #1-15	HERSHEY WEST	113.0	NORTHERN NATURAL GAS
=NP ENERGY CORP					RECEIVED: 12/02/80 JA: TX			
8107036	j1068	4246931161	103		MEYER #1	MARCADO CREEK E FIELD	72.0	HOUSTON PIPELINE COR
=NRM PETROLEUM CORPORATION					RECEIVED: 12/02/80 JA: TX			
8107046	j5173	4244500000	102		ODC 9 #1 81895	CABBINESS YATES FIELD	200.0	NORTHERN NATURAL GAS
=PANHANDLE PRODUCING COMPANY					RECEIVED: 12/02/80 JA: TX			
8107041	j2403	4223300000	108		HAILE NO 15 (00820)	PANHANDLE HUTCHINSON COU	10.0	GETTY OIL CO
=PANTHER GAS CO					RECEIVED: 12/02/80 JA: TX			
8107419	p4497	4221932841	103		PANTHER C NO 14	LEVELLAND (SAN ANDRES)	9.6	AMOCO PRODUCTION CO
8107418	p4496	4221932840	103		PANTHER C NO 15	LEVELLAND (SAN ANDRES)	10.4	AMOCO PRODUCTION CO
8107420	p4499	4221932679	103		PANTHER C NO 6	LEVELLAND (SAN ANDRES)	8.2	AMOCO PRODUCTION CO
=PARKER & PARSLEY INC					RECEIVED: 12/02/80 JA: TX			
8107158	p0683	4217331032	103		WALTON WELL NO 1	SPRABERRY (TREND AREA)	15.0	PHILLIPS PETROLEUM C
=PENNZOIL PRODUCING COMPANY					RECEIVED: 12/02/80 JA: TX			
8107295	p3736	4250331195	103		JENNINGS NO 46	JENNINGS W	40.0	NATURAL GAS PIPELINE
8107294	p3735	4200730641	103		V H TATTON NO 19-D	VIRGINIA	3.0	NATURAL GAS PIPELINE
8107296	p3738	4239131223	103		W J FOX NO A-46	REFUGIO-FOX	183.0	UNITED GAS PIPE LINE
=PETROLEUM CORPORATION OF TEXAS					RECEIVED: 12/02/80 JA: TX			
8107348	p4161	4213533133	103		BLAKENEY 32-2	NORTH CONDEN (GRAYBURG)	18.3	PHILLIPS PETROLEUM C
8107347	p4160	4213533191	103		BLAKENEY 32-3	NORTH CONDEN (GRAYBURG)	131.4	PHILLIPS PETROLEUM C
=PHILLIPS PETROLEUM COMPANY					RECEIVED: 12/02/80 JA: TX			
8107335	p4038	4238301149	108		(01612) JEFFS NO 1	SPRABERRY (TREND AREA)	11.0	NORTHERN NATURAL GAS
8107516	p4978	4213507939	108		(18713) GOLDSMITH ADOBE UNIT #44-04	GOLDSMITH (3600)	6.0	SHELL OIL CO
8107517	p4979	4200330154	108		(20480) HOLT-K #2-A	TRIPLE-N (PENN UPPER)	9.0	NORTHERN NATURAL GAS
8107055	j6148	4220530101	103		JOANNA NO 2	W PANHANDLE	66.0	EL PASO NATURAL GAS
8107219	p2430	4240100000	108		THRASH #18	EAST TEXAS	0.8	PANADE CO
=PICKENS CO INC					RECEIVED: 12/02/80 JA: TX			
8107027	p6695	4227331158	102		SEXAUER NO 6 09000	RICARDO SOUTH (7150)	5.0	HOUSTON PIPE LINE CO
=QUINTEX PETROLEUM CORP					RECEIVED: 12/02/80 JA: TX			
8107293	p3720	4208931102	103		E J GRACEY ET AL UNIT 1	ROCK ISLAND (UPPER FKIU)	602.0	HOUSTON PIPE LINE CO
=R E SMITH ESTATE					RECEIVED: 12/02/80 JA: TX			
8107279	p3593	4236530732	103		HOPPER UNIT #1 WELL #2	CARTHAGE (CUTTON VALLEY)	730.0	TEXAS EASTERN TRANSM
=R L TRIPPHORN					RECEIVED: 12/02/80 JA: TX			
8107280	p3600	4206500000	108		MCCONNELL A NO 6	PANHANDLE CARSON	1.4	GETTY OIL CO

JD NO	DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
=RIAL OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
810,173	01411	4249531101	103		SEALY & SMITH 72 #1 25638	DARMER NE (PENN)	21.6	EL PASO NATURAL GAS
=RICKS EXPLORATION CO					RECEIVED: 12/02/80 JA: TX			
810,225	02503	4235730969	102		SIMMONS 1176-A	NICKS (MURRUH UP)	75.0	HIGH PLAINS NATURAL
=RINER EXPLORATION CORP					RECEIVED: 12/02/80 JA: TX			
810,216	02363	4224731121	102		DANA MELLEN #1 WELL	SOUTH ROMEO	110.0	VALERO INTERSTATE TR
=RK PETROLEUM CORP					RECEIVED: 12/02/80 JA: TX			
810,375	04292	4231732154	103		PAISANO-WOLCOTT NO 3 WELL #25617	SPRABERRY (TREND) AREA	21.9	NORTHERN NATURAL GAS
=ROBERT H WYNNE					RECEIVED: 12/02/80 JA: TX			
810,231	02640	4210500000	108		UNIVERSITY 11-3	FARMER (SAN ANDRES)	0.0	EL PASO NATURAL GAS
=S K BARRY					RECEIVED: 12/02/80 JA: TX			
810,345	04148	4208331739	103		MCCORD NO 1 15339	COLEMAN COUNTY REGULAR	9.2	UNION TEXAS PETROLEU
=SAREDAN OIL CORPORATION					RECEIVED: 12/02/80 JA: TX			
810,411	04482	4216531390	103		ROBERTSON A NO 3	ROBERTSON (SAN ANDRES)	4.0	PHILLIPS PETROLEUM C
810,410	04481	4216531369	103		ROBERTSON SA NO 5	ROBERTSON (SAN ANDRES)	6.0	PHILLIPS PETROLEUM C
=SANCHEZ-O'BRIEN MINERALS CORP					RECEIVED: 12/02/80 JA: TX			
810,172	01336	4235531445	102		J L MASSEY NO 1 API-42-355-31445	WILDCAT	0.0	UNITED TEXAS TRANSMI
810,064	16899	4247932439	102		L M HEREFORD WELL NO 15 API 042-47-	BASAÑANA HEREFORD FIELD	500.0	UNITED TEXAS TRANSMI
810,065	16919	4235531478	102		PAVELKA GAS UNIT NO 1 API-42-355-3-	ROBSTOWN W (6900)	500.0	UNITED TEXAS TRANSMI
810,129	00266	4247932524	102		S J MARTIN NO 3-A API NO 42-479-32-	MORITAS CREEK (9700)	500.0	TENNESSEE GAS PIPELI
=SAXON OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
810,088	16363	4238331440	103		UNIVERSITY 4-10 NO 1	SPRABERRY (TREND AREA)	19.3	PHILLIPS PETROLEUM C
810,089	16364	4238300000	103		UNIVERSITY 4-10 NO 2	SPRABERRY (TREND AREA)	15.3	PHILLIPS PETROLEUM C
810,174	01469	4238331480	103		UNIVERSITY 7-2 NO 1	SPRABERRY (TREND AREA)	15.7	PHILLIPS PETROLEUM C
810,206	02190	4238331556	103		HEATHERBY A NO 2	SPRABERRY (TREND AREA)	31.8	EL PASO NATURAL GAS
=SEELY OIL CO					RECEIVED: 12/02/80 JA: TX			
810,363	04215	4249731627	103		DONNA KELLEY #1 ID 86079	BOONSVILLE (BEND CONGL G	365.0	NATURAL GAS PIPELINE
=SHELL OIL CO					RECEIVED: 12/02/80 JA: TX			
810,383	04314	4221530981	103		A A MCALLEN NO 66	MC ALLEN RANCH (VICKSBUR	400.0	VALERO INTERSTATE TR
810,343	04141	4221530984	103		A A MCALLEN NO 67R	MCALLEN RANCH (VICKSBURG	350.0	VALERO INTERSTATE TR
810,223	02485	4221530890	102		BOSTON-TEXAS LAND TRUST NO 12	MCCOOK EAST (VICKSBURG 1	350.0	NATURAL GAS PIPELINE
810,182	01718	4246131518	103		COWDEN 30 #1	SPRABERRY TREND AREA	14.0	PHILLIPS PETROLEUM C
810,044	13513	4216531552	103		DENVER UNIT 7539	WASSON	95.0	SHELL OIL CO & COLTE
810,069	17153	4221131082	103		FEE #1-111	ALPAR (TONKAWA)	200.0	
810,070	17154	4221131082	103		FEE #1-111	GEM-MEMPHILL (DOUGLAS)	800.0	
810,188	02011	4250531092	102		G P MUZZA NO 1	FANDANGO (HERODOTUS) (PR	900.0	UNITED TEXAS TRANSMI
810,253	03031	4204730731	102		H S LOPEZ NO 1	LOPEZ RANCH (VKSBG 13150	150.0	LONE STAR GAS CO
810,205	02167	4250131621	103		OWNBY SAN ANDRES UNIT NO 53	OWNBY	32.5	AMOCO PRODUCTION CO
810,208	02166	4250131602	103		OWNBY SAN ANDRES UNIT NO 60	OWNBY	8.6	AMOCO PRODUCTION CO
810,340	04098	4247532001	103		SEALY SMITH FOUNDATION #167	MONAHANS (CLEAR FORK)	56.0	EL PASO NATURAL GAS
=SOUTHLAND ROYALTY CO					RECEIVED: 12/02/80 JA: TX			
810,444	04647	4246131483	103		WOOLEY S #2	SPRAYBERRY TREND	30.0	PHILLIPS PETROLEUM C
=SOUTHWESTERN GAS EXPLORATION CORP					RECEIVED: 12/02/80 JA: TX			
810,261	023140	4236730528	103		D G TALBOT #3	BUCK RANCH (STRAWN)	128.6	SOUTHWESTERN GAS PIP
810,442	04640	4249700000	103		G A ELLIOTT #1	BOONESVILLE (BEND CONGL)	119.0	SOUTHWESTERN GAS PIP
810,443	04643	4222100000	103		IRA HUFFSTUTLER #1	MORGAN MILL (MARBLE FALL	124.4	SOUTHWESTERN GAS EXP
=STAHL PETROLEUM CO					RECEIVED: 12/02/80 JA: TX			
810,076	17565	4248300000	108		HUGHES #1	EAST PANHANDLE	0.0	TRANSWESTERN PIPELIN
=SUN OIL COMPANY (DELAWARE)					RECEIVED: 12/02/80 JA: TX			
810,232	02668	4200300000	108		ARGO -B- WELL NO 1	GOLDSMITH NORTH	2.0	PHILLIPS PETROLEUM C
810,463	04755	4217900000	108		COMBS AND WORLEY B NO 1	PANHANDLE	15.0	PHILLIPS PETROLEUM C
810,387	04327	4227331210	103		E G CANALES NO 21	TCB	359.0	FLORIDA GAS TRANSMIS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107101	j9271	a2135000000	108		FOSTER JOHNSON UNIT NO 5-5	FOSTER	0.4	UDESSA NATURAL CORP
8107259	j3117	a2427313690	103		I V MONTALVO C NO 41	SUN NORTH	83.0	
8107388	j4328	a2071300974	103		J E JACKSON UNIT WELL NO 4	JACKSON PASTURE (F-4)	15.0	WINNIE PIPELINE CO
8107102	j9272	a2135000000	108		J E WITCHER NO 8	FOSTER	1.0	UDESSA NATURAL CORP
8107465	j4759	a2391000000	108		J M OBRIEN A NO 6	GRETA	18.0	UNITED TEXAS TRANSMI
8107289	j3692	a2203306500	102		JANIE DAVIS NO 1	M LANSING	452.0	
8107288	j3690	a2127312190	103		JOHN S BAGGETT NO 7	PEARSALL (AUSTIN CHALK)	66.0	HOUSTON PIPE LINE CO
8107287	j3688	a2307309890	103		JOHN S BAGGETT NO 9	PEARSALL (AUSTIN CHALK)	1.0	HOUSTON PIPE LINE CO
*8107466	j4760	a2079311710	103		LEAGUE 91 PROJECT NO 2-5	SLAUGHTER	3.0	EL PASO NATURAL GAS
*8107467	j4761	a2079311680	103		LEAGUE 91 PROJECT NO 2-6	SLAUGHTER	2.0	EL PASO NATURAL GAS
8107240	n22809	a2469315140	102		MCFADDIN A NO 54	MCFADDIN NW (5930) (PROP	284.0	UNITED GAS PIPE LINE
8107527	j6414	a2135000000	108		PAUL MOSS UNIT NO 143	COWDEN SOUTH	1.5	UDESSA NATURAL CORP
8107160	j0756	a2401000000	108		R J HENDON NO 12	EAST TEXAS	1.0	ARCO OIL AND GAS CO
8107290	j3695	a2427312650	102		S RODRIGUEZ NO 4	KELSEY SOUTH	97.0	
8107258	j3114	a2427313780	103		S RODRIGUEZ NO 5	KELSEY SOUTH	1497.0	
8107464	j4758	a2081308540	103		SAM S SAVAGE WELL NO 2	LYGAY	40.0	EL PASO NATURAL GAS
8107384	j4321	a2423303730	103		SHAMBURGER LAKE UNIT NO 1-2	SHAMBURGER LAKE (PALUXY)	11.0	LONE STAR GAS CO
8107385	j4322	a2335315780	103		V T MCCABE A NO 17	JAMESON NORTH (STRAWN)	3.0	LONE STAR GAS CO
8107386	j4323	a2335316140	103		V T MCCABE D NO 17	JAMESON NORTH (STRAWN)	9.0	LONE STAR GAS CO
8107168	j1170	a2227000000	108		W R SETTLES WELL NO 13	HOWARD-GLASSCOCK	0.2	PHILLIPS PETROLEUM C
*SUNNYBROOK OIL & GAS INC					RECEIVED: 12/02/80 JA: TX			
8107183	j1797	a2401000000	108		M KANGERGA RRC ID #51175	SHILUH/RODESSA	18.0	TEXAS UTILITIES FUEL
*TAMOE OIL & CATTLE CO					RECEIVED: 12/02/80 JA: TX			
8107229	j2589	a2371054570	108		STATE UNIVERSITY ABD #4	LEON VALLEY (OBRIEN)	15.0	LARCO GAS CORP
*TAYLOR BROTHERS OIL CO					RECEIVED: 12/02/80 JA: TX			
8107243	n22848	a2341305710	103		DOTTIE #1 (04547)	PANHANDLE MOORE COUNTY	5.0	PHILLIPS PETROLEUM C
8107244	n22849	a2341305740	103		DOTTIE #2 (04547)	PANHANDLE MOORE COUNTY	5.0	PHILLIPS PETROLEUM C
8107245	n22850	a2341305720	103		MITCH & MITZIE A #6 (04442)	PANHANDLE MOORE COUNTY	20.0	PHILLIPS PETROLEUM C
*TENNECO OIL COMPANY					RECEIVED: 12/02/80 JA: TX			
8107262	j3154	a2371329160	103		MENDEL ESTATE 1-22	GOMEZ (WOLFCAMP UPPER)	360.0	VALERO TRANSMISSION
*TEXACO INC					RECEIVED: 12/02/80 JA: TX			
8107067	j7109	a2329306330	102		J C FRANKLIN NO 1	BRADFORD RANCH (ATOKA)	23.0	EL PASO NATURAL GAS
8107354	j4179	a2003311630	103		STATE OF TEXAS I #3	BLOCK 6 (DEVONIAN)	13.3	PHILLIPS PETROLEUM C
8107350	j4172	a2135329210	103		WEST JORDAN UNIT #15-13	JORDAN	9.9	PHILLIPS PETROLEUM C
8107355	j4180	a2103318160	103		WEST JORDAN UNIT #15-14	JORDAN	3.7	PHILLIPS PETROLEUM C
8107352	j4174	a2103318170	103		WEST JORDAN UNIT #16-4	JORDAN	12.1	PHILLIPS PETROLEUM C
8107351	j4173	a2103318180	103		WEST JORDAN UNIT #16-5	JORDAN	9.1	PHILLIPS PETROLEUM C
8107353	j4178	a2135329050	103		WEST JORDAN UNIT #3-12	JORDAN	6.2	PHILLIPS PETROLEUM C
8107356	j4181	a2135329180	103		WEST JORDAN UNIT #7-8	JORDAN	5.8	PHILLIPS PETROLEUM C
*TEXAS ENERGY EXPLORATION INC					RECEIVED: 12/02/80 JA: TX			
8107264	j3285	a2215309960	103		TEX ENERGY EXPL #1-C HINOJOSA	E LA REFORMA FRIO (01)	32.0	VALERO INTERSTATE TR
*TEXAS OIL & GAS CORP					RECEIVED: 12/02/80 JA: TX			
8107242	n22842	a2161305700	102		CAMERON #1	REED N (COTTON VALLEY LI	750.0	(PENDING)
8107242	n22842	a2161305700	103		CAMERON #1	REED N (COTTON VALLEY LI	750.0	(PENDING)
8107218	j2389	a2371000000	103		CARRIE A #1	ABELL (WADDELL)	17.0	PERRY GAS CO
8107095	j8792	a2481000000	108		J J HILL #4	LOUISE N (3600)	20.0	TENNESSEE GAS TRANSM
8107033	n9265	a2297319700	102		MCCLELLAND #12	OAKVILLE (YEGUA 3000)	120.0	TRANSCONTINENTAL GAS
8107127	j0110	a2479324750	103		RACHAL #6	SEGUNDO (OLNOS)	125.0	DELHI GAS PIPELINE C
*TEXAS PACIFIC OIL COMPANY INC					RECEIVED: 12/02/80 JA: TX			
8107087	j8003	a2161304070	102		F W ZUGG UNIT WELL NO 1	REED N (COTTON VALLEY) F	110.0	UNITED TEXAS TRANSMI
8107277	j3533	a2133317420	102		W E GARDNER ET AL UNIT NO 1	GAILEY ALLEN (MARBLE FAL	300.0	SOUTHWESTERN GAS PIP
*TOMLINSON INTERESTS INC					RECEIVED: 12/02/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
810,221	02448	4240130770	102		NAOMI WILLIAMSON NO 1 WELL	WILDCAT ABOVE 11100 FEET	45.0	DELHI GAS PIPELINE C
810,220	02447	4240130623	102		T P CANNON NO 1 WELL	WILDCAT ABOVE 11050 FEET	86.0	DELHI GAS PIPELINE C
*TRANSCONTINENTAL OIL CORPORATION					RECEIVED: 12/02/80 JA: TX			
*810,406	04434	4241330894	103		UNIVERSITY 22 #1	UNIVERSITY 53 (CANYON)	270.0	CRA INC
*TRAVELERS OIL CO					RECEIVED: 12/02/80 JA: TX			
810,393	04346	4217930714	103		CARPENTER E #1 ID# 87654	EAST PANHANDLE	10.9	TRANSWESTERN PIPE LI
810,395	04348	4217930715	103		DUNIGAN A #2 ID#87328	EAST PANHANDLE	10.9	TRANSWESTERN PIPE LI
810,394	04347	4217930731	103		MARATHON #1 ID# 87329	EAST PANHANDLE	54.7	TRANSWESTERN PIPE LI
*TUCKER & BAUMGARDNER					RECEIVED: 12/02/80 JA: TX			
810,256	03066	4222732051	103		BLACK BASS #4 WELL #25591	COAHUMA NORTH (FUSSELMAN	31.0	PHILLIPS PETROLEUM C
*TUCKER DRILLING COMPANY INC					RECEIVED: 12/02/80 JA: TX			
810,368	04233	4223531918	103		FRANK LINDLEY A #5	CHRISTI (CANYON 6800)	78.0	CRA INC
*THF OIL & GAS INC					RECEIVED: 12/02/80 JA: TX			
810,514	04910	4213332027	103		BROWN NO 1 (67981)	LEE RAY (DUFFER LIME)	397.9	LONE STAR GAS CO
*TYLER OIL & GAS INC					RECEIVED: 12/02/80 JA: TX			
810,075	17486	4236500000	108		NELLO-MAE BLANCHE UIL UNIT #1	CARTHAGE (HILL SOUTHWEST	16.0	UNITED GAS PIPELINE
*VANDERBILT RESOURCES CORPORATION					RECEIVED: 12/02/80 JA: TX			
810,128	00202	4223931159	108		STORMONT A-1 ID #73487	LONG BRANCH (FRIO 4100)	17.5	TENNESSEE GAS PIPELI
*VAUGHAN WELL CORP					RECEIVED: 12/02/80 JA: TX			
810,341	04133	4248300000	108		WRIGHT #1	EAST PANHANDLE	11.0	SHAMROCK GAS CO
*W E CARL					RECEIVED: 12/02/80 JA: TX			
810,057	16685	4250531107	102		BERTA VELA CAVAZOS NO 1	EL GRULLO (7300)	256.0	TENNESSEE GAS PIPELI
810,247	022874	4239131365	102		TATTON #1	ARTESIAN CREEK	185.0	SOUTHERN NATURAL GAS
*W R (BILL) HOFFMANN					RECEIVED: 12/02/80 JA: TX			
810,326	03987	4213300000	108		T J AMIS NO 1 ID NO 17523	CISCO SOUTHWEST (LAKE)	6.0	ENSERCH EXPLORATION
*W R EDWARDS JR					RECEIVED: 12/02/80 JA: TX			
810,468	04764	4223330816	103		BARNHILL WELL NO 25-1	PANHANDLE HUTCHINSON CO	0.0	PANHANDLE PRODUCING
*WAINOCO OIL & GAS COMPANY					RECEIVED: 12/02/80 JA: TX			
810,281	03617	4231131316	102		ALAMO NATL BANK TRUSTEE NO 1	FANNIE K (WALES 6650)	100.0	TENNESSEE GAS PIPELI
810,281	03617	4231131316	103		ALAMO NATL BANK TRUSTEE NO 1	FANNIE K (WALES 6650)	100.0	TENNESSEE GAS PIPELI
*WARREN PETRO CO A DIV OF GULF OIL CO					RECEIVED: 12/02/80 JA: TX			
810,270	03418	4210332177	103		STATE EE NO 6	DUNE	7.0	EL PASO NATURAL GAS
810,361	04205	4210332222	103		W N WADDELL ET AL TR A NO 1150	SAND HILLS N (ELLENBURGE	8.0	EL PASO NATURAL GAS
810,291	03716	4210332115	103		W N WADDELL ET AL TR A 1136	SAND HILLS (JUDKINS)	49.0	EL PASO NATURAL GAS
810,039	11419	4210300000	108		W N WADDELL ET AL TR A 572	SAND HILLS SAN ANGELO UP	4.0	EL PASO NATURAL GAS
810,360	04204	4210332202	103		W N WADDELL ET AL TR H NO 1149	LEA (SAN ANDRES)	7.0	EL PASO NATURAL GAS
*NATHAN W MCMANAN					RECEIVED: 12/02/80 JA: TX			
810,432	04613	4246131513	103		CONNELL ESTATE NO 1	SPRABERRY (TREND AREA)	14.5	PHILLIPS PETROLEUM C
810,428	04574	4246131515	103		COWDEN A ET AL NO 3	SPRABERRY (TREND AREA)	53.0	PHILLIPS PETROLEUM C
810,431	04612	4246131546	103		COWDEN ET AL B NO 1	SPRABERRY (TREND AREA)	40.5	PHILLIPS PETROLEUM C
810,327	03949	4236731603	103		PATTON A NO 1	COALSON (CONGL 4750)	161.0	LONE STAR GAS CO
*WILLIAM T LEWIS					RECEIVED: 12/02/80 JA: TX			
810,525	05052	4250300000	103		GRAY/JONES820170	A D U MISSISSIPPI	41.0	SUN GAS GATHERING CO
*WILSON ENERGY INC					RECEIVED: 12/02/80 JA: TX			
810,501	04869	4210500000	103		GULF STATE #2	FARMER (SAN ANDRES)	11.0	BIG LAKE GASOLINE PL
810,502	04870	4210500000	103		GULF STATE #3	FARMER (SAN ANDRES)	6.0	BIG LAKE GASOLINE PL
810,475	04808	4210500000	103		MAGGIE NEAL #4	WEGER (NORTH)	17.0	BIG LAKE GASOLINE PL
810,266	03326	4210500000	103		UNIVERSITY 10 #2 WELL	FARMER (SAN ANDRES)	4.0	BIG LAKE GAS PLANT
810,473	04806	4210500000	103		UNIVERSITY 10 #3	FARMER (SAN ANDRES)	19.0	BIG LAKE GASOLINE PL
810,474	04807	4210500000	103		UNIVERSITY 12 B #4	FARMER (SAN ANDRES)	11.0	BIG LAKE GASOLINE PL
810,310	03862	4210500000	103		UNIVERSITY 9 A #6	FARMER (SAN ANDRES)	311.0	BIG LAKE GASOLINE PL
*WORLD PRODUCERS INC					RECEIVED: 12/02/80 JA: TX			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107185	>1941	4223732548	102		MARLEY PARRISH #1	BOGEN (MISS)	40.0	SOUTHWESTERN GAS PIP
8107156	>0575	4243532161	103		MAYER RANCH B #5	MAYER RANCH (CANYON)	25.0	NORTHERN NATURAL GAS
8107157	>0576	4243532160	103		MAYER RANCH B #6	MAYER RANCH (CANYON)	50.0	NORTHERN NATURAL GAS
8107186	>1950	4236731719	102		SPARKS #2	LAKE MINERAL WELLS (4000	35.0	SOUTHWESTERN GAS PIP
*WY-VEL CORP					RECEIVED: 12/02/80 JA: TX			
8107114	>0772	4223330655	103		SOUTHLAND NO 3	PANHANDLE	2.0	PHILLIPS PETROLEUM C
*ZAPATA EXPLORATION CO					RECEIVED: 12/02/80 JA: TX			
8107275	>3490	4270430127	102		B/L 68099 WELL NO 1-L	BRAZOS 446L SE/4 (8-2 SD	1095.0	VALERO TRANSMISSION

OTHER PURCHASERS VOLUME NO 1335

8107030 GREAT WESTERN GAS CO
8107076 WARREN PETROLEUM COMPANY
8107222 NORTHERN NATURAL GAS CO
8107226 CITIES SERVICE CO
8107263 NATURAL GAS PIPE LINE CO OF AMERICA
8107285 AMOCO PRODUCTION CO
8107307 EL PASO NATURAL GAS COMPANY
8107308 PHILLIPS PET CO
8107374 KANSAS-NEBRASKA NATURAL GAS INC
8107390 EL PASO NATURAL GAS CO
8107391 EL PASO NATURAL GAS CO
8107406 LONE STAR GAS COMPANY
8107421 COLTEXO CORP
8107438 JOHN H MECOM
8107440 EL PASO NATURAL GAS COMPANY
8107466 AMOCO PRODUCTION CO
8107467 AMOCO PRODUCTION CO
8107471 NORTHERN NAT GAS CO
8107512 WINNIF P L CO
8107524 EL PASO NAT GAS CO

BILLING CODE 6450-85-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 proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons 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 February 12, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-3125 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings & Appeals

Cases Filed Week of December 12 through December 19, 1980

During the week of December 12 through December 19, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 22, 1981.

List of Cases Received by the Office of Hearings and Appeals

[Week of Dec. 12 through Dec. 19, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 12, 1980	Corn Belt F.S., Inc., Decatur, Illinois	BEE-1563	Allocation exception. If granted: Corn Belt F.S., Inc. would receive an exception from the provisions of 10 C.F.R., Part 211 which would permit the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Dec. 12, 1980	Kentucky Oil and Refining Co., Inc., Belsy Layne, Kentucky.	BEX-0137	Supplemental order. If granted: Kentucky Oil and Refining Co., Inc. would receive a stay of its obligations to purchase entitlements pursuant to 10 C.F.R. § 211.67.
Dec. 12, 1980	Kerr-McGee Corp., Washington, D.C	BEN-1561	Interim order. If granted: Kerr-McGee Corp. would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-1561).
Dec. 12, 1980	R.R. Morrison & Son, Inc., Vicksburg, Mississippi	BEG-0041	Request for Special Redress. If granted: R.R. Morrison & Son, Inc. will be considered a new wholesaler-purchaser-reseller and would be assigned a base period supplier for its Pearl, Mississippi outlet.
Dec. 15, 1980	Caribou Four Corners, Washington, D.C.	BEX-0139	Supplemental order. If granted: The Department of Energy would stay a portion of Caribou Four Corners' entitlement purchase obligations during the period December 1980 through May 1981 for crude oil receipts and runs to stills during the period October 1980 through March 1981.
Dec. 15, 1980	Craft Petroleum Company, Indianola, Mississippi	BFA-0552	Appeal of an Information Request Denial. If granted: The November 4, 1980 Information Request Denial issued by the Office of General Counsel would be rescinded and Craft Petroleum Co. would receive access to certain DOE materials.
Dec. 15, 1980	O.K. Petroleum Products Corp., New York, New York.	BEA-0559	Appeal of an Assignment Order. If granted: The August 21, 1980 Assignment Order issued to O.K. Petroleum Products Corp. by the Economic Regulatory Administration, Region II would be rescinded.
Dec. 15, 1980	Office of Enforcement Washington, D.C.	BEF-0021	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205 in connection with the Consent Order (Case No. 610V00300) issued to Aluminum Company of America.
Dec. 15, 1980	Office of Enforcement Washington, D.C.	BEF-0022	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205 in connection with a Consent Order (Case No. 6C0V00025) issued to Sid Richardson Carbon and Gasoline Company.
Dec. 15, 1980	Office of Special Counsel, Washington, D.C.	BEX-0143	Supplemental order. If granted: The November 21, 1980 Decision and Order (Case No. BRA-0510) issued to Champlin Petroleum Co. by the Office of Hearings and Appeals would be modified.
Dec. 15, 1980	Southland Oil Company, Washington, D.C.	BEX-0141	Supplemental order. If granted: The Department of Energy would stay a portion of Southland Oil Company's entitlement purchase obligations during the period of December 1980 through February 1981 for crude oil receipts and runs to stills during the period October 1980 through December 1980.
Dec. 15, 1980	The Tulsa Tribune, Tulsa, Oklahoma	BFA-0553	Appeal of an Information Request Denial. If granted: The October 30, 1980 Information Request Denial would be rescinded and the Tulsa Tribune would receive access to certain DOE materials.
Dec. 15, 1980	Thriftway Company, Washington, D.C.	BEX-0142	Supplemental order. If granted: The Department of Energy would stay a portion of Thriftway Company's entitlement purchase obligations during the period December 1980 through February 1981 for crude oil receipts and runs to stills during the period October 1980 through December 1980.
Dec. 15, 1980	Warrior Asphalt Company of Alabama, Washington, D.C.	BEX-0138	Supplemental order. If granted: The Department of Energy would stay a portion of Warrior Asphalt Company of Alabama's entitlement purchase obligations during the period December 1980 through May 1981 for crude oil receipts and runs to stills during the period of October 1980 through March 1981.
Dec. 15, 1980	Young Refining Corporation Washington, D.C.	BEX-0140	Supplemental order. If granted: The Department of Energy would stay a portion of Young Refining Corporation's entitlement purchase obligations during the period December 1980 through May 1981 for crude oil receipts and runs to stills during the period of October 1980 through March 1981.
Dec. 16, 1980	David Bowman, New York, New York	BFA-0555	Appeal of an Information Request Denial. If granted: The October 21, 1980 Information Request Denial issued by the Office of Safeguards and Security Defense Program would be rescinded and David Bowman would receive access to the DOE report entitled "Intrusion Detection Systems" document SAND78-0554.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Dec. 12 through Dec. 19, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 16, 1980	International Assoc. of Machinists and Aerospace Workers.	BFA-0554	Appeal of an Information Request Denial. If granted: The November 13, 1980 Information Request Denial issued by the Assistant Manager for Administration, FOI Authorizing Official, would be rescinded and International Assoc. of Machinists & Aerospace Workers would receive access to Appendix B of the contract between DOE and Rosa Aviation.
Dec. 17, 1980	Atlantic Richfield Co., Office of Special Counsel	BRJ-0167	Motion for Discovery. If granted: A Protective Order would be issued with respect to certain documents produced by the Office of Special Counsel in response to Atlantic Richfield Company's Motion for Discovery (Case No. BRD-0001) which was filed in connection with its objection to a Proposed Remedial Order (Case No. DRO-0193).
Dec. 17, 1980	East Tennessee Natural Gas Co., Washington, D.C.	BFA-0556	Appeal of an Information Request Denial. If granted: The November 14, 1980 Information Request Denial issued by the Assistant Administrator for Energy Systems and Support, Energy Information Administration, would be rescinded and East Tennessee Natural Gas Co. would receive access to certain DOE information.
Dec. 17, 1980	Getty Oil Company, Los Angeles, California	BFA-0558	Appeal of an Information Request Denial. If granted: The November 12, 1980 Information Request Denial issued by the Office of Enforcement, Western District would be rescinded and Getty Oil Co. would receive access to certain DOE materials.
Dec. 17, 1980	Hughes Oil Company, Atlanta, Georgia	BFA-0557	Appeal of an Information Request Denial. If granted: The October 27, 1980 Information Request Denial issued by the Office of Enforcement, Southeast District would be rescinded and Hughes Oil Co. would receive access to certain DOE materials.
Dec. 17, 1980	New Jersey Highway Authority, Woodbridge, New Jersey.	BXE-1568	Allocation Exception. If granted: New Jersey Highway Authority would receive an exception from the provisions of 10 C.F.R., Part 211 which would permit the firm to receive an increased allocation of motor gasoline.
Dec. 17, 1980	Sage Creek Refining Company, Cowley, Wyoming	BEX-0144	Supplemental order. If granted: The DOE would review the entitlements exception relief granted to Sage Creek Refining Company during its fiscal year ended August 31, 1980 to determine whether the level of relief accorded the firm was appropriate.
Dec. 17, 1980	Southwestern Refining Co., Inc., Washington, D.C.	BEE-1567 and BES-1567.	Exception from the Entitlements Program and Request for Stay. If granted: Southwestern Refining Co., Inc. would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations and Southwestern Refining Co., Inc. would also receive a stay of the provisions of 10 C.F.R. § 211.67 pending a final determination of its Application for Exception (Case No. BEE-1567).
Dec. 18, 1980	MAPCO, Inc., Washington, D.C.	BEE-1568; BES-1568 and BST-1568.	Price Exception Request for Stay and Temporary Stay. If granted: MAPCO, Inc. would receive an exception, stay and temporary stay from the provisions of 10 C.F.R. § 212.161(b)(2), regarding the sale of natural gas products.
Dec. 18, 1980	West Coast Oil Company, Los Angeles, California	BEL-0072	Temporary Exception from the Entitlements Program. If granted: West Coast Oil Company would receive a temporary exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of Dec. 12, 1980 through Dec. 18, 1980]

Name	Case No.	Date	State
Rainbow Oil of San Angelo, Inc	BXE-1564	12/15/80	Texas
Brooks, Douglas G. (Mulvany Oil)	BEE-1565	12/15/80	Illinois
Whale Oil Co	BEE-1569	12/15/80	Kentucky

NOTE: If granted: The above firms would be granted relief which would increase their base period allocation of motor gasoline.

Notices of Objection Received

[Week of Dec. 12 to Dec. 19, 1980]

Date	Name and location of applicant	Case No.
12/15/80	Wolff Development, Inc., Calif.	BEE-1498
12/16/80	Navajo Refining Co., Washington, D.C.	BEE-0247
12/16/80	Navajo Refining Co., Washington, D.C.	BEX-0014
12/16/80	Navajo Refining Co., Washington, D.C.	BEX-0131
12/17/80	John C. Manchester, Inc., Hanover, N. H.	DEE-4704
12/17/80	J.J. Doherty & Co., Inc., N.J.	BEE-0739
12/17/80	Champlin Petroleum Co., Washington, D.C.	BEE-1095

[FR Doc. 81-3254 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-01-M

Hearings and Appeals Office

Issuance of Decisions and Orders; Week of November 17 through November 21, 1980

During the week of November 17 through November 21, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

J. N. Abel, Austin, Texas, DRA-0077, crude oil

J. N. Abel filed an Appeal from a Remedial Order that the Region VI Office of Enforcement issued to the firm on November 22, 1977. In the Remedial Order, the DOE found that Abel had sold crude oil at prices which exceeded the maximum lawful prices permitted under DOE regulations. In the present proceeding, the DOE concluded that Abel's Appeal should be denied. The important issues discussed in the Decision and Order include (i) the exclusion of injection wells from the calculation of a property's average daily production and (ii) the liability of a crude oil producer's customer who pays unlawfully high prices for crude oil.

Bracewell & Patterson, Washington, D.C., BFA-0509, freedom of information

Bracewell & Patterson filed an Appeal from a partial denial issued to the firm by the Assistant Administrator, ERA Office of Regulatory Policy, of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE released portions of three documents which contain nonexempt factual information. In addition, the matter was remanded to the Assistant Administrator for a further search for responsive documents.

Exxon Company, U.S.A., Washington, D.C., BEA-0391, motor gasoline

On June 9, 1980, Exxon Company, U.S.A. filed an Appeal of a Supplemental Order which the ERA Region IV Office of Petroleum Operations issued to the firm on May 7, 1980. The Supplemental Order was issued in response to two Decisions and Orders issued by the Office of Hearings and Appeals which granted Appeals filed by Exxon from five Orders for the Redirection of Product issued by ERA Region IV. In the Supplemental Order, ERA Region IV affirmed its decision to issue the five Redirection Orders to Exxon pursuant to 10 CFR § 211.107(c). In its present Appeal, Exxon contends that ERA Region IV (1) failed in the Supplemental Order to make an adequate finding that the wholesale purchaser-resellers involved in the proceeding had made serious efforts to acquire supplies outside their marketing area and (2) failed to state the basis for the choice of Exxon as the supplier of the redirected volumes. In considering the firm's Appeal, the

DOE determined that the factual findings contained in the Supplemental Order constituted precisely the type of findings which had been lacking in the original Redirection Orders. The DOE also determined that independent firms which are served by the same supplier are not required jointly to attempt to solve their common supply problems before seeking a redirection order. Finally, the DOE determined that Exxon had failed to utilize the available procedures for filing an appeal based on an alleged improper selection of supplier. Accordingly, the Exxon appeal was denied.

Fulbright & Jaworski, Houston, Texas, BFA-0498, freedom of information

Fulbright & Jaworski filed an Appeal from a partial denial by the Office of Special Counsel's Disclosure Officer of a request for information which the firm had submitted under the Freedom of Information Act. The firm had requested all material related to two rulemaking proceedings. In considering the Appeal, the DOE found that certain of the documents which were initially withheld under Exemptions 5 and 7(A) should be released to the public. In addition, the OSC's determination was remanded for the preparation of a revised determination concerning material withheld pursuant to Exemptions 4 and 7(A).

Remedial Order

Edward Ahlman d.b.a. Chrikel's Grove, Kingston, New Hampshire, BRO-1224, gasoline

Edward Ahlman d.b.a. Chrikel's Grove objected to a Proposed Remedial Order which the Northeast District of the DOE Office of Enforcement issued to the firm on April 18, 1980. In the Proposed Remedial Order, the DOE found that Ahlman had charged prices for motor gasoline in excess of the maximum lawful selling price allowed by 10 C.F.R. § 212.93. Since Ahlman withdrew his Notice of Objection, the DOE concluded that the Proposed Remedial Order should be issued as a final Order.

Requests for Exception

Ayers Oil Company, Canton, Missouri, BEE-0402, gasohol

Ayers Oil Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to enable Ayers to maintain a stable gasohol program. Accordingly, exception relief was granted.

Bell's Texaco, San Francisco, California, BEO-0407, motor gasoline

Bell's Texaco filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was adversely affected to a significant degree by its current base period allocation. Accordingly, exception relief was denied.

Brentwood Texaco, Inc. Springfield, Missouri, BEO-0340, motor gasoline

Brentwood Texaco, Inc. filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm has not shown that it was unable to achieve a reasonable return on its investment by selling its current allocation of motor gasoline. Accordingly, exception relief was denied.

Bud's Texaco, Princeton, West Virginia, BEO-0131, motor gasoline

Bud's Texaco filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. Subsequently, the DOE was notified that the firm no longer wished to pursue its exception request. Accordingly, exception relief was denied.

Cabeon Corporation, Everrett, Washington, BEE-0812, gasohol

Cabeon Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that the firm had not demonstrated its ability to establish and maintain a successful gasohol marketing program. Specifically, Cabeon had declined to utilize any of its existing motor gasoline allocation for gasohol production. Accordingly, exception relief was denied.

Chevron U.S.A. Inc., San Francisco, California, BEE-1378, motor gasoline

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of 10 C.F.R. § 212.83 in which the firm sought to charge prices for premium unleaded gasoline above the price it charged for regular unleaded gasoline without deeming recovery of costs on its sales of regular unleaded gasoline. In considering the request, the DOE found that exception relief was necessary to encourage the marketing of premium unleaded gasoline. Accordingly, exception relief was granted.

Cities Service Company, Tulsa, Oklahoma, DEE-7788, motor gasoline

Cities Service Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in the base period motor gasoline allocation of a company-owned retail outlet located in Sulphur, Louisiana. In considering the request, the DOE found that the firm had failed to demonstrate that the financial viability of the outlet would be adversely affected to a significant degree in the absence of exception relief. Accordingly, exception relief was denied.

City of Bartlesville, Bartlesville, Oklahoma, BEO-0763, motor gasoline

City of Bartlesville filed an Application for Exception from the provisions of C.F.R. Part 211 in which it sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the city had failed to demonstrate that its base period allocation was inadequate to meet the current needs of its citizens. Accordingly, exception relief was denied.

Colonial Shell Service, Wallingford, Connecticut, BXE-0603, motor gasoline

Colonial Shell Service filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which it sought an increased allocation of motor gasoline. In considering the request, the DOE found that Colonial was not experiencing financial difficulties which threatened its continued existence and that the residents of its community were not experiencing an unfair distribution of burdens as a result of the DOE allocation program. Accordingly, exception relief was denied.

Columbus Public School System, Columbus, Ohio, BEE-1012, motor gasoline

The Columbus Public School System filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to alleviate a gross inequity resulting from the school system's increased fuel requirements under a court-ordered desegregation plan. Accordingly, exception relief was granted.

Continental Car Wash, Lawndale, California, BEO-0678, motor gasoline

Continental Car Wash filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the car wash facility had been purchased after the establishment of the current base period for motor gasoline allocation. Accordingly, exception relief was denied.

Don's Gulf Station, Vernon, Connecticut, DEE-5644, motor gasoline

Don's Gulf Station filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that any anticipated increase in the outlet's allocation should have been reflected during the measurement period for unusual growth adjustments. Accordingly, exception relief was denied.

Edson Oil Co., Inc., Windsor, New York, BEE-0732, gasohol

Edson Oil Co., Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to enable Edson to maintain a stable gasohol program. Accordingly, exception relief was granted.

Estrellita Estates Company; Fairview Marina; Recreation Plus, Inc., Trinity County, California, DEE-7398, DEE-7384, DEE-7164, motor gasoline

Estrellita Estates Company, Fairview Marina, and Recreation Plus, Inc. filed an Applications for Exception in which they each sought an increase in their respective base period allocation of motor gasoline.

Since the cases presented similar issues of law and fact, they were consolidated for consideration in a Proposed Decision and Order issued on April 22, 1980. In that determination, the DOE tentatively determined that the base period for motor gasoline allocation represented an anomalous business period for Estrellita Estates and Recreation Plus. The DOE therefore tentatively concluded that exception relief should be granted to those firms. However, the DOE found that Fairview Marina had failed to demonstrate that it was suffering adverse effects from the application of the DOE allocation regulations. Its exception request was therefore tentatively denied. Since none of the three firms filed a Notice of Objection to the issuance of the April 22 Decision, the DOE issued the Proposed Decision and Order as a final Decision and Order.

Lion Leasing, Inc., South Hackensack, New Jersey, DEO-0311, motor gasoline

Lion Leasing, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to allow the firm to benefit from improvements which had been made in its business operations and to prevent the firm from suffering a severe financial hardship. Accordingly, exception relief was granted.

Pen Fern Oil Company, Wilkes-Barre, Pennsylvania, BEO-0739, motor gasoline

Pen Fern Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that a shortage of motor gasoline existed in its market area. Accordingly, exception relief was denied.

R. H. Bowles Company, Inc., Yakima, Washington, BEE-0043, gasohol

R. H. Bowles Company, Inc. filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increased allocation of motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to provide the firm with an incentive to produce sufficient gasohol to meet the demand for this product in its market area. Accordingly, exception relief was granted. The important issues discussed in the Decision and Order are (1) whether the Office of Hearings and Appeals has the authority to grant exception relief to provide increased allocations of motor gasoline for the production of gasohol and (ii) whether an applicant for such relief should be required to demonstate that it has complied with state laws with respect to its gasohol blending facilities.

Uselton Oil Co., Inc., Peking, Illinois, BEE-0580, gasohol

Uselton Oil Co., Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purposes of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to enable Uselton to receive an assured supply of unleaded gasoline to maintain a stable gasohol program. Accordingly, exception relief was granted.

Requests For Temporary Exception

Dow Chemical, U.S.A., Washington, D.C., BEL-1393, crude oil

Dow Chemical, U.S.A. filed an Application for Temporary Exception in which the firm sought $20,869,120 worth of entitlements for the crude oil which it had purchased to establish a starting inventory for its new Freeport, Texas, refinery. In considering the Application, the DOE determined that while Dow had made a showing of likelihood of success on the merits of its Application for Exception, it had failed to satisfy any of the other criteria for the granting of a temporary exception. Dow's temporary exception request was therefore denied.

Navajo Refining Company, Dallas, Texas, BEL-0070, BER-0072, crude oil

Navajo Refining Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67 and an Application for Modification of a Decision and Order in which the firm sought relief from a portion of its entitlements purchase obligation for the period August 1, 1977 through July 31, 1981. In considering the request, the DOE determined that the firm would not incur irreparable injury in the absence of relief and that it was not likely to succeed on the merits of its exception applications. Accordingly, Navajo's Application for Temporary Exception and Application for Modification were denied.

The Somerset Refinery, Inc., Washington, D.C., BEL-1500, BEN-0071, crude oil

The Somerset Refinery, Inc. filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67. The Somerset request, if granted, would result in the issuance of an Order immediately increasing the number of entitlements issued to the firm by an amount which would bring Somerset's post-entitlements cost of crude oil into substantial parity with the average crude oil cost of other domestic refiners. The DOE found that implementation on an interim basis of a September 25, 1980 Proposed Decision and Order issued to Somerset would provide the firm with sufficient relief to allow it to continue its operations throughout the pendency of the exception proceeding. Accordingly, an Interim Order was issued, and Somerset's temporary exception request was dismissed.

Request For Stay

Champlin Petroleum Company, Forth Worth, Texas, BRS-0510, motor gasoline

Champlin Petroleum Company filed an Application for Stay of a Modified Remedial Order issued to the firm on July 23, 1980 by the DOE Office of Special Counsel for Compliance. Champlin simultaneously filed an Appeal of the Modified Remedial Order. In considering Champlin's Application for Stay, the DOE determined that Section 503 of the DOE Organization Act established a general policy in favor of staying the requirements of a remedial order pending administrative review. The DOE also determined that immediate compliance with the Modified Remedial Order would not be necessary to protect the public interest. Accordingly, the Champlin stay request was granted pending consideration of the firm's Appeal.

Motion For Discovery

Marathon Oil Co./Asamera Oil (U.S) Inc., Findlay, Ohio, BEJ-0144, BED-0144, other

The Marathon Oil Company filed a Motion for Discovery and Protective Order pursuant to the provisions of 10 CFR § 205.66 in which it sought discovery of confidential information filed by Asamera Oil (U.S.) Inc. in an exception proceeding. The DOE determined that under its procedural regulations, a Motion for Discovery and Protective Order is designed specifically for use at the objection stage of an exception proceeding. Since no Proposed Decision had been issued in the Asamera proceeding, the DOE dismissed Marathon's Motion as premature.

Interim Order

The following firm was granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No., and Location

J. A. Nere Co., Inc., BEN-0048, Fredericksburg, VA.

Petition Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be granted.

Company Name, Case No., and Location

Olen's Texaco, BEO-0270, Harvey, LA

Petitions Involving The Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in increases in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No., and Location

Dave's General Store, DEE-6437, Andover, ME
Lake Erie Patrol, Inc., DEE-7644, Put-in-Bay, OH
River Oil Co. of Jackson, DEE-4972, Jackson, TN
John Siciliani, DEE-5973, Anaheim, CA
Vantage Petroleum Corp., DEE-7275, Bohemia, NY

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Anderson Oil Co. & Volta Oil Co., BEG-0037
Barnett, Alagia & Carey, BFA-0514
Brennan Petroleum Products Co., Inc., DEE-4585
Emery Oil Co., Inc., DEE-2292
General Development Corporation, BRO-0029
Homax Oil Sales Inc., DEE-5174
International Carwash Association, BEE-0514
Shaw, Stephen M., BFA-0503
Stephen M. Shaw, BFA-0504
Spag's Ashland (Spagnolia), BRW-0052
Toney Petroleum, Inc., BEE-0532

Copies of the full text of these 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. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 22, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 81-3211 Filed 1-27-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1740-5]

Intent To Prepare an Environmental Impact Statement on the Hudson River PCB Reclamation Demonstration Project

AGENCY: U.S. Environmental Protection Agency—Region II.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

PURPOSE: In accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA has identified a need to prepare an EIS and therefore publishes this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FUTURE INFORMATION CONTACT: Ms. Robin Rohn, U.S. Environmental Protection Agency, Environmental Impacts Branch, 26 Federal Plaza, Room 400, New York, New York 10278, Telephone Number: Commercial (212) 264-8677, FTS 8-264-8677.

SUMMARY:

1. Description of Proposed Action

The purpose of the proposed Hudson River PCB Reclamation Demonstration Project is to initiate dredging of PCB contaminated sedimented in the upper Hudson River and to dispose of those sediments in an upland containment site.

The New York State Department of Environmental Conservation (NYSDEC) has completed a number of studies investigating the feasibility of PCB removal and containment. Among those studies is a draft environmental impact statement (EIS) which fulfills the requirements of the State Environmental Quality Review Act (SEQRA).

Due to the significance of the project and no further evaluate the potential beneficial and adverse environmental impacts of all alternatives; including the "no action" alternative, NYSDEC and EPA have entered into a Memorandum of Agreement establishing NYSDEC as a cooperating agency with EPA in the preparation of an EIS to fulfill the requirements of the National Environmental Policy Act (NEPA). In order to prevent any duplication of effort, EPA will evaluate and modify the draft SEQRA EIS as appropriate in the preparation of a NEPA EIS.

2. Description of Alternatives

The alternatives to be evaluated in the EIS include no action; in-river dredging and upland containment; the combination of complete and partial dredging; alternative dredging, transport and unloading systems; alternative action at remnant sites in the area of the former Fort Edward Dam and disposal site alternatives.

3. Public and Private Participation in the EIS Process

a. Full participation by interested Federal, State and local agencies as well as other interested private organizations and citizens is invited. The public will be involved to the maximum extent possible; a full-scale public participation program will be implemented in addition to and in cooperation with ongoing State public participation efforts. A citizens advisory committee will be formed as part of the EIS process. Applications for membership on the committee will be available at the scoping meeting. A public hearing and a number of public meetings will also be held.

b. Significant issues to be discussed in the EIS include:

1. A further evaluation of the potential beneficial and adverse, short and long-term environmental impacts of the "no-action" alternative.

2. A further evaluation of the potential beneficial and adverse, short and long-term environmental impacts of the PCB disposal options including the proposed containment site.

3. A further evaluation of the potential impacts to water quality resulting from the proposed action.

c. Scoping: In accordance with the CEQ regulations (40 CFR Section 1501.7) and EPA procedures (40 CFR Part 6), a scoping meeting will be held on February 9, 1981 at 7:00 p.m. The meeting will be held at the Washington, County Courthouse, Maple Street and Route 4, Hudson Falls, NY. In addition, a public meeting will be held on February 27, 1981 at the Washington County Courthouse at 7:00 p.m.

d. Timing: The EPA estimates that the draft EIS will be available for public review and comment in April 1981.

e. Request for copies of Draft EIS: All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

The draft and final EIS along with the supporting documents will be available for public review at the following locations.

1. Crandall Library, City Park, Glens Falls, NY 12801.

2. NYS Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561.

3. NYS Department of Environmental Conservation, 202 Mamaroneck Avenue, White Plains, NY 10601.

4. NYS Department of Environmental Conservation, 2 World Trade Center, New York, New York 10019.

Dated: January 23, 1981.

Willaim N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104)

[FR Doc. 3255 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-37-M

[A-7-FRL 1740-4]

Region VII; Non-Applicability of PSD Regulations

In the matter of Union Carbide Corporation, Centerville, Iowa; Mississippi Lime Company, Ste. Genevieve, Missouri; Hercules, Incorporated, Louisiana, Missouri; Omaha District, Corps of Engineers, Iowa Army Ammunition Plant, Burlington, Iowa; Fremont Department of Utilities, Fremont, Nebraska; Barber & Sons, Aggregates, Lee Summit, Missouri.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that construction proposals by the above companies are not subject to the review requirements of the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21).

On July 25, 1980, the EPA issued a non-applicability determination to Union Carbide Corporation to install a Flexographic press at its existing facility in Centerville, Iowa. This determination was made under a Partial Stay of Regulations published in the Federal Register on February 5, 1980. Potential emissions from this addition of any pollutant regulated under the Clean Air Act as amended in 1977, will be less than 250 tons per year.

On September 11, 1980, the EPA issued a non-applicability determination to the Mississippi Lime Company for the proposed addition of two rotary lime kilns at its facility in Ste. Genevieve, Missouri. Due to the contemporaneous shut down of four other kilns at this facility, the proposed new kilns will not cause a net significant emissions increase.

On October 14, 1980, the EPA issued a non-applicability determination to Hercules, Incorporated, concerning its proposal to burn higher sulfur coal in three existing coal-burning boilers at the Missouri Chemical Works near Louisiana, Missouri. This proposed fuel switch will not be subject to PSD review because, without any physical change, these boilers could have accommodated the switch to a higher sulfur coal prior to January 6, 1975.

On October 15, 1980, the EPA issued a non-applicability determination to Omaha District, Corps of Engineers for modifications to the Iowa Army Ammunition Plant in Burlington, Iowa. Net emission increases from this modification will not be "significant" as defined in § 52.21(b)(23) of the PSD regulations.

On November 4, 1980, the EPA issued a non-applicability determination to the Fremont Department of Utilities to refurbish two stoker-fired boilers and add pollution control equipment to Power Plant No. 1 in Fremont, Nebraska. This modification will not result in a significant net emissions increase of any regulated pollutant.

On December 1, 1980, the EPA issued a non-applicability determination to Barber & Sons, Aggregates, for its proposal to construct a limestone quarrying and crushing operation in Lee's Summit, Missouri. The major emissions from this source will be fugitive particulate matter emissions. Because fugitive emissions from this type of source are not counted in the source's potential emissions, total potential particulate matter emissions will not exceed 250 tons-per-year. Therefore, the source is not a major source for PSD purposes. This facility will not be a major emitter of any other pollutant regulated under the Clean Air Act, as amended, in August, 1977.

Under Section 307(b)(1) of the Clean Air Act, as amended in 1977, judicial review of any of these determinations 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, as amended in 1977, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In this case, the appropriate court is the Eighth Circuit Court of Appeals. A petition for review must be filed with this court on or before March 30, 1981.

The determinations and related background information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: January 16, 1981.

Kathleen Q. Camin,

Regional Administrator, Region VII.

[FR Doc. 81-3061 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-38-M

[A-7-FRL 1740-2]

Region VII; Non-Applicability of PSD Regulations

In the matter of Pester Refining Company, El Dorado, Kansas; Cities Service Company, Wichita, Kansas.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that construction proposals by the above mentioned companies are not subject to the review requirements of the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21).

On July 18, 1980, the EPA issued a non-applicability determination to Pester Refining Company for the proposed addition of a Residual Oil Supercritical Extraction (ROSE) unit to its facility in El Dorado, Kansas. The basis for this determination is that potential emission increases of all pollutants regulated under the Clean Air Act, as amended in August, 1977, are less than 100 tons per year of each pollutant.

On October 14, 1980, EPA issued a non-applicability determination to Cities Service Company for proposed modifications to its Wichita Gas Processing Plant. These modifications will not result in a net "significant" emissions increase as defined in 40 CFR 52.21(b)(23).

Under Section 307(b)(1) of the Clean Air Act, as amended in August, 1977, judicial review of any of these determinations 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, as amended in August, 1977, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In these cases, the appropriate court is the Tenth Circuit Court of Appeals. A petition for review must be filed with this court on or before March 30, 1981.

The determinations and related background information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: January 16, 1981.

Kathleen Q. Camin,

Regional Administrator, Region VII, EPA.

[FR Doc. 81-3060 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-38-M

[A-7-FRL 1740-3]

Region VII; Approvals of PSD Permits

In the matter of Panhandle Eastern Pipeline Company, Cognac Compressor Station, Grant County, Kansas; CRA, Incorporated, Coffeyville, Kansas; The City of Ottawa, Municipal Electric System, Ottawa, Kansas; Southwest Gas Storage Company, Panhandle Eastern Pipeline Company, Borchers Storage Project, Meade County, Kansas.

Notice is hereby given that the Environmental Protection Agency (EPA) has issued construction permits under the Prevention of Significant Air Quality Deterioration (PSD) regulations (40 CFR 52.21) to: Panhandle Eastern Pipeline Company; CRA, Incorporated; the City of Ottawa; and Southeast Gas Storage Company.

On July 28, 1980, the EPA formally approved a proposal by Panhandle Eastern Pipeline Company to install a 1169-horsepower natural gas-fired internal combustion reciprocating engine at their Cognac Compressor Station in Grant County, Kansas. Before the addition of this engine the Cognac Compressor Station had two engines identical to the one described above. With the addition of the recently approved engine, the cumulative controlled emissions of nitrogen oxides (NO_x) from the Cognac Station will exceed 250 tons-per-year (TPY), thus

making the station subject to the PSD regulations for NO_x. This addition is not subject to the PSD regulations for any other pollutant regulated under the Clean Air Act, as amended in August 1977, because emissions of these pollutants are less than 250 TPY. Though this source is not subject to the New Source Performance Standards (NSPS) for reciprocating engines, Southeast Gas Storage Company will meet the emission limit for NO_x proposed in the NSPS document, by the use of a pre-ignition system.

On September 4, 1980, the EPA formally approved a proposal by CRA, Incorporated to install four new process heaters (Units 42–45) at their refinery in Coffeyville, Kansas. Two other units (40 and 41) were included in the review process because of the accumulative nature of the PSD regulations. The combined controlled emissions of nitrogen oxides (NO_x) from the above sources are considered "significant" under the PSD regulations. Nitrogen oxide emissions from Units 40, 44, and 45 will be controlled using low NO_x burners. The other units will be equipped with conventional burners. No other pollutants regulated under the Clean Air Act, as amended in August, 1977, are emitted in significant amounts.

On December 2, 1980, the EPA formally approved a proposal by the City of Ottawa, Kansas to install two 6000-kilowatt dual-fuel internal combustion reciprocating engines at the Municipal Electric Plant in Ottawa, Kansas. The approved engines will be a significant source of nitrogen oxides (NO_x), carbon monoxide (CO), and sulfur dioxide (SO_2). A maximum emission limit was set for NO_x which, because of the physical characteristics of the engines, limits CO emissions also. Sulfur dioxide emissions will be controlled through limiting the sulfur content to the fuel fired in the engines.

On December 11, 1980, the EPA formally approved a proposal by the Southwest Gas Storage Company to construct a natural gas storage facility, including five 3200-horsepower internal combusion engines, in Meade County, Kansas. The engines proposed as part of this storage project are considered a major source of air pollution because they will have controlled potential emissions of nitrogen oxides (NO_x) and carbon Monoxide (CO) both in excess of 250 tons-per-year (TPY). A maximum emission limit has been set for NO_x which, because of the physical characteristics of the engines, limits CO emissions also.

Under Section 307(b)(1) of the Clean Air Act, as amended in August, 1977, judicial review of any of the above actions 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, as amended in August, 1977, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

In these cases, the appropriate court is the Tenth Circuit Court of Appeals. A petition for reivew must be filed with this court on or before March 30, 1981.

Copies of the permits and related information are available for public inspection at: U.S. Environmental Protection Agency, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Dated: January 16, 1981.

Kathleen Q. Camin,

Regional Administrator, Region VII.

[FR Doc. 81-3059 Filed 1-27-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 80-F68-FFL; File Nos. BPCT-5199, etc.]

Contemporary Television Broadcasting, Inc., et al.; Hearing Designation Order

Adopted: December 17, 1980.

Released: January 16, 1981.

In re Applications of Contemporary Television Broadcasting, Inc., Miami, Florida, BC Docket No. 80–768 (File No. BPCT–5199); Florida Broadcasting Ministry, Inc., Miami, Florida, BC Docket No. 80–769 (File No. BPCT–800430KE); Susan M. Jaramillo and Howard R. Conant, A Limited Partnership d/b/a 39 Broadcasting Co., Miami, Florida, BC Docket No. 80–770 (File No. BPCT–800430KF); Sun Belt Broadcasting, Inc., Miami, Florida, BC Docket No. 80–771 (File No. BPCT–800430KG); for construction permit designating applications for consolidated hearing on stated issues.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station to operate on Channel 39, Miami, Florida.

2. The applications of Contemporary Television Broadcasting, Inc. and Sun Belt Broadcasting, Inc. Contemplate operating subscription television (STV) over their proposed facilities. These parties have applications for STV authorization pending before the Commission. However, the STV applications will not be consolidated for hearing in this proceeding. STV is essentially an entertainment format, comparable to other entertainment proposals, except that it is supported directly by viewers' subscriptions rather than by advertising revenues. The Commission's reluctance to compare applicants on the basis of entertainment formats expressed in *George E. Cameron, Jr., Communications*, 71 F.C.C. 2d 460 (1979), provides ample precedent for precluding consideration of STV proposals in otherwise routine hearings on applications for television construction permits.

Contemporary Television Broadcasting, Inc.

3. The financial data submitted by Contemporary reveals that approximately $478,137 will be required to construct and operate the proposed station for three months, estimated as follows:

Equipment down payment	$247,374
Equipment payments with interest, 3 months	57,513
Buildings	5,000
Legal costs	10,000
Engineering and installation costs	60,000
Miscellaneous	5,000
Operating costs, 3 months	93,250

In arriving at this cost estimate, consideration has been given to an RCA letter dated December 16, 1977, describing the installment sale terms under which equipment would be supplied to the applicant. The letter also stated that these terms were to be available for 12 months from the date of the letter. Under the supposition that the credit terms have already expired, previous processing standards would have precluded acceptance of this letter as part of applicant's financial plan. Consequently, we would have assumed that the applicant was to pay for the equipment on a cash basis ($989,495). However, we believe it is appropriate to modify that policy as set forth below.

4. It is clear that, had the application been evaluated when filed, the RCA letter would have been accepted, for the 12 months would not have expired. The processing of this application was delayed pending the outcome of a rule making proceeding which proposed to change the allocations assigned to Miami, Florida.[1] *Amendment of Section 73.606(b) of the Commission's Rules*, BC Docket No. 78–207, Mimeo No. BC–

[1] This proceeding resolved interference problems inherent in applicant's original proposal, for which applicant requested a waiver of our rules.

15410, released January 15, 1980, 46 RR 2d 1272. We believe, however, it is reasonable to assume that Contemporary still will be able to obtain the same or similar credit arrangement from RCA or another equipment supplier, should it receive a grant in this proceeding. This assumption is based on our expectation that, pursuant to § 1.65 of the Commission's Rules, 47 CFR 1.65,[2] applicant would have reported any significant deterioration in its financial condition or any specific indication from the equipment supplier that the credit arrangement would not be renewed.

5. We will apply the policy described above to both equipment credit and bank loan commitment letters.[3] No useful purpose is served by requiring applicants to renew these documents when there is every likelihood that the proposals remain viable and it was the time entailed in the processing or in the hearing that caused the letters to expire. This modification in policy is in harmony with the Commission's desire to streamline and expedite the processing of applications. Accordingly, henceforth, credit letters from equipment suppliers and bank loan commitment letters will be acceted as part of the applicant's financial proposal, as long as the letters would have been acceptable at the time the application was filed and also if there is no indication that there has been a substantial and significant change in the applicant's status which would affect its credit standing. Although applicants will not need to submit updated letters under the circumstances outlined above, we will require that equipment credit and bank letters have expiration dates of not less than one year for this policy to be applied. This policy will be applicable to AM, FM and TV applications.

6. Contemporary has shown the availability or $33,042 in cash and a net bank loan amounting to $1,060,625. Since these funds exceed the estimated costs, we conclude that applicant has sufficient funds to finance its proposal, and, accordingly, no financial issue will be specified.

7. Question and Answer 36 of the *Primer on Ascertainment of Community Problems by Broadcast Applicants (Ascertainment Primer)*, 27 F.C.C. 650, 687 (1971), states that an applicant is expected to schedule the presentation of broadcast matter at a time when it could reasonably be expected to be effective. Contemporary has not specified the time segments for its list of typical and illustrative programs and, therefore, it cannot be determined whether applicant has complied with the provision stated above. Accordingly, an appropriate issue will be specified.

Florida Broadcasting Ministry, Inc.

8. The financial data submitted by Florida Broadcasting indicates that approximately $304,373 will be required to construct and operate the proposed station for three months, estimated as follows:

Equipment payment with interest, 5 months	$98,373
Buildings	10,000
Legal fees	30,000
Engineering and installation costs	7,000
Miscellaneous	30,000
Operating costs, 3 months	129,000

To meet these expenditures, Florida Broadcasting relies upon approximately $1,506,003, itemized as follows:

Cash on hand	$8,500
Net loan from Joseph Ferraro	797,503
Net loan from Robert R. D'Andrea	500,000
Anticipated advertising revenues	200,000

9. Analysis of this financial data leads to the following determinations:

(a) Mr. Ferraro intends to borrow funds from Mr. John C. Cosgrove to meet his commitment to the applicant. However, neither Ferraro nor Cosgrove have submitted any balance sheets or financial statements showing that they possess sufficient net liquid assets to meet their respective commitments. See Form 301, Section III, page 3, item 4(a).

(b) Mr. D'Andrea's balance sheet does not show a breakdown of current and long-term assets and liabilities, nor does it provide data concerning the marketability of the securities. Consequently, it cannot be determined whether D'Andrea has sufficient net liquid assets to meet his commitment. Moreover, no statement is furnished describing the manner in which non-liquid assets will be used to meet the commitment. See Form 301, Section III, page 3, item 4(b).

(c) Anticipated advertising revenues cannot be categorized as immediate sources of funds because applicant has not shown that full realization of these revenues can be expected within the first three months of operation. FCC Public Notice 79-299, 45 RR 925 (1979).

Therefore, it cannot be determined whether Florida Broadcasting has sufficient funds to meet its proposed costs, and, accordingly, a limited financial issue will be specified.

39 Broadcasting Company

10. Applicant's financial proposal indicates that approximately $477,030 will be required to construct and operate the proposed station for three months, estimated as follows:

Equipment payment with interest, 5 months	$185,030
Buildings	7,000
Legal Fees	80,000
Engineering costs	20,000
Installation costs	10,000
Miscellaneous	5,000
Operating costs, 3 months	170,000

To meet these expenditures, applicant relies on $900,000 in capital contribution from Howard R. Conant, the limited partner. Mr. Conant's financial statement shows $508,000 in marketable securities, of which only $487,888 qualify as liquid. See Form 301, Section III, page 3, item 4(b). However, his net liquid assets cannot be determined, since the financial statement does not segregate assets and liabilities into current and long-term items. Therefore, it cannot be concluded that Conant can finance applicant's proposal. Accordingly, a limited financial issue will be specified.

Sun Belt Broadcasting, Inc.

11. The financial data submitted by Sun Belt reveals that approximately $1,080,916 will be required to construct and operate the proposed station for three months, estimated as follows:

Equipment down payment	$545,750
Equipment payments with interest, 3 months	139,166
Legal costs	20,000
Engineering and installation costs	57,000
Pre-operational costs	193,000
Operating costs, 3 months	126,000

To meet these expenditures, Sun Belt relies upon $100,000 in stock subscription agreements from Philip Y. Hahn, Jr. and Carlos Linsky. However, the balance sheets submitted by these subscribers do not show a breakdown of assets and liabilities into current and long-term items; nor are statements provided, in the alternative, describing the manner in which non-liquid assets will be used to meet their commitments. See Form 301, Section III, page 3, item 4(b). Therefore, it cannot be determined whether the subscribers have sufficient net liquid assets to meet the stock subscription agreements.

12. Sun Belt also relies upon a loan from Mr. Hahn in the net amount of $1,466,666. To meet this loan commitment, Hahn intends to borrow funds from the Landmark National Bank. That bank has submitted a credit letter specifically earmarking $1,500,000 for that purpose, and describing the terms under which the loan will be made

[2] This rule requires each applicant to file additional or corrected information whenever its proposal is substantially and significantly changed.

[3] This policy will not be applied to credit arrangements between an applicant and individuals or companies which are not in the business of making loans or selling equipment. For example, a private credit arrangement between an applicant and an individual which terminates will have to be renewed if it is to be relied upon.

available. Under prior processing standards, we would have also examined Hahn's financial statement to determine whether he possesses sufficient net liquid assets, as supplemented by the loan, to meet his commitment to the applicant. In this case, we would not have been able to reach that determination because, as previously stated, Hahn's financial statement does not show a breakdown of assets and liabilities into current and long-term items. However, since the bank has earmarked the funds specifically for Hahn's investment in the proposed station, it is not necessary to rely on Hahn's financial statement in order to determine whether the bank loan is available to finance applicant's proposal. We believe it is reasonable to assume that the loan will be made available only for the stated purpose, and not as a supplement to Hahn's current liquid assets to be netted against Hahn's current liabilities. Accordingly, henceforth, bank loan commitment letters directed to investors in an applicant, which earmark funds specifically for that purpose, will be accepted as part of applicant's proposed sources of funds. In this instance, the investor's financial statement, as supplemented by the bank loan, need not show sufficient net liquid assets to meet the commitment to the applicant. This policy will be applicable to AM, FM and TV applications.

13. Since we have determined that applicant can rely upon Hahn's loan commitment ($1,466,666), we conclude that Sun Belt has shown its ability to meet its proposed costs ($1,080,916), and, accordingly, no financial issue will be specified.

14. Question and Answer 15 of the *Ascertainment Primer, supra,* states that consultations with community leaders and members of the general public should be held within 6 months prior to the filing of the application. Applicant has failed to comply with this requirement, since the general public survey was conducted in July 1979 and the application was filed in April 1980. Therefore, appropriate issues will be specified to determine whether applicant has conducted a general public survey in compliance with the *Primer,* and whether applicant's proposed programming is designed to meet the problems and needs ascertained.

Conclusion and Order

15. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since these applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

16. 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:[4]

1. To determine, with respect to Contemporary Television Broadcasting, Inc.:

(a) whether it has complied with Question and Answer 36 of the Ascertainment Primer; and

(b) whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is qualified to be a Commission licensee.

2. To determine, with respect to Florida Broadcasting Ministry, Inc.:

(a) whether it has $295,873 available to meet its estimated construction and operational expenses; and

(b) whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified to construct and operate as proposed.

3. To determine, with respect to 39 Broadcasting Company:

(a) whether it has $477,030 available to meet its estimated construction and operational costs; and

(b) whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified to construct and operate as proposed.

4. To determine, with respect to Sun Belt Broadcasting, Inc.:

(a) whether applicant has complied with the provisions of Question and Answer 15 of the *Ascertainment Primer* as it relates to the general public survey;

(b) whether applicant's proposed programming is designed to meet the problems and needs ascertained in its general public survey; and

(c) whether, in light of the evidence adduced pursuant to the foregoing issues, applicant is qualified to be a Commission licensee.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

17. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

18. 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 (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 81-3046 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

[4] Contemporary Television Broadcasting, Inc. and 39 Broadcasting Company both propose to side-mount their antennas on the WLRN-FM tower, licensed to Dade County Public Schools. The Commission's records indicate that there is no official FAA clearance for the existing tower at its current height of 718 feet above ground level (AGL). It is anticipated that FAA clearance will be forthcoming. However, if during the hearing, the FAA advises that the existing tower constitutes an air hazard, the Administrative Law Judge is authorized to specify an issue or issues against these applicants. In the unlikely event that the FAA study is not completed by the end of the hearing process, and either Contemporary or 39 Broadcasting is chosen as the applicant which would best serve the public interest, the construction permit shall be conditioned to require FAA approval prior to construction.

Initiation of Proceedings To Allocate Depreciation Reserve as Required by Docket No. 20188

1. In FCC Docket #20188 (adopted November 6, 1980), the Commission amended Part 31 of the Rules and Regulations, the "Uniform System of Accounts for Class A and Class B Telephone, Companies," to explicitly allow the use of the remaining-life method in determining depreciation rates for telephone plant. Remaining-life rates are calculated so as to distribute the unrecovered cost (i.e., original cost less depreciation reserve) of a group of assets over the estimated average life expectancy of the assets. Currently, depreciation rates for telephone plant are determined using a process known as "whole-life," in which rates are calculated using the estimated average service life of the assets with no adjustment for existing depreciation reserve levels.

2. As the Commission pointed out in that Docket, the depreciation reserve balance must be known for an account before a remaining-life rate can be

determined. Some carriers, notably the Bell Operating Telephone Companies, do not maintain depreciation reserve balances by account.[1] For those carriers, the Commission ordered us to determine the most reasonable allocation of the current book reserve to the various plant categories. In this Notice we are presenting our recommendation of how the depreciation reserve allocation should be accomplished. Furthermore, we are requesting comments regardinng our proposal as well as alternative allocation methods.

3. The method used to allocate the book reserve is extremely imortant because it may result in the redistribution of a significant amount of revenue requirement between various categories of ratepayers; e.g., between current and future customers, users of inter- and intrastate services, inter- and intra-exchange services, business and residential services, and monopoly and competitive services.[2]

4. At present we have two principal alternative reserve allocation methods under consideration: (1) allocation based upon the actual debits and credits to the reserve which are attributable to specific subclasses of plant; and (2) allocation based upon a distribution determined from theoretical reserve studies.

5. The aggregate depreciation reserve represents the extent to which capital recovery has been achieved for the company as a whole. This reserve is the accounting accumulation of accruals, retirements, salvage, and costs of removal all of which are directly traceable to specific subclasses of property for which depreciation rates have been prescribed. As a result a reserve can be developed for a specific class of plant based upon analysis of actual depreciation reserve activity, and the reserve developed in this manner represents capital recovery which has occurred for that class of plant.[3]

6. A theoretical reserve allocation approach focuses attention on current life estimates, ignoring all asset life characteristics that have existed in the past. This approach determines the theoretical reserve for each plant category using the most recent life prescription for that category. The aggregate reserve is then allocated to the plant categories in proportion to the distribution of the theoretical reserves. The theoretical reserve approach allocates more than would be allocated using actual recorded amounts to categories whose life characteristics are becoming relatively shorter.

7. A comparison of these two methods leads us to believe that the use of actual recorded amounts is preferable to the use of theoretical reserve studies. The telephone companies for which the Commission prescribes rates, the Commission, and the State commissions have for more than 30 years participated in tripartite proceedings to prescribe depreciation rates. As part of this process, the life characteristics of the various plant categories have been studied extensively, and as a consequence average service lives for the various plant categories for which depreciation rates are prescribed have been determined. We believe that the prescription of depreciation rates is an important element of regulation, that it must be continued, and that the results of the depreciation process must be given full consideration. Furthermore, we believe that it would be difficult to simply ignore the results of past depreciation prescriptions so painstakingly arrived at in so many tripartite meetings over so many years.

8. Nor do we believe that such a course would be entirely equitable. We think that past contributions by various customer groups should be recognized and given effect. Similarly, we believe that the retention of information as to sources of any underaccrual provides an important reference point to assist us and the States in determining proper corrective action (e.g., rate adjustments) to be taken to remedy any shortfall. For these reasons, we have tentatively decided on an allocation procedure based upon actual recorded depreciation activity.

9. Our primarly consideration of these two alternatives does not preclude our consideration of other possible alternatives, of which there are many. For example, the allocation could be based on the pro rata share of investment in each plant category or on any one of a combination of these approaches. Because we have yet to settle on the method for allocating the depreciation reserve, we are open to all reasonable suggestions. Comments proposing allocation methods not discussed in this Notice will be fully considered. It would be useful if those commenting would address the effects of the allocation procedures on overall revenue requirements and on the relative distribution of costs to the various user groups.

10. Interested persons may file comments by March 31, 1981 (ref. no. 61730). Reply comments are due by April 30, 1981. Comments may be reviewed in the offices of the Depreciation Rates Branch in Suite 100 at 2555 M St. N.W. in Washington, D.C. Questions regarding this matter should be brought to the attention of Mr. Kenneth P. Moran, Chief, Depreciation Rates Branch, (202) 632-6956.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-3047 Filed 1-27-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 31.171(c) of the Commission's rules requires that "* * * for purposes of analysis, the company shall maintain subsidiary records in which the depreciation reserve is broken down into component parts corresponding to the primary telephone plant accounts which include depreciable telephone plant * * *" We perceive the intent of this Section to be that component reserves must be maintained to support the balance in the depreciation reserve. It appears that companies which do not maintain reserve balances by account may not be in compliance with this requirement. See also Case 1 of Appendix A to Part 31 of the Commission's rules.

[2] Because of the implications for the net book costs of terminal equipment, this matter will be coordinated with implementation efforts related to the Second Computer Inquiry, FCC Docket #20828.

[3] Determining category reserves in this manner does present minor problems, because past accounting changes and the reclassification of assets between plant accounts should have resulted in category reserve adjustments which have not been made. We believe that, in most cases, a reasonable basis for estimating the appropriate category reserve adjustments is available and that the overall distortion of category reserves resulting from past accounting changes and plant reclassifications is relatively small.

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before February 17, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or

between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3376-4.

Filing party: Mr. Randall V. Adams, Traffic/Accounting, Port of Palm Beach, P.O. Box 9935, Riviera Beach, Florida 33404.

Summary: Agreement No. T-3376-4, between the Port of Palm Beach District (Port) and Caribbean Lines Corporation (CLC), modifies the parties' basic agreement which provides for CLC's lease of office and storage space. The purpose of the modification is to extend the term of the agreement for an additional one-year period, adjust the monthly rental and include certain provisions for vacating the leased premises in the event of new construction by Port.

Agreement No.: T-3942.

Filing Party: Richard L. Landes, Deputy City Attorney of Long Beach, Harbor Branch Office, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3942, between the City of Long Beach (City) and West Coast Warehouse Corporation (West Coast), provides for the lease of three parcels of land and office and warehouse space to be used for the storage of commodities, container freight station (CFS) operations and offices in connection with West Coast's warehouse and trucking business, and for the repair, maintenance and storage of West Coast's vehicles and warehouse handling equipment. As monthly rental for the three parcels of land, West Coast shall pay City the sum of $7,310, plus an additional variable rental charge for the portions used for CFS purposes. The term of the lease is 5 years.

Agreement No.: T-3943.

Filing party: Mr. David Ainsworth, Assistant General Counsel, American President Lines Ltd., 1950 Franklin Street, Oakland, California 94612.

Summary: Agreement No. T-3943, between American President Lines, Ltd. (APL) and Foss Alaska Line, Inc. (FOSS), provides that APL will perform stevedoring and terminal services for container and breakbulk cargoes, in behalf of FOSS at APL's terminal in Unalaska, Alaska. Breakbulk cargoes will be handled at rates and charges as set forth in APL's current terminal tariff. APL shall be compensated for container handling and terminal services at rates and charges as set forth in separate schedules. The agreement becomes effective upon approval by the Federal Maritime Commission, and it shall continue in effect until terminated by either party upon 60 days' prior written notice.

Francis C. Hurney,

Secretary.

[FR Doc. 81-3207 Filed 1-27-81; 8:45 am]

BILLING CODE 6730-01-M

[Proposed Modifications to General Order 4]

Licensing of Independent Ocean Freight Forwarders; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's proposed rulemaking with regard to 46 CFR 510—Licensing of Independent Ocean Freight Forwarders will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

This finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-3185 Filed 1-27-81; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-21-8; Amendment No. 8]

Master Lease Between Sacramento-Yolo Port District and Cargill, Inc.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on this agreement will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the preparation of an environmental impact statement is not required.

This Finding of No Significant Impact (FONSI) will become final within 20 days unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmenal assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-3184 Filed 1-27-81; 8:45 am]

BILLING CODE 6730-01-M

[Amendment No. 6 to Commission Order No. 201.1 (Revised)]

Redelegation of Authorities by the Managing Director

Commission Order No. 201.1 (Revised) dated June 30, 1975, was amended by amendment 5 on January 9, 1981, in order to reflect recent reorganization changes and changes in General Order 11 as follows:

"Section 6. Specific Authorities Redelegated to the Director, Bureau of Tariffs

"6.01 Authority to approve or disapprove applications as specified in General Order 11, 'Financial Reports of Common Carriers by Water in the Domestic Offshore Trades,' Sections: 512.2(c)—(extensions of time for filing); 512.2(d)—(alternate data); and 512.2(e)—(waivers of filing).

"6.02 Authority to approve or disapprove applications as specified in General Order No. 5, 'Reports by Common Carriers by Water in the Domestic Offshore Trades,' Sections: 511.4(b)—Extensions of time for Filing; 511.6—Alternate Data; and 511.7—Waivers of Filing."

Arthur Pankopf,

Managing Director.

[FR Doc. 81-3039 Filed 1-27-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankstock Two, Inc.; Formation of Bank Holding Company

Bankstock Two, Inc., Dardanelle, Arkansas, 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 at least 80.06 percent of the voting shares of Arkansas Valley Bank, Dardanelle, Arkansas. 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 St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1981. 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, January 22, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-3175 3189 Filed 1-27-81; 8:45 am]

BILLING CODE 6210-01-M

Northwest Bancorporation; Acquisition of Bank Holding Company and its Subsidiary Bank

Northwest Bancorporation, Minneapolis, Minnesota, 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 State Financial Services, Inc., Worthington, Minnesota, and, thereby, its subsidiary, the State Bank of Worthington, Worthington, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 21, 1981. 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, January 22, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-3176 Filed 1-27-81; 8:45 am]

BILLING CODE 6210-01-M

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 reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 21, 1981.

A. *Federal Reserve Bank of Boston* (Richard E. Randall, Vice President) 30 Pearl Street, Boston, Massachusetts 02106:

Old Stone Corporation, Providence, Rhode Island (mortgage banking and insurance agency activities; Alabama): To engage *de novo* through its indirect subsidy, DAC Corporation of Alabama, in the origination, sale and servicing of first and second mortgage loans; the sale of credit life and credit health and accident insurance offered in connection with extensions of credit, which insurance would be reinsured by an affiliate, Motor Life Insurance Company; and the sale of casualty insurance on property mortgaged in connection with extensions of credit. These activities would be conducted from an office in Birmingham, Alabama, serving the general metropolitan area of the City of Birmingham, Alabama and the County of Jefferson, Alabama.

B. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty street, New York 10045:

Citicorp, New York, New York (consumer and sales finance and insurance activities; California): to engage through its indirect subsidiary, Citicorp Person-to-Person Financial Center, Inc., in conducting the following activities: purchasing for its own account and servicing sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; making or acquiring loans and other extensions of credit, secured or unsecured, for consumer and other purposes; and 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 a de novo office in San Jose, California serving San Mateo, Santa Clara, and Alameda counties.

C. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Wells Fargo & Company, San Francisco, California (finance activities; Central United States): to engage, through its subsidiary, Wells Fargo Business Credit, in making or acquiring loans and other extensions of credit, including commercial loans secured by a borrower's inventory, accounts receivable, or other assets; servicing loans in accordance with the Board's Regulation Y. These activities would be conducted from an office in Hunt Valley, Maryland serving Maryland, Virginia, West Virginia, Ohio, Pennsylvania and New Jersey.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, January 22, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-3177 Filed 1-27-81; 8:45 am]

BILLING CODE 6210-01-M

Peoples Ban Corporation; Formation of Bank Holding Company

Peoples Ban Corporation, Seattle, Washington, 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 successor by merger to Peoples National Bank of Washington, Seattle, Washington. 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 February 20, 1981. 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, January 22, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-3178 Filed 1-27-81; 8:45 am]

BILLING CODE 6210-01-M

Peoples Ban Corporation; Proposed Acquisition of All Stock Owned by Peoples National Bank ("Bank") in its Wholly-Owned Washington Subsidiaries

Peoples Ban Corporation, Seattle, Washington, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(c)), for permission to acquire the voting shares of all stock owned by Bank's wholly-owned subsidiaries, Western States Computer Service, Inc., Seattle, Washington ("WSCS"); Western States Agencies, Inc., Seattle, Washington ("WSA"); Peoples Service Corporation, Seattle, Washington ("PEC"); Peoples Mortgage Company, Seattle, Washington ("PMC"); and Western States Mortgage Company, Seattle, Washington ("WSM").

Applicant states that the proposed subsidiary, WSCS, would engage in providing data processing services to commercial banks that are correspondent banks of Bank; WSA would act as an insurance agent offering credit life and disability insurance to customers of Bank and its subsidiaries; PEC would engage in closing residential mortgages for PMC; PMC would engage in originating and servicing loans secured by real estate, providing interim financing secured by real estate for construction projects, in direct mobile home financing, leasing real property, and acting as investment or financial advisory; WSM would engage in originating loans secured by real estate, as wholly-owned subsidiary of PMC. The proposed activities of WSCS would be performed in Bellingham, Washington; the proposed activities of WSA would be performed in Seattle, Washington; the proposed activities of PEC would be performed in Bellevue, Seattle, Tacoma, Vancouver and Yakima, Washington; the proposed activities of PMC would be performed in Denver, Colorado; Las Vegas, Nevada; Portland, Oregon; Salt Lake City, Utah; and the following Washington cities: Seattle, Bellevue, Tacoma, Kennewick, Wenatchee and Yakima; and the proposed activities of WSM would be performed in the following Washington cities: Seattle, Everett, Lynnwood, Moses Lake, Puyallup, Renton, Mountlake Terrace and Bellingham. The geographic areas to be served by WSCS are Oregon and Washington; the area to be served by WSA and PEC is Washington; and the areas to be served by PMC and WSM are Colorado, Nevada, Oregon, Utah and Washington. Such activities have been specified by the Board in § 255.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of 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 February 20, 1981.

Board of Governors of the Federal Reserve System, January 22, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-3179 Filed 1-27-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on January 16 (NRC), and January 21, (FTC), 1981. 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 receipts.

The notice includes the title of each 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 FTC and NRC requests 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 requests, comments (in triplicate) must be received on or before February 17, 1981, 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, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Trade Commission

The FTC requests an extension without change clearance of Form R-2, Quarterly Report on Working Capital and Long-Term Debt. The information requested consists of major components of total current assets and total current liabilities and also long-term debts for approximately 220 nonfinancial corporations consisting of natural gas, telephone and electric utilities. The FTC states that this is a voluntary form and that reports are submitted quarterly and require 45 minutes for completion of each report.

Nuclear Regulatory Commission

The NRC requests an extension without change clearance of the application, recordkeeping and reporting requirements contained in 10 CFR Part 110, Export and Import of Nuclear Equipment and Material. The requirements of these regulations affect 425 licensees. The specific requirements are contained in § 110.30 which requires that an application for export of nuclear materials and utilization facilities must be filed; § 110.31 which sets forth the criteria that must be contained in the application; § 110.32 which sets forth additional requirements for applications for export of a utilization facility; § 110.33 which sets forth additional application requirements for export of special, byproduct and source material; § 110.34 which sets forth requirements for import license applications; § 110.35(b) which requires an applicant to amend the original application whenever there is a substantive change in the information described in the application; § 110.50(a)(7) which specifies that any licensee authorized to export or import shall notify the NRC promptly if he knows or has reason to

believe that the packaging requirements of Part 71 of this chapter have not been met; § 110.50(b)(3) which requires a licensee to return to NRC any expired, revoked, unused or partially used but not intended to be used further license; § 110.53 requires that licensees maintain records concerning exports and imports for specific periods of time set out in the section. The NRC estimates that burden for each respondent for §§ 110.30–110.33 requires 30 minutes per action; § 110.34 requires .4 hours per action; § 110.35(b) requires 15 minutes per action; § 110.50(a)(7) requires 15 minutes per action; § 110.50(b)(3) requires 15 minutes per action; and § 110.53 requires 10 minutes per record.

The NRC requests an extension without change clearance of the reporting requirements contained in 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements. This part affects approximately 125 licensees. The specific requirements are contained in § 140.6 which requires licensees to submit a report to NRC in the event of property damage or bodily injury occurring as a result of licensed activities; § 140.15(a) requiring licensees who choose to maintain financial protection in the form of liability insurance required pursuant to section 170(b) of the Atomic Energy Act of 1954, as amended, to submit proof of their financial protection; § 140.15(b) requiring licensees to submit to NRC proof of financial protection for licensees who choose to maintain financial protection in the form of the licensee's own resources; § 140.17 requiring licensees to submit to NRC proof that insurers are legally authorized to issue liability policies and upon expiration of such policies proof that renewal of such policies has been obtained; § 140.20(c) specifying that licensees who indicate they will not be paying retrospective premium assessments to immediately submit their financial statements to NRC; and § 140.21 requiring licensees to submit to NRC copies of any one of several financial devices to guarantee a licensee's payment of retrospective premium assessment. The NRC estimates burden to licensees for § 140.6 will require an average of 10 hours per report; for § 140.15(a) NRC states that burden will average 1 hour; for § 140.15(b) burden will average 8 to 16 hours per statement; for § 140.17 NRC states only nominal burden would be required; for § 140.20(c) NRC makes the same statement; and for § 140.21 burden will average 10 hours per action.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-3199 Filed 1-27-81; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Violation of Federal Reports Act

Notice is hereby given that the Nuclear Regulatory Commission has promulgated the following revised information collection requirement without first obtaining a clearance from the General Accounting Office as required by the Federal Reports Act, 44 U.S.C. 3512 (1976):

NRC is using Form 2, Application for Source Material License. The form is ot the one that was approved by the Comptroller General on June 13, 1978, B–180225 (RO147). NRC materially revised several questions to the form after approval was granted. These changes constitute a revision of the form which requires another clearance under 44 U.S.C. 3512.

Section 3512(c) of title 44, United States Code, provides in part:

> * * * an independent regulatory agency shall not conduct or sponsor the collection of information upon an identical item from ten or more persons, other than Federal employees, unless, in advance of adoption or revision of any plans or forms to be used in the collection—
>
> (1) the agency submitted to the Comptroller General the plans or forms, together with the copies of pertinent regulations and of other related materials as the Comptroller General has specified, and
>
> (2) the Comptroller General has advised that the information is not presently available to the independent agency from another source within the Federal Government and has determined that the proposed plans or forms are consistent with the provision of this section. * * *

The clearance granted by GAO on June 13, 1978, is hereby revoked. Accordingly, the Commission has no effective clearance of Form 2, Application for Source Material License currently in use as required by the Federal Reports Act.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-3198 Filed 1-27-81; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 131]

The Pacific Gas and Electric Co.; the California Public Utilities Commission Proposed Intervention in Electric and Gas Rate Increase Proceeding

The General Services Administration Seeks to intervene in a proceeding before the California Public Utilities Commission concerining the application of the Pacific Gas and Electric Company for an increase in its electric and gas rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Albert A. Vicchiolla, Assistant General Counsel, Transportation and Public Utilities Division, General Services Administration, 425 I Street NW., Washington, D.C. 20406, telephone 202–275–6101. On or before February 27, 1981 to this notice number.

Persons making inquires are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding. (Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(8)).

Dated: January 16, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-3027 Filed 1-27-81; 8:45 am]

BILLING CODE 6820-AM-M

[Intervention Notice 130]

Potomac Electric Power Co.; the Public Service Commission of the District of Columbia; Proposed Intervention in Investigation of Electric Fuel Adjustment Clause

The General Services Administration seeks to intervene in an investigation before the Public Service Commission of the District of Columbia concerning the Potomac Electric Power Company's fuel adjustment clause. GSA represents the interests of the executive agencies of the U.S. Government as users of electric utility service.

Persons desiring to make inquiries to GSA concerning this investigation should submit them in writing to Albert A. Vicchiolla, Assistant General Counsel, Transportation and Public Utilities Division, General Services Administration, 425 I Street, N.W., Washington, D.C. (mailing address: General Services Administration (LT), Washington, DC 20456), telephone 202–

275–6101, on or before February 27, 1981, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inqiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4)).

Dated: January 16, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-3028 Filed 1-27-81; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Advisory Board on Child Abuse and Neglect; Meeting

Notice is hereby given, pursuant to Public Law 92–463, of the meeting of the Advisory Board on Child Abuse and Neglect on January 30, 1981, from 9:30 a.m. to 3:00 p.m., Rooms 339A & 337A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

The Advisory Board on Child Abuse and Neglect was established by the Department of Health and Human Services to assist the Secretary in coordinating programs and activities related to child abuse and neglect planned, administered, or assisted by the Federal agencies whose representatives are members of the Advisory Board. The Advisory Board shall also assist the Secretary in the development of Federal standards for child abuse and neglect prevention and treatment programs and projects.

At this meeting the Advisory Board will discuss the Oversight Hearings before the House subcommittee on Select Education; the Findings of the National Study of the Incidence and Severity of Child Abuse and Neglect; plans for the Fifth National Conference on Child Abuse and Neglect; and the Annual Report to the Secretary.

Further information on the Advisory Board meeting may be obtained from Ms. Arlene Taylor, National Center on Child Abuse and Neglect, Room 3754, Donohoe Building, P.O. Box 1182, Washington, D.C. 20013, Telephone (202) 755–8208.

Advisory Board meetings are open for public observation.

Failure to give 15 days notice is due to the uncertainty of knowing whether funds would be available to provide travel for the public members.

Dated: January 22, 1981.

Mamie J. Welborne,

Human Development Services Committee, Management Officer.

[FR Doc. 81-3040 Filed 1-27-81; 8:45 am]

BILLING CODE 4110-92-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Computation of Royalties on Phosphate Production on Western Public Lands

AGENCY: Department of the Interior Geological Survey.

ACTION: Adoption of method of computing royalty payments to the Federal Government on phosphate rock mined on western public lands.

SUMMARY: This notice announces the adoption of a new method for determining mine values for the purpose of computing royalties on phosphate rock produced on Federal leases in the States of Idaho, Montana, Utah, and Wyoming.

SUPPLEMENTARY INFORMATION:

By notice published in the **Federal Register** on November 7, 1980 (Vol. 45, No. 218, p. 74065 and 74066), it was proposed that the method utilized for determining value for phosphate rock mined on Federal lands that had been adopted on May 13, 1976, by the Secretary of the Interior be replaced by a new method. The new method proposed in the notice was to adopt the value of $0.337 for each unit of P_2O_5 mined. (Each unit represents 1 percent of P_2O_5 in a ton of phosphate rock.) This is the same base value that is currently utilized for phosphate mined on Indian lands in Idaho. The proposed new method would adjust the unit value of P_2O_5 annually based on an index. The Consumer Price Index-Urban (CPI-U) is the index currently used for adjusting unit value of phosphate rocks mined on Idaho Indian lands. However, no specific index was proposed for use on Federal lands. The notice requested comments be made with respect to: (1) selection of an index and (2) proposals for other methods of phosphate ore valuation.

Comments

Three comments were received on the method for valuing western phosphate rock at the mine.

One commentor stated that the Department must demonstrate that less than 1 percent of the 1980 sales are arms-length sales, as our previous notice had stated. This comment was not adopted since it is not relevent to the index or method to be used. The U.S. Geological Survey (USGS) statements in this regard in the original notice were only for information and not directly related to the method of computing royalties.

Another commentor suggested that either the Gross National Product-Implicit Price Deflator (GNP-IPD) or the CPI-U be used to adjust the unit value of phosphate rock. It was also suggested that if a lessee had sufficient arms-length sales that the proportional profit method should continue to be used by those lessees. The suggestion to use the GNP-IPD index was adopted, but the second suggestion for continued use of the proportional method was not adopted since different lessees in the same area mining similar grade ore would be using different methods to determine value of phosphate rock.

The third commentor recommended that the GNP deflation be used as an index for adjusting the value of phosphate rock for royalty purposes instead of the CPI-U since the GNP-IPD more accurately reflects inflation because it covers the prices of all goods and services. We agree with this reasoning and have adopted the use of the GNP-IPD as the most appropriate index. The commentor also recommended that, at some future date, the USGS consider an additional formula to solely reflect fluctuation in the western phospate market. If a better method is developed that more accurately reflects the value of phosphate rock, if will be considered at that time.

Method of Computation of Royalties on Phosphate Production on Western Public Lands

The new method of calculating royalties is effective as of January 1, 1981, and will utilize the base value of $0.337 for each unit of P_2O_5 mined. The base unit value of $0.337 is indexed to the average annual GNP-IPD index for 1979, as published by the U.S. Department of Commerce, Bureau of Economic Analysis.

The unit value for each calendar year will be adjusted annually by multiplying $0.337 by the average annual GNP-IPD index for the preceding calendar year and dividing the product by the average annual GNP-IPD index for 1979. This will establish the unit value for computing royalties for the current year's production. For example, the unit value of phosphate rock production for calendar year 1981 will be $0.337 multiplied by the 1980 annual average of the GNP-IPD index; this product will be

divided by the GNP-IPD for 1979, which is 165.46.

Royalties due the United States on each month's production will be computed as follows: The unit value, as derived above, rounded to the nearest hundredth of a cent, will be multiplied by the units of P_2O_5 in a dry short ton of ore rounded to two decimal places (a unit of P_2O_5 is equivalent to 1 percent P_2O_5 in a ton of ore). This figure is then multiplied by the tons of the ore shipped from the mine during the month. To determine the amount of royalties to be paid, this figure is multiplied by the percentage royalty required under the lease agreement.

This method for establishing reasonable values for phosphate rock at the mine will be used for all phosphate production from Federal leases in the States of Idaho, Montana, Utah, and Wyoming.

Dated: January 19, 1981.

John J. Dragoneeti,

Deputy Division Chief—Onshore, Minerals Regulation.

[FR Doc. 81-3042 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Indian Affairs

[INT DEIS 81-4]

Mount Tolman Proposed Open Pit Copper—Molybdenum Mine; DEIS Availability

AGENCY: Bureau of Indian Affairs, Interior.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Draft Environmental Statement for the proposed open-pit copper-molybdenum mine on the Colville Indian Reservation, Ferry County, Washington.

The proposed action is the approval by the Department of the Interior of a lease of Colville Tribal lands for the purpose of mining copper and Molybdenum. The lease area is entirely located on the Colville Reservation, Ferry County, northeastern Washington. The proposed project contemplates open-pit mining of 900 million tons of low grade copper and molybdenum ore from the Mt. Tolman area over a period of 43 years at a production rate of 60,000 tons per day. In addition to the mine the project would consist of (1) a flotation mill plant designed for the production of copper and molybdenum concentrates, (2) waste disposal sites, and (3) support facilities, including a transmission line and a water pipeline.

Copies are available for inspection at the following locations:

Office of Communication, Room 7200, Interior Building, Washington, D.C. 20240, Telephone (202) 343–3171.

Portland Area Office, Bureau of Indian Affaris, Land Services, 1425 N.E,. Irving, P.O. Box 3785, Portland, Oregon 97208, Telephnone (503) 231–6748.

Colville Agency, Bureau of Indian Affairs, P.O. Box 11, Nespelem, Washington 99155, Telephone (509) 634–4901.

Single copies of the Draft Environmental Impact Statement may be obtained from the Portland Area Office, Bureau of Indian Affairs, Land Services, 1425 N.E. Irving, P.O. Box 3785, Portland Oregon 97208.

Oral and/or written comments will be received at a public hearing held at 7:00 p.m., February 25, 1981, at the City Hall, Coulee Dam, Washington.

Oral and written comments by interested parties are invited. Oral statements by any party will be limited to no more than ten (10) minutes. Written statements can be entered into the record by filing a copy with the presiding officer.

Comments on the Draft Environmental Impact Statement are invited from all interested parties and should be forwarded to the following official no later than March 31, 1981: Bob Taylor, Environmental Coordinator, Portland Area Office, Bureau of Indian Affairs, Land Services, 1425 N.E. Irving, P.O. Box 3785, Portland, Oregon 97208 (Telephone (503) 231–6748).

Dated: January 22, 1981.

Cecil S. Hoffmann,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 81-3037 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-02-M

[INT FES 81-4]

Ute Mountain Ute Proposed Strip Coal Mine; EIS Availability

AGENCY: Bureau of Indian Affairs.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Statement for the proposed strip coal mine on the Ute Mountain Ute Indian Reservation, San Juan County, Colorado.

The proposed action is the approval by the Department of the Interior of a lease of Ute Mountain Ute Tribal lands for the purpose of mining coal. The lease area is entirely located on the Ute Mountain Ute Indian Reservation, San Juan County, in northwestern New Mexico. The proposed project will consist of a 10-year lease with an option to renew for 10 years. Exploration conducted in the late 1960's has indicated approximately 8–10 million tons of coal that can be stripped-mined.

Copies are available for inspection at the following locations:

Bureau of Indian Affairs, Department of the Interior, Environmental Quality Services, Rm. 4552, Washington, D.C. 20245, Telephone: (202) 343–8248.

Albuquerque Area Office, Bureau of Indian Affairs, Environmental Quality Services, 500 Gold Avenue, S.W., P.O. Box 2088, Albuquerque, New Mexico 87103, Telephone: (505) 766–3374.

Ute Mountain Ute Agency, Bureau of Indian Affairs, Towaoc, Colorado 81334, Telephone: (303) 565–8471.

Colorado State Division of Planning, 524 State Social Services Building, 1575 Sherman Street, Denver, Colorado 80203, Telephone: (303) 892–2178.

Single copies of the Final Environmental Statement may be obtained from the Albuquerque Area Office, Bureau of Indian Affairs, Environmental Quality Service, 500 Gold Avenue, S.W., P.O. Box 2088, Albuquerque, New Mexico 87103.

Dated: January 22, 1981.

Cecil S. Hoffmann,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 81-3038 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Alabama; Availability of Final Southern Appalachian; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM), Department of the Interior, has prepared a final environmental impact statement (EIS) for the proposed development of Federal coal resources in the Alabama subregion of the Southern Appalachian coal Production Region. Copies of the final EIS are available to the public at the addresses provided below.

In addition, in accordance with 43 CFR 3420.6–2, BLM is issuing a call for submission to the BLM of written surface owner consents given by qualified surface owners that would permit mining of Federal coal on the identified tracts where the Federal coal

is overlain by privately owned surface. Qualified surface owners also have the opportunity to submit written refusals to consent. The legal descriptions of all the tracts considered for regional lease sale schedule in the final EIS are provided in Appendix A of this notice.

ADDRESSES: Single copies of the final EIS may be obtained from and are available for inspection at the following addresses:

Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Tuscaloosa Office, Bureau of Land Management, 1315 McFarland Boulevard, East Tuscaloosa, Alabama 35405.

Office of Public Affairs, Bureau of Land Management, Room 5623, 18th & C Streets, N.W., Washington, D.C. 20240.

Valid written consents or written refusals to consent are to be filed with the Eastern State Office at the address given above.

DATES: The dates for filing valid surface owner consent agreements, or evidence thereof, are contained in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: Bob Todd, Team Leader, Southern Appalachian Regional Coal EIS, Tuscaloosa, Alabama, at the address given above.

SUPPLEMENTARY INFORMATION: The Final Southern Appalachian Regional Coal EIS, which is part of the leasing process under the Federal coal management program (43 CFR 3400), analyzes the environmental impacts that would result from the development of 26 coal tracts proposed for leasing in North Central Alabama.

The EIS analyzes the cumulative regional environmental impacts of five leasing level alternatives, including the no action alternative, in the Alabama Subregion of the Southern Appalachian Coal Production Region.

Copies of the draft EIS were sent to approximately 600 Federal, State, and local government agencies, non-governmental organizations and private citizens for their review and comment. Public hearings were held in Tuscaloosa, Alabama. All substantive comments on the adequacy of the draft EIS received during the public review process have been responded to in Chapter 6 of the final EIS.

In accordance with 43 CFR 3420.6–2 of the coal management regulations, the BLM is also requesting that written surface owner consent agreements, or evidence thereof, given by qualified surface owners for lands within the region be submitted to the BLM Eastern States Office at the address given above. Valid written consents for lands in which the ownership of the surface is held by qualified surface owners and the ownership of the underlying coal is reserved to the Federal Government will be accepted until 30 working days prior to the publication of each lease sale notice for the specific lands involved (identified in Appendix A) in accordance with the announced schedule of regional lease sales established by Secretarial decision. It is the responsibility of parties intending to file consents to be aware of pending lease sale notice dates, as set forth in an announced regional lease sale schedule.

Section 714(c) of the Surface Mining Control and Reclamation Act (SMCRA) states that, "The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent."

As defined in the regulations (43 CFR 3400.0–5(pp)), qualified surface owner "means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on that land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching opeaations, and;

(3) Have met the conditions of paragraphs (1) and (2) of this subsection for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (1) and (2) of this section. In computing the 3 year period the authorized officer shall include periods during which title was owned by a relative or such person by blood or marriage if, during such periods the relative would have met the requirements of this subsection."

Valid written consent is defined in the regulations (43 CFR 3400.0–5(zz)) as "the document or documents that a qualified surface owner has signed that: (1) Permit a coal operator to enter and commence surface mining of coal; (2) describe any financial or other consideration given or promised in return for permission, including in-kind consideration; (3) describe any consideration given in terms of type or methods of operation or reclamation for the area; (4) contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission, and (5) contain a full and accurate description of the area covered by the permissions."

As required by 43 CFR 3427.2(e), it is the Bureau's responsibility to review all consents received. The Bureau will verify that the named surface owner is a qualified surface owner as defined in the regulations and that the title for split estate lands described in filing is held by the named qualified surface owner(s). In addition, to be considered valid, consents entered into after the August 4, 1977, enactment of the Surface Mining Control and Reclamation Act must be transferable to whomever makes the successful bid in a lease sale for the tract that includes the lands to which the consent applies. A written consent shall be considered transferable only if, at a minimum, it allows that after the lease sale for the tract to which consent applies (i) payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse, at the purchase price of the consent, the party that first obtained the consent. If a filing is from anyone other than the named qualified surface owner, the Bureau shall contact the named qualified surface owner, and request confirmation, in writing, that the filed, transferable, written consent, or evidence thereof, enter and commence surface mining has been granted and that the filing fully discloses all of the terms of the written consent.

To facilitate the filing and review of written consents from qualified surface owners, the person submitting the consent is asked to include a statement that the evidence submitted represents a true, accurate, and complete statement of information regarding the consent for the area described. Such a validation statement is required by 43 CFR 3427.3. The statement is to be signed and dated by the person submitting the consent and can be either incorporated directly into the consent document or enclosed as a separate item submitted with the consent document. The statement can be worded as follows: "I (We) hereby declare that the evidence submitted, to the best of my (our) knowledge, represents a true, accurate, and complete statement of information regarding the surface owner consent for the area described." This validation statement does not have to be witnessed or notarized.

A qualified surface owner(s) that has not been contacted by or requested to enter into any agreement with a private party, who may wish to give consent to allow permission to enter and

commence surface mining, may prepare, sign, and submit a consent document to the Eastern States Office. The consent document should include the information and requirements specified earlier in this notice in order to constitute a valid written consent as defined in the coal regulations (43 CFR 3400.0–5(zz)), and must indicate any specific terms the surface owner may request to allow permission to enter and commence surface coal mining. This unilateral consent document must be signed by a private party at least 30 working days prior to the publication of the lease sale notice for the area affected, or the area affected will not be offered for lease sale.

In accordance with 43 CFR 3427.2(a)(2), written statements from qualified surface owners who refuse to consent to coal leasing may be filed with the Eastern States Office at the address given above. Early submittal of a refusal to consent by a qualified surface owner who is firmly against giving consent, thereby disqualifying the specified land from further leasing consideration, will deter pressure from persons or parties seeking to enter into a consent agreement and will prevent continued inquiries by the BLM of the status of surface owner consent for the specified lands. Additional information on written surface owner consents may be obtained from the Team Leader, Southern Appalachian Regional EIS, Tuscaloosa, Alabama, at the address given above.

For the tracts analyzed in the Final Southern Appalachian Regional Coal EIS, the Secretary of the Interior's decision and the announcement of a final lease sale schedule is anticipated in early March 1981. As part of that decision, the Secretary may choose to hold a series of sales beginning in June 1981. If the Secretary's decision should be to hold competitive lease sales in June 1981, the publication of sale notices for the specified tracts to be offered would be published approximately May 20, 1981. For those tracts specifically identified in that May notice valid written consents would be required no later than April 10, 1981. For other tracts (identified in Appendix A) that may be offered later in 1981 and 1982, valid written consents would be required at a later date, prior to the publication of each sale notice. In accordance with 43 CFR 3422.2(a), publication of each sale notice would be 30 days prior to the announced sale date.

Dated: January 15, 1981.

Ed Hastey,

Associate Director, Bureau of Land Management.

Approved: January 15, 1981.

Larry E. Meierotto,

Assistant Secretary of the Interior.

Enclosure.

Appendix A

Huntsville Principal Meridian

Legal Description of Federal Coal in Windham Springs Tract

T. 18S, R. 9W,
Sec. 17. S½ of SW¼;
Sec. 18. N½ of SE¼; SE¼ of NW¼;
Sec. 19. S½; SW¼ of NW¼;
Sec. 20. S¼ of SW¼;
Sec. 21. NE¼ of SE¼;
Sec. 22. S½ of NE¼; S½; SE¼ of NW¼; NW¼ of NW¼;
Sec. 27. W½ of NE¼; S½; NW¼;
Sec. 28. N½ of S½; SW¼ of NW¼;
Sec. 29. N½ of SE¼; S½ of SW¼;
Sec. 31. All;
Sec. 32. S½ of S½;
Sec. 33. N½; NE¼ of SE¼; S½ of SW¼; NE¼ of SW¼;
Sec. 34. N½; N½ of S½; S½ of SE¼;
Sec. 35. E½ of E½; W½ of W½; NW¼ of NE¼; SW¼ of SE¼; NE¼ of NW¼.
T. 18S, R. 10W,
Sec. 13. NW¼ of SE¼; NE¼ of SE¼; S½ of S½;
Sec. 14. SE¼ of SE¼;
Sec. 23. E½; S½ of NW¼;
Sec. 24. N½; N½ of SE¼; SW¼ of SE¼; NE¼ of SW¼;
Sec. 25. NW¼ of NE¼; SW¼ of SE¼; N½ of SW¼; E¼ of NW¼;
Sec. 26. N½; N½ of SE¼;
Sec. 27. SE¼ of NE¼; NE¼ of SE¼;
Sec. 36. W½ of NE¼; SE¼ of NE¼; NE¼ of NW¼.

Containing approximately 7,920 acres in Tuscaloosa county.

Legal Description of Federal Coal in Rock Springs Church Tract

T. 17S, R. 9W,
Sec. 2. NW¼ of SE¼; NW¼ of SW¼;
Sec. 3. SW¼ of SE¼; SW¼;
Sec. 4. NE¼ of NE¼; S½ of NE¼; S½ of SW¼;
Sec. 9. E½; SW¼;
Sec. 10. NW¼ of SE¼; N½; SW¼;
Sec. 11. SE¼ of SE¼; W½ of NW¼;
Sec. 12. E½ of SE¼; SW½ of NW¼;
Sec. 13. N½ of NE¼; SE¼ of SE¼; N½; of SW¼;
Sec. 14. E½ of NE¼; N½ of SE¼; SE¼ of SE¼; E½ of NW¼;
Sec. 15. W½ of NE¼; NW¼ of SE¼; NW¼ of SW¼; NW¼;
Sec. 22. E½ of SE¼; NE¼ of NW¼;
Sec. 23. S½ of NE¼; NE¼ of SE¼;
Sec. 24. E½ of SE¼; SW¼ of NW¼;
Sec. 25. NE¼ of NE¼; NE¼ of SE¼; E½ of SW¼;
Sec. 26. NW¼ of NW¼;
Sec. 27. NE¼ of NE¼;
Sec. 36. E½ of NE¼ of SW¼; E½ of NW¼.

Containing approximately 3,520 acres in Tuscaloosa County.

Legal Description of Federal Coal in North River Tract

T. 17S, R. 10W,
Sec. 3. NE¼; E½ of SE¼;
Sec. 4. N½ of SW¼; SW¼ of NW¼;
Sec. 5. E½ of SE¼; NE¼ of SW¼; E½ of NW¼;
Sec. 10. NW¼ of NE¼; NE¼ of NW¼;
Sec. 12. SE¼ of SE¼;
Sec. 13. NE¼ of NE¼; E½ of SE¼;
Sec. 15. N½ of NE¼; SE¼ of NE¼;
Sec. 17. SE¼ of NE¼; W½ of SE¼;
Sec. 21. SW¼ of NE¼; NW¼ of SE¼;
Sec. 22. N½ of NE¼; SW¼ of SW¼.

Containing approximately 1,240 acres in Tuscaloosa County.

Legal Description of Federal Coal in Jess Creek Tract

T.14S, R. 9W,
Sec. 7. W½ of NE¼;
Sec. 17. NE¼; E½ of SE¼; W½ of SW¼;
Sec. 18. SE¼; S½ of NE¼; NW¼ of NE¼; E½ of W½;
Sec. 19. NE¼; SE¼; NE¼; E½ of SW¼;
Sec. 20. W½ of SE¼; NW¼; SW¼ of NE¼; E½ of SW¼;
Sec. 21. SE¼; E¼ of SW¼; NW¼ of SW¼; NW¼.

Containing approximately 1,960 acres in Walker County.

Legal Description of Federal Coal in Upper North River Tract

T. 16S, R. 10W,
Sec. 28. NW¼ of SW¼.

Containing approximately 40 acres in Fayette County.

Legal Description of Federal Coal in Wiley Tract

T. 17S, R. 9W,
Sec. 30. E½ of SE¼;
Sec. 31. NE¼ of NE¼; S½ of NE¼; SE¼ of NW¼;
Sec. 32. E½ of NE¼; W½ of SW¼; SE¼ of NW¼; W½ of NW¼;
T. 17S, R. 10W,
Sec. 25. NW¼ of SW¼;
Sec. 26. NE¼ of SE¼; NW¼ of SW¼;
Sec. 27. W½ of NW¼;
Sec. 28. SE¼ of NE¼;
Sec. 34. NE¼ of SE¼;
Sec. 35. NW¼ of NE¼; SE¼ of NE¼; E½ of SE¼; E½ of SW¼; SE¼ of NW¼; NE¼ of NW¼;
Sec. 36. SE¼ of NE¼; N½ of SW¼; SE¼ of NW¼.
T. 8S, R. 9W,
Sec. 6. SW¼ of NE¼; W½ of SW¼; S½ of NW¼; NE¼ of NW¼;
Sec. 7. S½ of NE¼; N½ of NW¼.
T. 18S, R. 10W,
Sec. 1. N½ of SE¼; SW¼ of SE¼; SE¼ of SW¼; NE¼ of NW¼;
Sec. 11. E½ of NE¼;
Sec. 12. NW¼ of NE¼; SE¼ of SW¼.

Containing approximately 2,040 acres in Tuscaloosa County.

Legal Description of Federal Coal in Dividing Ridge Tract

T. 16S, R. 9W,
Sec. 15. NW¼ of SW¼;
Sec. 21. E½ of NE¼; NW¼ of NE¼; NE¼ of SE¼;

Sec. 22. S½ of N½; N½ of S½; NW¼ of NW¼;
Sec. 23. W½ of SW¼.

Containing approximately 638 acres in Fayette County.

Legal Description of Federal Coal in Elm Grove Tract

T. 14S, R. 10W,
Sec. 4. SW¼ of SW¼;
Sec. 5. NE¼ of SE¼;

Containing approximately 79.9 acres in Fayette County.

Legal Description of Federal Coal in Goodwin Creek Tract

T. 12S, R. 10W,
Sec. 19. SE¼ of SE¼;
Sec. 30. SW¼ of NE¼; SE¼ of NW¼; W½ of NW¼.

Containing approximately 201.2 acres in Walker County.

Legal Description of Federal Coal in Harris Cemetery Tract

T. 14S, R. 10W,
Sec. 5. SE¼ of SW¼.

Containing approximately 40 acres in Fayette County.

Legal Description of Federal Coal in Howard Tract

T. 14S, R. 10W,
Sec. 2. SW¼ of NE¼; S½ of SE¼; NW½ of SE¼; S½ of SW¼;
Sec. 11. W½ of NE¼; partial NE¼ of NE¼; partial SE¼ of NE¼; SW¼ of SE¼; SW¼; E½ of SW¼; E½ of NW¼.

Containing approximately 815 acres in Fayette County.

Legal Description of Federal Coal in Piney Woods Church Tract

T. 18S, R. 9W,
Sec. 29. NW¼ of NE¼, that portion west of Crabbe Road; N½ of SE¼; N½ of SE¼; S½ of SW¼;
Sec. 30. S½ of SE¼;
Sec. 31. N½ of N½.
T. 18S, R. 10W, Huntsville Principal Meridian
Sec. 25. SW¼ of SE¼;
Sec. 36. NW¼ of NE¼; NE¼ of NW¼.

Containing approximately 485.6 acres in Tuscaloosa County.

Legal Description of Federal Coal in Upper Sulfur Springs Church Tract

T. 16S, R. 9W, Huntsville Principal Meridian
Sec. 34. NE¼ of SE¼.

Containing approximately 39.4 acres in Fayette County.

Legal Description of Federal Coal in Brannon Tract

T. 14S, R. 9W, Huntsville Principal Meridian
Sec. 7. NW¼ of SE¼.
T. 14S, R. 10W, Huntsville Principal Meridian
Sec. 1. SW¼ of SE¼.
Sec. 11. Partial NE¼ of NE¼; Partial SE¼ of NE¼;
Sec. 12. NE¼; W½ of SW¼; S½ of NW¼.

Containing approximately 440 acres in Fayette and Walker Counties.

Legal Description of Federal Coal in Crabbe Road Tract

T. 17S, R. 9W, Huntsville Principal Meridian
Sec. 31. E½ of NE¼; SW¼ of NE¼; SE¼ of NW¼;
Sec. 32. E½ of NE¼; W½ of SW¼; S½ of NW¼; NW¼ of NW¼.
T. 18S, R. 9W, Huntsville Principal Meridian
Sec. 6. SW¼ of NE¼; W½ of SW¼; S½ of NW¼; NE¼ of NW¼;
Sec. 7. S½ of NE¼; NE¼ of NW¼.

Containing approximately 820.9 acres in Tuscalossa County.

Legal Description of Federal Coal in Dry Creek North Tract

T. 18S, R. 9W, Huntsville Principal Meridian
Sec. 7. NW¼ of NW¼;
Sec. 17. W½ of SW¼;
Sec. 18. N½ of SE¼; SE¼ of NW¼.

Containing approximately 243.5 acres in Tuscloosa County.

Legal Description of Federal Coal in Dry Creek South Tract

T. 18S, R. 9W, Huntsville Principal Meridian
Sec. 19. SE¼; S½ of SW¼; NE¼ of SW¼;
Sec. 20. SW¼ of SW¼.

Containing approximately 320 acres in Tuscaloosa County.

Legal Description of Federal Coal in Little Tyro Creek Tract

T. 16S, R. 9W, Huntsville Principal Meridian
Sec. 31. SW¼ of NE¼; NW¼ of SW¼; SW¼ of NW¼.
T. 16S, R. 10W, Huntsville Principal Meridian
Sec. 36. SE¼ of NE¼; N½ of SE¼; SE¼ of NW¼.
T. 17S, R. 10W, Huntsville Principal Meridian
Sec. 1. N½ of N½; SW¼ of NE¼; NW¼ of SE¼; SW¼ of SW¼; S½ of NW¼;
Sec. 2. SE¼ of NE¼; N½ of SE¼; SE¼ of SE¼.

Containing approximately 800 acres in Tuscaloosa County.

Legal Description of Federal Coal in North Rock Springs Church Tract

T. 17S, R. 9W, Huntsville Principal Meridian
Sec. 11. SE¼ of SE¼;
Sec. 13. SW¼ of NE¼; N½ of SW¼;
Sec. 14. E½ of NE¼; E½ of SE¼; NW¼ of SE¼; E½ of NW¼.

Containing approximately 440 acres in Tuscaloosa County.

Legal Description of Federal Coal in Willis Chapel Tract

T. 15S, R. 9W, Huntsville Principal Meridian
Sec. 7. N½ of SE¼; NE¼ of SW¼.

Containing approximately 120 acres in Walker County.

Legal Description of Federal Coal in Poplar Hollow Tract

T. 16S, R. 9W, Huntsville Principal Meridian
Sec. 32. NE¼ of SW¼; SE¼ of NW¼;
Sec. 33. SW¼ of SW¼.
T. 17S, R. 9W, Huntsville Principal Meridian
Sec. 3. W½ of SW¼;
Sec. 4. NE¼ of NE¼; S½ of NE¼; S½ of SW¼;
Sec. 5. E½ of SE¼; NE¼ of SW¼; W½ of SW¼; SE¼ of NW¼;
Sec. 6. SE¼ of SE¼;
Sec. 7. NE¼ of NE¼; SE¼ of SE¼; E½ of SW¼;
Sec. 8. SE¼ of NE¼; SW¼ of SW¼;
Sec. 9. N½ of NE¼;
Sec. 17. NW¼ of NW¼;
Sec. 18. N½ of NE¼; E½ of NW¼.

Containing approximately 1240 acres in Fayette County.

Legal Description of Federal Coal in Yellow Creek East Tract

T. 19S, R. 9W, Huntsville Principal Meridian
Sec. 10. SE¼;
Sec. 14. SE¼; NW¼.

Containing approximately 480 acres in Tuscaloosa County.

Legal Description of Federal Coal in Boxes Creek Tract

T. 14S, R. 10W, Huntsville Principal Meridian
Sec. 3. E½ of E½.

Containing approximately 120 acres in Fayette County.

Legal Description of Federal Coal in Bagwell Road Tract

T. 17S, R. 9W, Huntsville Principal Meridian
Sec. 15. SW¼ of NE¼; NW¼ of SE¼; NW¼ of SW¼; S½ of NW¼;
Sec. 22. E½ of SE¼; NE¼ of NW¼;
Sec. 26. NW¼ of NW¼;
Sec. 27. E½ of NE¼; NW¼ of SW¼.

Containing approximately 480 acres in Tuscaloosa County.

Legal Description of Federal Coal in Flatwoods Tract

T. 16S, R. 9W, Huntsville Principal Meridian
Sec. 20. SE¼ of SW¼;
Sec. 21. SW¼;
Sec. 28. SW¼ of NE¼; NE¼ of NW¼;
Sec. 29. W½ of NE¼; NE¼ of SW¼; SW¼ of SW¼; SW¼ of NW¼.

Containing approximately 480 acres in Fayette County.

Legal Description of Federal Coal in Pendley Number One Tract

T. 15S, R. 10W, Huntsville Principal Meridian
Sec. 23. E½ of NE¼; E½ of SE¼;
Sec. 24. S½ of NW¼; SW¼; NW¼ of SE¼; S½ of SE¼, less N½ of NW¼ of SE¼ of SE¼;
Sec. 25. N½ of NW¼.

Containing approximately 793 acres in Fayette County.

[FR Doc. 81-2134 Filed 1-27-81; 8:45 am]
BILLING CODE 4310-84-M

John Day Resource Area Resource Management Planning; Notice of Intent

The Bureau of Land Management, Burns District, is beginning Resource Management Planning on Bureau lands in the John Day Resource Area. The John Day Resource Area lies primarily within the John Day River Basin and Grant County and part of Harney County in eastern Oregon. The planning area is bounded by Wheeler County to the west, Umatilla County to the north

and by the Malheur National Forest to the south and east.

The planning effort will result in a Resource Management Plan (RMP) which will address major land use allocations including timber and grazing management. An Environmental Impact Statement (EIS), and a decision document are part of the RMP process. Together they will define and guide management actions for the next decade. The RMP is scheduled for completion by September, 1984.

The District has identified several major issue areas, conflicts, or management programs of high public concern. Additional issues which should be addressed in the plan should be brought to the District's attention in writing or at public meetings to be held this spring. The preliminary list of issues includes:

1. Determining the priority, location and types of needed legal public access required for public lands administered by BLM.

2. Developing appropriate BLM grazing management systems along major streams where grazing conflicts with other high value resources and recreation.

3. Determining the most appropriate and beneficial use and management of lands and resources close to the cities of John Day and Canyon City.

4. Maintaining or enhancing habitat diversity for terrestrial and aquatic wildlife including riparian areas and habitat or potential habitat of threatened and endangered species.

5. Potential land exchanges, leases and permits to facilitate industrial and residential expansion, potential mining developments and (lands and minerals) withdrawal restoration.

6. Recommendations to the Secretary of the Interior on two wilderness study areas.

The plan and environmental impact statement will be developed by an interdisciplinary team of BLM resource specialists in forestry, grazing, wildlife, minerals, recreation, soil and water management, cultural and historical resources, together with specialists in sociology and economics.

The resource specialists will assist the BLM Area Manager in the development of an array of land use and resource alternatives. These alternatives will be distributed for public review. Following the public review BLM managers will develop a preferred alternative for submission to the State Director. This will be used as the basis for the proposed action in RMP's draft Environmental Impact Statement for the John Day Resource Area in early 1984. Following public review and comment, the BLM will prepare the final EIS and final decision documents on the RMP. Implementation of the land use plan should begin in 1985.

Draft planning criteria to be used in the development of land use alternatives will be formulated and available to the public for review and comment in early 1982. Draft criteria will be distributed to all persons on our planning newsletter mailing list. In addition, public announcements in local newspapers will identify availability of the draft criteria. BLM managers and specialists will be using the criteria to develop alternatives and resolve land use conflicts that focus on major issues. Continuing public involvement will remain a key part of the planning process. Public announcements and notices in local newspapers will provide times, dates and locations of upcoming meetings associated with the issued identification, impact statement development, and the decision phases of this planning effort.

In addition, the district will conduct planning area tours if an expressed interest by the poublic is shown, hold open houses, periodically distribute newsletters and request public nomination of any Areas of Critical Environmental Concern (ACEC's).

Anyone who wishes to add his name to the planning newsletter mailing list or who wishes to discuss the BLM planning effort and availability of information and planning documents, may contact the John Day Resource Area Manager, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720, or call (503) 573–2071. Planning documents will generally be available for public review at the Burns District Office, Burns, Oregon. The first public meetings to identify public issues concerns and solicit Area of Critical Environmental Concern nominations will be held in John Day and Canyon City in February, 1981. Public announcements will indicate exact locations, dates and times.

Dated: January 15, 1981.

L. Christian Vosler,

District Manager.

[FR Doc. 81-3022 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

[Coal Lease Application (W-2728)]

Land in Sweetwater County, Wyoming; Request for Public Comment

U.S. Department of the Interior, Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001. The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to add noncompetitively (by modification) to Bridger Coal Company's coal lease W-2728.

The coal resource to be evaluated consists of the coal recoverable by surface mining methods from the Deadman 1 through 5 seams in the following described land located approximately 35 miles northeast of Rock Springs, Wyoming:

6th Principal Meridian, Sweetwater County

T. 21 N., R. 101 W.,
Sec. 10, NE¼.
Containing 160.00 acres.

The estimated total strippable reserves are 1.38 million tons. The coal quality is as follows: BTU—9,473 per pound; Sulfur—0.61 and Ash—9.70 percent. The coal resource averages 16.6 feet thick over 60 acres of the described lands.

The public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management and the U.S. Geological Survey. Public comments will be utilized in establishing fair market value for the coal resources in the described lands.

Comments should address specific factors related to fair market value including, but not limited to: the quantity and quality of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the probable timing and rate of production, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return, the value of the surface estate (if private surface), and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions, may also be submitted at this time.

These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63 and 43 CFR 3422.1–2. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission.

Information so marked will not be available to the public if it meets exemptions in the Freedom of Information Act. Comments should be sent to both the State Director, Wyoming State Office, Bureau of Land Management, at the above address, and to the Conservation Manager, North

Central Region, U.S. Geological Survey, 100 East "B" Street, Room 4130, Casper, Wyoming 82601, to arrive no later than February 28, 1981.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 81-3043 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

Siuslaw-Upper Willamette Management Framework Plan; Notice of Continuation

The Bureau of Land Management, Eugene District, is continuing with land use planning for 317,000 acres of public lands in Lane, Linn, Benton, and Douglas counties, Oregon.

Since 1977, BLM resource specialists in forestry, wildlife, fisheries, minerals, recreation, lands, water resources, soil conservation, visual resources, cultural resources and botanical resources, sociology, and economics have completed the following elements of the planning process:

Identification of Issues;
Resource Inventories;
Social and Economic Analyses; and
Development of Management Recommendations.

In addition, the District has conducted planning area tours, held open houses, periodically distributed newsletters and has requested public nomination of areas of critical environmental concern (ACEC's).

The above listed specialists will be assisting BLM managers in the development of an array of land use and resource alternatives. These alternatives will be distributed for public review in June 1981. Following the public review, BLM managers will develop a preferred alternative for submission to the State Director (August 1981). This will be used as the basis for the proposed action in timber management environmental impact statement for the Siuslaw and Upper Willamette sustained-yield management units scheduled for preparation and completion in 1982. During 1983, BLM will prepare a decision document on the EIS, finalize the land use plan, declare a new allowable cut and begin implementation of the land use plan which will guide BLM resource management for the next decade.

Draft planning criteria to be used in the development of land use alternatives are being formulated and will be available for public review and comment in early 1981. Draft criteria will be distributed to all persons on our planning newsletter mailing list. In addition, public announcements in local newspapers will identify availability of the draft criteria. BLM managers and specialists will use the criteria to develop alternatives and resolve land use conflicts identified as major issues.

The issues for which the public has expressed the greatest degree of concern are:

1. The impacts of BLM land-use allocations on the social and economic structure of local communities.
2. The effectiveness of forest development practices and their impact on the environment.
3. Timely reforestation and the use of forest residue.
4. Providing a diversity of wildlife habitat types on BLM-administered lands.
5. Practices to protect and enhance water quality.
6. Timber production and fisheries habitat.
7. Preserving primitive recreation values.
8. Impacts of public land management on intermingled private ownerships.

Continuing public involvement will remain a key part of the planning process. Public announcements and notices in local newspapers will provide times, dates and locations of upcoming planning meetings.

Anyone who wishes to be added to the planning mailing list or who wishes to discuss the BLM planning effort and availability of information may contact the District Manager, Bureau of Land Management, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440, or call (503) 687-6578.

Dwight L. Patton,

District Manager.

December 31, 1980.

[FR Doc. 3163 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Redelegation of Authority

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

EFFECTIVE DATE: This redelegation will become effective February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Harold R. Martin, 940 (303) 837-3814, Colorado State Office, Bureau of Land Management, 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

SUMMARY: Section 1.1(a)(2) of Bureau Order No. 701, dated July 23, 1964 as amended by notice published at 45 FR 6177 on Friday, January 25, 1980 (FR Doc. 80-2428 filed 1-24-80, 8:45 a.m.), authorizes the Bureau of Land Management State Directors to redelegate the authority to grant, renew, reassign or revoke rights-of-way under Title 1, Section 28 of the Mineral Leasing Act of 1920, as amended, and under the Federal Land Policy and Management Act of 1976 to Bureau of Land Management District and Area Managers.

That authority is hereby redelegated to the District Managers in Colorado with respect to public lands under the jurisdiction of each District Office, for applications involving only one BLM District. Authority over applications involving more than one District will be retained by the Colorado State Office and redelegated on an individual basis.

The District Managers may redelegate this authority to Area Offices under their jurisdiction for applications involving lands entirely within a single Resource Area.

Charles W. Luscher,

Acting State Director.

[FR Doc. 81-3025 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

Realty Action-Exchange; Public Lands in Garfield and Lewis and Clark Counties Montana

January 20, 1981.

This Notice of Realty Action involves an exchange of Bureau of Land Management administered lands in Montana (M 46303).

Certain lands in Garfield and Lewis and Clark Counties have been examined and found suitable for exchange with the Ox Bow Ranch under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. Not all of the lands will be exchanged. Selections will be made from the following list to equal the value of the lands which the Federal Government will acquire from the Ox Bow Ranch:

Principal Meridian, Montana.

Garfield County

T. 19N., R. 38 E.,
Sec. 13, NE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 14, NE¼, N½SE¼, SW¼SE¼;
Sec. 23, NW¼NE¼; and
Sec. 26, NE¼NE¼.
T. 20 N., R. 38 E.,
Sec. 22, NE¼NE¼, NE¼NW¼, and NW¼SE¼; and
Sec. 25, E½SW¼ and SW¼SE¼.
T. 19 N., R. 39 E.,
Sec. 4, SW¼SE¼;
Sec. 22, SW¼NW¼; and
Sec. 28, S½NE¼.

T. 20 N., R. 39 E.,
Sec. 1, SE¼SW¼
Sec. 2, Lots 2, 3, SE¼NW¼, NE¼SW¼, and S½S½;
Sec. 3, SE¼SW¼ and S½SE¼;
Sec. 5, S½SE¼;
Sec. 8, E½;
Sec. 9, SE¼NE¼, SW¼, and E½SE¼;
Sec. 10, All;
Sec. 11, All;
Sec. 12, E½E¼, NE¼NW¼, and SW¼SW¼;
Sec. 17, NE¼ and N½SE¼;
Sec. 23, W½ and S½SE¼;
Sec. 24, E½NW¼ and SW¼;
Sec. 25, N½NE¼, E½SW¼, and SE¼;
Sec. 26, NE¼;
Sec. 27, SW¼NE¼ and NW¼SE¼;
Sec. 28, SW¼NW¼; and
Sec. 35, NE¼SE¼.
T. 19 N., R. 40 E.,
Sec. 1, Lots 1, 2, S½NE¼, and SE¼;
Sec. 6, Lots 3, 4, and 5, and SE¼NW¼;
Sec. 8, W½NE¼, NW¼NW¼, and SW¼NW¼;
Sec. 10, SE¼SW¼ and S½SE¼;
Sec. 11, SE¼NE¼ and SE¼SE¼;
Sec. 17, NE¼NE¼ and S½SW¼;
Sec. 19, Lot 4, SE¼SW¼, and SW¼SE¼; and
Sec. 30, Lots 1, 2, 3, and 4, W½E½, SE¼NE¼, and E½W½.
T. 20 N., R. 40 E.,
Sec. 1, Lot 1 and SE¼NE¼;
Sec. 2, SE¼SE¼;
Sec. 4, Lot 2 and SW¼SE¼;
Sec. 18, Lots 1, 2, 3, and 4, E½, and E½W½;
Sec. 19, Lots 1, 2, NE¼, and E½NW¼;
Sec. 20, N½ and SE¼;
Sec. 21, S½;
Sec. 22, S½;
Sec. 23, W½NW¼;
Sec. 24, W½NE¼, NW¼, and W½SW¼;
Sec. 29, N½;
Sec. 30, Lots 1, 2, NE¼, E½NW¼; and
Sec. 31, Lots 1, 2, 3, and 4, SE¼NE¼, SE¼SW¼, and E½SE¼.
T. 19 N., R. 41 E.,
Sec. 6, Lots 1, 2, 3, 4, and 5.
T. 20 N., R. 41 E.,
Sec. 6, Lots 3, 4, 5, and 6, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 17, SW¼;
Sec. 18, S½SE¼;
Sec. 19, N½NE¼;
Sec. 20, S½;
Sec. 29, W½SW¼ and SE¼SE¼;
Sec. 30, SW¼SE¼;
Sec. 31, Lot 4, NW¼NE¼, SE¼SW¼, and S½SE¼; and
Sec. 32, SE¼.

Lewis and Clark County

T. 10 N., R. 3 W.,
Sec. 20, A tract of land lying in the NE¼NW¼, more particulaly described as follows: Commencing at the North one-quarter corner of said Section 20; thence S. 86° 59" W. along the North Line of said Section 20, a distance of 149.4 feet; thence S. 0° 28' 30" E., along the center line of the right-of-way of Interstate Highway 15, a distance of 86.6 feet; thence S. 89° 05' 30" W., parallel with the center line of York Road, a distance of 100.0 feet to the true point of beginning, said point being the NE corner of the tract being described; thence S. 0° 28' 30" E., along the West right-of-way line of Interstate Highway 15, a distance of 361.4 feet to the SE corner of said tract; thence S. 89° 05' 30" W., a distance of 361.4 feet to the SW corner of said tract; thence N. 0° 28' 30" W., a distance of 361.4 feet to the NW corner of said tract, said corner being on the South right-of-way line of York Road; thence N. 89° 05' 30" E., along said right-of-way line, a distance of 361.4 feet to the true point of beginning, containing 3.0 acres, more or less; all as shown on a plat of said tract on file in the office of the County Clerk and Recorder of said County of Lewis and Clark.
Sec. 32, Lot 6.
T. 14 N., R. 4 W.,
Sec. 4, Lot 4;
Sec. 9, NE¼NE¼ and other lands which cannot yet be described due to boundary conflicts;
Sec. 10, SE¼NE¼; and
Sec. 22, SE¼.

All of the above-described lands comprise 12,309.89 acres.

The offered lands to be acquired from Ox Bow are:

Principal Meridian, Montana.

Lewis and Clark County

T. 13 N., R. 3 W.,
Sec. 2, SE¼SE¼SW¼SE¼;
Sec. 11, Lots 1, 2, NW¼NE¼, E½NW¼, E½NW¼ NW¼, and NE¼NW¼ NW¼NW¼;ad
Sec. 13, Lot 12.
T. 14 N., R. 3 W.,
Sec. 23, Lots 3, 6, and SW¼NW¼.

The above-described lands comprise approximately 254.09 acres.

The proposed exchange would acquire additional undeveloped shoreline on Holter Lake, thereby, preserving the historic, recreation, and wildlife values. In return, several small, isolated and difficult to manage parcels with high value for residential development and public park purposes would be transferred to private ownership in Lewis and Clark County. The lands in Garfield County are scattered, difficult to manage parcels that would be transferred for management in conjunction with adjacent private operations. The land south and west of Oakes Street in Lot 6, Sec. 32, T. 32, T. 10 N., R. 3 W., would be transferred with the condition that it be used for park purposes only, with a reversionary clause placed in the land patent. The proposed exchange constitues a land tenure adjustment which will benefit public needs and improve the manageability of public lands.

The exchange will be made subject to:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945);

2. All coal and oil and gas in the lands so granted, together with the right to prospect for, mine and remove same under the provisions of Sec. 206 of the Act of October 21, 1976, 43 U.S.C. 1716;

3. The exchange will be subject to all valid existing rights; and

4. The provision, that if the patentee or his assigns attempts to transfer title to or control over the land south and west of Oakes Street, in Lot 6, Sec. 32, T. 10 N., R. 3 W., to a use other than for public park purposes, title to such land shall revert to the United States.

This exchange is consistent with the Bureau's planning and has been discussed with local officials. The public interest will be well-served by making this exchange.

Detailed information concerning the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, 106 N. Parkmont, Industrial Park, Butte, Montana 59701, and the Miles City District Office, West of Miles City, Montana 59301.

For a period of 30 days from the date of last publication of this notice, interested parties may submit comments to the Secretary of the Interior, LLM (320), Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary of the Interior, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary of the Interior, this realty action will become the final determination of the Department of the Interior.

Kannon Richards,

Acting State Director.

[FR Doc. 81-3026 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

[NM 40698]

New Mexico; Application for Airport Lease

January 16, 1981.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) Gary Thompson has applied for an airport lease for the following described land:

New Mexico Principal Meridian, New Mexico

T. 23 S., R. 28 E.,
Sec. 9, NE¼SW¼ and NW¼SE¼.

The purpose of this notice is to inform the public that the filing of this application segregates the described

land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should do so to the District Manager, Bureau of Land Management, P.O. Box 1397 Roswell, New Mexico 88201.

Stella V. Gonzales,

Chief, Lands Section.

[FR Doc. 81-3159 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

[FES-81-5]

Availability of Final Environmental Impact Statement for Proposed General Management Plan, Lassen Volcanic National Park, California

Pursuant of Section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a final environmental impact statement for the proposed General Management Plan, Lassen Volcanic National Park, California.

The final environmental impact statement considers the alternatives and recommended actions for general management which includes visitor use and development proposals, cultural resources management actions, and major goals and actions related to natural resources management.

Copies are available from or for inspection at the following locations:

Western Regional Office, National Park Service, 450 Golden Gate Avenue, Box 36063, San Francisco, California 94102.

Los Angeles Field Office, National Park Service, 300 North Los Angeles Street, Room 1013, Los Angeles, California 90012.

Lassen Volcanic National Park, Mineral, California 96093.

Dated: January 16, 1981.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 81-3134 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-70-M

Gateway National Recreation Area; Gateway Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 3:00 p.m., Tuesday, February 10, 1981, at 26 Federal Plaza Hearing Room E2222, New York, New York.

The Commission was established by Public Law 92-592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area.

The matters to be discussed at this meeting include:

I. Introduction and Administering of Oath to New Commissioners.
II. Status Report, Gateway Citizens Committee Congressional Briefing.
III. FY/81 Budget Report: Status of Funds re: Construction/planning/operations.
IV. Fort Wadsworth Update.
V. Planning Update.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Herbert S. Cables, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 630-0353.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the Gateway National Recreation Area Headquarters Building.

Dated: January 19, 1981.

Herbert S. Cables, Jr.,

Superintendent, Gateway National Recreation Area.

[FR Doc. 81-3135 Filed 1-27-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Section 5b Application No. 2, Western Railroads—Agreement; Section 5b Application No. 3, Eastern Railroads—Agreement; Section 5b Application No. 6, Southern Railroads—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: The Commission has issued a final decision disapproving the proposed collective ratemaking agreements. Applicants are directed to comply with this decision by filing conforming amended agreements with the Commission. Prior interim approval of the existing agreements shall terminate 90 days from January 21, 1981. Pending this date, immunity is extended only to the extent bureau operations conform to the act and this decision. Interim approval for American-Canadian through route agreements shall terminate 90 days from January 21, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Notice of this proceeding was given at 45 FR 70994 (October 27, 1980). Copies of the complete decision are available from the Secretary, I.C.C., Washington, D.C. The major findings in this decision are as follows:

(1) The use of general rate increases and broad tariff changes to set single-line rates is not approved. Implementation of 49 U.S.C. 10706(a)(3)(A)(i) has not been shown to be infeasible and is effective immediately. The Commission's current definition of "broad tariff changes" is retained.

(2) The definition of "practicable participation" in 49 U.S.C. 10706(a)(3)(A)(ii) is modified to require that only direct connectors to a specified joint line movement are permitted to discuss, participate in agreements related to or to vote on rates applicable to that particular movement. Such modification is to become effective in 90 days in accordance with an approved phase-in plan. Implementation of 49 U.S.C. 10706(a)(3)(A)(iii) has not been shown to be infeasible, and shall begin 90 days from the service date of the decision and be concluded by January 21, 1982.

(3) Collective ratemaking agreements shall provide member carriers the absolute right to decide whether or when rate bureaus will docket independent action. There may be no rate bureau discussion of independent actions. There may be no joining in independent actions.

(4) Carriers prohibited from participating in or voting on single-line or joint-line rate proposals are also prohibited from discussing them.

(5) Single-line and joint-line movements may not be included in one proposal.

(6) Rate bureaus are required to maintain transcripts of rate committee meetings and vote records.

(7) Our prior findings in the August 1980 decision regarding the treatment of affiliated carriers' interline proposals, Commission jurisdiction over intrastate rate agreements, and specific Western Railroad agreement conditions are affirmed.

(8) With regard to 49 U.S.C. 10706(a)(3)(A) (ii) and (iii) Canadian carriers shall be considered one integrated enterprise.

(9) Specific findings in *Rate Bureau Investigation*, 349 ICC 811 (1975) as they

apply to rail rate bureaus are modified or reversed. 49 CFR 1331.5 and 6 are repealed and incorporated as standards in this decision.

We also found that applicants in each in these proceedings have not shown the proposed agreements to be in furtherance of the national transportation policy and in the public interest within the meaning of 49 U.S.C. 10706(a) to warrant relief from the operation of the antitrust laws with respect to the making and carrying out of these agreements.

The agreements are disapproved. Interim approval granted to these agreements by order of the Commission entered October 26, 1976, in Ex Parte No. 297 (Sub-No. 1) will be terminated 90 days from the date of service of the decision. During the interim period, bureau operations must conform to this decision and the Act, as amended. New or amended agreements are due 45 days from service of the decision. Comments are due 20 days thereafter. Interim approval for proposed agreements involving American-Canadian through-route will be extended until 90 days from the date of service of this decision.

To the extent that prior findings in these proceedings of November 4, 1977, July 19, 1978 and August 13, 1980 vary from our findings here, they are modified accordingly. This decision will not significantly affect either the quality of the human environment as conservation of energy resources and will not have an adverse impact on small business. The repeal of 49 CFR 1331.5 and 6 published elsewhere in this issue, is under the authority of 49 U.S.C. 10321 and 10706(a).

Dated: January 14, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam. Commissioner Gilliam concurring with a separate expression. Commissioner Gresham concurring in part and dissenting in part with a separate expression to follow at a later date. Commissioner Clapp concurring in part and dissenting in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Gilliam (Concurring)

Many of the questions which I raised at the oral argument on December 11, 1980, still remain unanswered. These questions may never be answered satisfactorily without some practical experience. I believe this decision will give carriers and shippers the opportunity to test the feasibility of the practicably participate definition. By allowing the carriers to develop their own implementation plan, I think we can minimize the disruptive effects which may occur as a result of our decision.

Commissioner Clapp (Concurring in Part and Dissenting in Part)

This decision is a considerable improvement over the draft originally circulated. That draft would have implemented the direct connectors definition of "practical participation" in interline movements immediately for all rail traffic. In my opinion, that could have had serious consequences. A subsequent proposal would have imposed the definition immediately on coal, lumber, and transportation equipment and, six months later, on food, farm products, and chemicals, without further public notice. That too presented problems. I am glad to see that the Commission has adopted my suggestion that we consult with the carriers and shippers whose daily operations would be changed before implementing the definition. While the compromise decision is a step in the right direction, I am nonetheless disturbed that it still ignores or glosses over several important matters.

There is no justification for the finding that the direct connectors definition and the restrictions on single-line rates in broad tariff changes are feasible. The staff has made no study of these matters and the record contains no concrete supporting evidence. Admittedly, it may be difficult to judge the feasibility of the restrictions until some experience is gained.

By statute, the direct connectors definition cannot apply to general rate increases or broad tariff changes until 1984. The Commission may not take any action to eliminate general rate increases until at least April, 1982. Immediate implementation of the definition would only limit the manner in which the railroads may use the increased flexibility provided by the Staggers Rail Act for selective rate adjustments.

It can be argued very persuasively that now is not the time to impose this limitation on carrier ratemaking flexibility. Consider the present state of the economy, the generally poor financial condition of the railroad industry, the current uncertainty as to the future system configuration of Conrail and the potential impact of significant changes in that system on most of the Northeast, the substantial administrative expense of tariff readjustments, and the disruptive effect on existing rate structures. Should we be saddling the railroads with additional costs that may produce little or no tangible benefit?

We must give much closer attention to the competitive impact of the direct connectors definition. The net effect (as a result of the elimination of scale rates and other easily adjustable rate structures) may seriously impair many carriers' ability to compete effectively against other modes. I do not believe that we should be seeking to destroy the ability of bridge carriers and regional railroads to compete for traffic. Yet the decision seems to consign these carriers, many of whom are efficient, to the scrapheap—based on the misguided impression that this will increase efficiency.

In addition to determining whether the perceived benefits from the direct connectors definition are likely to appear, we must consider whether those benefits outweigh the costs to the railroads and the public. While the direct connectors approach has theoretical appeal, practical considerations cannot be tossed aside casually in the belief that the railroads will be able to conform to whatever the Commission mandates.

The "phase-in" proposal assumes that the railroad industry will be able to comply fully within one year. This time frame appears selected to permit the earliest possible end to general rate increases. Since the decision finds implementation feasible, there is no attempt to determine whether the one year frame is best suited to the preservation and stimulation of an efficient rail transportation system.

We will never know whether the direct connectors approach will work unless there is an experimental pilot project (i.e. a specific percentage of traffic studied for a statistically significant period) or a gradual phase-in. The Commissioner must be flexible and react quickly if implementation threatens the financial health of the transportation community. The greatest potential cause of failure would seem to be the expense associated with the transition phase. The costs should be spread over a reasonable period of time, and I question whether one year is sufficient. As the railroads submit new comments, we should not automatically disregard plans which would not be fully implemented by April, 1982.

The Commission is mistaken in finding that the restriction against single-line rate consideration in general rate increases or broad tariff changes currently is feasible. The restriction will be feasible for general rate increases once the Commission adopts a cost recovery index such as that proposed in Ex Parte No. 290 (Sub-No. 2). That has not yet taken place. Since the index will be based on national (or possibly regional) rather than individual carrier costs, we have stated that rates set collectively may be increased at the same pace as other rates under the zone. This will obviate the potential uncertainty as to antitrust questions which is the primary reason why we cannot reasonably find the requirement feasible at present.

We do not know if implementation for broad tariff changes is feasible. Unless we implement the single-line restriction, there are no other restraints on broad tariff changes until 1984. Thus, in theory, carriers will be able to adjust their joint-line rates in a broad tariff change and make similar adjustments in their single-line rates, tempered by competitive considerations. However, this Commission's failure to establish joint antitrust guidelines with the Department of Justice may have a chilling effect on needed rate adjustments. The potential expense of defending an antitrust prosecution is enormous, even if that prosecution is unsuccessful. It is not enough to say that carriers need not fear "responsible, legitimate ratemaking" and that difficulties may be solved "on a case-by-case basis through consultation with competent antitrust counsel." Who is to judge what is "responsible and legitimate" and under what standards? The railroad industry *is* unique and does need particular guidelines. Carrier uncertainty must not paralyze management and defeat the Stagger Act's goals. In the absence of joint antitrust guidelines, scheduled implementation of the single-line

restriction for broad changes should parallel implementation of the direct connectors approach.

[FR Doc. 81-3068 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 105F)]

Chicago and North Western Transportation Company—Abandonment Near Belmond and Alexander, IA; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided January 19, 1981, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the *Commission in Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment of a line of railroad known as the Belmond to Alexander line extending from railroad milepost 206.3 near Belmond to the end of line near Alexander (milepost 198.6), a distance of 7.7 miles, in Wright and Frankling Counties, IA. A certificate of public convenience and necessity permitting abandonment was issued to Chicago and North Western Transportation Company. Since the investigation has been completed, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than February 9, 1981. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necesssity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3067 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 6]

Restriction Removals; Decision-Notice

Decided: January 22, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings: We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed on or before February 17, 1981, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 2202 (Sub-652)X, filed January 16, 1981. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Avenue, Washington, DC 20014. Applicant seeks to remove restrictions in its Sub-No. 503 regular-route Certificate by (1) eliminating the restriction to service Nashville and Jackson, TN, for joinder only, and (2) to allow service at all intermediate points on its regular-routes between Tupelo, MS, and Nashville, TN, and between Tupelo, MS, and Jackson, MS.

MC 14314 (Sub-50)X, filed January 16, 1981. Applicant: DUFF TRUCK LINE, INC., P.O. Box 359, Lima, OH 45802. Representative: R. L. Anderhalt, Jr. (same as applicant). Applicant seeks to remove restrictions in Certificate granted it in MC-F-13915 by (1) broadening the commodity description from general commodities (with exceptions) to *general commodities* (except class A & B explosives), (2) authorizing service at intermediate points on the regular route between St. Louis and Kansas City, MO, (3) eliminating the restrictions against the shipments originating at points in the St. Louis, MO-E. St. Louis, IL, commercial zone and destined to points in the Kansas City, MO-KS commercial zone and vice versa; and eliminating the restriction of service to points in the St. Louis, MO-E. St. Louis, IL, commercial zone for purposes of joinder only.

MC 48441 (Sub-67)X, filed January 13, 1981. Applicant: R. M. E., INC., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St., N.W., Washington, D.C. 20001. Applicant seeks to remove restrictions in its Sub-No. 58F Certificate to remove the commodity and vehicle restriction "except commodities in bulk, in tank vehicles" and to authorize service between Cook County, IL, and points in the United States in place of its limited authority between a named facility near Des Plains, IL, and points in the United States.

MC 107403 (Sub-1345)X, filed January 16, 1981. Applicant: MATLACK, INC., 10 West Baltimore Ave., Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as above). Applicant seeks to remove restrictions in its Sub-No. 1219F certificate by (1) broadening the commodity description from dry spent silica gel catalyst to chemicals and related products, (2) eliminating the bulk and tank vehicle restriction in the commodity description and (3) removing the territorial restrictions against transportation to AK and HI in its non-radial authority between points in the United States. Applicant intends to cancel various sub-numbered authorities which would be duplicated by removal of the above restrictions.

MC 113678 (Sub-905)X, filed January 15, 1981. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as applicant). Applicant seeks to remove restrictions in Sub-Nos. 533, 649, 755F, 760F and 871F certificates which authorize the transportation of general commodities (with exceptions) from named facility origins at New York, NY, Boston, MA, Newark, NJ, Chicago, IL, Los Angeles and San Francisco, CA, Syracuse, NY, New Haven, CT, Salt Lake City, VT, and Reno, NV, to (1)

remove the restriction limiting transportation to traffic moving on bills of lading of freight fowarders and (2) remove the plantsite restrictions which will enable carrier to serve the commercial zones of cities involved.

MC 116227 (Sub-13)X, filed January 14, 1981. Applicant: POLMAN TRANSFER, INC., Route 3, Box 470, Wadena, MN 56482. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks to remove restrictions in its Sub-Nos. 7, 10, and 11 permits to (1) broaden the commodity descriptions from pet foods (except commodities in bulk), materials, supplies, and equipment and ingredients, used in the manufacture and distribution of pet foods (except commodities in bulk) and packaging materials, to food and related products, (2) remove the bulk restrictions, and (3) broaden the territorial description to between points in the United States.

MC 129282 (Sub-57)X, filed January 15, 1981. Applicant: BERRY TRANSPORTATION, INC., P.O. Box 2147, Longview, TX 75606. Representative: Fred S. Berry (same address as above). Applicant holds authority to transport specified commodities (mainly malt beverages and sugar) from and to specified points in AR, LA, MS, OK, and TX. The application seeks to remove restrictions from Sub-Nos. 5, 7, 19, 23, 31, 35, 38, 43, 49, 52, E1, and E3 by (1) broadening the commodity descriptions in each to "food and related products," (2) removing the plantsite restrictions of (a) The Jackson Brewing Company at New Orleans, LA, in Sub-Nos. 5 and 19; (b) Falstaff Brewing Corporation near Galveston, TX and New Orleans, LA, in Sub-No. 19; (c) Colonial Sugar Company at Gramercy, LA, and Godchaux-Henderson Sugar Company at Reserve, LA in Sub-No. 31; and (d) Imprial Sugar Company at Sugarland, TX, (3) changing its one-way authorities to non-radial authority, and (4) removing its bulk restrictions in Subs 31, 35, 38, 49, and 52.

MC 135104 (Sub-2)X, filed January 13, 1981. Applicant: A. J. (ARCHIE) GOODALE LIMITED, 2559 Barton Street East, Hamilton, Ontario, Canada L8E 2X2. Representative: Robert D. Gunderman, Esq., Suite 710 Statler Building, Buffalo, NY 14202. Applicant seeks to remove restrictions from its lead certificate which authorizes the transportation of commodities, the transportation of which because of size or weight requires the use of special equipment (except farm tractors), radially between ports of entry on the United States-Canada Boundary line on the Niagara River, and Buffalo, Niagara Falls, and Lewiston, NY, and radially between ports of entry on the United States-Canada Boundary line on the Detroit and St. Clair Rivers, and Detroit and Port Huron, MI, by (1) removing the restriction against handling farm tractors; (2) removing the restriction against the transportation of traffic originating at and destined to the above points, and (3) broadening the territorial authority to radially service (a) port of entry on the International Boundary line between the United States and Canada located in NY, and, Erie and Niagara Counties, NY, and (b) ports of entry on the International Boundary line between the United States and Canada located in MI, and Wayne and St. Clair Counties, MI.

MC 138328 (Sub-129)X, filed January 12, 1981. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I–80 and Hwy. 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same as applicant). The application seeks to modify Permits in No. MC–133233, Sub-Nos. 1, 29, 37, 53, and 57, by (1) broadening the commodity description in the authorities from building materials as described in appendix VI to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, lumber, lumber products, forest products, and insulating materials and supplies; equipment, supplies and displays used in the production, storage, and distribution of the commodities described above; and lumber, lumber products, and building materials (Sub-No. 1); lumber, and lumber products, and building materials (except in bulk) (Sub-No. 29); lumber, lumber products and building materials (except commodities in bulk) Sub-No. 37); lumber and forest products (Sub-No. 53); and lumber, lumber products, and forest products (Sub-No. 57), to (a) lumber and wood products, and (b) building materials; (2) by eliminating the bulk restriction in the named authorities; (3) by eliminating the restriction against the transportation of stone, marble, granite, slate and glass in Sub-No. 1; and (4) by broadening the territorial scope of the named authorities to between points in the United States, under continuing contract(s) with a named shipper.

MC 135518 (Sub-29)X, filed January 19, 1981. Applicant: WESTERN CARRIERS, INC., 53 South Dawson Avenue, Seattle, WA 98124. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Applicant seeks to remove restrictions in its Sub-No. 20F certificate by (1) broadening the commodity description from foodstuffs to food and related products, (2) eliminating the restriction requiring the use of vehicles equipped with mechanical refrigeration, and (3) broadening the one-way authority to radial authority.

MC 138386 (Sub-2)X, filed January 16, 1981. Applicant: KEPHART TRUCKING COMPANY, P.O. Box 386, Bigler, PA 16825. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. The applicant seeks to modify its Sub-No. 1 certificate by broadening (1) the commodity description from coal and sawdust, in bulk, to "commodities in bulk," (2) the origin territory from named plant sites in Clearfield County, PA, to serve all points in Clearfield County, PA, and (3) the authority from one-way to radial authority between Clearfield County and points in NY, MD, and NJ (with county exceptions).

MC 138438 (Sub-101)X, filed January 16, 1981. Applicant: D. M. BOWMAN, INC., Route No. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. This application seeks to modify the Sub-No. 53F certificate eliminating the restrictions against the transportation of cast iron, and steel products originating at or destined to points in KY, TN, NC, SC, AL, GA, and FL, wood products originating at or destined to points in Somerset, Worcester, and Wicomico Counties, MD; Norfolk, Suffolk, Portsmouth, Newport News, Chesapeake, Hampton, and Virginia Beach, VA, and gypsum and building materials from the facilities of U.S. Gypsum Co., in Baltimore, MD, Norfolk, VA, Oakfield and Stoney Point, NY, and Woodbridge, NJ.

MC 143924 (Sub-5)X, filed January 14, 1981. Applicant: FUGATE TRUCKING, INC., Post Office Box 14, Danville, VA 24541. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Applicant seeks removal of restrictions in its lead certificate to (1) broaden the commodity description from general commodities (with the usual exceptions) to general commodities (except classes A and B explosives and household goods as defined by the Commission), (2) replace named rail facilities at Greensboro and Reidsville, NC with countywide authority in Guilford and Rockingham Counties, NC in the base area, (3) expand the radial area from the southern portion of Pittsylvania County, VA, to countywide authority, and (4) remove the restriction to traffic having a prior or subsequent movement by rail.

MC 144115 (Sub-10)X, filed January 14, 1981. Applicant: DIVERSIFIED

CARRIERS, INC., 903 6th St., NW., Rochester, MN 55901. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks to remove restrictions in its Sub-Nos. 1, 2, 3, and 4 permits to (1) broaden the meat commodity descriptions in (a) Sub-Nos. 1, 2, and 3 to include hides and commodities in bulk and (b) Sub-No. 4 from tallow, in bulk, to meat, meat products, and meat by-products, and articles distributed by meat packing houses, and (2) broaden the territorial description to be between points in the United States under contract(s) with a named shipper.

MC 150489 (Sub-1)X, filed January 16, 1981. Applicant: ALL AMERICAN AIRFREIGHT, CORP., 6210 NE 92nd Avenue, Portland, OR 97220. Representative: John A. Anderson, 101 SW Main Street, Portland, OR 97204. Applicant seeks to remove restrictions in Certificate No. MC 150489F to (1) eliminate the usual exceptions from the general commodities authority except "classes A & B explosives," and (2) replace the specific airport designations of Portland International Airport, Seattle-Tacoma International Airport and Boeing Field with countywide authority between Multnomah County, OR, and King County, WA, and (3) eliminate the prior or subsequent movement by air restriction.

[FR Doc. 81-3066 Filed 1-27-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10,000.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before March 16, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3-133

Decided: January, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 31675 (Sub-30F), filed November 6, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Leonard A. Jaskiewicz, 1730 M St., N.W., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between points in Charleston, Dorchester, Berkeley, Colleton, Florence and Sumter Counties, SC, and Rutherford County, NC, on the one hand, and, on the other, points in the U.S., in and east of MN, IA, MO, OK, and TX, (2) between points in New Haven County, CT, on the one hand, and, on the other, points in VA, NC, SC, TN, AL, GA, FL, Jackson County, IN, Cook and DuPage Counties, IL, Franklin County, TN, Orange and Seminole Counties, FL, Harris and Orange Counties, TX, Worcester and Bristol Counties, MA, Columbia, Luzerne, Chester, Berks, and Bucks Counties, PA, Hudson and Union Counties, NJ, New Castle County, DE, Los Angeles County, CA, and Gaston, Forsyth, and Rowan Counties, NC, and Utah County, UT, on the one hand, and, on the other points in the U.S., (3) between points in Gordon, Whitfield, Catoosa, Bibb and Walton Counties, GA, and (4) between points in AL, CT, GA, MD, NC, NJ, NY, PA, SC, and VA.

MC 72235 (Sub-15F), filed December 22, 1980. Applicant: IVORY VAN LINES, INC., 5601 Corporate Way, Suite 107, West Palm Beach, FL 33407. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. (except AK, HI, and VT).

MC 102285 (Sub-7F), filed September 25, 1980, previously published in the **Federal Register** of October 17, 1980. Applicant: MIAMI TRANSFER CO., INC., 10340 N.W. 37th Avenue, Miami, FL 33147. Representative: Norman J. Bolinger, 3100 University Blvd. S., Suite 225, Jacksonville, FL 32216. Transporting *general commodities* (except classes A and B explosives), between points in Hillsborough, Dade, Broward, and Palm Beach Counties, FL, on the one hand, and, on the other, points in Charlotte, Lee, and Collier Counties, FL.

Note.—This republication corrects the commodity description.

MC 107515 (Sub-1407F), filed December 29, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. Transporting (1) *such commodities* as are dealt in by hardware stores, drug stores, discount houses, grocery stores, and food business houses; (2) *cleaning and building maintenance materials and supplies;* (3) *swimming pool, spa, and hot tub products;* (4) *chemicals;* and (5) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities in (1) through (4) above (except commodities in bulk), between the facilities used by Purex Corporation, in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107515 (Sub-1408F), filed December 22, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE, 5th Floor-Lenox Towers South, Atlanta, GA 30326.

Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Bordan, Inc., in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 114604 (Sub-123F), filed December 23, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer 1, State Farmers Market #33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in OH and SC, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Stouffer Foods Corporation.

MC 114604 (Sub-124F), filed December 22, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer 1, State Farmers Market #33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as applicant). Transporting (1) *plumbing fixtures and fittings*, and (2) *parts and supplies* used in the manufacture and distribution of the commodities in (1) above, from Trenton, NJ, and Plainfield, CT, to points in AL, FL, GA, LA, MS, NC, SC, and TN.

MC 116254 (Sub-319F), filed December 22, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting (1) *welders*, and *welder parts*, and (2) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., (except AK and HI), under continuing contract(s) with Miller Electric Manufacturing Company, of Appleton, WI.

MC 133015 (Sub-1F), filed December 18, 1980. Applicant: LYNCH BUS LEASING SERVICE, INC., d.b.a. LYNCH BUS SERVICE, R.D. 1, Box 82A, Carbondale, PA 18407. Representative: Paul J. Kenworthy, P.O. Box 25, Clarks Summit, PA 18411. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Lackawanna and Susquehanna Counties, PA, and extending to points in the U.S. (including AK, but excluding HI).

MC 134755 (Sub-229F), filed December 23, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as applicant). Transporting *food and related products*, between points in Fulton County, OH, on the one hand, and, on the other, points in the U.S.

MC 134755 (Sub-230F), filed December 23, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as applicant). Transporting *pneumatic tires*, between points in Erie County, NY, Madison County, AL, and Peoria County, IL, on the one hand, and, on the other, points in the U.S.

MC 145394 (Sub-2F), filed December 9, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting *industrial and commercial air distribution and ventilation equipment*, between points in the U.S., under continuing contract(s) with Carnes Company, Division of Wehr Corp., of Verona, WI.

MC 146055 (Sub-13F), filed December 23, 1980. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Bldg., Omaha, NE 68107. Representative: James F. Crosby, 7363 Pacific St., Oak Park Office Bldg., Suite 210B, Omaha, NE 68114. Transporting *meats* and *packinghouse products*, between points in Douglas County, NE, on the one hand, and, on the other, points in AZ, CA, FL, GA, IL, IN, NE, KY, MN, NV, OR, TX, and WA.

MC 146534 (Sub-3F), filed December 18, 1980. Applicant: DEAN HUGHS, INC., R. R. #2, New Berlin, IL 62670. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *beverage and food dispensing equipment*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Bunn-O-Matic Corporation, of Springfield, IL.

MC 147264 (Sub-10F), filed December 29, 1980. Applicant: JAT EXPRESS, INC., 4002 N. Rosewood Ave., Muncie, IN 47304. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *food* and *related products*, between points in the U.S., under continuing contract(s) with Iowa Beef Processors, Inc., of Dakota City, NE.

MC 151964 (Sub-1F), filed December 22, 1980. Applicant: D. C. S. TRUCKING CO., 500 Industrial Lane, Prairie View, IL 60069. Representative: Paul J. Maton, Ten South LaSalle St., Suite 1620, Chicago, IL 60603. Transporting (1) *commodities* which, by reason of size or weight, require the use of special equipment, *cranes*, and *back-hoes*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Dick's Crane Sales & Service, Inc., of Prairie View, IL.

MC 152324 (Sub-1F), filed October 30, 1980, previously published in the F.R. of November 28, 1980. Applicant: CARTWRIGHT MOVING & STORAGE CO., INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: Alex M. Lewandowski, 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105. Transporting *general commodities* (except household goods and defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with the Jones Store Company, of Kansas City, MO.

Note.—This republication corrects the commodity description.

MC 152385 (Sub-1F), filed December 24, 1980. Applicant: DAVID D. MARTIN, d.b.a. DAVID D. MARTIN TRUCKING, 103 Tuttle Ave., Manden, ND 58554. Representative: Charles E. Johnson, P.O. Box 2578, Bismarck, ND 58502. Transporting (1) *industrial, commercial, and agricultural equipment*, and (2) *parts and attachments* for the commodities in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with General Tractor, Inc., of Shakopee, MN.

MC 152915F, filed November 24, 1980, previously published in the **Federal Register** of December 18, 1980. Applicant: SUNNYDALE DISTRIBUTING, INC., 450 Hart-Albin Bldg., Billings, MT 59103. Representative: Daniel J. Sweeney, 1750 Pennsylvania Ave., N.W., Washington, DC 20036. Transporting (1) *drugs, medicines, toilet preparations, chemicals, medical products and appliances, food, sweeteners, cleaning products, containers, store displays, bakers yeast, adhesives* and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale, and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with (a) William H. Rorer, Inc., (b) Vicks Health Care Division and Vicks Toiletry Divison of Richardson-Merrell, Inc., (c) Mallinckrodt, Inc., (d) W. F. Young, Inc., (e) The Upjohn Company, (f) ICI Americas, Inc., (g) Norwich-Eaton Pharmaceuticals, Division Morton-Norwich, (h) Noxwell Corporation, (i) Anheuser Busch Companies, Inc., (j) Johnson & Johnson Products, Inc., (k)

Alberto-Culver Co., and (l) Warner-Lambert Company.

Note.—This republication corrects the commodity description.

Volume No. OP3–137

Decided: January 7, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Parker not participating.)

MC 14215 (Sub-90F), filed December 23, 1980. Applicant: SMITH TRUCK SERVICE, INC., 1118 Commercial, Mingo Junction, OH 43938. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *commodities,* in bulk, in dump vehicles, between points in Jackson County, WV, on the one hand, and, on the other, points in the U.S. in and east of MN, WI, IL, KY, TN, MS, and LA.

MC 14314 (Sub-48F), filed December 29, 1980. Applicant: DUFF TRUCK LINE, INC., P.O. Box 359, Broadway and Vine Sts., Lima, OH 45802. Representative: R. L. Anderhalt, Jr. (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving points in OH as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 30504 (Sub-23F), filed December 19, 1980. Applicant: TUCKER FREIGHT LINES, INC., 1415 South Olive Street, P.O. Box 3144, South Bend, IN 46619. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, commodities in bulk, and those requiring special equipment), (1) between Benton Harbor, MI, and Clyde, OH, from Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 20 to Clyde, (2) between Benton Harbor, MI, and Marion, OH, (a) from Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 33 to junction U.S. Hwy 23, then over U.S. Hwy 23 to Marion; (b) from Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 33 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 30S, then over U.S. Hwy 30S to Marion; and (c) from Benton Harbor over U.S. Hwys 31 and 33 to junction U.S. Hwy 20, then over U.S. Hwy 20 to junction OH Hwy 4, then over OH Hwy 4 to Marion, and return over the same route in (1) and (2) above, serving all intermediate points.

Note.—To the extent that the authority granted herein authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 30504 (Sub-24F), filed December 19, 1980. Applicant: TUCKER FREIGHT LINES, INC., 1415 South Olive Street, P.O. Box 3144, South Bend, IN 46619. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Kokomo, IN, on the one hand, and, on the other, Huntington, WV, and those points in PA on and west of U.S. Hwy 219.

MC 67234 (Sub-36F), filed December 16, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *household goods* as defined by the Commission, between points in the U.S., under continuing contract(s) with Acme Visible Records, Inc., of Crozet, VA.

MC 105984 (Sub-29F), filed December 29, 1980. Applicant: JOHN B. BARBOUR TRUCKING COMPANY, a corporation, P.O. Box 577, Iowa Park, TX 76367. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Transporting (1) *iron and steel articles,* (2) *primary metal products,* (3) *fabricated metal products,* and (4) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) through (3) above, between points in Jefferson County, AR, on the one hand, and, on the other, points in AL, AR, AZ, CO, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MN, MI, MO, MS, ND, NE, NJ, NM, NY, OH, OK, PA, SC, SD, TN, TX, VA, WI, and WV.

MC 106074 (Sub-453F), filed December 23, 1980. Applicant: B & P MOTOR LINES, INC., Shiloh Rd. at U.S. Hwy 221 South, P.O. Box 727, Forest City, NC 28043. Representative: John J. Capo, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *such commodities* as are dealt in or used by chain grocery and food business houses, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of such commodities from the facilities used by Stouffers Foods Corporation at points in Cuyahoga County, OH, and Cherokee County, SC, to points in AL, AR, AZ, CA, CO, FL, GA, IA, ID, IL, IN, KS, KY, LA, MI, MN, MO, MS, MT, NC, ND, NE, NM, NV, OH, OK, OR, SC, SD, TN, TX, VT, VA, WA, WI, WV, andWY.

MC 112595 (Sub-96F), filed December 23, 1980. Applicant: FORD BROTHERS, INC., Box 272, Ironton, OH 45638. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *chemicals and petroleum products,* between Cincinnati and Lima, OH, on the one hand, and, on the other, points in the U.S.

MC 115724 (Sub-12F), filed December 22, 1980. Applicant: J. W. PHILLIPS, INC., 4500 North Sewell, Suite 5, Oklahoma City, OK 73154. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Transporting *lumber and wood products,* between points in the U.S., under continuing contract(s) with Rogue Forest Products, of Medford, OR.

MC 117765 (Sub-305F), filed November 28, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *non-alcoholic beverages,* in containers, between points in Okmulgee County, OK, and points in AR, KS, LA, MS, MO, and TX.

MC 126514 (Sub-76F), filed December 19, 1980. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home Road, Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. Transporting *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 in the U.S. (except AL, AK, HI, ID, IA, KS, KY, MT, NE, NM, ND, SD, WV, and WY).

MC 134105 (Sub-555F), filed December 24, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rassdille Ave., Chattanooga, TN 37408. Representative: Daniel O. Hands, 205 W. Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *frozen food,* between the facilities of Zartic Frozen Meats and Seafoods, Inc., at Cedertown, GA, and Plainfield, IL, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 134335 (Sub-6F), filed December 9, 1980. Applicant: ALL FREIGHT, INC., 238 Sheldon Road, Berea, OH 44017. Representative: James G. Keck, 16964 Cambridge Ave., Brook Park, OH 44142. Transporting *general commodities,* between points in the U.S. under continuing contract(s) with SCM Corporation, of Cleveland, OH.

MC 134335 (Sub-8F), filed December 22, 1980. Applicant: ALL FREIGHT, INC., 238 Sheldon Road, Berea, OH 44017. Representative: James G. Keck (same address as applicant). Transporting *general commodities,* between points in

the U.S., under continuing contract(s) with W. S. Tyler, Inc., Mentor, OH.

MC 134755 (Sub-231F), filed December 19, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as above). Transporting *non-exempt food or kindred products*, as described in item 20 of the Standard Transportation Commodity Code, between points in Solano County, CA, on the one hand, and, on the other, points in CO, NM, OK, and TX.

MC 135924 (Sub-26F), filed December 22, 1980. Applicant: SIMONS TRUCKING CO., INC., 3851 River Rd., Grand Rapids, MN 55744. Representative: Samual Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with Whitmore Manufacturing Company, of Cleveland, OH.

MC 140364 (Sub-7F), filed December 22, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, a corporation, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, 111 West Clarendon, Phoenix, AZ 85013. Transporting *foodstuffs, and materials and supplies used in the manufacture of foodstuffs* (except commodities in bulk), between points in the U.S., under continuing contract(s) with Ore-Ida Foods, Inc., of Boise, ID, Foodways National, and Gagliardi Bros., Inc.

MC 140665 (Sub-127F), filed December 29, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *such commodities* as are dealt in or used by drug and department stores (except in bulk), between Brookfield, MO, and Seattle and Tacoma, WA.

MC 141914 (Sub-96F), filed December 22, 1980. Applicant: FRANKS AND SON, INC., Route 2, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Evansville and Mt. Vernon, IN, and Springfield, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Mead Johnson & Company.

MC 142824 (Sub-4F), filed December 22, 1980. Applicant: CENTURY MOTOR FREIGHT, INC., 162 Columbus Rd., Mt. Vernon, OH 43050. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Transporting *glass containers*, and *materials, equipment, and supplies* used in the manufacture and distribution of glass containers, between points in the U.S., under continuing contract(s) with Chattanooga Glass Company, of Chattanooga, TN.

MC 144645 (Sub-9F), filed December 24, 1980. Applicant: ROBERT HANSEN TRUCKING, INC., Route 2, Box 125, Delavan, WI 53115. Representative: Daniel R. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *meats, meat products, and 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 (except hides and commodities in bulk), and (2) *materials, equipment, and supplies* used in the processing and distribution of the commodities listed in (1) above, between points in the U.S., under continuing contract(s) with Birchwood Meat and Provision Co., Inc., and its wholly-owned subsidiary, Kenosha Beef International, of Kenosha, WI.

MC 145515 (Sub-13F), filed December 22, 1980. Applicant: GREENE'S CARTAGE CO., INC., 1934 Avalon Ave., Muscle Shoals, AL 35660. Representative: Tony Greene (same address as applicant). Transporting (1) *metal* and *metal articles;* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between points in AL, AR, DE, GA, IA, IL, IN, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI, and DC.

MC 145525 (Sub-11F), filed December 22, 1980. Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. Box 6977, Cleveland, OH 44114. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Alcan Aluminum Corporation, of Cleveland, OH.

MC 146195 (Sub-3F), filed December 19, 1980. Applicant: ENERGY CARRIERS, INC., 187 W. Orangethorpe, Suite F, Placentia, CA 92670. Representative: John Paul Fischer, 256 Montgomery St., 5th Flr., San Francisco, CA 94104. Transporting *petroleum products*, in bulk, in tank vehicles, between points in CA, OR, WA, ID, NV, UT, AZ, WY, MT, CO, NM, and TX.

MC 149144 (Sub-3F), filed December 22, 1980. Applicant: SCHIERDING TRUCKING CO., a corporation, 3690 W. Clay, St. Charles, MO 63301. Representative: James E. Schierding (same address as applicant). Transporting *carbonated beverages, in containers*, from St. Louis, MO., to points in AL, AR, IL, IN, IA, KS, NE, TN, and WI.

MC 149144 (Sub-4F), filed December 22, 1980. Applicant: SCHIERDING TRUCKING CO., a corporation, 3690 W. Clay, St. Charles, MO 63301. Representative: James E. Schierding (same address as applicant). Transporting *malt beverages, in containers*, from Minneapolis, MN, and LaCrosse, WI, to St. Charles, MO.

MC 152444 (Sub-1F), filed December 29, 1980. Applicant: SHARP'S TRUCK & TRACTOR, INC., Business Hwys #36 & 69 West, Cameron, MO 64429. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105.Transporting *anhydrous ammonia, liquid fertilizer and dry fertilizer*, in bulk, from points in Jackson County, MO, to points in KS and NE.

MC 152564F, filed October 31, 1980. Applicant: IGC TRANSPORTATION, INC., 93–59 183rd Street, Jamaica, NY 11423. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. Transporting *such commodities* as are dealt in or used by retail department stores, between points in the U.S., under continuing contract(s) with IGC Management, Inc., of Jamaica, NY.

MC 105045 (Sub-143F), filed March 14, 1980, previously noticed in **Federal Register** on June 24, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania St., Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *steel joists* and *steel decking*, and (2) *accessories* used in the installation of the commodities in (1) from the facilities of Nucor Corporation, at or near Grapeland, TX, to points in AL, AR, AZ, FL, LA, MS, NM, OK, and TN.

Note.—This republication corrects destination point to read TN instead of TX.

Volume No. OP3–141

Decided: January 15, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 1074 (Sub-21), filed November 26, 1980. Applicant: ALLEGHENY FREIGHT LINES, INC., P.O. Box 2080, Winchester, VA 22601. Representative: Francis W.

McInerny, 1000 16th St., NW, Suite 502, Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), over (A) regular routes, (1) Between Parkersburg, WV and Winchester, VA, over U.S. Hwy 50, serving points in Jefferson, Berkeley, Morgan, Hampshire, Mineral, Hardy, Grant, Tucker, Randolph, Upshur, Barbour, Preston, Taylor, Monongahelia, Marion, Harrison, Lewis, Doddredge, Ritchie and Wood Counties, WV, Warren, Clarke, and Frederick Counties, VA, and Garrett County, MD as off-route points, (2) Between Parkersburg and Charleston, WV, over Interstate Hwy 77, serving points in Wirt, Jackson, Mason, Roane, Calhoun, and Kanawha Counties, WV as off-route points, (3) Between Charleston, and Huntington, WV, over Interstate Hwy 64, serving the points in Cabell, Putnam and Wayne Counties, WV as off-route Points, (4) Between Pittsburgh, PA and Charleston, WV: From Pittsburgh over Interstate Hwy 279 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Charleston, WV, and return over the same route, serving points in Allegheny, Washington, Westmoreland, Lawrence, Butler, Beaver, and Greene Counties, PA and Braxton and Clay Counties, WV as off-route points; (5) Between junction Interstate Hwy 79 and Interstate Hwy 70, and Charleston, WV: From junction Interstate Hwy 79 and Interstate Hwy 70 over Interstate Hwy 70 to junction WV Hwy 2, then over WV Hwy 2 to junction Interstate Hwy 77, then over Interstate Hwy 77 to Charleston, and return over the same route, serving points in Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, and Pleasants Counties, WV as off-route points; (6) Between Cincinnati, OH and Parkersburg, WV, over U.S. Hwy 50, serving points in Campbell, Kenton, and Boone Counties, KY, and Hamilton, Butler, Warren, and Montgomery Counties, OH, (7) Between Washington, PA and Cincinnati, OH: From Washington over Interstate Hwy 70 to junction Interstate Hwy 71, then over Interstate Hwy 71 to Cincinnati, OH and return over the same route, serving points in Union and Delaware Counties, OH, as off-route points; (8) Between junction Interstate Hwys 70 and 71 and Cincinnati, OH: From junction Interstate Hwys 70 and 71 over Interstate Hwy 70 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Cincinnati, OH, and return over the same route; (9) Between Athens and Columbus, OH, over U.S. Hwy 33; (10) Between Winchester, VA and Lancaster, PA: From Winchester, VA over U.S. Hwy 11 to Chambersburg, PA, then over U.S. Hwy 30 to Lancaster, PA, and return over the same route, serving points in Lancaster, Dolphin, York, Cumberland, Franklin Counties, PA and Washington, and Frederick Counties, MD as off-route Points; (11) Between Pittsburgh, PA and Winchester, VA: From Pittsburgh over Interstate Hwy 376 to junction Interstate Hwy 76, then over Interstate Hwy 76 to junction Interstate Hwy 70, then over Interstate Hwy 70 to junction U.S. Hwy 522 at or near Hancock, MD, then over U.S. Hwy 522 to Winchester, VA, and return over the same route; (12) Between Pittsburgh, PA and Baltimore, MD: From Pittsburgh over Interstate Hwy 376 to junction Interstate Hwy 76, then over Interstate Hwy 76 to junction Interstate Hwy 70, then over Interstate Hwy 70 to Baltimore, MD, and return over the same route; (13) Between Berkeley Springs, WV and Baltimore, MD: From Berkeley Spring over U.S. Hwy 522 to junction U.S. Hwy 40, then over U.S. Hwy 40 to junction MD Hwy 144, then over MD Hwy 144 to Baltimore, MD, and return over the same route; (14) Between Winchester, VA and junction U.S. Hwy 340 and Interstate Hwy 70: From Winchester, over WV Hwy 7 to junction U.S. Hwy 340, then over U.S. Hwy 340 to junction Interstate Hwy 70, and return over the same route; (15) Between Inwood, VW and Frederick, MD: From Inwood over WV Hwy 51 to Charles Town, WV, then over U.S. Hwy 340 to Frederick, and return over the same route, serving all intermediate points; (16) Between Winchester, VA and Morgantown, WV: (a) From Winchester over U.S. Hwy 522 to junction VA Hwy 127, then over VA Hwy 127 to the VA–WV State line, then over WV Hwy 45 to junction WV Hwy 29 South, then over WV Hwy 29 South to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction WV Hwy 28, then over WV Hwy 28 to junction WV Hwy 9, then over WV Hwy 9 to junction U.S. Hwy 220, then over U.S. Hwy 220 to junction VW Hwy 53, then over WV Hwy 53 to junction U.S. Hwy 48, then over U.S. Hwy 48 to Morgantown, WV, and return over the same route; and (b) From Winchester over U.S. Hwy 522 to junction VA Hwy 127, then over VA Hwy 127 to the VA–WV State line, then over WV Hwy 45 to junction WV Hwy 29 North, then over WV Hwy 29 North to the WV–MD State line, then over MD Hwy 51 to junction U.S. Hwy 48, then over U.S. Hwy 48 to Morgantown, and return over the same route; and (17) Between Hancock, MD and Morgantown, WV: From Hancock over U.S. Hwy 40 to junction U.S. Hwy 48, then over U.S. Hwy 48 to Morgantown, and return over the same route; in (A) above, serving all intermediate points; and (B) irregular routes, (1) between Berkeley Springs, WV, on the one hand, and, on the other, Clarksburg and Buckhannon, WV, Harrisonburg, Staunton and Richmond, VA, Altoona, Johnstown, Philadelphia, Pittsburgh and Uniontown, PA, points in MD, those in WV on and east of U.S. Hwy 250, and DC; (2) Between points in Wood County, WV, on the one hand, and, on the other, points in Wood, Jackson, Wirt, Ritchie, Pleasants, Calhoun, Gilmer, Tyler and Doddredge Counties, WV, and (3) between points in Wood County, WV on the one hand, and, on the other, points in OH and PA.

Note.—Applicant intends to tack this authority with its presently existing authority.

MC 20824 (Sub-49F), filed December 22, 1980. Applicant: COMMERCIAL MOTOR FREIGHT INC., OF INDIANA, 2141 South High School Rd., Indianapolis, IN 46241. Representative: C. C. Boyd (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of General Motors Corporation, located at or near Wentzville, MO, as an off-route point in connection with carrier's presently authorized regular-route operations.

MC 30884 (Sub-28), filed January 2, 1981. Applicant: JACK COOPER TRANSPORT CO., INC., 3501 Manchester Trafficway, Kansas City, MO 64129. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Transporting *Motor Vehicles*, between points in the U.S. under continuing contract(s) with General Motors Corporation, of Troy, MI.

Note.—Issuance of a permit in this proceeding is conditioned upon prior or coincidental cancellation of Permits Nos. MC 30884 Subs 5, 10, 13, 14, 15, 16, 25, and 26, at applicant's written request.

MC 95084 (Sub-170F), filed December 5, 1980. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting *lumber*, from points in AR and LA, to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, PA, SD, WV, and WI.

MC 107515 (Sub-1410F), filed December 29, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Road, N.E., 5th Floor—

Lenox Towers South, Atlanta, GA 30326. Transporting *general commodities* (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment), between LaPorte, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 109724 (Sub-7F), filed December 30, 1980. Applicant: PAUL J. SCHMIT, d.b.a. PAUL J. SCHMIT TRUCKING, 1480 North Springdale Rd., Waukesha, WI 53186. Representative: William P. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203. Transporting *sand* between points in the U.S. under continuing contract(s) with Lake Shore Sand & Stone, Division of Construction Aggregates Corporation, of Milwaukee, WI.

MC 114045 (Sub-579F), filed December 30, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *food and related products*, (a) between points in Lubbock, Potter and El Paso counties, TX, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY; and (b) from points in Emmet and Woodbury Counties, IA, Minnehaha County, SD, and Nobles County, MN, to points in AZ, CA, KS, LA, NM, NV, OK, and TX.

MC 114604 (Sub-125F), filed December 22, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market #33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as above). Transporting *candy and confectionery* (except in bulk), (a) from Chicago, IL, to points in GA, NJ, IL, and TX, and (b) from Morrow, GA, to those points in FL in and south of Citrus, Sumter, Lake, and Volusia Counties (except Daytona Beach) FL, restricted to traffic originating at the facilities of E. J. Brach & Sons Inc.

MC 116254 (Sub-321), filed January 2, 1981. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting (1) *refractories and refractory products*, and (2) *materials, equipment and supplies* used in the manufacture, installation, and distribution of the commodities in (1), between the facilities of Harbison Walker Refractories, Division of Dresser Industries, Inc., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 123405 (Sub-84), filed December 31, 1980. Applicant: FOOD TRANSPORT, INC., R.D. No. 1, Thomasville, PA 17364. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *such commodities* as are dealt in or used by chain grocery and food business houses, (except commodities in bulk), between points in the U.S. in and east of ND, SD, NB, KS, OK and TX.

Note.—Issuance of a certificate is conditioned upon prior or coincidental cancellation of Certificates Nos. MC-123405, Subs 2, 4, 6, 7, 9, 13, 14, 16, 20, 21, 22, 23, 25, 27, 33, 34, 35, 36, 38, 41, 43, 46, 47, 48, 55, 57F, 58F, 68F, 70F, 71F, 72F, 73F, 74F, 75F, 77F, 80F and E1, at applicant's written request.

MC 133655 (Sub-230), filed January 2, 1981. Applicant: TRANS-NATIONAL TRUCK, INC., 4601 Langland Road, P.O. Box 402535, Dallas, TX 75240. Representative: Matthew J. Reid, P.O. Box 2298, Green Bay, WI 54306. Transporting *general commodities* (except classes A and B explosives), between the facilities used by American Cyanamid Company, its affiliates and subsidiaries, on the one hand, and, on the other, points in the U.S.

MC 134235 (Sub-29F), filed December 31, 1980. Applicant: KUHNLE BROTHERS, INC., P.O. Box 375, Newbury, OH 44065. Representative: Neal A. Jackson, 1156 Fifteenth St., N.W., Washington, DC 20005. Transporting (1) *chemicals and related products*, (2) *clay, concrete, glass or stone products*, (3) *metal products*, (4) *lignin pitch*, and (5) *sand*, between points in Geauga County, OH, on the one hand, and, on the other, points in the U.S.

MC 140665 (Sub-126), filed December 29, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Transporting *plastic boxes, cosmetics*, and *toilet preparations*, between the facilities of the Eli Lilly and Company, at or near (a) Roanoke, VA, and (b) Fresno, CA.

MC 140665 (Sub-128), filed January 2, 1981. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson (same address as applicant). Transporting *frozen meats*, between New Orleans, LA, on the one hand, and, on the other, points in AZ, CA, CO, IA, ID, IL, IN, KS, KY, MI, MN, MO, MT, NC, ND, NE, NM, NV, NY, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI and WY.

MC 142364 (Sub-46F), filed December 30, 1980. Applicant: KENNETH SAGELY TRUCKING COMPANY, P.O. Box 368, Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *flour and corn meal* (except in bulk), *bird seed, popcorn, feed and feed ingredients*, from the facilities of Shawnee Milling Company, at or near Shawnee, OK, to points in TX.

MC 145774 (Sub-2), filed January 2, 1981. Applicant: ARTHUR E. JOHNSTON AND MICHAEL A. JOHNSTON d.b.a. JOHNSTON TRUCKING, P.O. Box 325, Spearfish, SD 57783. Representative: Claude Stewart, P.O. Box 480, Sioux Falls, SC 57101. Transporting *lumber, lumber products and wood products*, from points in SD to points in the U.S.

MC 147264 (Sub-11F), filed December 29, 1980. Applicant: JAT EXPRESS, INC., 4002 No. Rosewood Avenue, Muncie, IN 47304. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *bananas*, from Galveston, TX to points in AR, IL, IN, IA, KS, KY, LA, MO, NE, OK, OH, TN, and TX.

MC 148045 (Sub-3F), filed December 29, 1980. Applicant: QUAD CITY SPOTTING SERVICE, INC., 1607 West River Drive, P.O. Box 4168, Davenport, IA 52808. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting *materials, equipment and supplies* used in the manufacture and distribution of indusrial, construction, and agricultural machinery and equipment, between points in the U.S. (except AK and HI), under continuing contract(s) with The B. F. Goodrich Company, of Akron, OH, and International Harvester Company, of Chicago, IL.

MC 150634F, filed December 30, 1980. Applicant: CHECKER TRANSFER AND STORAGE COMPANY, a corporation, 7960 Farrow Road, Columbia, SC 29204. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, NW, Suite 1200, Washington, DC 20036. Transporting *household goods*, as defined by the Commission, Between points in SC, GA, FL, AL, MS, NC, TN, VA, LA, MD and DC.

MC 150645 (Sub-3F), filed December 31, 1980. Applicant: TILEWAYS, INC., 7834 C. F. Hawn Freeway, Dallas, TX 75217. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245. Transporting *clay glazed tile and materials and supplies used in the installation of clay glazed tile*, between points in the U.S. under continuing contract(s) with the Elit Corporation, of Dallas, TX.

MC 150954 (Sub-6F), filed December 29, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. Transporting (1) *foodstuffs*

(except in bulk), and (2) *materials, equipment, and supplies* used in the production and distribution of the commodities in (1) above, between points in the U.S. under continuing contract(s) with Lamb-Weston, Inc., of Portland, OR.

MC 150954 (Sub-7F), filed December 29, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. Transporting (1) *such commodities* as are dealt in or used by retail grocery, drug, and department stores, between points in the U.S., under continuing contract(s) with Scott Paper Company, of Philadelphia, PA.

MC 151665F, filed December 30, 1980. Applicant: MAGNUM, LTD., Box 775, Hillsboro, ND 58045. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. Transporting (1) *industrial limerock*, and (2) *sugarbeet pulp*, between points in the U.S. under continuing contract(s) with American Crystal Sugar Company, of Moorhead, MN.

MC 151894 (Sub-1), filed January 2, 1981. Applicant: VENTURE EXPRESS, INC., P.O. Box 100300, Nashville, TN 37210. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting *general commodities* (except classes A and B explosives), between points in Rutherford County, TN, on the one hand, and, on the other, points in the U.S.

MC 153534F, filed December 29, 1980. Applicant: SIMON FLORES, INC., d.b.a. UNION TRANSPORT SYSTEM, 411 Moline St., Los Angeles, CA 90013. Representative: Simon Flores (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery, food business, discount or variety houses, between points in the U.S., under continuing contract(s) with The Proctor and Gamble Co., of Cincinnati, OH.

MC 153415F, filed December 22, 1980. Applicant: TRANS COAST ENTERPRISES, INC., 15217 Valley Blvd., Fontana, CA 92335. Representative: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650. Transporting *rock, stone, clay, ore, and ore concentrates*, in bulk, between points in the U.S., under continuing contract(s) with American International Minerals, of Kingman, AZ.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3201 Filed 1-27-81; 3:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 16, 1981 (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3–148

Decided: January 19, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 56984 (Sub-3), filed January 12, 1981. Applicant: VALLEY TRANSFER, INC., d.b.a. AIR LAND EXPRESS, 572 Delong, Salt Lake City, UT 84111. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 138704 (Sub-8F), filed December 29, 1980. Applicant: GARY L. DUNPHY, Embden, ME 04958. Representative: William P. Jackson, 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities*, between Cheviot, Bridgetown, and Miamitown, OH, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 139984 (Sub-3), filed January 12, 1981. Applicant: BRADFORD FILM TRANSIT, INC., 2154 S. Lynhurst, Indianapolis, IN 46206. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP5–21

Decided: January 16, 1981.

By the Commission, Review Board No. 3, members Parker, Fortier, and Hill. (Member Hill not participating.)

MC 153488, filed January 6, 1981. Applicant: STEPHEN G. SINKS ENTERPRISES, INC. d.b.a.

CALIFORNIA INTERSTATE TRANSPORT, INC., 5729 Smith Wy., City of Commerce, CA 90040. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3202 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP3-142]

Motor Carrier Permanent Authority Decisions

Decided: January 15, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before March 16, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members Chandler, Liberman, and Eaton participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 143304 (Sub-1), filed December 30, 1980. Applicant: BOBBY JOE BUSH, d.b.a. AAA MOBILE HOME MOVERS, P.O. Box 569, Theodore, AL 36582. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

[FR Doc. 81-3203 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to a applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action signficantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 16, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-010

Decided: January 13, 1981.

By the Commission, Review Board No. 3, members Parker, Fortier, and Hill.

MC 47171 (Sub-196F), filed January 2, 1981. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602.Representative: Harris G. Andrews (same address as applicant). Transporting (1) *plastic articles*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of plastic articles, between those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 52460 (Sub-304F), filed December 22, 1980. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga (same address as applicant). Transporting (1) *paper and paper products* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Sonoco Products Co., at or near (a) Arlington and Houston, TX, (b) Tulsa, OK, and (c) Camden, AR, on the one hand, and, on the other, points in AR, KS, LA, MS, OK, and TX.

MC 52460 (Sub-307F), filed December 29, 1980. Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Kruizinga (same address as applicant). Transporting *cosmetics, toilet preparations, medicines, weed killing compounds, animal and poultry feed supplements, and plastic articles*, between points in Fulton County, GA, Marion County, IN, Richland County, SC, Dallas County, TX, and Roanoke County, VA, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, IL IN, IA, KS, LA, MS, MO, NE, NM, NC, OK, SC TN, TX, VA, and WI.

MC 60430 (Sub-33F), filed January 2, 1981. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 480, Wilkes Barre, PA 18703. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507. Transporting *general commodities* (except classes A and B explosives), between points in DE, NJ, NY, MD, and PA.

MC 70151 (Sub-64F), filed December 31, 1980. Applicant: UNITED TRUCKING SERVICE, INC., 8505 West Warren Ave., Dearborn, MI 48126. Representative: A. David Millner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving points in IL, IN, KY, NY, OH, the lower peninsula of MI, and those in Warren, Forest, Clarion, Armstrong, Westmoreland, Fayette, Greene, Washington, Beaver, Allegheny, Butler, Lawrence, Mercer, Venango, Crawford and Erie Counties, PA, as off-route points in connection with applicant's otherwise-authorized regular-route operations.

MC 84450 (Sub-9F), filed December 31, 1980. Applicant: S.R.T. MOTOR FREIGHT, INC., 1801 S. Pennsylvania Ave., Morrisville, PA 19067. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *those commodities which because of their size or weight require the use of special handling or equipment*, between points in CT, DE, MA, MD, NJ, NY, PA, RI, and DC.

MC 108520 (Sub-4F), filed December 23, 1980. Applicant: DON WALDRON, d.b.a. DONALD WALDRON TRUCKING, 21414 Seven Mile Rd., Franksville, WI 53126. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. Transporting *feed ingredients*, from the facilities of Cargill, Inc., at Chicago, IL, to points in Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Jefferson, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha, and Winnebago Counties, WI.

MC 112210 (Sub-4F), filed January 5, 1981. Applicant: ROBERT G. OWEN TRUCKING, INC., 49 Ohio St., Navaree, OH 44662. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting (1) *pulp, paper and related products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S., under continuing contract(s) with Ace Paper Company of Monroe, MI.

MC 112520 (Sub-398F), filed January 5, 1981. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Thomas F. Panebianco (same address as applicant). Transporting *chemicals and related products*, between points in Marshall County, KY, on the one hand, and, on the other, points in Santa Rosa County, FL.

MC 112801 (Sub-257F), filed January 7, 1981. Applicant: TRANSPORT SERVICE CO., a corporation, 15 Salt Creek Lane, Hinsdale, IL 60521. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *food and related products*, and (2) *chemicals and related products*, between points in Tazewell County, IL, on the one hand, and, on the other, points in the U.S.

MC 114211 (Sub-494F), filed December 18, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of lumber, lumber mill products, forest products and wood products, between points in Colbert County, AL, on the one hand, and, on the other, points in the U.S.

MC 115651 (Sub-95F), filed December 29, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Rd., P.O. Box 39, Rockford, IL 61105. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting *petroleum products*, in bulk, in tank vehicles, between points in Lake and Porter Counties, IN, on the one hand, and, on the other, points in IL.

MC 118431 (Sub-38F), filed December 31, 1980. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72209. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68102. Transporting *general commodities* (except household goods as defined by the Comission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Johnson & Johnson Baby Products Co., Inc., of Piscataway, NJ.

MC 124050 (Sub-3F), filed January 6, 1981. Applicant: MERCER BROS. TRUCKING CO., a corporation, P.O. Box 952, Highway 301 North, Wilson, NC 27893. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting (1) *lumber and wood products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in Bertie, Chatham, Craven, Martin, Onslow, and Washington Counties, NC, on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV, and DC.

MC 124050 (Sub-4F), filed January 6, 1980. Applicant: MERCER BROS. TRUCKING CO., P.O. Box 952, Highway 301 North, Wilson, NC 27893. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *lumber and wood products*, between points in Nash and Edgecombe Counties, NC, and Patrick and Sussex Counties, VA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA MO, AR, and TX.

MC 125951 (Sub-70F), filed January 5, 1981. Applicant: SILVEY

REFRIGERATED CARRIERS, INC., 7000 West Center Road, Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino (same address as applicant). Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (1) between points in Freeborn County, MN, and Linn and Polk Counties, IA, on the one hand, and, on the other, points in CT, DE, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA and CA, and (2) between points in Douglas County, NE, on the one hand, and, on the other, points in CA.

MC 135070 (Sub-176F), filed December 16, 1980. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *confectionery* and (2) *such commodities* as are used in the manufacture and distribution of confectionery, between Oklahoma City, OK, on the one hand, and, on the other, points in the U.S.

MC 135170 (Sub-54F), filed January 2, 1981. Applicant: TRI-STATE ASSOCIATES, INC., P.O. Box 188, Federalsburg, MD 21632. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting (1) *food and related products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with The Gorton Group, Division of General Mills, Inc., of Minneapolis, MN.

MC 135410 (Sub-118F), filed December 31, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, North 6th St. Rd., P.O. Box 266, Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting (1) *food and related products,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), between the facilities of General Mills, Inc., at Cedar Rapids, IA, Buffalo, NY, and Toledo, OH, and (2) between Galesburg, IL, on the one hand, and, on the other, points in AR, AZ, CA, IA, IN, KS, KY, MI, MN, MO, NE, OH, TN, and WI.

MC 139960 (Sub-5F), filed December 30, 1980. Applicant: WPX FREIGHT SYSTEM, INC., 526 Mission Street, San Francisco, CA 94105. Representative: Stephen T. Rudman (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Salt Lake City, UT, and Denver, CO, (a) from Salt Lake City over Interstate Hwy 15 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction Interstate Hwy 70, then over U.S. Hwy 70 to Denver, and return over the same route, serving all intermediate points, and (b) from Salt Lake City over Interstate Hwy 80 to junction U.S. Hwy 287, then over U.S. Hwy 287 to Denver, and return over the same route, serving all intermediate points.

Note.—Applicant intends to tack the sought rights to its existing authority.

MC 140460 (Sub-9F), filed January 7, 1981. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, NC 28445. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW, Washington, DC 20006. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of beverage products, between points in the U.S.

MC 142080 (Sub-17F), filed January 2, 1981. Applicant: LITE TRANSPORT, INC., 480 Neponset St., Canton, MA 02021. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with James River Corporation of Richmond, VA.

MC 142431 (Sub-3F), filed January 2, 1981. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 108th St., Runnells, IA 50237. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, between points in Dodge and Colfax Counties, NE, and Clay and Webster Counties, IA, on the one hand, and, on the other, points in AL, FL, GA, IL, IN, KY, MI, MS, NC, OH, SC, TN, WI, and WV.

MC 142941 (Sub-76F), filed January 5, 1981. Applicant: SCARBOROUGH TRUCK LINES, INC., P.O. Box 6716, Phoenix, AZ 85005. Representative: D. W. Sinclair (same address as applicant). Transporting *alcoholic beverages,* between points in AR, AZ, CA, LA, and NV.

MC 144011 (Sub-4F), filed November 25, 1980, and previously noticed in FR issue of December 11, 1980. Applicant: HALL SYSTEMS, INC., 214 South 10th St., Birmingham, AL 35233. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (A) over regular routes, between New Orleans and Baton Rouge, LA, (1) over Interstate Hwy 10, and (2) over U.S. Hwy 61, serving no intermediate points, and (B) over irregular routes, between points in the Baton Rouge, LA Commercial Zone.

Note.—Applicant intends to tack this authority with its authority in MC–144011 at New Orleans, LA. This republication corrects the highway designation in (A)(2) above.

MC 145441 (Sub-136F), filed January 5, 1981. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *furniture and fixtures,* between points in Morgan County, IL, on the one hand, and, on the other, points in the U.S.

MC 146101 (Sub-3F), filed December 18, 1980. Applicant: MIDSTATES REFRIGERATED EXPRESS, INC., P.O. Box 420, East Chicago, IN 46312. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle St., Chicago, IL 60602. Transporting *foodstuffs,* between the facilities of U.S. Cold Storage at Lyons, IL, on the one hand, and, on the other, points in the U.S.

MC 148930 (Sub-4F), filed January 6, 1981. Applicant: AERO DELIVERIES, INC., 529 Gidley Dr., Grand Haven, MI 49417. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with ServiceMaster Industries, Inc., of Downers Grove, IL.

MC 150301 (Sub-9F), filed January 6, 1981. Applicant: EQUITY TRANSPORTATION COMPANY, INC., 9744 E. Fulton Rd., Ada, MI 49301. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *General commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with M. Grumbacher, Inc., of Yardley, PA.

MC 150400 (Sub-2F), filed January 2, 1981. Applicant: AZTEC TRUCKING, INC., 9555 South Baltimore, Chicago, IL 60617. Representative: Richard A. Kerwin, 180 North LaSalle St., Chicago, IL 60601. Transporting *General commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) (a) with L. B. Foster Company of Pittsburgh, PA,

and (b) with Midwest Treating Corp., of Winslow, IN.

MC 153461F, filed December 22, 1980. Applicant: FLYNN'S MOTOR EXPRESS, INC., P.O. BOx 627, Southington, CT 06489. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in CT, on the one hand, and, on the other, points in MA, RI, VT, NH, and NY (except those in Bronx, Queens, Kings, Richmond, New York, Nassau, and Suffolk Counties, NY).

Volume No. OP2–157

Decided: January 19, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 3753 (Sub-33), filed December 24, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explolsives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Hagerstown, MD, and Martinsburg, WV, over Interstate Hwy. 81, serving all intermediate points and off route points located in Berkeley, Jefferson, and Morgan Counties, WV.

MC 66512 (Sub-12), filed December 30, 1980. Applicant: P & G MOTOR FREIGHT, INCORPORATED, 450 Burnham St., South Windsor, CT 06074. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in ME, NH, VT, MA, CT, RI, NY, NJ, and PA.

MC 107012 (Sub-641), filed December 23, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *toilet preparations and paper products*, from Wilmington, IL, to points in AR, KS, LA, and MS.

MC 107012 (Sub-642), filed December 23, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *Such commodities* as are dealt in or used by fabric, stores, between Westfield, IN and Charlotte, NC, on the one hand, and, on the other, points the U.S.

MC 107912 (Sub-35), filed December 23, 1980. Applicant: REBEL MOTOR FREIGHT, INC., 3934 Homewood, P.O. Box 181028, Memphis, TN 38118. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Oxford and Tupelo, MS, over MS Hwy 6, serving all intermediate points.

MC 118552 (Sub-4), filed December 24, 1980. Applicant: PIEDMONT COACH LINES, INC., P.O. Box N. 72, 3636 Glenn Ave., Winston Salem, NC 27105. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Alexander, Alleghany, Ashe, Caldwell, Cleveland, Davidson, Davie, Iredell, McDowell, Mecklenburg, Stanly, and Union Counties, NC, and extending to points in the U.S.

MC 125952 (Sub-54), filed December 24, 1980. Applicant: INTERSTATE DISTRIBUTOR CO., a corporation, 8311 Durango St., SW, Tacoma, WA 98499. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *foodstuffs*, between points in the U.S., under continuing contract(s) with Heinz USA, Division of H. J. Heinz Co., of Pittsburgh, PA.

MC 125973 (Sub-6), filed December 24, 1980. Applicant: CROWN WAREHOUSE TRANSPORTATION COMPANY, INC., 710 E. 9th Ave., Gary, IN 46401. Representative: Jack H. Blanshan, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068. Transporting *herbicides, insecticides, fertilizer, vermiculite and muriate of potash*, between points in the U.S., under continuing contract(s) with Koos, Inc., of Kenosha, WI.

MC 144293 (Sub-18), filed December 22, 1980. Applicant: DUANE McFARLAND, P.O. Box 1006, Austin, MN 55912. Representative: Thomas J. Beener, 67 Wall Street, Suite 2510, New York, NY 10005. Transporting *such commodities* as is dealt in by food business houses, and *materials, ingredients, and supplies* used in their manufacture and distribution of such commodities between points in OH, on the one hand, and, on the other, points in IA, IL, IN, KS, MI, MN, MO, ND, SD, OH, and WI, restricted to traffic originating at or destined to the facilities used by the Stouffer Corporation.

MC 144303 (Sub-27), filed December 23, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., NW., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and Classes A and B explosives), between points in the U.S., under continuing contract(s) with Champion International Corporation, of Stamford, CT.

MC 145773 (Sub-7), filed December 23, 1980. Applicant: KIRK BROS. TRANSPORTATION, INC., 800 Vandemark Rd., Sidney, OH 45365. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), in foreign commerce only between points in IN, MI and OH, on the one hand, and, on the other, points in the U.S.

MC 147553 (Sub-9), filed December 23, 1980. Applicant: DENNIS MOSS AND GARY MOSS, d.b.a. MOTOR WEST, P.O. Box 1405, Caldwell, ID 83605. Representative: Mr. Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in ID and OR, on the one hand, and, on the other, those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX (except AK and HI), restricted to shipments originating at or destined to the facilities of Ore-Ida Foods, Inc.

MC 148423 (Sub-11), filed December 23, 1980. Applicant: AVANT TRUCKING CO., INC., P.O. Box 216, Gray, GA 31032. Representative: R. Napier Murphy, 700 Home Federal Bldg., Macon, GA 31201. Transporting *road building materials and aggregates*, between points in GA and SC.

MC 148632 (Sub-4), filed December 18, 1980. Applicant: DIXON MOTOR FREIGHT, INC., 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. Representative: Gary V. Dixon (same as applicant). Transporting (1) *insulation materials and insulating products*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S. (except AK and HI).

MC 149412 (Sub-1), filed December 18, 1980. Applicant: MILK TANK LINES, INC., P.O. Box 788, Frazer, PA 19355. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St. NW, Washington, DC 20001. Transporting *sugar, sirups, molasses, blends thereof, citrus juices, and edible oils,* in bulk, between those points in the U.S. in and east of MN, IA, KS, OK, and TX.

NC 150583 (Sub-2), filed December 19, 1980. Applicant: ROSENBERGER ENTERPRISES, INC., 200 East Clinton, Indianola, IA 50125. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *iron and steel articles,* from Detroit, MI, and New Haven, CT, to points in the U.S. (except AK and HI).

MC 152383 (Sub-1), filed December 29, 1980. Applicant: C. C. M. ENTERPRISES, INC., Suite 40, 27 Produce Drive, Cincinnati, OH 45202. Representative: John R. Mateyko (same as applicant). Transporting *such commodities* as are dealt in or used by manufacturers of iron and steel articles, between points in Hamilton County, OH on the one hand, and, on the other, points in ND, MN, PA, WI, OH, MI, IL, IN, WY, and CO.

MC 153372, filed December 30, 1980. Applicant: P. JUDGE & SONS, INC., Building 1320—Dakar St., Elizabeth, NJ 07201. Representative: Ronald N. Cobert, 1730 M St., NW, Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in AZ, CA, CO, CT, DE, FL, GA, HI, IN, IL, IA, KS, MD, MA, MI, MN, MO, NJ, NY, OH, OR, PA, RI, TN, TX, VA, WA, WI, and DC, restricted to traffic having a prior or subsequent movement by rail.

MC 153423, filed December 22, 1980. Applicant: THOMAS G. & GEORGE E. CRAFT, a partnership, d.b.a. B&G TRUCKING COMPANY, 6120 Holmes St., Omaha, NE 68117. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., Under continuing contract(s) with (a) Omaha Porkers, Inc., and (b) John Roth & Son, Inc., both of Omaha, NE.

MC 153463, filed December 22, 1980. Applicant: PAULIN TRANSPORTATION, INC., P.O. Box 112, McLeansboro, IL 62859. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *gasoline,* between points in Gibson County, IN, and Cape Girardeau County, MO, on the one hand, and, on the other, those points in IL on and south of Interstate Highway 64.

Volume No. OP5–19

Decided: January 16, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Hill not participating.)

MC 7228 (Sub-47F), filed December 4, 1980. Initially published in the **Federal Register** on December 23, 1980. Applicant: COAST TRANSPORT, INC., 1906 S.E. 10th Ave., Portland, OR 97214. Representative: Jerry Cinnera (same address as applicant). Transporting (1) *frozen bakery goods,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Mrs. Smith's Frozen Foods Co., of Pottstown, PA. This application is republished to show that applicant seeks contract-carrier authority rather than common-carrier authority.

MC 15558 (Sub-10F), filed November 20, 1980. Initially published in the **Federal Register** on December 23, 1980. Applicant: WARWOOD TRANSFER CO., a corporation, 2233–41 Warwood Ave., Wheeling, WV 26003. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting *steel containers, and materials, equipment, and supplies* used in the manufacture of steel containers, between points in Brooke County, WV, on the one hand, and, on the other, points in the U.S. (except AK and HI). This application is republished to show that the correct location of Brooke County is WV.

MC 18459 (Sub-14), filed January 6, 1981. Applicant: BRITTON MOTOR SERVICE, INC., 740 Westminster St., St. Paul, MN 55101. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402. Over *regular* routes, transporting *general commodities* (except classes A and B explosives), between Chicago, IL and Milwaukee, WI, over Interstate Hwy 94.

MC 35628 (Sub-442), filed January 9, 1981. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 110 Ionia Ave., N.W., P.O. Box 175, Grand Rapids, MI 49501. Representative: Michael P. Zell (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 44128 (Sub-42), filed January 8, 1981. Applicant: EPES TRANSPORT SYSTEM, INCORPORATED, P.O. Box 24038, Richmond, VA 23224. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Transporting *general commodities* (except classes A and B explosives), between points in GA, SC, NC, VA, TN, KY, WV, MD, DE, NJ, PA, and DC.

MC 96839 (Sub-4), filed January 9, 1981. Applicant: PALMER TRUCKING CO., INC., 239 Park St., Palmer, MA 01069. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *general commodities* (except classes A and B explosives), between points in CT, ME, MA, NH, NY, RI, and VT. Issuance of a certificate in this proceeding is subject to the coincidental cancellation at applicant's written request, of its Certificate of Registration in MC 96839 and Subs thereunder.

MC 96929 (Sub-4F), filed December 29, 1980. Applicant: TRIANGLE FREIGHT CO., 826 Main St., Springfield, CO 81073. Representative: John H. Lewis, 1365 Logan St., Suite 100, Denver, CO 80203. Transporting *general commodities* (except used household goods, and classes A and B explosives) (a) over regular routes, between Springfield, CO and Elkhart, KS, (i) from Springfield over U.S. Hwy 287 to Boise City, OK, then over U.S. Hwy 56 to Elkhart, and return over the same routes, (ii) from Springfield over U.S. Hwy 287 to junction U.S. Hwy 160, then over U.S. Hwy 160 to Manter, KS, then over unnumbered county road to KS Hwy 27, then over KS Hwy 27 to Elkhart, and return over the same routes, serving all intermediate points, (b) over alternate routes for operating convenience only, between Campo, CO and junction KS Hwy 51 and KS Hwy 27, from Campo over unnumbered CO Hwy to the CO–KS state line, then over KS Hwy 51 to junction KS Hwy 27 and return over the same routes.

MC 100439 (Sub-11), filed January 9, 1981. Applicant: D. W. HASSLER, INC., R.D. #8, York, PA 17403. Representative: Harold G. Hernly, Jr., 110 S. Columbus St., Alexandria, VA 22314. Transporting *petroleum, natural gas and their products,* between points in DE, MD, NJ, and PA.

MC 109609 (Sub-1), filed January 5, 1981. Applicant: HELLEN TRANSPORTATION CO., INC., 255 No. Main St., North Uxbridge, MA 01538. Representative: Joseph M. Klements, 84 State St., Boston, MA 02109. Transporting *petroleum, natural gas and their products,* between points in MA, RI, CT, ME, and NH.

MC 118899 (Sub-17), filed December 31, 1980. Applicant: BALTIMORE TANK LINES, INC., 180 Eighth Ave., P.O. Box 1028, Glen Burnie, MD 21061. Representative: Lawrence E. Lindeman,

425–13th Street NW., Suite 1032, Washington, DC 20004. Transporting *commodities in bulk*, between points in NY, NJ, PA, DE, MD, WV, VA, NC, and DC. Condition: Issuance of a certificate in this proceeding in conditioned upon prior or coincidental cancellation of certificates in MC–118899 Subs 1F, 7F, 10F, 11F, 12F, 13F, 14F, 15F, and 16F.

MC 120799 (Sub-5), filed January 6, 1981. Applicant: COLONIAL TRUCKING, INC., 38 May Ave,, Brockton, MA 02401. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403. Transporting *general commodities* (except classes A and B explosives), between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, and DC.

MC 133189 (Sub-40), filed January 6, 1981. Applicant: VANT TRANSFER, INC., 1257 Osborne Rd., Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101. Transporting *lumber and wood products*, between points in Itasca County, MN on the one hand, and, on the other, points in IA and IL.

MC 138438 (Sub-99), filed January 5, 1981. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *building materials*, between those points in the U.S. in and east of OH, KY, TN, and AL, on the one hand, and, on the other, points in IL and IN.

MC 138438 (Sub-100), filed January 6, 1981. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *general commodities* (except classes A and B explosives) between Washington County, MD, on the one hand, and, on the other, points in the U.S.

Volume No. OP5–20

Decided January 16, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Hill not participating.)

MC 140409 (Sub-6F), filed December 11, 1980. Applicant: CIRCLE B TRANSPORTATION CORPORATION OF NORTH DAKOTA, 10250 West 44th Ave., Wheat Ridge, CO 80033. Representative: Lee E. Lucero, 450 Capitol Life Center, Denver, CO 80203. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives), between points in the U.S. (including AK but excluding HI).

MC 142189 (Sub-46), filed January 2, 1981. Applicant: C. M. BURNS, d.b.a. WESTERN TRUCKING, P.O. Box 980, Baker, MT 59313. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting *such commodities* as are dealt in by farm supply cooperatives, (a) between points in CO, IA, IL, IN, KS, MO, MN, MI, NE, OH, and WI, on the one hand, and, on the other, points in WA, ID, MT, ND, SD, MN, OR and WY, and (b) between points in OR and WA, on the hand, and, on the other, points in ID, MN, MT, ND, SD, UT, and WY.

MC 142449 (Sub-15), filed January 5, 1981. Applicant: SPEEDWAY HAULERS, INC., P.O. Box 1463, South Bend, IN 46624. Representative: Jo Ann Sawyer (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in IL, IN, and MI, on the one hand, and, on the other, points in AL, AR, CO, CT, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MO, NE, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, WV, WI, and WY. Condition: Issuance of a certificate in this proceeding is conditioned upon coincidental cancellation, at applicant's written request, of its certificated in MC–142449 Subs 4F, 6F, 9F, and 10F.

MC 142559 (Sub-164F), filed December 29, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelly Ave., Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Macomb, IL, Baltimore, MD, St. Louis, MO, Jersey City, NJ, and Dallas and Ft. Worth TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143179 (Sub-23F), filed December 22, 1980. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). Transporting (1) *polystyrene plastic and fiber egg trays*, and (2) *materials and supplies* used in the packaging and shipment of eggs, between points in the U.S., under continuing contract(s) with Milton G. Waldbaum Company, of Wakefield, NE.

MC 143389 (Sub-14), filed January 13, 1981. Applicant: MERCHANTS DUTCH EXPRESS, INC., 700 Pine St., Monroe, LA 71201. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by a manufacturer of paper and paper products, between points in the U.S. under continuing contract(s) with Bancroft Bag, Inc., of West Monroe, LA.

MC 143739 (Sub-45), filed January 2, 1981. Appliant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: Gary W. Shurson (same address as applicant). Transporting *food and related products*, betwen Kansas City, MO, on the one hand, and, on the other points in IL, IN, IA, KY, MI, MN, NE, ND, OH, PA, SD, TN, WV, and WI.

MC 145999 (Sub-8), filed January 5, 1981. Applicant: WESTERN DRYWALL TRANSPORT INC., d.b.a. WESTERN DIRECT TRANSPORT, 2001 Broadway, Vallejo, CA 94590. Representative: Norman A. Sorensen (same address as appliant). Transporting *building materials* between points in CA, OR, WA, ID, MT, UT, NM, AZ, NV, and WY.

MC 147969 (Sub-5F), filed December 16, 1980. Applicant: JOE S. BOWEN, INC., Highway 264 East, P.O. Box 282, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *such commodities* as are dealt in or used by discount and grocery stores, from points in the U.S. (except AK and HI) to points in AR, AL, KS, MO, OK, TX, LA, MS, KY, TN, and IL, restricted to traffic destined to the facilities of Wal–Mart, Inc.

MC 150578 (Sub-8), filed January 6, 1981. Applicant: STEVENS TRANSPORT, a division of STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey (same address as applicant). Transporting *such commodities* as are dealt in by petroleum distributors, between points in LA, OK, and TX.

MC 151638 (Sub-1F), filed December 17, 1980. Applicant: M. D. NICHOLS, d.b.a. BECO–BANNER EXPRESS CO., P.O. Box 3452, Fremont, CA 94538. Representative: M. D. Nichols (same address as applicant). Transporting (1) *cabonated beverages*, and (2) *extracts*, between points in Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Solano Counties, CA, on the one hand, and, on the other, points in Nevada.

MC 151968 (Sub-5), filed January 6, 1981. Applicant: ALLSTATE TRANSPORTATION COMPANY, a corporation, 10700 Lyndale Ave. South, Minneapolis, MN 55420. Representative: George L. Hirschbach, 920 West 21st St., P.O. Box 155, South Sioux City, NE

68776. Transporting *machinery*, between points in the U.S., under continuing contract(s) with Valley Equipment Company, of Burnsville, MN.

MC 152209 (Sub-1F), filed December 31, 1980. Applicant: TRANSPORT DE VEHICULES L. G. LTEE, a corporation, 9980 Papineau St., Montreal, Quebec, Canada H2B 1Z8. Representative: Adrien R. Paquette, 200 St. James Street Ouest, Montreal, Quebec, Canada H2Y 1M1. Transporting *used passenger vehicles*, in truckaway service, between port of entry on the international boundary line between the United States and Canada at or near Champlain, NY, on the one hand, and, on the other, those points in Florida on and south of a line beginning at or near Fort Pierce and extending along FL Hwy 70 to junction FL Hwy 72, and then along FL Hwy 72 to the Gulf of Mexico, restricted to traffic originating at or destined to points in the Province of Quebec, Canada.

MC 153418, filed January 2, 1981. Applicant: DISTRIBUTION CONCEPTS, INC., P.O. Box 2081, Oakland, CA 94604. Representative: Kirk Wm. Horton, 333 Hegenberger Rd., Suite 400, Oakland, CA 94621. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Sears, Roebuck, and Company, of Chicago, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3204 Filed 1-27-81; 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 indentify 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-90

The following applications were filed in Region I.

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 148654 (Sub-1-1TA), filed January 14, 1981. Applicant: CLOVERLEAF TRANSPORTATION INC., 14 Kerry Lane, Spring Valley, NY 10977. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Coffee and coffee beans* from the New York and New Jersey Piers (New York, NY Commercial Zone) to Syracuse, NY, under a continuing contract(s) with Paul DeLima Coffee Co., Inc. of Syracuse, NY. Supporting shipper(s): Paul DeLima Coffee Co., Inc., Box 6149 Tead Station, Syracuse, NY 13217.

MC 149579 (Sub-1-3TA), filed January 14, 1981. Applicant: TRANSPORT SERVICE, INC., 216 Amaral Street, P.O. Box 4167, East Providence, RI 02914. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier: irregular routes: Steel articles*, from Elmhurst, IL and Pittsburgh, PA to the facilities of Brenco, Inc. located at Petersburg, VA, under continuing contract with Washburn Wire Company. Supporting shipper(s): Washburn Wire Company, 300 Bourne Avenue, Rumford, RI 02916.

MC 112108 (Sub-1-1TA), filed January 15, 1981. Applicant: LEPRECHAUN LINES, INC., Route 32, P.O. Box 2628, Newburgh, NY 12550. Representative: J. C. Dail, Jr., P.O. Box LL, McLean, VA 22101. *Contract carrier:* irregular routes: *passengers and their baggage*, in charter operations, under a continuing contract or contracts with Leprechaun Tours, Inc., between points in the United States (including AK and HI). Supporting shipper: Leprechaun Tours, Inc., Route 32, P.O. Box 2628, Newburgh, NY 12550.

MC 106958 (Sub-1-1TA), filed January 15, 1981. Applicant: KUPPER BROS., INC., Victory Circle, South Amboy, NJ 08879. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Copperas, in bulk, in dump trailers*, from Sayreville, NJ to Louisville, KY, under contract(s) with United Catalyst, Inc. Of Louisville, NY. Supporting shipper(s): United Catalyst, Inc., 1227 South 12th Street, Louisville, KY 40210.

MC 152074 (Sub-1-2TA), filed January 15, 1981. Applicant: KEY-STONE FREIGHT, INC., 767 St. George St., Woodbridge, NJ 07095. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Toilet preparations and personal care products*, between points in the US, under continuing contract(s) with Charles of the Ritz, Holmdel, NJ. Supporting shipper: Charles of the Ritz, P.O. Box 711, Holmdel, NJ 07333.

MC 147864 (Sub-1-1TA), filed January 13, 1981. Applicant: YANTICAW TRUCKING CORPORATION, 69 Yanticaw St., Clifton, NY 07013. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Power and generation equipment, transformers, generators, turbine rotors, and motors, and (2) materials, equipment, and supplies used in the manufacture, sale, installation, and servicing of the commodities named in (1) above*, between the facilities of the General Electric Company, located at North Bergen, NJ, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper(s): General Electric Company, 6001 Tonnele Ave., North Bergen, NJ 07047.

MC 150122 (Sub-1-2TA), filed January 15, 1981. Applicant: DYSART SERVICE, INC., MRC Box 156, Bangor, ME 04401. Representative: R. Emery Clark, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. *Aviation fuel* from Boston, MA to points in ME, VT and NH, restricted to traffic originating at or destined to the facilities of Marcks Utilities Corporation. Supporting shipper: Marcks Utilities Corporation, 30 Lincoln Ave., Roslyn, NY 11577.

MC 153611 (Sub-1-1TA), filed January 15, 1981. Applicant: H. STANLEY EDINGER d.b.a. EDINGER TRUCKING, RD #1, Route 80, Tully, NY 13159. Representative: John L. Alfano, Esq., Alfano & Alfano, P.C., 550 Mamaroneck Ave., Harrison, NY 10528. *Contract carrier:* Irregular routes: *Wire, and*

supplies, materials, and equipment used in the manufacture, sale, and distribution of wire (except commodities in bulk), between Camden, NY, on the one hand, and, on the other, points in AL, GA, IL, NC, and WI, under continuing contract(s) with Laribee Wire Mfg. Co., Inc., of Camden, NY. Supporting shipper: Laribee Wire Mfg. Co., Inc., 26 Harden Road, Camden, NY 13316.

MC 144122 (Sub-1–5TA), filed January 15, 1981. Applicant: CARRETTA Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076. *General commodities (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* from points in CT, NY, and NJ to Philadelphia, PA, serving Philadelphia solely for purposes of tacking with applicant's existing certificate in MC 144122 Sub 27F. Supporting shipper(s): Mobil Chemical Company, Chemical Coatings Division, 150 J.F.K. Parkway, Short Hills, NJ 07078; Keuffel & Esser, 20 Whippany Rd., Morristown, NJ 07960; FMC Corp., 2000 Market Street, Philadelphia, PA 19103; Walter Kidde Corp., 675 Main Street, Belleville, NJ 07109; MEM Corp., Northvale, NJ 07647; Ilford Corp., Century Rd., Paramus, NJ 07652; Faberge, Inc., 440 Franklin Turnpike, Ramsey, NJ 07430.

MC 15821 (Sub-1–1TA), filed January 13, 1981. Applicant: GRAF BROS., INC., P.O. Box 271, Newburyport, MA 01950. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *General commodities (except household goods as defined by the Commission, Class A and B explosives, commodities in bulk and commodities requiring special equipment)* between points in MA, RI, CT, NH, VT, and ME (except Aroostook and Washington Counties). Supporting shipper(s): There are 14 statements in support of this application that may be examined at the ICC Regional Office in Boston, MA.

MC 136916 (Sub-1–3TA), filed January 13, 1981. Applicant: LENAPE TRANSPORTATION CO., INC., P.O. Box 227, Lafayette, NJ 07848. Representative: Morton E. Keil, Suite 1832, 2 World Trade Center, New York, NY 10048. *Soda ash, in bulk,* from Solvay, NY to Jersey City and Carteret, NJ and Washington, PA. Supporting shipper(s): Ball Corporation, Glass Container Group, 345 South High Street, Muncie, IN 47302.

MC 153607 (Sub-1–1TA), filed January 15, 1981. Applicant: H & S TRUCKING, R.D. #153, Blairstown, NJ 07825. Representative: Michael R. Werner & Edward F. Bowes, Esqs., P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *Hanging beef, boxed beef and pork,* from Le Mars, IA and Geneseo, IL to Easton, PA, from Esterville, IA to Easton, PA, under continuing contract(s) with Korte Co., Inc., Easton, PA. Supporting shipper: Korte Co., Inc., 364 E. Berwick St., Easton, PA 18042.

MC 106207 (Sub-1–1TA), filed January 15, 1981. Applicant: New York Keansburg-Long Branch Bus Co., Inc., 50 Highway 36, Leonardo, NJ 07737. Representative: Sidney J. Leshin, Esq., 575 Madison Avenue, New York, NY 10022. *Contract carrier:* irregular routes: *Passengers,* between Staten Island, NY and Manhattan, NY via NJ, under continuing contract with Village Hills Riders Association, Staten Island, NY. Supporting shipper: Village Hills Riders Association, Staten Island, NY.

MC 151575 (Sub-1–2TA), filed January 15, 1981. Applicant: WESTWAY TRANSPORT, INC., No. 2 Federal St., St. Albans, VT 05478. Representative: Willaim J. Hirsch P.C., 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202. *Malt beverages and liquor,* from Trenton, NJ and Relay and Baltimore, MD to Norwood, Lawrence, Fairhaven, Marlboro, and West Roxbury, MA. Supporting shipper: United Liquors, Limited, 99 Rivermoor Street, West Roxbury, MA 02132.

MC 148034 (Sub-1–1TA), filed January 14, 1981. Applicant: EDWARD C. LOTT, INC., 2338 Slaterville Road, Ithaca, NY 14850. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14850. *Contract carrier:* irregular routes: *Foodstuffs and animal feed, also, materials, equipment and supplies, used in the manufacture, sale and distribution of such commodities* between Friendship, NY and all points in FL under continuing contract(s) with Friendship Dairies, Inc. Supporting shipper: Friendship Dairies, Inc., Friendship, NY 14739.

MC 140768 (Sub-1–14TA), filed January 13, 1981. 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. *Welding bars, rods and wire; welding parts and accessories; and material, supplies and equipment used in the manufacture and distribution thereof,* (1) from Charlotte, NC to Birmingham, AL; (2) from Cleveland, OH to Sparrows Point, MD; and (3) from Sparrows Point, MD to Kingston, RI. Supporting shipper(s): Airco Welding Products, 575 Mountain Avenue, Murray Hill, NJ.

MC 141601 (Sub-1–1TA), filed January 13, 1981. Applicant: ARROW DRIVEAWAY, INC., 100 Pavonia Ave., Jersey City, NJ 07302. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Trucks, chassis, and tractors, in secondary movements, in driveaway service,* between points in the US (except AK and HI). Supporting shipper(s): There are 10 statements in support of this application that may be examined at the ICC Regional Office in Boston, MA.

The following protests were filed in Region 4. Send protests to: Interstate Commerce Commission, Complaints and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 119366 (Sub-4–2TA), filed January 13, 1981. Applicant: MOTOR CITY CARTAGE COMPANY, 175 12th Street, Detroit, MI 48216. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. *Meats and meat products, fresh, cured and canned* from Detroit, MI to Lucas County, OH. Supporting shipper: Swift Independent Packing Company, 115 W. Jackson Blvd., Chicago, IL.

MC 146438 (Sub-4–4TA), filed January 18, 1981. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Frozen foods,* and *materials and supplies used in the manufacture and distribution of frozen foods* (except commodities in bulk) (1) between points in the U.S. on the one hand, and, on the other, facilities used by Chef Pierre, Inc. in MI and MS; and (2) between points in the U.S., on the one hand, and, on the other, facilities used by Mrs. Smith's Frozen Foods Co. in PA, OR, CA, GA, NJ and MI. Supporting shippers: Chef Pierre, Inc., Box 1009, Traverse City, MI 49684; Mrs. Smith's Frozen Foods Co., P.O. Box 298, Pottstown, PA 19464.

MC 16499 (Sub-4–3TA), filed January 14, 1981. Applicant: ROHDE CARTAGE, INC., P.O. Box 475, Mundelein, IL 60060. Representative: D. R. Beeler, 1261 Columbia Avenue, Franklin, TN 37064. *Packaging materials (except in bulk)* from the facilities of Potlatch Corp. at Mundelein, IL to points in IA, IN, KY, MI, MO, TN, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Potlatch Corp., 225 E. Hawley, Mundelein, IL 60060.

MC 146753 (Sub-4–7TA), filed January 13, 1981. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street NW.,

Washington, DC 20001. *Such commodities* as are dealt in or used by manufacturers and distributors of sound recordings, between points in the U.S. Restricted to traffic originating at or destined to the facilities of CBS Record Division, U.S., CBS, Inc. Supporting shipper: CBS Record Div., 51 West 52nd Street, New York, NY 10019.

MC 111812 (Sub-4–24TA), filed January 14, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *Coffee beans; beverages; beverage preparations and commodities used or useful in the manufacture, sale and distribution thereof (except commodities in bulk),* from New York, NY and its Commercial Zone to points in IL, IA, MN, NE, ND, SD and WI. Supporting shipper: Hills Bros. Coffee, Inc., 2 Harrison Street, P.O. Box 3149, San Francisco, CA 94119.

MC 111812 (Sub-4–23TA), filed January 14, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *(1) Hospital supplies; intraveneous solutions, drugs (subject to RVNX), health care products, and (2) Materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above,* between the facilities of Abbott Laboratories located at N. Chicago, IL on the one hand, and, on the other, points in CA, CO, FL, GA, ID, KS, MA, NJ, OR, PA and WA. An underlying ETA seeks 120 days authority. Supporting shipper: Abbott Laboratories, 1400 Sheridan Road, N. Chicago, IL 60064.

MC 150103 (Sub-4–10TA), filed January 13, 1981. Applicant: SCHWEIGER INDUSTRIES, INC., 116 W. Washington St., Jefferson, WI 53549. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Contract,* irregular; *Packaging material* from Salem, IL to points in IN, IA, MI, MN, and WI, under a continuing contract(s) with Jiffy Packaging Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Jiffy Packaging Corporation, P.O. Box 27, Somerset, NJ 08873.

MC 15975 (Sub-4–20TA), filed January 14, 1981. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). *Alcoholic beverages and wines,* in cartons or boxes, between Jacksonville, FL, 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: McKesson Wine and Spirit Company, 2783 W. 5th St., Jacksonville, FL 32203.

MC 153119 (Sub-4–1TA), filed January 12, 1981. Applicant: FLEEGE DISTRIBUTING CO., Box 273, Foley, MN 56329. Representative: Robert Fleege (same address as applicant). *Contract,* irregular: *Millwork, hardware, building supplies and dimension lumber* between Woodcraft Industries and/or its subsidiaries (located in St. Cloud, MN, Foreston, MN, and Fagro, ND) and points in AZ, AR, CO, ID, IL, IN, IA, KS, KY, MD, MI, MN, MO, MT, NE, NM, NY, ND, OH, OK, PA, SD, TN, TX, UT, VA, WV, WI, WY. Restricted to traffic moving under continuing contract with Woodcraft Industries and/or its subsidiaries. Supporting shipper: Woodcraft Industries, Inc., 525 Lincoln Avenue SE., St. Cloud, MN 56301.

MC 149457 (Sub-4–7TA), filed January 12, 1981. Applicant: JWI TRUCKING, INC., 8100 North Teutonia Avenue, Milwaukee, WI 53209. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Ready made garments and wearing apparel* between Los Angeles, CA and points in the Los Angeles, CA commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI). Underlying ETA seeks 120 days authority. Supporting shippers: Harris & Frank, 5570 Wilshire Blvd., Los Angeles, CA 90036; Bullock's, 1531 West Imperial Highway, LaHarbra, CA 90631; and May Company, 3447 South Grand Avenue, Los Angeles, CA 90007.

MC 144757 (Sub-4–10TA), filed January 13, 1981. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 308 W. Blvd., Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. *Contract;* irregular; *Lumber, Plywood, Wood Products and Forest Products* from ID, MT, OR, WA to all points in U.S. (except AK and HI) under contract with Kokanee Cedar Sales, Inc. and Gibbs Lumber Co. Supporting shippers: Gibbs Lumber Co., P.O. Box 878, lake Elmo, MN 55042 and Kokanee Cedar Sales, Inc., P.O. Box 892, Bonners Ferry, ID 83805.

MC 22311 (Sub-4–2), filed January 12, 1981. Applicant: A. LINE, INC., P.O. Box 765, Hammond, IN 46325. Representative: Marvin Mickow, P.O. Box 765, Hammond, IN 46325. *Such commodities as are used in or dealt in by manufacturers and distributors of coiled springs and railroad spikes, (except commodities in bulk)* between Cook County, IL and Brown County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Alco Spring Industries, Inc., Chicago Heights, IL.

MC 135231 (Sub-4–1), filed January 12, 1981. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1 Hwy. 1 and 59 West, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *General commodities* (except Classes A and B explosives), from the facilities of Midwest Air Freight Shipper's Association at Bloomington, MN to points in the U.S. Restricted to traffic originating at above name facilities and moving on bills of lading issued by Midwest Air Freight Shipper's Association. Supporting shipper: Midwest Air Freight Shipper's Association, 8068 26th Ave. So., Bloomington, MN 55420.

MC 119577 (Sub-4–2TA), filed January 12, 1981. Applicant: OTTAWA CARTAGE, INC., P.O. Box 458, Ottawa, IL 61350. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. *Coal,* from points in IN to Wedron, IL. An underlying ETA seeks 120 days authority. Supporting shipper: Renco Fuel, 477 E. Butterfield, Lombard, IL 60148.

MC 97397 (Sub-4–1), filed January 8, 1981. Applicant: BARKLEY TRUCK LINES, INC., 124 1st Avenue N.W., P.O. Box 970, Watertown SD 57201. Representative: James R. Becker, 412 West Ninth Street, P.O. Box 1443, Sioux Falls SD 57101. *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): Between Watertown, SD, and Hammer, SD: From Watertown over Interstate Hwy 29 to junction U.S. Hwy 12, then over U.S. Hwy 12 to junction SD Hwy 15A, then over SD Hwy 15A to Wilmot, SD, then over SD Hwy 15 to junction unnumbered Hwy, they over unnumbered Hwy via Peever, SD, to junction U.S Hwy 81, then over U.S. Hwy 81 to Hammer, and return over the same route or over Interstate Hwy 29, serving the intermediate points of Summit, Marvin, Wilmot, Peever and Sisseton, SD, and the off-route points of Twin Brooks, Corona, Big Stone City, Hartford Beach, Ortley, Eden, Fort Sisseton, Lake City, Hillhead, Marlow, Veblen, Claire City, New Effington, Victor, Rosholt, White Rock, Dahlberg and Lohre Station, SD. Supporting shipper: 5 supporting shippers.

Note.—Applicant holds motor contract carrier authority in MC 128530, and therefore dual operations may be involved.

MC 144696 (Sub-4–4TA), filed January 13, 1981. Applicant: MEEUWSEN PRODUCE, INC., 9525 Ransom Street, Zeeland, MI 49464. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Foodstuffs, materials, equipment, and supplies used in the manufacture thereof,* between Chesaning, MI on the one hand, and, on the other, all points in and east of WI, IL, KY, TN, and MS. An underlying ETA seeks 120 days authority. Supporting shipper: Peet Packing Company, 1100 West Line Street, Chesaning, MI 48616.

MC 147343 (Sub-4–7TA), filed January 13, 1981. Applicant: TREADWAY CARRIERS, INC., 9333 N. Meridian St., Indianapolis, IN 46260. Representative: Charles E. Mayer, Vice President (same address as applicant). *Contract,* irregular: *Boxes, fibreboard, paper, paperboard or pulpboard, NOI, KD flat or folded flat, other than corrugated, printed or not printed* from New York, NY and its commercial zone to all points and places in the US (except AK and HI). Supporting shipper(s): Packaging Corp. of America, 70 Outerwater Lane, Garfield, NJ.

MC 144115 (Sub-4–1TA), filed January 13, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 903 6th Street NW., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095. *Non-Exempt or Kindred Products* from IA, WI, NE, and MN to points in CA and CO, restricted to shipments originating at or destined to the facilities of Geo. A. Hormel & Co. Supporting shipper: Geo. Hormel & Co., Austing, MN.

MC 119974 (Sub-4–4TA), filed January 13, 1981. Applicant: L. C. L. TRANSIT COMPANY, 949 Advance Street, Green Bay, WI 54304. Representative: L. F. Abel, P.O. Box 949, Green Bay, WI 54305. *Toilet Preparations, Pharmaceuticals and Household Cleaning Products (except in bulk, in tank vehicles),* from Chicago, IL to WI and the Upper Peninsula of MI. Supporting shipper: Bristol-Myers Company, P.O. Box 8528, Chicago, IL 60680.

MC 149500 (Sub-4–3), filed January 13, 1981. Applicant: INTERMODAL SERVICES, INC., 11650 Courthouse Boulevard, Inver Grove Heights, MN 55075. Representative: James M. Christenson, 4444 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. (1) *Fabricated metal products and equipment, materials and supplies used in the manufacture of such products* between Twin Cities, MN and points in the 48 contiguous states. Supporting shippers: General Resource Corp., 201–3rd Street South, Hopkins, MN 55343; Lear Siegler, Inc., Mammoth Division, 13120 B County Road 6, Minneapolis, MN 55441.

MC 107162 (Sub-4–10TA), filed January 13, 1981. Applicant: NOBLE GRAHAM TRANSPORT, INC., Rural Route 1, Brimley, MI 49715. Representative: Michael S. Varda, 121 S. Pinckney Street, Madison, WI 53703. (1) *Hardwood flooring systems, hardwood flooring, lumber, lumber products and accessories used in the installation thereof* from the facilities of Horner Flooring Co. at Dollar Bay, MI to points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY; (2) on return, *equipment, materials and supplies used or useful in the manufacture of the named commodities* from points in the U.S. to the origins in (1); (3) *lumber* from Munising and Shingleton, MI to Denver, CO; and (4) *fertilizer and fertilizer ingredients* from Maumee, OH to points in the Upper Peninsula of MI. An underlying ETA seeks 120 days authority. Supporting shipper(s): Horner Flooring Company, Dollar Bay, MI 49922; Cliffs Forest Products, Box 520, Iron Mountain, MI 49801; and Holmquist Feed Mill, P.O. Box 208, Trenary, MI 49891.

MC 111812 (Sub-4–22TA), filed January 13, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *(1) Such commodities as are dealt in by manufacturers of floors, floor coverings, walls and wall coverings (except commodities in bulk), and (2) Materials, equipment and supplies used in the manufacture or distribution of the commodities named in (1) above (except commodities in bulk),* between the facilities of Roberts Consolidated Industries, Inc. located at Conyers, GA on the one hand, and, on the other, points in the U.S. Supporting shipper: Roberts Consolidated Industries, Inc., 600 North Baldwin Park Boulevard, City of Industry, CA 91749.

MC 139023 (Sub-4–2TA), filed January 13, 1981. Applicant: 2–G TRANSPORTATION, INC., 12515 Pennsylvania Ave., Savage, MN 55378. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Malt beverages* from Omaha, NE to Dickinson and Grand Forks, ND. An underlying ETA seeks 120 days authority. Supporting shippers: (1) Dakota Sales Co., Inc. 1916 Demers Avenue, Grand Forks, ND 58201; (2) Leo J. Braun, d.b.a. Queen City Beverage Company, North Highway 22, P.O. Box 1506, Dickinson, ND 58601.

MC 153288 (Sub-4–1TA), filed January 13, 1981. Applicant: MINNESOTA UTILITY CONTRACTING, INC., 6100 Industry Avenue, Anoka, MN 55303. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101. *Utility trucks,* from points in MN to Lake Charles, LA. Supporting shipper: Northwestern Bell Telephone Company, 500 North Carlton Steet, St. Paul, MN 55119.

MC 76266 (Sub-4–15TA), filed January 13, 1981. 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. *(1) Electrical Storage Batteries and Parts thereof, and (2) Equipment, Materials and Supplies used in the manufacture or distribution of Electric Storage Batteries* between the plantsites of Gould, Inc. at Phoenix, AZ; City of Industry, CA; Denver, CO; Orlando, FL; Atlanta, GA; Leavenworth, KS; Shreveport, LA; St. Paul, MN; Vicksburg, MS; Zanesville, OH; Salem, OR; Dunmore, PA; Memphis, TN; Dallas, TX; Lynchburg, VA; and Milwaukee, WI on the one hand and points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Gould, Inc., P.O. Box 43140, St. Paul, MN 55164.

MC 143318 (Sub-4–1), filed January 13, 1981. Applicant: JENKINS TRUCKLINE, INC., Motley, MN 56466. Representative: James F. Finley, AAA Building, Suite 200, 170 E. 7th Place, St. Paul, MN 55101. *Glass Container Bottles* from all points in the IL to all points in the MN. Supporting shipper: Brainerd-Wadena Beverage Co., 2024 S.E. 13 Street, P.O. Box 352, Brainerd, MN 56401.

MC 148705 (Sub-4–8TA), filed January 12, 1981. Applicant: TWIN CONTINENTAL TRANSPORT CORP., 5738 Olson Highway, Minneapolis, MN 55422. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402. *Alcoholic beverages* from Jacksonville, FL and points in CA to St. Paul, MN and points in the Minneapolis/St. Paul Commercial Zone. Supporting shipper: Midwest Wine Co., 1340 University Ave., St. Paul, MN 55104.

MC 117370 (Sub-4–1TA), filed January 13, 1981. Applicant: STAFFORD TRUCKING, INC., 2155 Hollyhock Lane, Elm Grove, WI 53122. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Foundry sand additives, in bulk,* from the facilities of American Colloid Co. at or near Waterloo, IA to Brillion, WI. Supporting shipper: American Colloid Co., P.O. Box 228, Skokie, IL 60077.

MC 153515 (Sub-4–1TA), filed January 12, 1981. Applicant: JO'CEE

TRANSPORT CO., INC., 1310 W 107th St., Chicago, IL 60643. Representative: William D. Brejcha, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Iron and steel articles,* between points in the Chicago, IL Commercial Zone and the Detroit, MI Commercial Zone on the one hand, and, on the other, points in IA, IL, IN, MI, MN, MO, OH and WI. Supporting shipper: (1) National Material Corporation, 2525 Arthur Avenue, Elk Grove Village, IL 60007; (2) Pierson Steel Corporation, 596 Green Bay Road, Winnetka, Illinois 60093; (3) Serendipity Steel Co., 3040 Charlevoix Drive, Grand Rapids, MI 49506; (4) David Steel Company, 307 North Michigan Avenue, Chicago, IL 60601.

MC 153514 (Sub-4–1TA), filed January 12, 1980. Applicant: BRUCE MATTILA TRUCKING, 5601 E. Glenmore Rd., Minnetonka, MN 55343. Representative: Robert P. Sack, P.O. Box 6010, W. St. Paul, MN 55118. *Firebrick, refractories, furnaces, and materials, supplies, and equipment used in the installation of furnace lingins,* between the facilities of Hilton Firebrick Service, Inc. at Eagan, MN on the one hand, and, on the other hand points in the U.S. Supporting shipper: Hilton Firebrick Service, Inc., 3810 Sibley Memorial Hwy, Eagan, MN 55122.

MC 128462 (Sub-4–2TA), filed November 20, 1980. Applicant: SCHULTZ & SON TRUCK LINE, INC. (now known as PRAIRIE REFRIGERATED EXPRESS, INC.), P.O. Box 36, Long Prairie, MN 56347. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. *Contract* irregular: *meat and meat products,* from the Fargo, ND commercial zone to points in CA, FL, IL, MI, MN, NE, OH, OK, TN and WI. Restricted to traffic moving under continuing contract with Held Beef Industries, Inc. Supporting shipper: Held Beef Industries, Inc., Stockyard Road, West Fargo, ND 58078.

MC 98883 (Sub-4–2TA), filed January 9, 1981. Applicant: MANN CARTAGE CO., INC., 9152 South Trumbull Avenue, Evergreen Park, IL 60602. Representative: Marc J. Bluementhal, 39 South LaSalle Street, Chicago, IL 60603. *Contract: irregular: Such commodities dealt in by grocery and food business houses; also materials, equipment and supplies used in the production, marketing and sale of these products,* between Naperville, IL, on the one hand, and, on the other, Denver, CO; Dallas, TX; Little Rock, AR; and points in MO under contract with Nabisco, Inc. Supporting shipper: Nabisco, Inc., East Hanover, New Jersey 07936.

MC 153492 (Sub-4–1TA), filed January 9, 1981. Applicant: JOHN M. CORCORAN, d.b.a. CORCORAN'S DRIVEAWAY, 216 Dawn Avenue, Rockford, IL 61107. Representative: Donald S. Mullins, 1033 Graceland Avenue, Des Plaines, IL 60016. *Used Automobiles and Trucks,* Between points in the Rockford, IL, Commercial Zone, on the one hand, and, on the other, points in the states of IA, IN, IL, MI, MN, MO, and WI. Supporting shipper: Greater Rockford Auto Auction, 6316 Beltline Road, Rockford, IL 61109, Rock River Ford Inc. 224 No. Alpine, Rockford, IL 61107, White's Auto Sales, 1515 Kishwaukee St. Rockford, IL 61108.

MC 139482 (Sub-4–25TA), filed January 9, 1981. 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. *(1) Paint and paint products and (2) materials, supplies and equipment used in the manufacture and distribution of commodities named in (1) above,* between points in the U.S. (except AK and HI). Restricted to the traffic originating at or destined to the facilities utilized by Schulte Paint & Lacquer Mfg. Co. Supporting shipper: Schulte Paint & Lacquer Mfg. Co., 627–45 E. Holly Ave., St. Louis, MO 63147.

MC 148930 (Sub-4–6TA), filed January 9, 1981. Applicant: AERO DELIVERIES, INC., 529 Gidley Dr., Grand Haven, MI 49417. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Contract* irregular: *General commodities (except in bulk)* between points in IL and MI, under a continuing contract with Lieberman Enterprises. Supporting shipper: Lieberman Enterprises, 9549 Penn Ave. S., Minneapolis, MN 55401.

MC 128543 (Sub-4–8TA), filed January 12, 1981. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. *Cleaning compounds and related materials, and materials, equipment, machinery and supplies* used in the manufacture and distribution of cleaning compounds (except commodities in bulk), between Joliet, IL, and Avenel, NJ, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, under a continuing contract with Economics Laboratory, Inc. Supporting shipper: Economics Laboratory, Inc., Osborn Building, St. Paul, MN 55102.

MC 147259 (Sub-4–8TA), filed January 12, 1981. Applicant: CHURCHILL TRANSPORTATION, INC., 2455 24th Street, Detroit, MI 48216. Representative: Richard E. VanWinkle, 16901 VanDam, South Holland, IL 60473. *General Commodities (except Household Goods as defined by the Commission and Class A and B explosives)* between Cook, DuPage, Kane, Lake and Will Counties, IL, and Lake and Porter Counties, IN, on the one hand, on the other, Macomb, Monroe, Oakland, Washtenaw and Wayne Counties, MI. Supporting shipper: Lawry's Foods, Inc., 570 West Avenue 26, Los Angeles, CA 90065.

MC 139482 (Sub-4–26TA), filed January 12, 1981. 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. *(1) Paper and paper products, plastic and plastic products, aluminum and aluminum products* and *(2) materials, supplies and equipment used in the manufacture and distribution of commodities listed in (1),* between points in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities utilized by Avery International. An underlying ETA seeks 120 days authority. Supporting shipper: Avery International, 250 Chester St., Painesville, OH 44077.

MC 147323 (Sub-4–1), filed January 16, 1981. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Contract; irregular: *General commodities* (except Classes A and B explosives, household goods as defined by the Commission and those commodities injurious or contaminating to other lading) between points in NY, OH, PA, and WV, on the one hand, and, on the other, points in the U.S. (except AK and HI) under a continuing contract or contracts with Busy Beaver Building Centers, Inc., of Pittsburgh, PA. Supporting shipper: Busy Beaver Building Centers, Inc., Pittsburgh, PA 15238.

MC 150798 (Sub-4–4TA), filed January 14, 1981. Applicant: CKR TRANSPORT, LTD., P.O. Box 599, Elmhurst, IL 60126. Representative: D. R. Beeler, 1261 Columbia Avenue, Franklin, TN 37064. *Chemicals, toilet preparations, personal care items, foodstuffs, (except in bulk), and materials and supplies used in the manufacture, sale, and distribution of the aforementioned* between Dallas, TX and Lawton, OK and their commercial zones on the one hand and points in the U.S. on the other. An underlying ETA seeks 120 days authority. Supporting shipper: Sasco, 8700 Stemmons Freeway, Suite 425, Dallas, TX 75247.

MC 143776 (Sub-4–17TA), filed January 15, 1981. Applicant: C.D.B., INCORPORATED, 155 Spaulding Avenue, S.E., Grand Rapids, MI 49506.

Representative: C. Michael Tubbs, (same as above). *General Commodities (except household goods as defined by the Commission and class A and B explosives)* between the facilities of Superior Plastics, Inc. and its subsidiaries and affiliates, on the one hand, and, on the other, various points in the Continental U.S. Supporting shipper: Superior Plastics, Inc.; 1660 Old Deerfield Road; Highland Park, IL 60035.

MC 153609 (Sub-4–1), filed January 16, 1981. Applicant: HOLLAND TRUCK & TRAILER REPAIR, INC., 1534 E. 168th Street, South Holland, IL 60473. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle Street, Chicago, IL 60602. *Wrecked and disabled motor vehicles and parts and accessories therefore,* between points in AL, AR, CO, DC, GA, IA, IL, IN, KS, KY, LA, MD, MI, MN, MO, MS, NE, NJ, NY, OH, PA, TN, VA, WI, and WV. Supporting shippers: Veen Cartage, Inc., 9146 S. Kolmar Ave., Oak Lawn, IL 60453; D. A. Express, Inc., 11937 S. Page Ave., Calumet Park, IL 60643.

MC 58851 (Sub-4–4TA), filed January 15, 1981. Applicant: RUDOLF EXPRESS CO., 1650 Armour Road, Bourbannais, IL 60914. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Contract: Irregular: Cleaning Compounds, disinfectants, softeners, insecticides and materials, supplies and equipment used in the manufacture and distribution thereof (Except in Bulk),* Between Sanfa Fe Springs, CA; Danville, Kankakee and Momence, IL; Clarksville and Piscataway, NJ; Maulden, SC; Atlanta, GA; and Memphis, TN; on the one hand, and, on the other, points in the U.S. (Except AK and HI) under continuing contract(s) with Texize, Division of MortonNorwich. Supporting Shipper: Texize, Division of MortonNorwich, P.O. Box 368, Greenville, SC 29602.

MC 111812 (Sub-4–25TA), filed January 12, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *(1) Candy and confectionery, and (2) Materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk),* between the facilities of Leaf Confectionery, Inc. located at Idaho Falls, ID on the one hand, and, on the other, points in AZ, CA, CO, IL, IA, KS, MN, MO, MT, NE, NV, ND, OR, SD, UT, WA, WI and WY. An underlying ETA seeks 5 days authority. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651.

MC 111812 (Sub-4–26TA), filed January 14, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *Cleaning and washing compounds; institutional and industrial maintenance supplies, such commodities as are dealt in by retail and wholesale grocery outlets and discount stores; and materials, equipment and supplies used in the manufacture and distribution of the above-described commodities (except commodities in bulk),* between the facilities utilized by Proctor and Gamble at (1) Kansas City, KS; St. Louis, MO; Iowa City, IA; Omaha, NE; Cincinnati, OH; and Chicago, IL on the one hand, and, on the other, points in the states of AZ, CA, ID, MT, NV, NM, OR, UT, WA and WY; and (2) Lexington, KY on the one hand, and, on the other, points in the states of AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. An underlying ETA seeks 120 days authority. Supporting shipper: The Procter and Gamble Company, P.O. Box 599, Cincinnati, OH 45210.

MC 145882 (Sub-4–3TA), filed January 14, 1981. Applicant: KUVASZOK TRANSPORT, INC., 1630 Rhonda Road, St. Joseph, Mi. 49085. Representative: Paul W. Fichtner, 1630 Rhonda Road, St. Joseph, Mi. 49085. *Residual Fuel,* from East Chicago, IN and Westville, IN to St. Joseph, MI and from St. Joseph, MI to Burns Harbor, IN. Supporting shipper: Enterprise Oil & Gas Company, 14445 Linwood Ave., Detroit, MI 48238.

MC 147572 (Sub-4–2TA), filed January 15, 1981. Applicant: COUNTRY LEASING, INC., 8206 Park Avenue, Allen Park, MI 48101. Representative: Alex J. Miller, P.O. Box 244, Bloomfield Hills, MI 48013. *Contract;* Irregular, *foods, food products, groceries and goods sold by retail grocery stores,* from WI, IL, IN, MO, and OH to Plymouth and Grand Rapids, MI. Supporting shipper, Spartan Stores, Inc., 850 76th Street SW., Grand Rapids, MI 49508.

MC 144630 (Sub-4–16TA), filed January 15, 1981. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN. 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN. 46240. *Grain flour* from Topeka, KS. to the facilities of Marsh Supermarktes, Inc. at or near Yorktown, Indianapolis, and Anderson, IN. Supporting shipper: Marsh Supermarkets, Inc., of Yorktown, IN.

MC 153610 (Sub-4–1TA), filed January 15, 1981. Applicant: LEASEWAY TRUCKING, INC., 880 North York Road, Elmhurst, IL 60126. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract,* irregular *Such merchandise as is dealt in and used by retail department stores, wholesale mercantile establishments, and mail order houses,* between Bedford Park, IL and Des Plaines, IL, on the one hand, and, on the other, points in IN and WI, under contract(s) with Carsons, Pirie, Scott & Company and Wieboldt Stores, Inc. Supporting shippers: Carsons, Pirie, Scott & Company, 1 S. State St., Wieboldt Stores, Inc., One North State, Chicago, IL 60602.

MC 16499 (Sub-4–4TA), filed January 15, 1981. Applicant: ROHDE CARTAGE, INC., P.O. Box 475, Mundelein, IL 60060. Representative: D. R. Beeler, 1261 Columbia Avenue, Franklin, TN 37064. *Plastic articles (except in bulk) and materials and supplies used in the manufacture, sales, and distribution of the aforementioned* between the facilities of Parade Packaging Corp. at Mundelein, IL, on the one hand, and points in IN, IA, KY, MI, MO, TN, and WI on the other. An underlying ETA seeks 120 days authority. Supporting shipper: Parada Packaging Corp., 222 South Shaddle, Mundelein, IL 60060.

MC 145664 (Sub-4–14TA), filed January 15, 1981. Applicant: STALBERGER, INC., 223 South 50th Ave., W., Duluth, MN 55807. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Cellulose and insulation products and materials, supplies and equipment used in the manufacture, sale and distribution of cellulose and insulation* between points in Hennepin and Ramsey County, MN; Wyandotte County, KS; Denver County, CO, on the one hand, and, on the other, points in IA, MI, ND, NE, SD, and WI, restricted to traffic from, to or between facilities operated or utilized by Diversified insulation Industries. Supporting shipper: Diversified Insulation Industries, a Division of Insulation Sales Co., P.O. Box 188, Hamel, MN 55346.

MC 136512 (Sub-4–1TA), filed January 14, 1981. Applicant: SPACE CARRIERS, INC., 444 Lafayette Road, St. Paul, MN 55101. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Paper bags, paper rolls, and materials, equipment and supplies* used in the manufacture of paper bags and paper rolls, between Hudson, WI, on the one hand, and, on the other, points in KS, NE, MO, IA, IL, IN, KY, ND, SD, MI, TX and MN. Supporting shipper: Duro Paper Bag Manufacturing Company, Route 1, Box 247, Hudson, WI 54016.

MC 123407 (Sub-4–51TA), filed January 14, 1981. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304.

Representative: Sterling W. Hygema (same address as applicant). *Printing paper, other than newsprint,* from Brainerd and Cloquet, MN, to points in and east of ND, SD, NE, CO, and NM. Supporting shipper: Potlatch Corporation, Box 510, Cloquet, MN 55720.

MC 123407 (Sub-4–52TA), filed January 9, 1981. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: Sterling W. Hygema (same address as applicant). *Marine sandblasting and painting equipment, and supplies used in marine sandblasting and painting* from Newport News, VA, to Mobile, AL, and Beaumont, TX. Supporting shipper: Sabine Coatings, Inc., 1670 Cardinal Drive, Beaumont, TX 77705. An underlying ETA seeks 120 days authority.

MC 144757 (Sub-4–11TA), filed January 15, 1981. Applicant: DAKOTA PACIFIC TRANSPORT, INC., 308 W. Blvd., Rapid City, SD 57701. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. *Contract;* irregular; *1. Building materials; 2. Wood Products; 3. Commodities used in the manufacture of wood products* from points in OR and WA to points in AR, CO, IL, IA, KS, MN, MT, MO, NE, ND, OK, SD, WA, WI and WY under contract with Trimac Panel Products, Inc. and International Development, Inc. Supporting shippers: Trimac Panel Products, Inc. P.O. Box 25277, Portland, OR 97225 and International Development, Inc. 10149 Barbur Blvd, Suite 101, Portland, OR 97219.

MC 150589 (Sub-4–3TA), filed January 15, 1981. Applicant: J & K TRANSPORTATION CO., INC., 1600 Industrial St., Dearborn, MI 48120. Representative: Michael F. Morrone, 1150 17th St., N.W., Suite 1000, Washington, D.C. 20036. *Contract,* irregular: *Aluminum and vinyl siding and the materials used in the production of aluminum and vinyl siding* between points in Wayne County and Jackson County, MI and points in KY, NY, PA, OH, IL, IN, MD, DE, MO, NJ, and GA for the account of Modern Materials Corp. An underlying ETA requests 120 days authority. Supporting shipper: Modern Materials Corp., 301 S. Green St., Detroit, MI 48209.

MC 103993 (Sub-4–26TA), filed January 15, 1981. Applicant: MORGAN DRIVE-AWAY INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James Buda (same address as applicant). *Motor Home Chassis* in truckaway service, between Santa Clara County, CA, on the one hand, and on the other, Kosciusko County, IN. Supporting shipper: Barth Recreational Vehicles, Milford, IN 46542.

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 9291 (Sub-5–5TA), filed January 13, 1981. Applicant: CARROL BALL TRANSPORT, INC., P.O. Box 53, Centerville, KS. 66014. Representative: Clyde N. Christey, Ks Credit Union Bldg, 1010 Tyler, Suite 110L, Topeka, KS. 66612. *Insulating material, NOI; rolled roofing, composition or prepared NOI; Mineral wool (glass) plain or saturated bats, with or without paper backs and mineral wool, (glass) plain or saturated other than bats,* between the facilities of Owens Corning Fiberglass Corp., at or near Kansas City, KS and Pauline, KS on the one hand and points in MO, AL, TN and MS on the other hand. Supporting shipper: Owens Corning Fiberglas Corp., Fiberglass Tower, Toledo, OH 43659.

MC 14743 (Sub-2TA), filed January 14, 1981. Applicant: E. L. POWELL & SONS TRUCKING CO, INC., P.O. Box 356, Tulsa, OK 74101. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. Contract, irregular, *fuel oil,* from Ardmore, OK to Harris County, TX under continuing contract with National Petroleum Sales, Inc. Supporting shipper: National Petroleum Sales, Inc., 3105 East Skelly Drive, Tulsa, OK 74105.

MC 111401 (Sub-5–28TA), filed January 13, 1981. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic (same address as applicant). *Flour, in bulk,* from Carthage, MO to North Sioux City, SD. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936.

MC 111401 (Sub-5–29TA), filed January 13, 1981. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic (same address as applicant). *Sulphuric Acid, in bulk, in tank vehicles,* from Avondale, LA to Brownsville, TX, in foreign commerce only. Supporting shipper: American Cyanamid Co., P.O. Box 845, Houston, TX, 77001.

MC 119988 (Sub-32TA), filed January 14, 1981. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, Texas 75901 Representative: Steve E. Beck, P.O. Box 1384, Lufkin, Texas 75901. *General commodities (except Classes A and B explosives).* Between points in the United States, restricted to the facilities of Foremost McKesson, Inc., its subsidiaries, vendors, and customers. Supporting shipper: Foremost McKesson, Inc., One Post Street, Crocker Plaza, San Francisco, CA 94104.

MC 121066 (Sub-1TA), filed January 14, 1981. Applicant: NEBRASKA TRANSPORT CO., INC., P.O. Box 621, Scotts Bluff, NE 69361. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *Sugar, in bags and containers,* between Scotts Bluff and Morrill Counties, NE, on the one hand, and, on the other, points in KS. Supporting shipper: The Great Western Sugar Company, P.O. Box 5308, Denver, CO 80217.

MC 124174 (Sub-5–36TA), filed January 13, 1981. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Canned goods, wine, champagne, beer, and brandy, (except in bulk in tank vehicles),* from points in CA to points in the USA. Supporting shipper(s): Sebastiani Vineyards, P.O. Box AA, Sonoma, CA 95476; Almaden Vineyards, 2055 So 7th Street, San Jose, CA 95112; Geyser Peak Winery, P.O. Box 25, Geyserville, CA 95441; Stanislaus Food Products Company, P.O. Box 3951, Modesto, CA 95352; United Vintners, Inc., 601 4th Street, San Francisco, CA 94107.

MC 124174 (Sub-5–37TA), filed January 13, 1981. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *(1) paper and (2) machinery, equipment, and supplies used in the manufacture of paper,* (1) from Madison, ME to points in MA, NH, NY, NJ, RI, PA, CT, and VT; and (2) from the ports of Portland, ME; Boston, MA; and New York, NY to Madison, ME. Supporting shipper(s): Madison Paper Corp., Box 129, Madison, ME 04950.

MC 125535 (Sub-5–6TA), filed January 13, 1981. Applicant: NATIONAL SERVICE LINES INC. OF NEW JERSEY, 2275 Schuetz Road, St. Louis, MO 63141 Representative: (same as applicant). Contract: Irregular. *(1) Glass, flat, bent, polished; glasing units and (2) Commodities used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk in tank vehicles),* between the facilities of C–E Glass, Combustion Engineering, Inc., at St. Louis and Truesdail MO, Cinnaminson and Pennsauken NJ, and Lancaster OH, on the one hand, and on the other, points in the U.S. in and west of MT, WY, CO, and NM. Between the

facilities of C–E Glass, Combustion Engineering, Inc., at Fullerton and Carson CA, on the one hand, and on the other, points in the U.S. except AL and HI. Supporting shipper: C–E Glass, Combustion Engineering, Inc., P.O. Box 268, Cinnaminson NJ 08077.

MC 138069 (Sub-5–4TA), filed January 13, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Max Vance, 2512 South 163rd Street, Omaha, NE 68130. *Animal foods and supplies* Between Omaha, NE, on the one hand, and, on the other, points in the U.S. Supporting shipper: Geisler Pet Products, Inc., 13507 "I" Circle, Omaha, NE.

MC 139905 (Sub-5–1TA), filed January 14, 1981. Applicant: R.B. STUCKY & N.M. STUCKY, d.b.a. S&S DAIRIES, Route 2, Moundridge, KS 67107. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Blends of corn syrups and liquid sweeteners,* between Wyandotte County, KS and points in CO, NE, IA, OK, MO and AR. Supporting shipper: The Amalgamated Sugar Company, P.O. Box 1520, Ogden, UT 84402.

MC 140665 (Sub-56TA), filed January 14, 1981. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Wire Staples* from Cleveland and Youngstown, OH to points in the U.S. Supporting shipper: Universal Staple Company, P.O. Box 4327, Springfield, MO 65804.

MC 141614 (Sub-5–1TA), filed January 14, 1981. Applicant: J. D. and BILLY HINES TRUCKING, INC., 1110½ West First Street, Prescott, Arkansas 71857. Representative: J. D. Hines, 1110½ West First Street, Prescott, Arkansas 71857. *Contract,* Irregular. *Saw dust and shavings* between points in the United States. Supporting shipper: Edward Hines Lumber Company, P.O. Box 69, Hope, Arkansas 71801.

MC 142447 (Sub-5–1TA), filed January 13, 1981. Applicant: LOUISIANA-PACIFIC TRUCKING COMPANY, P.O. Drawer AB, New Waverly, TX 77358. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. *Contract,* Irregular, *Lumber,* (1) from Marianna, FL, to points in AL, GA, MS, NC, SC, TN, LA and TX; and (2) from Crestview, Defuniak Springs and West Bay, FL, to points in TX. Supporting shipper: Louisiana-Pacific Trucking Corporation, P.O. Box 368, New Waverly, TX 77358.

MC 145163 (Sub-1TA), filed January 14, 1981. Applicant: DON MULDER d.b.a. DON MULDER TRUCKING, 1735 North 50th, Lincoln, NE 68504. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. (1) *Such commodities as are used or dealt in by manufacturers and distributors of electrical equipment, mechanical devices and tele-communication equipment (except size and weight commodities and commodities in bulk);* and (2) *parts, materials and supplies used in the manufacture, sale and distribution of commodities in (1) above (except size and weight commodities and commodities in bulk),* between points in the U.S. restricted to the transportation of shipments originating at or destined to the facilities of Reliance Electric Co., its divisions and subsidiaries. Supporting shipper: Reliance Electric Company, Highway 127 North, Lawrenceburg, KY 40023.

MC 145202 (Sub-1TA), filed January 14, 1981. Applicant: K–LINES, LTD., 805 32nd Avenue, Council Bluffs, IA 51501. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Contract carrier,* irregular routes, *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 (except hides and commodities in bulk),* (1) From Amarillo, TX to points in AL, AR, FL, GA, KS, LA, MO, MS, NE, OK, SC, and TN, and (2) From Omaha, NE to points in DE, KY, MD, VA, WV, and DC, under continuing contract(s) in (1) and (2) above with Prime Meat Processors, Inc. of Omaha, NE. Supporting shipper(s): Prime Meat Processors, Inc., 5145 North 90th, Omaha, NE 68134.

MC 149553 (Sub-2TA), filed January 14, 1981. Applicant: VALLEY TRANSPORTATION SERVICE, INC., P.O. Box 1527, Mission, TX 75827 Representative: D. R. Beeler, 1261 Columbia Avenue, Franklin, TN 37064. *Common;* irregular; *Meat, meat products, and meat byproducts, and articles distributed by packing houses* between the facilities of Clanton Enterprises in TX on the one hand and points in VA, NC, SC, FL, GA, MS, OK, KS, IA, NE, MN, WI, IL, IN, PA, KY, and TN on the other. Supporting shipper: Clanton Enterprises, 2946 Silverdale Lane, Garland, TX 75042.

MC 153199 (Sub-5–1TA), filed January 14, 1981. Applicant: DOUGLAS EUGENE HARRIS, d.b.a. HARRIS AND SONS, 1004 N. 12th Street, Chickasha, OK 73108. Representative: Michael H. Lennox, 8903 N. Western Avenue, Oklahoma City, OK 73114. *Contract,* irregular, *Steel Plate or Sheet; Structural Beams; Pipe, other than oilfield pipe,* from Houston, TX to points in OK, NE and CO. Supporting shipper: Agnew Steel Co., Inc., 1925 S. Agnew, Oklahoma City, OK 73148.

MC 153266 (Sub-5–1TA), filed January 14, 1981. Applicant: STEVE CRAIN TRUCKING, INC., P.O. Box 324, Owasso, OK 70455. Representative: Michael H. Lennox, 8903 N. Western Avenue, Oklahoma City, OK 73114. *Contract,* irregular, *Rough Iron Castings: Raw Steel,* between points in the U.S. except AK and HI. Supporting shipper: Big Four Foundries, Corp., 6630 S. 57th West Ave., Tulsa, OK 74105.

MC 29452 (Sub-5–1TA), filed January 16, 1981. Applicant: B.O.W. EXPRESS, INC., 1251 Taney, N. Kansas City, MO 64116. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Common,* regular, *General Commodities, except those of unusual value, Class 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 the Kansas City, MO Commerical Zone and Cedarvale, KS. From Ottawa, KSD south over U.S. Highway 59 to U.S. Highway 169, then over U.S. Highway 169 to U.S. Highway 54, then over U.S. Highway 54 to U.S. Highway 75, then over U.S. Highway 75 to U.S. Highway 166, then over U.S. Highway 166 to Cedarvale serving all intermediate points except Garnett, KS and return over the same route. Also, Between the Kansas City, MO Commerical Zone and Fredonia, KS. From Ottawa, KS over U.S. Highway 59 to U.S. Highway 169, then over U.S. Highway 169 to U.S. Highway 54 then over U.S. Highway 54 to U.S. Highway 75, then over U.S. Highway 75 to Kansas Highway 47, the west over Kansas Highway 47 to Fredonia and return over the same route. Also, Between Kansas City, MO Commerical Zone and Hartford, KS. From Osage City, KS south over Kansas Highway 170 to Reading, KS an unnumbered county road to U.S. Interstate Hingway 35, then over Kansas Highway 130 to Hartford, KS serving all intermediate points. Applicant intends to tack and interline. Supporting shipper: There are 22.

MC 30844 (Sub-5–43TA), filed January 16, 1981. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 4616 East 67th Street, Tulsa, OK 74121. Representative: Robert Kroblin, P.O. Box 21222, Tulsa, OK 74121. *Chemicals, in packages,* from Woodward, OK to point in the U.S. Supporting shipper: PPG Industries, Inc., One Gateway Center Pittsburg, PA 15222.

MC 31879 (Sub-5–2TA), filed January 16, 1981. Applicant: EXHIBITORS FILM DELIVERY & SERVICE, INC., 101 West 10th Avenue, North Kansas City, MO 64116. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Wearing apparel, materials, equipment, and supplies necessary to operate retail clothing stores* between points in IA, 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 Cook, 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 US Hwy 51, then along US 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 US Hwy 50, then east along US Hwy 50 to junction US Hwy 51, then north along US Hwy 51 to Decatur, IL then east along US Hwy 36 to Springfield, IL, then along combined US Hwy 36 and 54 to junction US Hwy 36, and then along US 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 US Hwy 85 and Interstate Hwy 25, then along combined US Hwy 85 and Intersate Hwy 25 to junction US Hwy 60, then along US 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.

Supporting Shipers: Foxmoor and Chess King, Divisions of Melville Corporation, 393 Manley Street, West Bridgewater, MA 02379.

Note.—The applicant currently conducts operations between all points in the destination territory described above, limited to shipments which do not exceed 200 pounds a day from one consignor to one consignee.

MC 47038 (Sub-5–1TA), filed January 16, 1981. Applicant: GRAHAM SHIP BY TRUCK COMPANY, 721 South Packard, Kanas City, KS 66105. Representative: Richard R. Arnold, 721 South Pakard, Kansas City, KS 66105. *Contract:* Irregular. *Greeting Cards, papeteries, envelopes, boxes, printed matter, skids, machinery, and other equipment or products manufactured, used or sold by Hallmark Cards, Inc.,* between points within the Kansas City, Mo. commercial zone on the one hand and points in KS on the other.

Suporting shipper: Hallmark Cards, Inc., 25th and McGee, Kansas City, MO 64141.

MC 59367 (Sub-5–6TA), filed January 16, 1981. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Ft. Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Metal and metal articles,* from the facilities of Joseph T. Ryerson, Inc. at Chicago, IL to pts in IA and NE. Supporting shipper(s): Joseph T. Ryerson & Son, Inc., 2621 West 15th Place, Chicago, IL 60608.

MC 114211 (Sub-5–25TA), filed January 16, 1981. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *General commodities (except Classes A and B explosives),* between pts in Butler County, IA, on the one hand, and, on the other, pts in the IL, IN, MI, OH, and WI. Restriction: Restricted to transportation of shipments moving from, to or between the facilities of or used by TASCO, Inc. or its dealers. Supporting shipper: Tasco, Inc., 1001 Cherry Street, Shell Rock, IA 50670.

MC 117119 (Sub-5–50TA), filed January 15, 1981. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Such commodities as are used by restaurants (except commodities in bulk and foodstuffs other than condiments)* from Wichita, KS to Indianapolis, IN; Morrow, GA; City of Industry, CA; Langhorne, PA; Jackson, MS; Burnsville, MN; and Guilderland Park, NY. Supporting shipper(s): Franchise Services Inc., P.O. Box 484, Wichita, KS 67201.

MC 119774 (Sub-5–5TA), filed January 15, 1981. Applicant: EAGLE TRUCKING COMPANY, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H. English, 6270 Firth Road, Forth Worth, TX 76116. *Mud compounds* between points in Washington County, MO, on the one hand, and, on the other, points in the U.S. (except HI). Supporting shipper: N L Baroid, NL Industries, P.O. Box 1675, Houston, TX 77001.

MC 120419 (Sub-5–1TA), filed January 15, 1981. Applicant: SERVICE TRANSFER, INC., P.O. Box 460, Henryetta, OK 74437. Representative: Wilburn L. Williamson, Suite 615-East, the Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Foodstuffs,* from the facilities of J. M. Smucker Co. at Memphis, TN to Little Rock and Ft. Smith, AR and Oklahoma City and Tulsa, OK. Supporting shipper(s): J. M. Smucker Co., 4740 Burbank, Memphis, TN 38118.

MC 126118 (Sub-5–47TA), filed January 16, 1981. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same as applicant). *Such commodities as are dealt in or used by manufacturers of electrical equipment and electrical products,* between pts in NC, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Handy Man Electric Co., H. E. Rayfield, Jr., President, 1214 Maple Ave., P.O. Box 2658, Burlington, NC 27215.

MC 126118 (Sub-5–48TA), filed January 16, 1981. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same as applicant). *Furniture or fixtures, machinery, and supplies,* between pts in CO and IL, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Inno Max Corporation, Dennis Weyl, Vice President and General Manager, 2885 S. Shoshone, Englewood, CO 80110.

MC 126118 (Sub-5–49TA), filed January 16, 1981. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same as applicant). *Such commodities as are dealt in by chemical producers,* between pts in MI, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Dow Chemical USA, Fred Asch, Jr., Senior Transportation Specialist, 690 Building, Midland, MI 48640.

MC 135070 (Sub-5–33TA), filed January 16, 1981. 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 used or dealt in by food business houses, and materials, ingredients, and supplies used in their manufacture and distribution,* between points in OH, on the one hand, and, on the other, points in the States of AR, AZ, CA, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, NV, OH, OK, OR, SD, TX, UT, WA, WI, and WY, restricted to traffic originating at or destined to the facilities utilized by The Stouffer Corporation. Supporting shipper: Stouffer Foods Corporation, 5750 Harper Road, Solon, OH.

MC 135691 (Sub-5–1TA), filed January 16, 1981. Applicant: DALLAS CARRIERS CORP., P.O. Box 38528, Dallas, TX 75238. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Contract,* Irregular: *Animal feed supplements* from facilities of Hoffman LaRoche, Inc. at Ft. Worth, TX, to points in SC and FL. Supporting shipper: Hoffman LaRoche, Inc., 340 Kingsland St., Nutley, NJ 07110.

MC 136220 (Sub-5–8TA), filed January 15, 1981. Applicant: SULLIVAN'S TRUCKING CO., INC., P.O. Box 2164, Ponca City, OK 74601. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036. *Scrap iron, in bulk, in dump vehicles,* from Ft. Smith, AR to Sand Springs, OK. (Supporting shipper: David J. Joseph Company, P.O. Box 1078, Cincinnati, OH 45201).

MC 141523 (Sub-2TA), filed January 15, 1981. Applicant: C. R. Kidd Produce, Inc., P.O. Box 364, Springdale, AR 72764. Representative: Connie R. Kidd, P.O. Box 364, Springdale, AR 72764. *Such commodities as are dealt in or used by wholesale and retail discount and variety stores, (except in bulk)* from points in CA, CT, DE, FL, GA, IN, IA, ME, MD, MA, MI, MN, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, VE, VA, WV and WI to points in AL, AR, IL, KS, KY, LA, MO, MS, OK, TN and TX. Restricted to traffic 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 142508 (Sub-5–47TA), filed January 16, 1981. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. *Meat, meat products, meat by-products and material, equipment, and supplies used in the manufacture, sale, and distribution thereof* between the facilities of Lakin Meat Processors, Inc., and pts in the U.S. Supporting shipper: Lakin Meat Processors, Inc., 8990 West Dodge Road, Suite 217, Omaha, NE 68114.

MC 144364 (Sub-5–1TA), filed January 16, 1981. Applicant: ART BETZ, P.O. Box 157, Sioux Center, IA 51250. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141. *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,* from pts in NE to pts in WA and OR. (Supporting shipper: Land O'Lakes, Spencer Beef Division, P.O. Box 544, Schuyler, NE 68661).

MC 144682 (Sub-5–12TA), filed January 16, 1981. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245. *Automotive parts, equipment and accessories;* from Tarrant County, TX to points in AZ, CA, NM, WA, OR and NV; RESTRICTED to traffic originating at the facilities of A.R.A. Mfg. Co., Inc. Supporting shipper: A.R.A. Mfg. Co., Inc., 602 Fountain Parkway, Grand Prairie, TX 75050.

MC 145441 (Sub-5–41TA), filed January 15, 1981. 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. *Cloth materials and metal products,* between the facilities of Sol Alman Company at Pulaski County, AR, on the one hand, and, on the other, points in the U.S. Supporting shipper: Sol Alman Co., P.O. Box 2244, Little Rock, AR 72203.

MC 145557 (Sub-5–3TA), filed January 15, 1981. Applicant: LIBERTY TRANSPORT, INC., P.O. Box 9182, Kansas City, MO 64168. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses, as described in Section A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from Liberal, KS, to points in CO, TX, MO, IA, NE, OK, MN, WI, IL, MI, IN, OH and PA. (Supporting shipper: National Beef Packing Co., 1501 E. 8th, Liberal, KS 67901).

MC 145997 (Sub-5–7TA), filed January 15, 1981. Applicant: J.E.M. EQUIPMENT, INC., P.O. Box 396, Alma, AR 72921. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *Frozen Meats*—Between the facilities of New Orleans Cold Storage Company, at or near New Orleans and Metairie, LA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: New Orleans Cold Storage Co., P.O. Box 895, Metairie, LA 70004.

MC 146517 (Sub-5–3TA), filed January 15, 1981. 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 and Classes A & B explosives)* Between all points in the U.S. (except AK and HI) under continuing contract(s) with Levi Strauss and Company, Amarillo, TX. Supporting shipper: Levi Strauss and Co., 4714 NE 24th St., Amarillo, TX.

MC 147388 (Sub-5–7TA), filed January 16, 1981. Applicant: EARLY BIRD FREIGHT LINES, INC., Route 1, Box 49, St. Libory, NE 68872. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *(1) Non-alcoholic beverages (except in bulk);* and *(2) materials and supplies used in the manufacture, sale and distribution of non-alcoholic beverages (except in bulk),* between Grand Island and Scottsbluff, NE, and points in their respective commercial zones, on the one hand, and, on the other, points in the states of TX, OK, KS, MO, IL, CO, WY, IA, and MN. Supporting shippers: National Drink, Inc., 2022 East 17th, Scottsbluff, NE 69341, and Grand Island Bottling Company, Inc., P.O. Box 1374, Grand Island, NE 68801.

MC 148105 (Sub-5–1TA), filed January 16, 1981. Applicant: OVERLAND EXPRESS CO., INC., 9446 Manchester, Houston, TX 77017. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459. (1) *Synthetic plastics, synthetic resin and synthetic rubber;* (2) *Empty Containers;* (1) From the points and places in Harris, Jefferson, Montgomery, Walker, Brazoria, Matagorda, Fort Bend and Orange Counties, TX to the ports of Houston, Galveston, Beaumont, Port Arthur, and Orange, TX over irrgular routes. (2) From the ports of Houston, Galveston, Port Arthur, Beaumont, and Orange, TX to points and places in Harris, Jefferson, Montgomery, Walker, Brazoria, Matagorda, Fort Bend and Orange Counties, TX over irregular routes. Supporting shippers: (1) Cole Enterprises Co., Inc., 10700 Craighead, Houston, TX 77025; (2) H. E. Schurig Co., 609 Fannin Bldg., Houston, TX 77002; (3) Arco Polymers, Inc., 1500 Market Street,

Philadelphia, PA 19101; (4) United States Lines, Inc., 10120 N.W., Freeway, Houston, TX 77092.

MC 149058 (Sub-5–1), filed January 16, 1981. Applicant: THE INLAND SEA, INC., 2021 West Governors Circle, Suite 100, Houston, TX 77092. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. *Used household goods, unaccompanied baggage, and used automobiles,* in steamship containers, between Houston, TX, on the one hand, and, on the other, Ft. Huachuca, Glendale and Tucson, AZ; Colorado Springs and Denver, CO; Ft. Knox, KY; Ft. Levenworth, KS, Albuquerque and Las Cruces, NM; Bartlesville, Dewey, Tulsa and Oklahoma City, OK; and the United States-Canada Boundary Line on Interstate Highway 29, at or near Pembina, ND; restricted to traffic having a prior or subsequent movement by water in foreign commerce. Supporting shippers: International Transportation Organization, Inc., 5825 Lexington, El Paso, TX 79914; American Ensign Van Service, Inc., 2698 Dawson Avenue, Long Beach, CA 90806; Tucor Services, Inc., 640 Sacramento Street, San Francisco, CA 94119.

MC 149172 (Sub-5–1TA), filed January 16, 1981. Applicant: GARY HOFFMAN, individual, d.b.a. HOFFMAN TRUCKING, 2807 Desirae, Chickasha, OK 73018. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. *Contract;* Irregular. *Steel and steel articles,* from Dallas and Houston, TX, to points in CO, KS, MO, NE, and OK, under continuing contract(s) with Zelrich Steel Co., Dallas, TX. Supporting shipper: Zelrich Steel Co., P.O. Box 29667, Dallas, TX 75229.

MC 149223 (Sub-5–1TA), filed January 16, 1981. Applicant: R. C. and N. R. AKIN, d.b.a. AKIN TRUCKING, Route 2, Box 286, Westville, OK 74965. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034. (1) *Foodstuffs,* and (2) *Materials and supplies used in the processing and distribution of foodstuffs,* between points in Benson and Washington Counties, AR; Adair County, OK; and Hidalgo County, TX, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MS, MO, NE, NM, NY, NC, OK, OH, PA, SC, TN, TX, VA, and WV, restricted to traffic originating at or destined to facilities used by Stilwell Foods, Inc. Supporting shipper: Stilwell Foods, Inc., P.O. Box 432, Stilwell, OK 74960.

MC 149244 (Sub-5–2TA), filed January 16, 1981. Applicant: PEAKE, INC., 2022 Avenue "A", Kearney, NE 68847. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. *Dry fertilizer,* from IA to NE. Supporting shipper: TriCo Farm Service, Inc., East Hwy 136, Box 755, Oxford, NE 68967.

MC 150088 (Sub-5–13TA), filed January 16, 1981. Applicant: STERLING TRANSPORT DIVISION, INC., 2005 South Great Southwest Pkwy., Grand Prairie, TX 75050. Representative: Robert K. Frisch, Brown & Walker, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. *Printed cellophane and printed plastic bags* between Dallas and Tarrant Counties, TX, on the one hand and points in AR, OK, LA, and CO, on the other hand. Supporting shipper: Printpack, Inc., 2006 South Great Southwest Parkway, Grand Prairie, TX 75050.

MC 150378 (Sub-5–6TA), filed January 15, 1981. Applicant: C & M CARTAGE CO., INC., P.O. Box 94531, Oklahoma City, OK 73143. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034. *(1) textiles and textile products and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities cited in (1) above,* between points in the U.S., restricted to traffic originating at or destined to the facilities of Union Underwear Company, Inc. Supporting shipper: Union Underwear Company, Inc., P.O. Box 780, Bowling Green, KY 42101.

MC 150943 (Sub-5–3TA), filed January 16, 1981. Applicant: F. H. SMITH TRANSPORT, INC., Route A, Box 83, Yellville, AR 72687. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. *Charcoal briquettes,* between the facilities of Cotter Manufacturing Company, Inc., located in Cotter, AR, on the one hand, and, on the other, points and places in the States of MO, OK, TX, LA, MS, AL, TN, KY, OH, IN, IL, IA, MI and WI. Supporting shipper: Cotter Manufacturing Co., Inc., P.O. Box 100, Cotter, AR 77626.

MC 151228 (Sub-5–2TA), filed January 15, 1981. Applicant: EARL PICKENS, d.b.a. P & M TRUCKING, 740 Iowa Street, Norman, OK 73069. Representative: Earl Pickens (same address as applicant). *Fine box chocolate and raw materials used in the making of chocolate (except raw foodstuffs in bulk),* From Ft. Worth, TX, to points in the U.S. (except AK and HI). Supporting shipper: Pangburn Co., Inc., 1900 Southeast Loop 820, Box 15050, Ft. Worth, TX 76119.

MC 151238 (Sub-5–2TA), filed January 16, 1981. Applicant: ZERO TANK & TRUCK LINES, INC., P.O. Box 551, Channelview, TX 77530. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Lighting standards, irrigation equipment, control devices, portable tanks, poles, pipe, tubing, iron and steel articles, related parts and attachments, and materials, equipment and supplies used in the manufacture, installation and maintenance of such commodities, in ocean or motor carrier owned containers or equipment,* between Springer, OK, Benham, TX and Lubbock, TX, on the one hand, and, on the other, the ports at New Orleans, LA, Houston, TX and Galveston, TX. Supporting shipper: Valmont Industries, Inc., Hwy. 275 West, Valley, NE 68064.

MC 152021 (Sub-5–14TA), filed January 16, 1981. Applicant: IMPALA TRANSPORTATION SERVICES, INC., P.O. Box 678, 1705 E. Irving Blvd., Irving, TX. 75060. Representative: Larry P. Cardin, President, (same address as applicant). *Paper and paper articles* between Grand Prairie, TX, and all points in the continental U.S. Supporting shipper: Western Kraft Corp., 1200 West N. Carrier Parkway, Grand Prairie, TX.

MC 152245 (Sub-5–9TA), filed January 16, 1981. Applicant: ARMOUR FOOD EXPRESS CO., P.O. Box 2785, Amarillo, TX 79105. Representative: P. L. Gordon, Manager—Transportation, 111 West Clarendon, Phoenix, AZ 85013. *Contract,* Irregular: *(1) Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses (except frozen commodities and commodities in bulk); and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities listed in part (1) above;* between (a) Houston, TX and points in OK; (b) Springfield, OR and points in ID, UT and WA; (c) Kansas City, MO and points in NE; and (d) Chicago, IL and points in MO. Restricted to the transportation of shipments originating at or destined to the facilities of The Clorox Company and its wholly-owned subsidiaries. Supporting shipper: The Clorox Company, 1221 Broadway, Oakland, CA 94603.

MC 153133 (Sub-5–3TA), filed January 16, 1981. Applicant: TRANS AMERICAN TRANSPORTATION SYSTEM, INC., Highway 59 South, P.O. Box 422, Stafford 77477. Representative: Patricia L. Altman, 2523 Avenue H, Rosenburg, TX 77471. *Lumber, building materials, and wood products,* between points in TX, LA, MS, AL, on the one hand, and, on the other, points in NM, AZ, and and CO. Supporting shipper: There are six supporting shippers.

MC 153362 (Sub-5–1TA), filed January 16, 1981. Applicant: B & S, INC., P.O. Box 344, Anamosa, IA 52205. Representative: Richard P. Moore, 2720 First Avenue N.E., P.O. Box 1943, Cedar Rapids, IA

52406. *Feed and feed ingredients* between points in IA, WI, MN, ND, SD, NE, KS, MO, IL, and IN. Supporting shipper: Ralston Purina Co., Olin, IA 52320.

MC 153387 (Sub-5–1TA), filed January 16, 1981. Applicant: CAPITOL TRUCK SERVICE, INC., 620 Doddridge, St. Louis, MO 63147. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. (1) *Paint and paint products* from Moberly, MO, to points in the St. Louis, Mo.-East St. Louis, ILL., commerical zone and the Kansas City, MO–KS, commercial zone; and (2) *Materials and supplies used in the manufacture and distribution of paint and paint products* in the reverse direction. Restricted to traffic having an immediate prior to subsequent movement by rail. Supporting shippers: ITOFCA, Inc., 500 Northwest Plaza, P.O. Box 1067, St. Ann, MO 63074. E. I. du Pont de Nemours & Company, 1007 Market St., Wilmington, DE 19898.

MC 153550 (Sub-5–1TA), filed January 15, 1981. Applicant: MEXICAN ORIGINAL TRANSPORTATION INC., P.O. Box 1368, Fayetteville, AR 72701. Representative: Mark S. Gray, P.O. Box 872, Atlanta, GA 30301. *Parts, equipment, materials and supplies used in the manufacture of office furniture* from Morristown, TN to Springdale, AR. Supporting shipper: PFI, INC., P.O. Box 542, Springdale, AR 72767.

MC 153603 (Sub-5–1TA), filed January 15, 1981. Applicant: ROCKET TRANSFER COMPANY, INC., 702 Elm Street, Des Moines, IA 50309. Representative: Russell H. Wilson, 4400 Merle Hay Road, Des Moines, IA 50310. *Contract:* Irregular: (1) *Kitchen & bathroom cabinets countertops, appliances, household fixtures, television, stereo, radios parts and fireplace units; (2) Such commodities as are dealt in or used by the manufacturers and distributors of paint, chemicals, also related articles,* (1) Between points and places in IA and points and places in continental U.S. (2) Points and places in the State of IA. Supporting shippers: A. A. Schneiderhahn, 6111 Park Avenue, Des Moines, IA 50321; and Sherwin Williams Co., 101 Prospect, Cleveland, OH 44101.

MC 153629 (Sub-5–1), filed January 16, 1981. Applicant: REID WOODWARD CO., 3327 West Hillsboro, El Dorado, AR 71730. Representative: Joe D. Woodward, P.O. Box 727, Magnolia, AR 71753. *Oil field and refinery equipment and supplies* between points in LA, TX and AR. Supporting shipper: Great Lakes Chemical, P.O. Box 1878, El Dorado, AR 71730.

MC 200 (Sub-5–85TA), filed January 19, 1981. 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 & B explosives),* serving Houston, TX and its commercial zone, as off-route points in connection with applicant's otherwise authorized operations. Applicant intends to tack and interline. Supporting shippers: 22.

MC 200 (Sub-5–86TA), filed January 19, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Pulp, paper and related products,* and *chemicals or allied products,* between points in Harris County, TX, on the one hand, and, on the other, points in Buchanan County, MO., restricted to traffic originating at or destined to facilities used by Farmland Industries, its affiliates, suppliers, or vendors. Supporting shipper: Farmland Industries, 1417 Lower Lake Road, St. Joseph, Mo 64503.

MC 10872 (Sub-5–2TA), filed January 19, 1981. Applicant: BE-MAC TRANSPORT COMPANY, INC., 7400 North Broadway, St. Louis, MO 63147. Representative: Joel H. Steiner, Axelrod, Goodman, Steiner & Bazelon, 39 S. LaSalle St., Chicago, IL 60603. *Plastic film and materials, equipment and supplies used in the manufacture, sale and distribution thereof (except commodities in bulk),* between points in the Tulsa, OK, commercial zone on the one hand, and, on the other, points in IL on and north of Interstate Hwy 70 and points in the WI counties of Racine, Rock, Walworth, Waukesha, Kenosha, Milwaukee, Washington, Ozaukee, Sheboygan, Jefferson, Dodge, Fon du Lac, Dane and Green. Supporting shipper: Armin Plastics Oklahoma, Inc., 10001 East 54th, Tulsa, OK 74145. Applicant intends to tack.

MC 26825 (Sub-5–6TA), filed January 19, 1981. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Lumber, lumber products, and wood products (except commodities in bulk),* between points in the U.S., for the account of Hardware Wholesalers, Inc. Shipper: Hardware Wholesalers, Inc., P.O. Box 2209, Fort Wayne, IN 46801.

MC 30378 (Sub-5–1TA), filed January 19, 1981. Applicant: ASSOCIATED TRANSPORTS, INC., 9050 Pershall Road, Hazelwood, MO 63042. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Motor vehicles,* between Wayne County, MI and points in IL, MO, KS, IA, and NE. Supporting shipper: Ford Motor Company; P.O. Box 1529–B, NAAO Bldg.; Dearborn, MI 48121.

MC 35320 (Sub-5–42TA), filed January 19, 1981. 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 Wilburton, OK and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operations. Supporting shipper: Franklin Electric Co., Siloam Springs, AR.

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-5–43TA), filed January 19, 1981. 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 Wentzville, MO and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operations. Supporting shipper: Dominion Bridge, Sulzer, Inc., Lachine, Quebec, CN.

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-5–44TA), filed January 19, 1981. 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 Fresno, CA and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular-route operations. Supporting shippers: Ball Glass Corporation, Muncie, 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 85718 (Sub-5–2TA), filed January 19, 1981. Applicant: SEWARD MOTOR FREIGHTS, INC., P.O. Box 126, Seward, NE 68434. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Soda ash, sodium bicarbonate*

and sodium carbonate (except in bulk), from Sweetwater County, WY, to pts in IL, IA, KS, MN, MO, NE, SD and WI. Supporting shipper: McKesson Chemical, Division of Foremost-McKesson, Inc., Crocker Plaza, One Post St., San Francisco, CA 94104.

MC 93840 (Sub-5–4TA), filed January 19, 1981. Applicant: GLESS BROS., INC., P.O. Box 219, Blue Grass, IA 52726. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Acids and chemicals, in bulk,* from Muscatine, IA, to all points in IL. Supporting shipper: K. A. Steel Chemicals, Incorporated 2700 River Road, Des Plaines, IL 60018.

MC 106195 (Sub-5–2TA), filed January 19, 1981. Applicant: CLARK BROS. TRANSFER, INC., 900 North First, Norfolk, NE 68701. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114. *Such commodities as are dealt in and used by wholesale grocery and general merchandise stores* between Gering, Norfolk, and Omaha, NE, on the one hand, and, on the other, points in the WI, IL, IN, MI, MO, IA, MN, and KS. Supporting shipper: Shurfine-Central Corporation, 2100 North Mannheim Road, Northlake, IL 60164.

MC 111651 (Sub-5.2TA), filed January 19, 1981. Applicant: MIDDLEWEST FREIGHTWAYS, INC., 6810 Prescott Avenue, St. Louis, MO 63147. Representative: Rudy Yessin, 113 West Main Street, Frankfort, KY 40601. *Common,* regular, *General commodities (except classes A and B explosives.):* Route #1: From Chicago, IL to Louisville, KY, from Chicago over I–94 and I–80 to junction of I–65; thence over I–65 to Louisville, KY, serving all intermediate points; Route #2: Between Louisville, KY and Mt. Sterling, KY via U.S. Hwy 60 and I–64, serving all intermediate points; Route #3: Between Frankfort, KY and Mt. Sterling, KY over U.S. Hwy 460, serving all intermediate points; Route #4: Between Berea, KY and Georgetown, KY via U.S. Hwy 25 and I–75, serving all intermediate points; Route #5: Between U.S. Hwy 25 and Paris, KY over KY Hwy 627; Route #6: Between Frankfort, KY and Danville, KY via U.S. Hwy 127, serving all intermediate points; Route #7: Between Lawrenceburg, KY and Cynthiana, KY over U.S. Hwy 62, serving all intermediate points; Route #8: Between Cynthiana, KY and Stanford, KY via U.S. Hwy 27, serving all intermediate points; Route #9: Between Danville, KY and Richmond, KY over U.S. Hwy 52; Route #10: Between Lexington, KY and Harrodsburg, KY via U.S. Hwy 68, serving all intermediate points, and the off-route point of Wilmore, KY; Route #11: Between Danville, KY and U.S. Hwy 68 over KY Hwy 33, serving all intermediate points; Route #12: Between Niholasville, KY and U.S. Hwy 68 over KY Hwy 29; Route #13; Between Danville, KY and Stanford, KY over U.S. Hwy 150; Route #14: Between Interstate 64 and U.S. Hwy 127, over KY Hwy 151. Applicant intends to tack and interline. Supporting shipper: There are 109.

MC 112713 (Sub-5–29TA), filed January 19, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commdities in bulk and those requiring special equipment),* between West Helena, AR, and points in the U.S. Supporting shipper: Eli Lilly and Company, 307 East McCarty Street, Indianapolis, IN 46285.

MC 112713 (Sub-5–30TA), filed January 19, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Park, KS 66207. *Common;* regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commdities in bulk and those requiring special equipment),* serving Red Wing, MN, as an off-route point in connection with carrier's otherwise authorized operations. Restricted to traffic moving for the account of Durkee-Atwood Company, Inc., Applicant intends to tack. Supporting shipper: Durkee-Atwood, 215 N.E. 7th St., Minneapolis, MN 55413.

MC 112713 (Sub-5–31TA), filed January 19, 1981. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Overland Park, KS 66207. Representative: William F. Martin, Jr., P.O. Box 7270, Overland Parks, KS 66207. *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 Maxwell, TX, as an off-route point in connection with carrier's otherwise authorized operations. Applicant intends to tack. Supporting shipper: Nagel Manufacturing & Supply Co., P.O. Box 248, Maxwell, TX 78656.

MC 114273 (Sub-5–39TA), filed January 19, 1981. Applicant: CRST, Inc., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel (same as above). *Titanium dioxide (except in bulk or tank vehicles),* from Camden County, NJ and Ashtabula County, OH to points in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper(s): G & W Natural Resources Group, 2200 First American Center, Nashville, TN 37238.

MC 119399 (Sub-5–41TA), filed January 19, 1981. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant above). *Foodstuffs; viz: Bread making compounds; prepared edible flour; dessert preparations; icing powders.* From Olathe, KS to Jackson, Kalamazoo, Lansing, and Saginaw, MI; Cincinnati, OH and Ft. Wayne, IN. Supporting shipper: Paniplus Company, Olathe, KS.

MC 124673 (Sub-5–5TA), filed January 19, 1981. Applicant: FEED TRANSPORTS, INC., P.O. Box 2167, Amarillo, TX 79105. Representative: Gail Johnson (same as applicant). *Anhydrous ammonia,* from Lake Charles, LA, to points in TX and AR. Supporting shipper: Terra Chemicals International, Inc., P.O. Box 1828, Sioux City, IA 51102.

MC 134752 (Sub-5–1TA), filed January 19, 1981. Applicant: HILL & WILLIAMS BROS., INC., 799 44th Street, Marion, IA 52302. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Carpet and carpet padding,* from points in GA, IN, MS, NC, PA, SC and TN to points in IA. There are six supporting shippers.

MC 135797 (Sub-5–95TA), filed January 19, 1981. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (address same as applicant). *Internal combustion engines and parts thereof,* between points in MI, on the one hand, and, on the other, points in OK. Supporting shipper: United Engines, Inc., 5555 West Reno, Oklahoma City, OK 73127.

MC 136786 (Sub-5–48TA), filed January 19, 1981. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50306. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, 50309. *(1) Such commodities as are dealt in by food business houses, and (2) equipment, materials, and supplies used in the manufacture, distribution, or sale of the commodities in (1) above,* between Cherokee County, SC, and Cuyahoga County, OH, and Cleveland, OH, on the one hand, and, on the other, points in IA, IL, IN, KS, KY, MI, MN, MO, NE, ND, OH, SC, SD, TN, and WI. Supporting shipper: Stouffer Foods

Corporation, 5750 Harper Road, Solon, OH 44139.

MC 138069 (Sub-5–5TA), filed January 19, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Max Vance, 2512 South 163rd Street, Omaha, NE 68130. *Meats and Packinghouse products.* From the facilities of Greater Omaha Packing Co., Inc., at Omaha, NE to points in IA, IL, WI and OH. Supporting shipper: Greater Omaha Packing Co., Inc., 5100 South 26th Street, Omaha, NE 68107.

MC 139284 (Sub-5–5TA), filed January 19, 1981. Applicant: TRUCKER'S INC., P.O. Box 337, 4316 South Main St., Stafford, TX 77477. Representative: Damon R. Capps, Suite 1230, Capital National Bank Bldg., 1300 Main St., Houston, TX 77002. *Kiln dust (flu Dust)* between points in TX and LA. Supporting shipper: Solididust, Inc., 8114 Misty Vale, Houston, TX 77075.

MC 140665 (Sub-5–54TA), filed December 22, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Furniture and furniture parts* from Lebanon, MO, to points in CA, MN, OR, UT, WA, and TX. Supporting shipper: Bear Creek Furniture Manufacturing Co., Inc., Route 4, Lebanon, MO 65536.

MC 140665 (Sub-5–57TA), filed January 16, 1981. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Empty Wine Bottles* from San Francisco, CA, to New Braunfels, TX. Supporting shipper: Moyer Texas Champagne Company, 1941 I.H. E, New Braunfels, TX 78130.

MC 142672 (Sub-5–17TA), filed January 19, 1981. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *Paper Articles and Plastic Articles and Materials, Equipment and Supplies used in the manufacture thereof*—Between Sebastian County, AR, on the one hand, and, on the other, points in CA, CO and WA. Supporting shipper: American Can Company, Inc., P.O. Box 428, Ft. Smith, AR 72902.

MC 144449 (Sub-5–1TA), filed January 19, 1981. Applicant: A & A MOVING & STORAGE CO., d.b.a. A & A CONTRACT CARRIERS, 414 Blue Smoke Court West, Fort Worth, TX 76105. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Contract,* Irregular. *Greeting cards,* from Dallas, TX, to Secaucus, NJ, for the account of Drawing Board Greeting Cards, Inc., Dallas, TX. Supporting shipper: Drawing Board Greeting Cards, Inc., P.O. Box 220355, Dallas, TX 75222.

MC 147196 (Sub-5–19TA), filed January 19, 1981. Appliant: 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 CLARK 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 Co., P.O. Box 9, Jeffersonville, IN 47130.

MC 147196 (Sub-5–20TA), filed January 19, 1981. Appliant: 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. *Bread Crumbs, Breadmaking Ingredients and Preparations (except in bulk and other than frozen) and supplies and equipment related thereto* between Vanderburgh County, IN, on the one hand, and, on the other, the 48 states under a continuing contract or contracts with Modern Maid Foods Products, Inc., Evansville, IN. Supporting shipper: Modern Maid Foods Products, Inc., 200 Garden City Plaza, Garden City, NY 11530.

MC 147378 (Sub-5–3TA), filed January 19, 1981. Applicant: BAMA TRANSPORTATION CO., INC., 5247 East Pine, Tulsa, OK 74115. Representative: Jack R. Anderson, Rahal & Anderson, A Professional Corporation, Suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. *Fruit Juice* from Downey, CA to Sparks, NV; Phoenix, AZ; Tulsa, OK; Hutchinson, KS; Detroit, MI; Seattle, WA; Portland, OR and Houston, TX. Supporting shipper: L & A Juice Company, Inc., 8100 Nance, Downey, CA 90241.

MC 148035 (Sub-5–5TA), filed January 19, 1981. Applicant: QUANDT TRANSPORT SERVICE, INC., 2606 North 11th Street, Omaha, NE 68110. Representative: Arlyn L. Westergren, Westergren & Hauptman, P. C., Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114. *Denatured alcohol.* From Atchison, KS, to points in IA and NE. Supporting shipper: Jones Oil Co., Inc., P.O. Box 30225. Lincoln, NE 68503.

MC 148107 (Sub-5–3TA), filed January 19, 1981. Applicant: JESSE J. MESA, d.b.a. J. J. MESA TRUCKING CO., 1500 S. Zarzamora Street, San Antonio, TX 78207. Representative: Ronald Mercier, 1500 S. Zarzamora St., San Antonio, TX 78207. *Food and related products* between FL, GA, AL, TX, AR, MO, IL, WI, IA, NE, OK, LA, NM, CO, UT, AZ, NV, CA, KS, MS, ID, WA, OR, and TN. Supporting shipper: Texsun Corp., 522 Texas Blvd., Weslaco, TX 78596.

MC 149026 (Sub-5–22TA), filed January 19, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Chemicals or allied products (except in bulk) and material, equipment and supplies used in the manufacture, distribution and production of the above named articles,* between Houston, TX and Baltimore, MD and their respective commercial zones, on the one hand, and, on the other, points in the U.S. (except AK & HI). Supporting shipper: The Cosmin Corporation; Crossroads 1635 North East Loop 410; San Antonio, TX 78209.

MC 149026 (Sub-5–23TA), filed January 19, 1981. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as above). *Building materials and related articles, material, equipment and supplies used in the manufacture, distribution and assembly thereof;* between Fort Smith, AR; Colorado Springs, CO; and Toledo, OH; on the one hand, and, on the other, points in the U.S. (except AK & HI). Supporting shipper: Therma-Tru Division of L.S.T.; 2806 N. Reynolds Road; Toledo, OH 43615.

MC 151158 (Sub-5–2TA), filed January 19, 1981. Applicant: BROWN TRANSIT, INC., 325 Ingram, Conway, AR 72032. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Processed potatoes* between points in ID, on the one hand, and, on the other, points in AR. Supporting Shipper: Institutional Food Brokers, Inc., P.O. Box 4708, Little Rock, AR, 72201.

MC 153658 (Sub-5–1TA), filed January 19, 1981. Applicant: GULF ENTERPRISES, INC., P.O. Box 1869, La Porte, TX 77571. Representative: Wade H. Brown P.O. Box 217 Bessemer, AL 35020. *Contract,* Irregular: *General Commodities, in intermodal containers or trailers, having a prior or subsequent movement by rail or water,* between points in Brazoria County, TX, on the one hand, and, on the other, point in Galveston and Harris Counties, TX, under continuing contract(s) with Dow Chemical, USA and Shintech, Inc. Supporting shippers: Dow Chemical, USA, Texas Division, Freeport, TX, 77541 and shintech, Inc., 5618 East Highway 332, Freeport, TX, 77541.

MC 53660 (Sub-5–1TA), filed January 19, 1981. Applicant: PAUL FELLINGER AND SON, P.O. Box 86, Monticello, IA 52310. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Meat and meat products,* from the facilities of Des Moines Meat Packing Corporation at Des Moines, IA, to points in IL, IN, KS, MI, MN, MO, NE, OK, OH, TN and WI. Supporting shipper: Des Moines Meat Packing Corp., 1831 Maury Street, Des Moines, IA 50307.

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 153578 (Sub-6–1TA), filed January 12, 1981. Applicant: ALPINE TRANSPORT, INC., 225 Commerce, Missoula, MT 59801. Representative: John C. Doubek, 314 Fuller Avenue, Helena, MT 59601. *Contract Carrier,* Irregular routes: *lumber, plywood, particle board, fiber board, sheet rock, paneling, redwood, cedar products, roofing and asphalt products, moulding, insulation, doors, trusses, wood beams, laminated wood products, treated wood products, posts, poles, pilings, buildings materials and wood products,* between points in MT, WA, OR, CA, ID, UT, WY, SD, MN, ND, IA and NE, for the account of Missoula Forest Products, Inc., for 270 days. Supporting shipper: Missoula Forest Products, Inc., 1702 Rankin Street, Missoula, MT 59801.

MC 138313 (Sub-6–6TA), filed January 9, 1981. Applicant: BUILDERS TRANSPORT INC., 409–14th St. S.W., Great Falls, MT 59404. Representative: Irene Warr 430 Judge Bldg., Salt Lake City, UT 84111. *Steel,* from Salt Lake and Utah Counties, UT to points in MT for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Superior Welding Service, Great Falls, MT.

MC 71652 (Sub-6–6TA), filed January 8, 1981. Applicant: BYRNE TRUCKING, INC., P.O. Box 280, Medford, OR 97501. Representative: David J. Stewart, P.O. Box 280, Medford, OR 97501. *(1) Aluminum; (2) aluminum building products, and (3) aluminum mill products* between the facilities of Alumax Building Products Division of Alumax Fabricated Products, Inc., at or near Woodland, CA; Perris Valley, CA; and Reverside, CA; on the one hand, and on the other, points in AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Alumax Building Products Division of Alumax Fabricated Products, Inc., 1495 Columbia Avenue, Riverside, CA 92517.

MC 149138 (Sub-6–2TA), filed January 9, 1981. Applicant: CKM EXPRESS CO., 4250 Oneida St. Suite 130, Denver, CO 80239. Representative: William J. Lippman, Steele Park, Suite 330, 50 So. Steele St., Denver, Co 80209. *Such merchandise as is dealt in or used by grocery and food business houses* (except commodities in bulk) from points in the St. Louis Commercial Zone to points in AR, IA, CO, MN, NE and TX, for 270 days. Supporting shipper: Lever Brothers, 1400 North Pennsylvania, St. Louis, MO 63133.

MC 152534 (Sub-6–2TA), filed January 9, 1981. Applicant: CALIFORNIA-AMERICAN TRUCKING, INC., P.O. Box 288, Grenada, CA 96038. Representative: John R. Harleman (same address as applicant). *Contract carrier,* Irregular routes: *Farm and ranch equipment, materials, supplies and commodities used in the manufacture thereof,* between points in and west of MN, IA, MO, AR, LA, for the account of Farmaster Div. of Wickes Corp., for 270 days. Supporting shipper: Farmaster Div. of Wiches Corp., P.O.B. 220, Shenandoah, IA. 51601.

MC 151165 (Sub-6–2TA), filed January 12, 1981. Applicant: CATHAY, INC., 7680 S. State St., Midvale, UT 84047. Representative: Dix H. McMullin (same address as applicant). *Ice cream, bakery items, and materials and supplies* used in the manufacturing and packaging of ice cream and bakery items, from Salt Lake City, UT, and Los Angeles, CA, to points in AZ, CA, NV, CO, and UT, for 270 days. Supporting shipper: McWilly's Company, Inc., 5175 Greenpine Dr., Salt Lake City, UT 84107.

MC 138543 (Sub-6–1TA), filed January 13, 1981. Applicant: GARY SCANNAVINO, d.b.a. Cherokee Freight Lines, 5463 Cherokee Rd., Stockton, CA 95205. Representative: Thomas M. Loughran, 100 Bush St., 21st Floor, San Francisco, CA 94104. *Granulated sugar,* in bulk, in hopper type vehicles, from Rupert, Twin Falls and Nampa, ID to Woodland, Spreckels, Manteca and Mendota, CA for 270 days under a continuing contract(s) with Amstar Corporation, Spreckels Sugar Division. An underlying ETA seeks 120 days authority. Supporting shipper: Amstar Corporation, Spreckels Sugar Division, 50 California St., San Francisco, CA 94111.

MC 140409 (Sub-6–4TA), filed January 12, 1981. Applicant: CIRCLE B TRANSPORTATION CORPORATION OF NORTH DAKOTA, P.O. Box 207, Wheat Ridge, CO 80033. Representative: Robert W. Armstrong (same as applicant). *General commodities (except Household Goods as defined by the Commission and classes A and B explosives)* Between (A) points in CO and points in CA, and, (B) Orleans Co., LA, and Houston, TX, and points in CO, UT, and WY, and (C) from Orleans, Co., LA, to all points in the United States, except HI, but including the District of Columbia, further restricted to traffic having a prior or subsequent movement by water or rail for 270 days. Supporting shippers: Alltransport, Inc., 520 International Trade Mart, New Orleans, LA, 70130; Lykes Bros. Steamship Co., Inc., 300 Poydras St., New Orleans, LA 70130; Protecto Wrap Company, 2255 So. Delaware St., Denver, CO, 80223; Atlas Metal & Iron Corp., 318 Walnut Street, Denver, CO 80204; Iron & Metals, Inc., 5555 Franklin Street, Denver, CO 80216.

MC 135989 (Sub-6–6TA), filed January 12, 1981. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Ave., Chino, CA 91710. Representative: William J. Lippman, Steele Park, Suite 330, 50 South Steele St., Denver, CO 80209. *Contract carrier,* irregular routes, *Materials, supplies and equipment used in the manufacture of windows, doors and axles* (a) from points in the U.S. (except AK and HI) to Cucamonga, CA and Staton, OR; and (b) between Cucamonga, CA and Staton, OR, under continuing contract(s) with Philips Industries, Inc. for 270 days. Supporting shipper: Philips Industries, Inc., 9141 Arrow Highway, Cucamonga, CA 91730.

MC 67156 (Sub-6–3TA), filed January 12, 1981. Applicant: CONTAINER TRANSPORT COMPANY, Division of Fibreboard Corporation (P.O. Box 1409), Antioch, CA 94509. Representative: P. W. Pollock (same as applicant). *Contract carrier,* irregular routes, (1) *Corrugated Fibreboard Boxes,* from points in Los Angeles and Orange Counties, CA to points in Maricopa County, AZ; and (2) *Waste Paper* from points in Maricopa County, AZ to points in Los Angeles and Orange Counties, CA for the account of (1) Allied Corrugated Box Co., Inc. and (2) California Paper Stock for 270 days. An underlying ETA seeks 120 authority. Supporting shippers: Allied Corrugated Box Co., Inc., 7215 South Crider Ave., Pico Rivera, CA 90060. California Paper Stock, 2914 East Catella Ave., Suite 104, Orange, CA 92667.

MC 145054 (Sub-6–6Ta), filed January 14, 1981. Applicant: COORS TRANSPORTATION COMPANY, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *Contract carrier;* irregular routes; *General Commodities* (except classes A and B explosives) between points in the U.S. under continuing contract(s) with

Hedstrom U.S.A. Inc. d.b.a. Outdoor Sports Industries for 270 days. Supporting shipper: Hedstrom U.S.A. Inc. d.b.a. Outdoor Sports Industries 907 E. 62nd Ave., Denver, CO 80216.

MC 153585 (Sub-6–1TA), filed January 12, 1981. Applicant: DONALD WALDMANN d.b.a. D & W EQUIPMENT, 819 Holly, Sterling, CO 80751. Representative: Donald Waldmann (same as applicant). *Contract carrier,* irregular routes: *wood and wood composition building materials and asphalt shingles,* from all points in CA, OR, WA, IA, MT and UT to all points in CO, NE and WY, for the accounts of Quality Lumber & Supply, Inc., Sterling, CO and General Building Materials, Englewood, CO, for 270 days. Restricted to service for supporting shippers. Supporting shippers: Quality Lumber & Supply, Inc., 502 S. 11th Ave., Sterling, CO 80751; General Building Materials, 5650 S. Syracuse Circle, Englewood, CO 80111.

MC 136605 (Sub-6–24TA), filed January 9, 1981. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8129, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Iron or steel articles,* between points in the United States in and west of MI, IN, IL, MO, OK, TX and the facilities of Joslyn Mfg. and Supply Company, located at or near Franklin Park, IL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Joslyn Mfg. and Supply Co., 9200 W. Fullerton Ave., Franklin Park, IL 60131.

MC 152115 (Sub-6–4TA), filed January 9, 1981. Applicant: GEORGE KUIPHOF d.b.a. G. K. DISTRIBUTING CO., 13924 Maryton, Santa Fe Springs, CA 90670. Representative: George Kuiphof (same address as above). *Paper articles, plastic articles, including but not limited to expand or foam articles,* between Los Angeles Commercial Zone, CA on one hand, and points and places AZ and NV on the other hand for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Alchem Plastics, 14233 Gannet St., La Mirada, CA 90638.

MC 152115 (Sub-6–5TA), filed January 9, 1981. Applicant: GEORGE KUIPHOF d.b.a. G. K. DISTRIBUTING CO., 13924 Maryton, Santa Fe Springs, CA 90670. Representative: George Kuiphof (same address as above). *Cabinets; stove or range canopies or hoods; sheet steel articles; fans, electric; light fixtures; receptors, shower bath; stalls, shower bath; paper holders; towel bars, steel* between Los Angeles Commercial Zone, CA and points in AZ and NV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dura Steel Corp., 13901 S. Carmenita Rd., Santa Fe Springs, CA 90670.

MC 136086 (Sub-6–2TA), filed January 13, 1981. Applicant: GUILEY TRUCKING, INC., 8615 Pecan Ave., Fontana, CA 92335. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Iron and steel articles* from the facilities of C. F. & I. Steel Corporation at Pueblo, CO, to points in AZ, CA, NV and NM, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: C. F. & I. Steel Corporation, P.O. Box 316, Pueblo, CO 81002.

MC 149564 (Sub-6–1TA), filed January 9, 1981. Applicant: BOB HUBBARD HORSE TRANSPORTATION, INC., P.O.B. 277, Walnut, CA 91789. Representative: William J. Monheim, P.O. 1756, Whittier, CA 90609. (1) *Non-exempt livestock,* (2) *personal effects* of attendants, and (3) *supplies and equipment* used in the care, transportation, racing, and exhibition of non-exempt livestock, between points in the U.S., for 270 days. An underlying ETA seeks 120-days authority. Supporting shipper: There are 9 shippers. Their statements may be examined at the Regional Office listed.

MC 145229 (Sub-6–1TA), filed January 12, 1981. Applicant: JAMES D. BASALO AND HAROLD W. FULLERTON d.b.a. J & H, 1600 N. Ave. West, Missoula, MT 59801. Representative: Walter Anno (address same as applicant's). *Beverages and beverage containers* from Metropolitan Denver, CO area to points in MT and from points in MT to the Metropolitan Denver CO area for 270 days. Supporting shippers: Frontier Coors Distributing Co., 3455 Hwy 93 So, Kalispell MT 59901; Waters Distributing Co., Inc., 10011 River Dr. So., Great Falls, MT 59405; Missoula Distributing Co., 1550 Sunflower Dr., Missoula MT 59801.

MC 149304 (Sub-6–1TA), filed January 8, 1981. Applicant: J H R CORPORATION, 105 East Kiowa St., Suite 200, Colorado Springs, CO 80903. Representative: F. Kimball Joyner, Jr., 1600 Lincoln Center Building, Denver, CO 80264. *Contract carrier,* Irregular Routes: *Coal,* from the facilities of Chimney Rock Coal located in Archuleta County, CO, to the facilities of Paul Lime Company at Douglas, AZ, under a continuing contract or contracts with Chimney Rock Coal, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chimney Rock Coal, Star Route 3, Box 52A, Pagosa Springs, CO 81477.

MC 129951 (Sub-6–4TA), filed January 13, 1981. Applicant: HARLEY I. KEETER, JR., 6379 Valmont Dr., Boulder, CO 80301. Representative: Harley I. Keeter, Jr. (same as applicant). *Lumber* from points in CA, ID, MT, OR, WA, WY to CO for 270 days. ETA seeks 120 days authority. Supporting shipper: Hendricks Mining Company, Hendricks Good Milling Co., P.O. Box 653, Nederland, CO 80466.

MC 153584(Sub-6–1TA), filed January 12, 1981. Applicant: LARRY A. LANCKRIET, d.b.a. LARRY A. LANCKRIET TRUCKING, 308 South Cedar, Yuma, CO 80749. Representative: Larry A. Lanckriet (same as applicant). *Contract carrier,* Irregular routes: *Dry potash compounds, boron compounds, and dry fertilizers,* from points in Eddy and Lea Counties, NM; to points in Yuma County, CO; for the account of Yuma Farmers M & M Coop, Yuma, CO, for 270 days, Restricted to service for supporting shipper. Supporting shipper: Yuma Farmers M & M Coop, P.O. Box 184, Yuma, CO 80759.

MC 144079 (Sub-6–1TA) filed January 8, 1981. Applicant: LAS VEGAS TOWING CORPORATION, 5725 N. Riley, Las Vegas, NV 89108. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Wrecked, disabled, stolen, recovered or impounded motor vehicles, and trailers,* designed to be towed by motor vehicles, between points in Inyo, San Bernardino and Riverside Counties, CA; Mohave County, AZ; Beaver, Iron and Washington Counties, UT, on the one hand, and Clark County, NV on the other hand, for 270 days. Supporting shippers: There are nine (9) shippers. Their statements may be examined at the Regional Office listed.

MC 144054 (Sub-6–2TA) filed January 14, 1981. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Rd., Medford, OR 97501. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. (1) *Horticultural equipment, implements, and tools,* (2) *plastic articles,* (3) *insecticides, plant foods, and fertilizer,* and (4) *equipment, materials, and supplies* used in the manufacture or distribution of the products in (1), (2), and (3) above, between Polk County, IA, on the one hand, and on the other, all points in the U.S. in and east of ND, SD, NE, KS, MO, OK, and TX, restricted to traffic originating at or destined to the facilities of Ross Daniels, Inc. for 270 days. Supporting shipper: Ross Daniels, Inc., 1720 Fuller Road, West Des Moines, IA 50265.

MC 151442 (Sub-6–2TA) filed January 12, 1981. Applicant: LYNNCO LINES, INC., 2302 E. Del Amo Blvd., Compton, CA 90220. Representative: Jim Van Hosen (same as applicant). *Airline ground support equipment and/or flight*

equipment and supplies, between all points in the Continental U.S., for 270 days. Supporting shippers: Flying Tiger Line, Inc., 7401 World Way West, Los Angeles, CA 90009, Aircraft Service Int., Inc., P.O. Box 90156, Los Angeles, CA 90009, Continental Air Lines, Inc., 7300 World Way West, Los Angeles, CA 90045, Sunset Airport Systems, 6951 World Way West, Los Angeles, CA 90045..

MC 153309 (Sub-6–1TA) filed January 9, 1981. Applicant: MID-VALLEY TRANSPORTATION & DISPOSAL, P.O.B. 155, Victor, MT 59875. Representative: Dwane D. Clarke (same as applicant). *Contract carrier,* irregular routes: *Cartons and containers used by dairy industry,* from Hamilton, MT to points in ID and WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Philip D. McOmber, Northwest Polymeric, Inc. POB 1187 Hamiltion, MT 59840.

MC 138762 (Sub-6–3TA) filed January 9, 1981. Applicant: MUNICIPAL TANK LINES LTD., P.O.B. 3500, Calgary, Alberta, T2P 2P9. Representative: D. S. Vincent, P.O.B. 3500, Calgary, Alberta, T2P 2P9. *Dry synthetic resin* in bulk. From ports of entry on the US/Canada International Boundary line located at MI and NY to points in MI, IN, OH, CN, and NJ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Imperial Oil Limited, 111 St. Clair Ave. W., Toronto, Ontario, Canada.

MC 105350 (Sub-6–1TA), filed January 8, 1981. Applicant: NORTH PARK TRANSPORTATION CO., 5101 Columbine St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *General commodities* (except classes A and B explosives) serving the facilities of Consolidated Freightways Corporation of Delaware located at Cheyenne, WY as an intermediate or off-route point in connection with the carrier's existing regular route authority with the right to interline and tack such authority for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Consolidated Freightways Corporation of Delaware, 5300 E. 56th Ave., Commerce City, CO 80217.

MC 730 (Sub-6–14TA), filed January 9, 1981. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., 25 North Via Monte, Walnut Creek, CA 94595. Representative: Alfred G. Krebs (same address as applicant). *Common carrier,* regular routes: Forest products, pulp, paper and allied products. Serving points in Lincoln County, MT as off-route points in connection with carrier's otherwise authorized regular route operations, for 270 days. An underlying ETA seels 120 days authority. Supporting shipper: St. Regis Paper Co., 150 E. 42nd Street, New York, NY 10017.

Noted.—Applicant intends to tack with other authority held by it in Docket MC 730. Common control may be involved.

MC 143060 (Sub-6–2TA), filed January 8, 1981. Applicant: PENN–PACIFIC, INC., 20815 Currier Road, Walnut, CA 91789. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Commodities dealt in by manufacturers and distributors of products utilized by fast-food restaurants,* from Phoenix, AZ; Denver, CO; American Falls, Caldwell, and Pocatello, ID; Billings, MT; Halsey and Hermiston, OR; Friona, TX; and Logan, UT, to the facilities of Golden State Foods Corp., at Phoenix, AZ, and City of Industry, CA, for 270 days. Supporting shipper: Golden State Foods Corp., 640 6th Avenue, City of Industry, CA 91749.

MC 153559 (Sub-6–1TA), filed January 9, 1981. Applicant: PLAZA EXPRESS, INC., 15445 Ventura Blvd., Suit 10–416, Sherman Oaks, CA 91413. Representative: William J. Monheim, P.O. Box 1756, Whitter, CA 90609. *Contract carrier,* irregular routes: *New furniture, household accessories,* and *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the described commodities, between Los Angeles, CA, on the one hand, and, on the other, points in the United States, for the account of G. J. Industries, Inc., for 270 days. An underlying ETA seeks 120-days authority. Supporting shipper: G. J. Industries, Inc., 14660 Arminta Street, Panorama City, CA 91402.

MC 153581 (Sub-6–1TA), filed January 12, 1981. Applicant: RAZ TRANSPORTATION CO., 1660 SW Bertha Blvd., Portland, OR 97219. Representative: Jerry R. Woods, Suite 1600, One Main Pl, 101 SW Main St., Portland, OR 97204. *Passengers and their baggage in charter and special operations,* between points in Clark County, WA and Clackamas, Multnomah and Washington Counties, OR, on the one hand, and, on the other, points in CA, ID, MT, NV, OR, UT, WA and WY, for 180 days. There are 19 shippers. Their statements may be examined at the Regional office listed.

MC 153583 (Sub-6–1TA), filed January 12, 1981. Applicant: S & F TRUCKING, INC., R. R. 1, Box 79, Joseph, OR 97846. Representative: Rex L. Smith (same as above). (1) *Steel pipes, rounds, and flat steel stock* from the facilities of Beall Pipe, Portland, OR to points in AZ, CA, CO, ID, MT, NV, NM, WA, UT, WY, and (2) *Lumber* from the facilities of Joseph Forest Products, Joseph, OR to points in AZ, CA, CO, ID, MT, NV, NM, WA, UT, WY, for 270 days. Supporting shippers: Beall Pipe, 12005 N. Burgard Rd, Portland, OR; Joseph Forest Products, P.O. Box 198, Joseph, OR 97846.

MC 150727 (Sub-6–2TA), filed January 14, 1981. Applicant: JOE B. PAGE and DOROTHY L. PAGE d.b.a. Sandia Express, 1120 1st. NW., Albuquerque, NM 87107. Representative: Joe B. Page, 1714 Father Sky NE., Albuquerque, NM 87112. *Internal combustion engine parts,* between Albuquerque, NM on the one hand; and San Diego, CA and Ontario, CA on the other; for 270 days. Supporting shipper: General Electric Company Aircraft Engine Group, 336 Woodward Road SE, Albuquerque, NM 87102.

MC 153586 (Sub-6–1TA), filed January 14, 1981. Applicant: SUPERIOR ENTERPRISES, INC., Route 5, Box 264, Blackfoot, ID 83221. Representative: B. Lynn Winmill, P.O. Box 4645, Pocatello, ID 83201. *Contract carrier,* irregular route: *Coal in bulk,* from Kemmerer, WY to Conda, ID for the account of J. R. Simplot Company for 270 days. Supporting shipper: J. R. Simplot Company, 1 Capital Center, Boise, ID 83707.

MC 136818 (Sub-6–25TA), filed January 13, 1981. 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. *Beer,* From Fairfield, Irwindale and Van Nuys, CA to Ogden, UT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wasatch Distributing Co., 2361 B Ave., Ogden, UT 84402.

MC 153541 (Sub-6–1TA), filed January 9, 1981. Applicant: TURLEY WHOLESALE & BUILDING SUPPLIES, 556 West Jones Creek Rd., Grants Pass, OR 97526. Representative: Dwayne Turley (same address as applicant). *Lumber, plywood, paneling, shakes, and veneer,* between all points in the states of CA, OR, and WA, for 270 days. Supporting shippers: There are 6 shippers. Their statements may be examined at the Regional Office listed.

MC 141804 (Sub-6–96TA), filed January 9, 1981. Applicant: WESTERN EXPRESS, division of Interstate Rental, Inc., P.O. Box 3488, Ontario, Canada 91761. Representative: Frederick J. Coffman (same as applicant). *Commodities dealt in and utilized by distributors, wholesalers and retailers of alcoholic beveroges,* between points in NY, NJ, MA, CT and RI to all points in the U.S. (except AK and HI), for 270

days. Supporting shippers: Schenly Affiliated Brands Corp., 888 Seventh Avenue, New York, NY 10019.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-3024 Filed 1-27-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or before July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to conform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 16, 1981 (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Volume No. OP1-008

Decided: January 9, 1981.

By the Commission, Review Board No. 2. Members Chandler, Eaton, and Liberman. (Member Eaton not participating.)

MC 200 (Sub-521F), filed December 22, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting (1) *food and related products* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, (A) between points in Bates County, MO, on the one hand, and, on the other, points in CT, DE, IA, IL, IN, KS, KY, MA, MD, NE, NJ, NY, OH, OK, PA, RI, TX, VA, and WV, and (B) between points in NE and TX.

MC 30900 (Sub-18F), filed December 18, 1980. Applicant: FILKINS TRANSPORTATION CO., INC., 723 Crane Ave., Pittsfield, MA 01201. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *lime and limestone products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Berkshire County, MA, on the one hand, and, on the other, points in DE, ME, MD, NH, NJ, NY, PA, RI, VT, and DC.

MC 35831 (Sub-26F), filed December 24, 1980. Applicant: E. A. HOLDER, INC., P.O. Box 60, Kennedale, TX 76060. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103. Transporting *building materials* from points in Jefferson and Orleans Parishes, LA, to points in TX.

MC 54591 (Sub-10F), filed December 16, 1980. Applicant: SOUTHEASTERN TRAILWAYS, INC., P.O. Box 1207, Indianapolis, IN 46206. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Over regular routes, transporting *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, between Indianapolis, IN and Louisville, KY, over Interstate Hwy 65, serving all intermediate points.

Note.—Applicant intends to tack the rights sought to its existing authority.

MC 59720 (Sub-11F), filed December 19, 1980. Applicant: KENMORE TRANSPORTATION CO., a corporation, 22 Eskow Road, Worcester, MA 01604. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers (except commodities in bulk), between points in AZ and those in the U.S. In and east of WI, IL, MO, AR, and LA.

MC 87511 (Sub-31F), filed December 22, 1980. Applicant: SAIA MOTOR FREIGHT LINE, INC., P.O. Box 10157, Station One, Houma, LA 70360. Representative: Harold D. Miller, Jr., 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in AL, AR, FL, GA, LA, MO, MS, NC, OK, SC, TN, and TX.

MC 105501 (Sub-51F), filed December 29, 1980. Applicant: TERMINAL WAREHOUSE CO., INC., 1851 Raddison Rd., N.E., Blaine, MN 55434. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *non-alcoholic beverages* (except in bulk), between Lenexa, KS, on the one hand, and on the other, points in MN, IA, ND, and WI.

MC 108761 (Sub-4F), filed December 19, 1980. Applicant: THRONE AUTO SERVICE, INC., 3266 Upton Ave., Toledo, OH 43613. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603. Transporting (1) *wrecked, disabled or repossessed vehicles, and replacement vehicles*, and (2) *materials, equipment, and supplies* used in the repair of wrecked or disabled vehicles, between points in Lucas and Wood Counties, OH, on the one hand, and, on the other, points in the U.S.

MC 111231 (Sub-331F), filed December 19, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: James H. Berry (same address as

applicant). Transporting *general commodities* (except classes and B explosives), between points in St. Charles County, MO on the one hand, and, on the other, points in the U.S.

MC 111401 (Sub-609F), filed December 9, 1980. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). Transporting *flour*, in bulk, in tank vehicles, between Enid, OK, on the one hand, and, on the other, points in the U.S. (except AR, AZ, CO, GA, IA, IN, KS, LA, MO, NE, NM, OH, OK, SC, TX, AK and HI).

MC 114211 (Sub-489F), filed December 16, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *contractors' equipment, materials, and supplies*, between points in the U.S.

MC 114211 (Sub-490F), filed December 16, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between the facilities used by Northwestern Bell Telephone Co., Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 114211 (Sub-492F), filed December 16, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers, distributors, or converters of paper and paper products, between points in the U.S.

MC 114211 (Sub-495F), filed December 18, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *industrial equipment*, from Houston, TX, to points in the U.S.

MC 115331 (Sub-551F), filed December 16, 1980. Applicant: TRUCK TRANSPORT INC., 11040 Manchester Road, St. Louis, MO 63122. Representative: Edward J. Kiley, 1730 M Street, Washington, D.C. 20423. Transporting *general commodities* (except household goods as defined by the Commission, and commodities in bulk), between points in the U.S. Condition: Any certificate issued to the extent it authorizes the transportation of classes A and B explosives, shall expire 5 years from the date of issuance.

MC 115841 (Sub-780F), filed December 29, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Richard L. Hollow (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities used by the Roper Corporation at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 117730 (Sub-84F), filed December 16, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL 60602. Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Wilson Foods Corporation, at (a) Cedar Rapids, IA, and (b) Marshall, MO, to points in CT, DE, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, and DC, and (2) from the facilities of Wilson Foods Corporation, at Monmouth, IL, to points in IN, MI, and OH.

MC 121811 (Sub-2F), filed December 16, 1980. Applicant: MC CLELLAN'S ENTERPRISES, INC., Highway 41 South, Tifton, GA 31794. Representative: Arthur L. McClellan (same address as applicant). Transporting *building materials*, between points in Chatham County, GA, on the one hand, and, on the other, points in AL, FL, NC, SC, and TN.

MC 124821 (Sub-114F), filed December 16, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 N. Keyser Ave., Old Forge, PA 18518. Representative: Edward F. V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507. Transporting (1) *foodstuffs*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in the U.S.

MC 135640 (Sub-14F), filed December 12, 1980. Applicant: STALEY EXPRESS, INC., 2501 North Brush College Rd., Decatur, IL 62526. Representative: Charles Carnahan, Jr. (same address as applicant). Transporting *plastic materials* (except in bulk), from points in Macon and Sangamon Counties, IL, to points in IA, IN, KY, MI, MO, OH, and WI.

MC 143080 (Sub-2F), filed December 30, 1980. Applicant: BUCCANEER MOVING & STORAGE, INC., 315 North 2nd St., Fernandina Beach, FL 32034. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and those of unusual value), between points in AL, FL, GA, and SC.

MC 143280 (Sub-10F), filed January 2, 1981. Applicant: SAFE TRANSPORTATION CO., a corporation, 6834 Washington Ave. South, Eden Prairie, MN 55344. Representative: Robert P. Sack, P.O. Box 6010, West St., Paul, MN 55118. Transporting *general commodities* (except classes A and B explosives), between the facilities used by Moderrn Merchandising, Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 144030 (Sub-13F), filed December 15, 1980. Applicant: DRUE CHRISMAN, INC., P.O. BOX 264, Lawrenceburg, IN 47025. Representative: Paul J. Snodgrass (same address as applicant). Transporting *materials, equipment, and supplies* used in the manufacture and distribution of overhead doors, between points in the U.S., under continuing contract(s) with Overhead Door Corp., of Dallas, TX.

MC 144621 (Sub-50F), filed December 19, 1980. Applicant: CENTURY MOTOR LINES, INC., Box 66, 52275 U.S. Hwy 31 North, South Bend, IN 46624. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting (1) *plastic articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles, between points in MA, NY, NJ, MD, VA, NC, GA, FL, OH, IL, TX, CO, CA, WA, and MN, on the one hand, and, on the other, points in the U.S.

MC 148370 (Sub-18F), filed December 30, 1980. Applicant: TRAFIK SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02960. Representative: A. Joseph Mega (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Mark Stevens Service Merchandisers, Inc., of Woonsocket, RI.

MC 149440 (Sub-2F), filed December 23, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First St., Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 East

Gay St., Columbus, OH 43215. Transporting *building hardware, and materials, equipment, and supplies* used in the manufacture of building hardware, between points in Kent County, MI, and Lee County, AL, on the one hand, and, on the other, points in the U.S.

MC 153350F, filed December 30, 1980. Applicant: ACADIA COACH LINES, INC., 2609 Canal Street, New Orleans, LA 70119. Representative: John W. Abbott (same address as applicant). Transportating *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning or ending at points in LA and extending to points in the U.S.

MC 153410F, filed December 19, 1980. Applicant: DEBRYNNT McDUFFLE, d.b.a. McDUFFIE'S MOVING SERVICE, 3825 Tall Pine Drive, Algiers, LA 70114. Representative: Marshall Kragen, 1919 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20006. Transporting *household goods,* between points in AL, AR, FL, GA, LA, MS, TN, and TX.

MC 153421F, filed December 30, 1980. Applicant: PRINTCO, INC., P.O. Box 16039, Memphis, TN 38116. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW, Washington, DC 20004. Transporting (1) *printed matter,* and (2) *materials and supplies* used in the manufacture and distribution of printed matter, between points in the U.S.

Volume No. OP1–013

Decided: January 14, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill. (Member Parker not participating.)

MC 200 (Sub-522F), filed December 16, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Chicago, IL, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the facilities used by Tootsie Roll Industries, Inc., its affiliates, suppliers, or vendors.

MC 200 (Sub-527F), filed December 16, 1980. Applicant: RISS INTERNATIONAL CORP., P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting (1) *batteries and battery containers,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between Texarkana, AR, and St. Joseph, MO.

MC 22311 (Sub-29F), filed January 2, 1981. Applicant: A. LINE, INC., P.O. Box 765, Hammond, IN 46325. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of coiled springs and railroad spikes, between points in Cook County, IL, and Brown County, WI, on the one hand, and, on the other, points in the U.S.

MC 29910 (Sub-319F), filed December 22, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh St., Forth Smith, AR 72901. Representative: Joseph K. Reber (same address as applicant). Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C Appendix I to the reports in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), between points in Dakota and Cuming Counties, NE, Crawford and Webster Counties, IA, Rock County, MN, Lyon and Finney Counties, KS, and Potter County, TX, on the one hand, and, on the other, points in the U.S.

MC 115181 (Sub-47F), filed December 23, 1980. Applicant: HAROLD M. FELTY, INC., R.D. No.1, Box 148 Pine Grove, PA 17963. Representative: Lee E. High, 541 Penn St., Reading, PA 19601. Transporting *sand, clay, and gravel,* in bulk, in dump vehicles, from points in NJ and MD, to points in PA.

MC 118561 (Sub-22F), filed December 22, 1980. Applicant: HERBERT B. FULLER, d.b.a. FULLER TRANSFER CO. 212 East St. Maryville, TN 37801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting (1) *Foodstuffs,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in TN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TN.

MC 121550 (Sub-2F), filed December 23, 1980. Applicant: HATBORO DELIVERY SERVICE, INC., 424 Easton Road, Warrington, PA 18976.Representative: Harry J. Liederbach, 892 Second Street Pike, Richboro, PA 18954. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of drug stores, department stores, grocery stores and food business houses, between points in PA, on the one hand, and, on the other, points in NC, CT, DE, FL, GA, ME, MA, MD, NJ, NY, PA, RI, SC, VT, VA, and DC.

MC 124221 (Sub-71F), filed December 17, 1980. Applicant: HOWARD BAER, P.O. Box 47, Morton, IL 61550. Representative: Robert W. Loser, 1101 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U. S., under continuing contract(s) with The Kroger Co., of Cincinnati, OH. Condition: Upon issuance of a permit in this proceeding, the permits isued in MC 124221 (Subs 21, 23, 27, 29, 35, 39, 41, 43, 47, 49, 56, 58, 60, 61, 64, and 68) ae cancelled.

MC 124411(Sub-22F), filed December 19, 1980. Applicant: SULLY TRANSPORT, INC., P.O. Box 185, Sully, IA 50251. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *nitrogen fertilizer solution,* in bulk, from Tama, IA, to points in IL, MN, MO, and WI.

MC 138000 (Sub-80F), filed December 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. Transporting *furniture parts, and materials and supplies* used in the manufacture of furniture parts (except commodities in bulk), (1) between Carthage, Springfield and Aurora, MO, Birmingham, AL, Atlanta and Social Circle, GA, Nashville, TN, Winchester, Simpsonville and Nicholasville, KY, Dolton, IL, Grafton, WI, Ferndale, MI, Mason, Cininnati and Burton Station, OH, Edison and Jersey City, NJ, High Point, Forest City, Linwood, Newton, and Maxton, NC, Jacksonville, Orlando and Miami, FL, and Tupelo, MS, and (2) between those points in (1) above, on the one hand, and, on the other, points in MO, AL, GA, TN, KY, IN, IL, WI, MI, OH, PA, WV, VA, NJ, DE, NC, SC, FL, MS, MD, and DC, restricted to traffic originating at or destined to the facilities of Leggett & Platt, Inc., its affiliates and suppliers.

MC 144061 (Sub-18F), filed December 31, 1980. Applicant: SICOMAC CARRIERS, INC., 1107 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 345 Webster Ave., Brooklyn, NY 11230. Transporting *commodities in bulk,* between those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 148050 (Sub-2F), filed December 16, 1980. Applicant: L & J MOTOR LINES, INC., P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666

Eleventh St., N.W., Washington, DC 20001. Transporting *petroleum products*, from Baltimore, MD, and Bradford, PA, to points in NC.

MC 148071 (Sub-2F), filed December 12, 1980. Applicant: COFER TRANSPORT, INC., R.R. No. 1 Box 42, Willard, OH 44890. Representative: Keith D. Warner, 5732 W. Rowland Rd. Toledo, ON 43613. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Weyerhaeuser Company, of Mount Vernon, OH, Plymouth Locomotive Works, Inc., of Plymouth, OH and MTD Products, Inc., of Willard, OH.

MC 150711 (Sub-1F), filed December 24, 1980. Applicant: R.G.B. TRANSPORTATION CO., INC., 1034 Humble, El Paso, TX 79915. Representative: Antonio Cortez, Suite C—206, 4171 North Mesa St., El Paso, TX 79902. Transporting (1) *Wearing apparel*, from points in El Paso County, TX, to points in WA, (2) *frozen foods*, from points in WA to points in El Paso County, TX and (3) *meats, meat products, meat byproducts, and articiles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), between points in El Paso County, TX, on the one hand, and, on the other, points in ID, OR, UT, and WA.

Volume No. OP1–014

Decided: January 16, ,1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Fortier not participating.)

MC 2860 (Sub-216F), filed January 6, 1981. Applicant: NATIONAL FREIGHT, INC,. 71 West Park,. Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Ave., Vineland, NJ 08360. Transporting (1) *pulp, paper and related products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between points in Albany and Saratoga Counties, NY, on the one hand, and, on the other, points in IL, KY, OH, and TN.

MC 6031 (Sub-13F), filed December 30, 1980. Applicant: BARRY TRANSFER & STORAGE CO., INC., 120 East National Ave., Milwaukee, WI 53204. Representative: William P. Dineen, 710 North Plankinton, Ave,. Milwaukee, WI 53203. Transporting *Scrap materials*, between points in the U.S., under continuing contracts with Miller Compressing Company of Milwaukee, WI.

MC 47171 (Sub-197F), filed December 24, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosivies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AL, on the one hand, and, on the other points in CT, DE, MA, MD, NC, NJ, NY, SC, PA, RI, and DC.

MC 52460 (Sub-305F), filed January 2, 1981 Applicant: ELLEX TRANSPORTATION, INC., 1420 W. 35th St., P.O. Box 9637, Tulsa, OK 74107. Representative: Don E. Druizinga, (same address as applicant). Transporting *such commodities* as are dealt in by cold storage houses, between points in AL, AR, FL, KS, LA, MS, MO, NE, OK, TN, and TX.

MC 52680 (Sub-8F), filed December 29, 1980. Applicant: D.A. EXPRESS, INC., 11937 S. Page Ave., Calumet Park, IL 60643. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle St., Chicago, IL 60602. Transporting *metal and metal products*, between points in IL, IN, IA, KY, MD, MI, NM, MO, NE, NJ, NY, OH, PA, TN, VA, WV, WI, and DC.

MC 52861 (Sub-89F), filed January 6, 1981. Applicant: WILLS TRUCKING, INC., 3185 Columbia Rd., P.O. Box 256, Richfield, OH 44286. Representative: Paul F. Berry, 275 E. State St., Columbus, OH 43215. Transporting (1) *alloys and ores*, and (2) *materials and supplies* used in the manufacture of alloys and ores, between points in Ashtabula, Columbiana, and Washington Counties, OH, and Fayette County, WV, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 59720 (Sub-12F), filed December 30, 1980. Applicant: KENMORE TRANSPORTATION CO. a corporation, 22 Eskow Rd., Worcester, MA 01604. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastic, plastic articles and chemicals (except commodities in bulk), between points in MO and those in the U.S., in and east of WI, IL, KY, TN, and MS.

MC 67450 (Sub-107F), filed December 24, 1980. Applicant: PETERLIN CARTAGE CO., 9651 S. Ewing Ave., Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting (1) *foodstuffs*, and (2) *materials, equipment, and supplies* used in the manufacture of foodstuffs, between those points in the U.S. in and east of MT, WY, CO, and NM, restricted to traffic originating at or destined to the facilities used by Keebler Company.

MC 106920 (Sub-118F), filed January 5, 1981. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe St., P.O. Box 26, New Bremen, OH 45869. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting (1) *food and related products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between Gaffney, SC and points in OH, on the one hand, and, on the other, points in CT, DE, IA, IL, IN, KY, MA, MD, ME, MI, MN, MO, ND, NE, NH, NJ, NY, OH, PA, RI, SD, VA, VT, WI, WV and DC.

MC 109490 (Sub-25F), filed December 30, 1980. Applicant: HEDING TRUCK SERVICE, INC., P.O. Box 97, Union Center, WI 53962. Representative: Ronald E. Laitsch, P.O. Box 70, Watertown, WI 53094. Transporting (1) *dairy products* from Fond du Lac and Milwaukee, WI, to points in the U.S., and (2) *materials, equipment and supplies* used in the manufacture of dairy products, in the reverse direction.

MC 114211 (Sub-493F), filed December 18, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of Kohler Company and its dealers.

MC 115840 (Sub-124F), filed December 24, 1980. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Chester G. Groebel (same address as applicant). Transporting (1) *metal and metal articles*, between points in GA, NC, SC, and VA, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (2) *electrical arc furnaces, parts for electrical arc furnaces, and arc fabricated steel water cooling systems*, from Salisbury, NC, to points in AL, AZ, CA, CO, GA, IL, IN, KS, LA, MA, MI, MN, MO, NE, OH, OR, PA, SC, TX, and WV.

MC 119990 (Sub-13F), filed December 22, 1980. Applicant: MERCHANTS

DELIVERY CO., a corporation, 1212 East 19th St., Kansas City, MO 64108. Representative: David W. Howard, 601 W. 47th St., Kansas City, MO 64112. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Kansas City, MO, to those points in KS and MO bounded by a line beginning at the junction of U.S. Hwy 77 and the KS–NE State line, then along U.S. Hwy 77 to the KS–OK State line, then along the KS–OK State line to the OK–MO State line, then along the OK–MO State line to the MO–Ar State line, then along the MO–AR State line to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA–MO State line, then along the IA–MO State line to the MO–NE State line, then along the MO–NE State line to the KS–NE State line, then along the KS–NE State line to the point of beginning, including points on the described boundary lines, and the commercial zones of any points in the described area, restricted against the transportation of packages or articles weighing individually more than 100 pounds or in the aggregate more than 750 pounds from one consignor at one location to one consignee at one location on any one day. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. § 11343–11344 or submit an affidavit indicating why such approval is unnecessary.

MC 120941 (Sub-2F), filed December 22, 1980. Applicant: SUGARHOUSE VAN LINES, 450 East 2200 South, Salt Lake City, UT 84115. Representative: Keith E. Sohm, 525 South 300 East, Salt Lake City, UT 84111. Transporting *household goods*, between points in AZ, CA, CO, ID, MT, NV, UT, and WY.

MC 129480 (Sub-54F), filed January 5, 1981. Applicant: TRI-LINE EXPRESSWAYS, LTD., 9559 40th St., S.E., Calgary, Alberta, Canada T2H 2J1. Representative: Edwart T. Lyons, Jr., 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. *In foreign commerce only*, transporting (1) *lumber and wood products and forest products*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one, and, on the other, points in AR, DE, FL, GA, IA, IL, IN, KY, LA, MD, MI, MO, MS, NC, OH, PA, SC, TN, VA, WI, WV, and DC, (2) *those commodities which because of their size or weight require the use of special handling or equipment, Mercer commodities, machinery and equipment*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except CT, HI, MA, ME, NH, NJ, NY, RI, and VT), and (3) *chemicals and related products*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except CT, HI, MA, ME, NH, NJ, NY, RI, and VT).

MC 133870 (Sub-6F), filed January 5, 1981. Applicant: JOHN P. WEYER, INC., Route 1, Box 86B, Brownsville, WI 53006. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53202. Transporting (1) *lime and lime products*, and (2) *materials, equipment and supplies* used in the manufacture of lime and lime products, between points in the U.S., under continuing contract(s) with Western Lime & Cement Company, of Milwaukee, WI.

MC 134440 (Sub-2F), filed January 6, 1981. Applicant: LAVENTURE BROS. TRANSFER d.b.a. LAVENTURE BROS. TRANSFER and LAVENTURE BROS. VAN LINES, P.O. Box 119, Maywood, CA 90270. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Transporting *furniture and fixtures*, between points in the U.S., under continuing contract(s) with California Shops, Ltd., of Los Angeles, CA.

MC 141871 (Sub-23F), filed January 2, 1981. Applicant: WNI, INC., 8700 S.W. Elligsen Rd., Wilsonville, OR 97070. Representative: Matthew J. Reid, P.O. Box 2298, Green Bay, WI 54306. Transporting *general commodities* (except classes A and B explosives) between the facilities of American Cynamid Company, its affiliates and subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 142310 (Sub-33F), filed December 23, 1980. Applicant: H. O. WOLDING, INC., P.O. Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *iron and steel articles*, from Jersey Shore and Williamsport, PA, to Weyauwega, WI.

MC 143291 (Sub-6F), filed January 2, 1981. Applicant: RAYLS BROTHERS TRANSFER, INC., Route 1 North, Box 342, Hoopeston, IL 60942. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Dry Storage Corp., of Des Plaines, IL.

MC 143831 (Sub-2F), filed December 29, 1980. Applicant: CLIFF VIESSMAN, INC., Clarkfield, MN 56223. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *corn syrup, corn sugar, and sucrose*, between points in the U.S., under continuing contract(s) with Kohler Mix Specialities, Inc. of White Bear Lake, MN.

MC 144740 (Sub-30F), filed December 29, 1980. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Fred Daugherty (same address as applicant). Transporting (1) *industrial staples*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) (except in bulk), between points in the U.S., under continuing contract(s) with BeA Fasteners, Inc., of Hamlet, NC.

MC 148231 (Sub-4F), filed December 30, 1980. Applicant: SIKORA & WILSON, INC., d.b.a. EAST–WEST EXPRESS, 7900 North Frontage Rd., Hinsdale, IL 60521. Representative: John T. O'Connell, 521 S. LaGrange Rd., LaGrange, IL 60525. Transporting *articles generally sold in grocery stores*, between Chicago, IL, on the one hand, and, on the other, points in the U.S.

MC 149440 (Sub-3F), filed December 23, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First St., Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities of Union Camp Corporation and Moore-Handley, Inc.

MC 150861 (Sub-1F), filed December 22, 1980. Applicant: JUNKINS TRUCKING, INC., Route 1, Box 330H, Keyser, WV 26726. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting *coal*, between points in MD, PA, VA, WV, and DC.

MC 153540F, filed January 2, 1981. Applicant: NUNES TRANSPORT INC., P.O. Box 84, Newburyport, MA 01950. Representative: Irving S. Kaplan, 44 Humphrey St., Swampscott, MA 01907. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Stahl Finish Co., a Division of Beatrice Foods, Inc., of Peabody, MA, and (b) Polyvinal Chemical Industries, a Division of Beatrice Goods, Inc., of Wilmington, MA.

Volume No. OP1–016

Decided: January 19, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 200 (Sub-533), filed January 9, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between the facilities used by Purex Corp., its affiliates, suppliers, or vendors, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 200 (Sub-535), filed January 9, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between the facilities used by Sunbeam Appliance Company, its affiliates, suppliers, or vendors, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 200 (Sub-536), filed January 9, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing, Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *hides*, between points in Allen County, IN, on the one hand, and, on the other, points in Webb County, TX.

MC 200 (Sub-537), filed January 9, 1981. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing, Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *plastic articles*, between points in Denver County, CO, on the one hand, and, on the other, points in Defiance County, OH, and Johnson County, TX.

MC 28691 (Sub-32F), filed December 30., 1980. Applicant: McDUFFEE MOTOR FREIGHT, INC., 8505 West Warren Avenue, Dearborn, MI 48126. Representative: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Over *regular routes*, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in TN, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 78400 (Sub-99), filed January 9, 1981. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *general commodities* (except classes A and B explosives), between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

MC 82101 (Sub-20), filed January 9, 1981. Applicant: WESTWOOD CARTAGE, INC., 62 Everett St., Westwood, MA 02090. Representative: John P. Tynan, 201 Juno St., P.O. Box 777, Jupiter, FL 33458. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Lechmere Tire & Sales Co., Inc., of Woburn, MA.

MC 108531 (Sub-24F), filed December 29, 1980. Applicant: BLUE BIRD COACH LINES, INC., 502–504 North Barry St., Oleans, NY 14760. Representative: Ronald W. Malin, Bankers Trust Building, Jamestown, NY 14701. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, (1) between points in NY, OH, and PA, and (2) beginning and ending at points in NY, OH, and PA, and extending to points in the U.S.

MC 112070 (Sub-22F), filed January 9, 1981. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl St., Denver, CO 80210. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036. Transporting *household goods*, between points in the U.S. Condition: Prior to issuance of a certificate in this proceeding, applicant must request cancellation of those certificates which duplicate the above authority.

MC 121101 (Sub-4F), filed January 9, 1981. Applicant: FORGE VILLAGE TRANSPORTATION CO., INC., 39 Central Ave., Ayer, MA 01432. Representative: Russell S. Callahan, P.O. Box 1806, Brockton, MA 02403. Transporting *general commodities* (except classes A and B explosives), between points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, and VT.

MC 12141 (Sub-142F), filed December 29, 1980. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Batesville, AR 72501. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with Alloy Rods Division of Chemetron Corporation of Hanover, PA.

MC 129410 (Sub-24F), filed December 29, 1980. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Transporting *liquid corn syrup*, in bulk, between points in the U.S., under continuing contract(s) with American Maize Products Co. of Hammond, IN.

MC 134701 (Sub-6), filed January 9, 1981. Applicant: J-V, INC., 723 E. 8425 South, Sandy, UT 84070. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, Ut 84111. Transporting (1) *foodstuffs*, and (2) *paper products*, between points in the U.S., under continuing contract(s) with Nicholas & Co., Inc., of Salt Lake, City, UT.

MC 135070 (Sub-177), filed January 12, 1981. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *food and related products*, between points in OH, on the one hand, and, on the other, points in AR, AZ, CA, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, NM, NV, OH, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 135391 (Sub-6F), filed December 23, 1980. Applicant: WILDERNESS EXPRESS, INC., 525 Lake Ave. South, Duluth, MN 55802. Representative: Sperling R. Englehart (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Jeno's Inc., of Duluth, MN. Condition: Issuance of a permit in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its existing permit in MC-135391 (Sub-5F).

MC 140201 (Sub-6F), filed December 18, 1980. Applicant: SONELL, INC., 416 Governor Prints Blvd., P.O. Box 9065, Lester, PA 19113. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K Street, NW., Washington, DC 20005. Transporting (1) *paper and paper products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between those points in the U.S. in and east of MN, IA, MO, AR, and LA, restricted to traffic originating at or destined to the facilities used by Scott Paper Company.

MC 143110 (Sub-14), filed January 9, 1981. Applicant: K AND B EXPRESS, INC., P.O. Box 801, Union, NJ 07083. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08817. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under

continuing contract(s) with ABC-TNT and Acme Fast Freight, Inc., both of Los Angeles, CA.

MC 144740 (Sub-31), filed January 9, 1981. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Nancy D. Daughterty (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with J. N. Ceazan Co., of Carson, CA.

MC 145441 (Sub-135F), filed December 30, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between the facilities of Mid-South Shippers Association, Inc.,at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 146820 (Sub-10), filed January 9, 1981. Applicant: B & G TRUCKING, INC., 579 High St., P.O. Box 581, Worthington, OH 43085. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *pulp, paper and related products,* (2) *rubber and plastic products,* and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in the U.S., under continuing contract(s) with St. Regis Paper Company, of New York, NY.

MC 148560 (Sub-2F), filed December 19, 1980. Applicant: GOLD STAR, INC., 130 Davidson Avenue, Somerset, NJ 08873. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with The Great Atlantic and Pacific Tea Company, Inc., Compass Foods, Inc., Super Market Service, Inc., Plus Discount Foods Inc., Family Center, Inc., LoLo Discount Stores, Inc., Kwik Save Inc. and Supermarket Distribution Services, Inc., all of Montvale, NJ.

MC 151130 (Sub-1F), filed December 29, 1980. Applicant: COLONIAL VIRGINIA TOURS, INC., d.b.a. HAVE BUS WILL TRAVEL, 7716 Bergen St., Norfolk, VA 23518. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *passengers and their baggage,* in charter operations, beginning and ending at Norfolk, Portsmouth, Virginia Beach, Chesapeake, Hampton, and Newport News, VA, points in Northampton and Accomack Counties, VA, and Elizabeth City, NC, and extending to points in the U.S. (including AK but excluding HI), under continuing contract(s) with Reuven Z. Cohen, d.b.a. Mr. Happy Travel Service, of Norfolk, VA.

MC 152001 (Sub-2F), filed January 12, 1981. Applicant: HALL'S SPECIALTIES, INC., R.R. 1, Laotto, IN 46763. Representative: Constance J. Goodwin, Suite 800, Circle Tower, Five East Market St., Indianapolis, IN 46204. Transporting (1) *petroleum, natural gas and their products,* between points in St. Clair County, IL, Genesee County, MI, and those in MI on and south of Interstate Hwy 96, on the one hand, and, on the other, points in Allen County, IN, and (2) *chemicals and related products,* between points in OH and those in MI on and south of Interstate Hwy 96, on the one hand, and, on the other, points in Miami County, IN.

Volume No. OP5–16

Decided January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 31389 (Sub-320F), filed December 30, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. under continuing contract(s) with the Port of Seattle, of Seattle, WA.

MC 52589 (Sub-1F), filed December 19, 1980. Applicant: BLUE BIRD TRANSFER & STORAGE CO., a corporation, 2123 Harrison Dr., Clinton, IA 52732. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *ventilators and plastic articles,* and (2) *aluminum; articles and fiberboard and paperboard boxes,* between Clinton, IA, on the one hand, and, on the other, points in IL, IN, KY, MI, MN, MO, OH, and WI.

MC 52709 (Sub-405F), filed December 22, 1980. Applicant: RINGSBY TRUCK LINES, INC., P.O. 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Transporting (1) *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (a) between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (b) between points in the U.S. (except AK and HI), restricted in (b) to Traffic originating at or destined to the facilities used by General Mills, Inc., its subsidiaries, and affiliates, and (2) *metal products* between points in Box Elder County, UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 57228 (Sub-6F), filed December 17, 1980. Applicant: DWORKIN, INC., 5400 Harvard Ave., Cleveland, OH 44105. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. Transporting (1) *general commodities* (except classes A and B explosives), between points in OH, and (2) (a) *iron and steel articles, metal products, machinery, electric motors, precast building materials,* and (b) *materials, equipment, and supplies* used in the manufacture of the commodities in (2) (a), between points in DE, IL, IN, KY, MD, MI, NJ, NY, OH, PA, and WV.

MC 79568 (Sub-1F), filed December 22, 1980. Applicant: O'ROURKE STORAGE & TRANSFER COMPANY, INC., 60 Campbell's Run Rd., Pittsburgh, PA 15205. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *household goods* between those points in PA on and west of U.S. Hwy 219, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, IA, KS, LA, ME, MN, MS, NE, NH, NM, OK, SC, TX, VT, and WI.

MC 119789 (Sub-725F), filed December 22, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting *such commodities* as are distributed by liquor business houses, between points in the U.S. (except AK and HI).

MC 121568 (Sub-72F), filed December 23, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *manganese ore,* and *materials, equipment, and supplies* used in the processing and distribution of manganese ore, between the facilities of ESB Materials Company and its affiliates in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

Note.—Applicant intends to tack with existing regular route authority.

MC 125368 (Sub-122F), filed December 22, 1980. Applicant: CONTINENTAL

COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *plastic products,* between the facilities of Package Development Corp., at Shawnee Mission, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 128639 (Sub-15F), filed December 22, 1980. Applicant: CURRIER TRUCKING CORPORATION, Berlin-Gorham Rd., Gorham, NH 03581. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of paper, paper products, lumber, lumber products and petroleum products, between points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, MD, DE, VA, WV, OH, IN, IL, MI, and DC.

MC 133478 (Sub-25F), filed December 22, 1980.Applicant: DG TRANSPORT, INC., P.O. Box 23727, Portland, OR 97223. Representative: Peter H. Glade or Nick I. Goyak, 1 SW Columbia, No. 555, Portland, OR 97258. Transporting *building materials,* between points in the U.S., under continuing contracts(s) with Sentree Forest Products, of Lake Oswego, OR.

MC 136168 (Sub-47F), filed December 22, 1980. Applicant: WILSON CERTIFIED EXPRESS, INC., P.O. Box 3326, Des Moines, IA 50316. Representative: Donald L. Stern, Suite 610 7171 Mercy Road, Omaha, NE 68106. Transporting (1) *corrugated paper boxes and sheets,* between points in the U.S. under continuing contract(s) with Mead Containers, Division of The Mead Corporation, of Albert Lea, MN.

MC 136669 (Sub-17F), filed December 31, 1980. Applicant: PROCESSED BEEF EXPRESS, INC., P.O. 522 Dakota, City, NE 68731. Transporting *food and related products, and machinery* between points in the U.S., under continuing contract(s) with Iowa Beef Processors, Inc., of Dakota City, NE.

Volume No. OP5–17

Decided: January 14, 1981.

By the Commission, Review Board No. 2. Members Chandler, Eaton, and Liberman.

MC 141878 (Sub-12F), filed December 24, 1980. Applicant: DIRECT COURIER, INC., 800 N Taylor St., Arlington, VA 22003. Representative: Gearld K. Gimmel Suite 145, 4 Professional Dr., Gaithersburg, MD 20760.,Transporting (1) *chemicals and pharmaceuticals,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN to the international boundary line between the U.S. and Canada.

MC 144779 (Sub-8F), filed December 23, 1980. Applicant: AHA, INC., Box 158, Panguitch, UT 84759. Representative: Glen M. Hatch, 80 West Broadway, Suite 300, Salt Lake City,UT 84101. Transporting *steel,* from Los Angeles, CA, to points in UT.

MC 146438 (Sub-9F), filed December 23, 1980. Applicant: ETV, INC., P.O. Box 393, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Transporting *frozen foods, and materidls and supplies* used in the manufacture and distribution of frozen foods (except commodities in bulk), (1) between points in the U.S., on the one hand, and, on the other, the facilities used by Chef Pierre, Inc., in MI and MS, and (2) between points in the U.S., on the one hand, and, on the other, facilities used by Mrs. Smith's Frozen Foods Co., in PA, OR, CA, GA, NJ and MI.

MC 148589 (Sub-6F), filed December 30, 1980. Applicant: STOREY TRUCKING CO., INC., P.O. Box 126, Henegar, AL 35978. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. Transporting (1) *yarn and floor coverings,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with (a) Mohasco Corporation, of Amsterdam, NY, (b) Apollo Sales, Inc., of Oakland, CA, and (c) L. D. Brinkman Co., of Irving, TX.

MC 150799 (Sub-1F), filed December 30, 1980. Applicant: SPIVEY TRUCKING CO., INC., Route 1, Box 32, Clio, AL 36017. Representative: Boyd Whigham, 104 Court Square, Clayton, AL 36016. Transporting (1) *lumber and lumber products, wood, and wood shavings,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between the facilities of Slawson Lumber Company and Southeast Wood Treating, Inc., at Louisville, AL, on the one hand, and, on the other, points in LA, MS, TN, NC, SC, GA, FL, TX, VA, IN, OH, IL, and AR.

MC 151839 (Sub-1F), filed December 23, 1980. Applicant: C & S TRUCKING, INC., 4717 West Military Hwy., Chesapeake, VA 23320. Representative: Blair P. Wakefield, Suite 1001, First & Merchants National Bank Bldg., Norfolk, VA 23510. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the Norfolk, VA, commercial zone restricted to traffic having a prior or subsequent movement by water or rail.

MC 152179F, filed October 14, 1980, initially published in FR November 4, 1980. Applicant: MARCUS MO d.b.a. MARCUS TRUCKING CO., 240 N. Berendo St., Los Angeles, CA 90004. Representative: Greg P. Stefflre, 261 S. Figueroa St., Los Angeles, CA 90017. Transporting *waste products* for recycling or reuse, from points in the U.S., to Los Angeles, CA.

Note.—This republication shows the correct territorial description.

MC 152239 (Sub-1F), filed December 19, 1980. Applicant: C–B BROKERS, INC., P.O. Box 10, Hanover, VA 23069. Representative: J. D. Brown (same address as applicant). Transporting *household appliances,* between points in the U.S., under continuing contract(s) with Warwick Manufacturing Corporation, of Chesapeake, VA.

MC 152739 (Sub-1F), filed December 23, 1980. Applicant: FRED B. HALL, d.b.a. WORTHINGTON GULF SERVICE, 923 High St., Worthington, OH 43085. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *wrecked and disabled motor vehicles and freight trailers,* and (2) *replacement motor vehicles and freight trailers,* between points in Franklin County, OH, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, PA, and WV.

MC 152949 (Sub-1F), filed December 22, 1980. Applicant: McKINLEY GUNTER, JR., d.b.a. G TRANSPORTATION CO., 610 Lickinghole Rd., Ashland, VA 23005. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. Transporting (1) *aluminum and aluminum products, boxes, plastic and rubber articles, paper and paper products, metals and metal products,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and storage of the commodities in (1), between Richmond, VA, and points in Orange County, NY, Middlesex County, NJ, and Rowan County, NC, on the one hand, and, on the other, points in CT, DE, MA, MD, NC, NJ, NY, PA, RI, VA, WV, and DC.

MC 153428F, filed December 16, 1980. Applicant: DESHOTEL TRUCKING CO., a corporation, Route 5, Box 7039,

Beaumont, TX 77706. Representative: Clint Oldham, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *petroleum products*, between points in Jefferson County, TX, on the one hand, and, on the other, points in MS, LA, and TX. Condition: Any certificate issued in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of authority in MC 148276.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3045 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 C.F.R. 1100.247. Special rule 247 was pulished in the **Federal Register** on July 3, 1980, at 45 F.R. 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 F.R. 80109.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before March 16, 1981, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPL-011

Decided: January 9, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman. (Member Eaton not participatig.)

MC 79550 (Sub-9F), filed November 24, 1980. Applicant: ERSKINE TRUCKING, INC., 6210 Center Rd., Lowellville, OH 44436. Representative: James Duvall, P.O. Box 97, 220 W. Bridge St. Dublin, OH 43017. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 107151 (Sub-29F), filed December 19, 1980. Applicant: H. F. JOHNSON, INC., P.O. Box 1435, Billings, MT 59103. Representative: Donald L. Sand (same address as applicant). Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OP1-012

Decided: January 13, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 113751 (Sub-42F), filed December 29, 1980. Applicant: HAROLD F. DUSHEK, INC., 10th & Columbia Streets, Waupaca, WI 54981. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 114070 (Sub-7F), filed December 30, 1980. Applicant: WAGONER TRANSPORTATION CO., a corporation, 755 East Hackley Ave., Muskegon Heights, MI 49444. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OP1-015

Decided: January 16, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Fortier not participating).

MC 153490F, filed December 29, 1980. Applicant: DANIEL E. TIETMEYER, d.b.a. TIETMEYER TRUCKING, 4306 W. 22nd St., Greeley, CO 80631. Representative: Steven K. Kuhlmann, 2600 Energy Center, 717 17th St., Denver, CO 80202. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 153500F, filed December 29, 1980. Applicant: RED SAVAGE LINE, INC., 2801 S. 29 Mile Rd., Cadillac, MI 49601. Representative: Melvin Savage (same address as applicant). Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP1-017

Decided: January 19, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 142941 (Sub-81), filed January 12, 1981. Applicant: SCARBOROUGH

TRUCK LINES, INC., 1313 North 25th Ave., Phoenix, AZ 85009. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg., 1623 Farnam, Omaha, NE 68102. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OP5–18

Decided: January 14, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 142059 (Sub-150F), filed December 30, 1980. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting *general commodities*, between Alamitos, CA, Cushing, Crandall, Eustace, Frankston, Kaufman, Kemp, Larue, Mabank, Mohl, Poynor, Reklaw, Sacul, and Seagoville, TX, Warrensburg, NY, Steptoe and Thornton, WA, Hartford, Humboldt, Montrose, Salem, Spencer, Farmer, Fulton and Riverside, SD, Evan, Morgan, Gilfillan, and Redwood Falls, MN, Unionville, Milan, Browning, Purdin, and Linneus, MO, and Galesville and Neillsville, WI, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for complete abandoned rail service.

MC 147939 (Sub-4), filed January 6, 1981. Applicant: CHARLOTTE VAN & STORAGE CO., INC., 213 Verbena St., Charlotte, NC 28203. Representative: Frank E. Watson, Jr. (same address as applicant). As a broker of *general commodities* (except household goods) between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-3044 Filed 1-27-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

[Amdt. No. 1 to Delegation of Authority No. 2]

Amendment to Delegation of Authority

Pursuant to the authority vested in the Director of the United States International Development Cooperation Agency by Section 2 of the Reorganization Plan No. 2 of 1979 (44 FR 41165), I hereby amend IDCA Delegation of Authority No. 2, dated October 29, 1979 (44 FR 65485, November 13, 1979), in its entirety to read as follows:

Pursuant to the authority vested in the Director of the United States International Development Cooperation Agency by Section 2 of Reorganization Plan No. 2 of 1979 (44 FR 41165), it is directed as follows:

In the event of the absence or disability of the Director and the Deputy Director of the United States International Development Cooperation Agency (IDCA) or of vacancies in both such offices, the following IDCA officials shall act as Director: the Administrator or Acting Administrator of the Agency for International Development, or an IDCA official formally designated by said Administrator or Acting Administrator.

This amendment is effective immediately.

Dated: January 19, 1981.

Thomas Ehrlich,

Director.

[FR Doc. 81-3041 Filed 1-27-81; 8:45 am]

BILLING CODE 4710-02-M

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting

Pursuant to Executive Order 11769 and the Provisions of Section 10(a)(2), Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on March 3–4, 1981 at the Pan American Health Organization Building, Conference Room 'C', Washington, D.C., to review, appraise and make recommendation to the Administrator, Agency for International Development, concerning projects proposed for A.I.D. research funding in the areas of food and nutrition, health and population, education, and selected development problems.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. each day. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Miloslav Rechcigl, Chief of Research and Methodology Division, Bureau for Development Support, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Rechcigl, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–9011.

Date: January 13, 1981.

Miloslav Rechcigl,

A.I.D. Representative; Research Advisory Committee.

[FR Doc. 81-3023 Filed 1-27-81; 8:45 am]

BILLING CODE 4710-02-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–83]

Certain Adjustable Window Shades and Components Thereof; Proposed Consent Orders and Settlement Agreements and Request for Public Comments Thereon

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the presiding officer in the above-captioned investigation has certified to the Commission for action a joint motion to terminate the investigation, along with proposed settlement agreements and consent orders executed by the complainant and two respondents. Before taking final action on the proposed consent orders and settlement agreements, the Commission requests that interested members of the public submit written comments thereon.

SUPPLEMENTARY INFORMATION:

Background

Newell Window Furnishings Company (hereinafter "complainant"), Freeport, Illinois, filed a complaint with the U.S. International Trade Commission (hereinafter "Commission") on April 7, 1980. The complaint alleged that unfair methods of competition and unfair acts have occurred, including the infringing of U.S. Letters Patent 4,006,770 (hereinafter "the patent"), which have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission instituted an investigation into those allegations and published notice thereof in the **Federal Register** of May 29, 1980 (45 FR 36229). The notice of investigation listed as parties respondent two overseas firms, Tony Plastic Co., Kaohsiung, Taiwan, Republic of China, and Dirkson Inc., Taipei, Taiwan, Republic of China (producers and exporters of the allegedly infringing articles) and three domestic firms, Breneman, Inc., Cincinnati, Ohio, Joanna Western Mills Company, Chicago, Ill., and Stanley Drapery Hardware, Wallingford, Conn. (importers and distributors of the allegedly infringing articles).

On September 30, 1980, the complainant and respondents Joanna Western Mills Company and Breneman, Inc., filed a joint motion (Motion 83–13) to terminate this investigation as to respondents Joanna and Breneman pursuant to section 210.51 of the Commission's Rules of Practice and Procedure, on the basis of the proposed settlement agreements and consent orders. A supplement to the joint motion to terminate was filed by the same three parties on December 3, 1980. The motion is unopposed.

The Settlement Agreements

There are two proposed settlement agreements in this case—one of them between the complainant and the respondent Breneman and the other between the complainant and the respondent Joanna. the substantive provisions of the proposed settlement agreements are identical and may be summarized as follows:

1. Each respondent represents and warrants that it has ceased importing the allegedly infringing window shades and that it has placed no subsequent purchase orders for the importation of such window shades.

2. The agreement constitutes no admission or inference that the subject patent is valid or infringed or that the respondent has committed any wrongful act or violated any law.

3. Each respondent may dispose of current inventories of the allegedly infringing window shades upon payment of a fee (the amount of which is confidential) to the complainant. The right to dispose of such window shades shall survive the termination of this investigation.

4. With respect to each of the respondent's allegedly infringing window shades, the complainant releases each respondent, its officers, successors, and assigns from any and all causes of action and claims for damage which complainant may have against them relating to unfair methods of competition arising out of the importation, use, and sale of the subject window shades. Complainant agrees to take no action against respondents, their directors, successors, and assigns, by reason of any prior use or sale of the subject window shades.

5. Each respondent shall give to the complainant reasonable notice, not less than four months, of its intent to import size-to-width window shades and components thereof which are non-staple articles of commerce, which information will be held in confidence by complainant.

6. Nothing in the settlement agreements or the consent orders shall in any way impair respondents' right to challenge the validity and enforceability of the patent in any future proceeding.

7. The agreement shall be binding upon and insure to the benefit of complainant and respondent, their officers, successors, assigns, and other agents.

8. The agreement is considered a contract made by and under the laws of the State of Illinois.

The full text of each settlement agreement, except for confidential business information, is available for public inspection in the Office of the Secretary, U.S. International Trade Commission. Copies may be requested at the same address.

The Consent Orders

There are two proposed consent orders—one between the complainant and Joanna, and the other between the complainant and Breneman. The substantive provisions of the two consent orders are identical and may be summarized as follows:

1. The parties concede that the Commission has subject matter and personal jurisdiction, and the parties waive all rights to seek judicial review or to otherwise challenge or contest the validity of the order.

2. Each order shall apply to the respondents and its officers, directors, employees, controlled and/or majority owned business entities, successors and assigns and to all persons who receive actual notice of this order.

3. The respondent will not import, cause to be imported, or purchase, sell, give, own, or consign subject the imported window shade products which have been offered for sale or sold in the United States. The respondent will likewise not import, purchase, sell, give, own or consign any device which infringes the patent or any component thereof which constitutes a material part of the invention and is not a staple article or commodity of commerce. Respondent may dispose of all devices presently in inventory.

4. Each respondent is ordered to serve within thirty days a conformed copy of this order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for marketing, distribution of repondent's products in the United States, or for shipment or export to the United States for resale.

5. The Commission may seek enforcement of this order pursuant to 19 U.S.C. 1337(f).

6. This order constitutes a settlement and resolution of investigation No. 337–TA–83. In the event that the patent is declared invalid by a court of competent jurisdiction from which no appeal can be taken, the provisions set forth in No. 3 above shall be void.

The full text of each consent order is available for public inspection in the Office of the Secretary, U.S. International Trade Commission. Copies may be requested at the same address.

The respondents named in the notice of investigation, published on May 29, 1980 (45 FR 36229), are: Joanna Western Mills Company; Breneman, Inc.; Stanley Drapery Hardware; Tony Plastic Co.; and Dirkson, Inc.

Submission of Comments

All comments should be addressed to the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, and must reference investigation No. 337–TA–83. Comments must be received not later than thirty days after the date of publication of this notice in the **Federal Register.** The Commission will consider requests for oral argument or oral presentation on this matter if such requests are received in the office of the Secretary not later than fifteen days after the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: January 22, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-3197 Filed 1-27-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–96]

Certain Modular Pushbutton Switches and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of ITT Schadow, Inc., 8081 Wallace Road, Eden Prairie, Minnesota 55344. The complaint alleges unfair methods of competition and unfair acts in the importation of certain modular pushbutton switches and components thereof into the United States, or in their sale, because such pushbutton switches are alleged to infringe claims 1, 10, and

14 of U.S. Letters Patent Re 27,963 and claims 1 through 4, 7, 11, and 12 of U.S. Letters Patent 4,044,213. Moreover, the complaint alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests the Commission, following a full investigation, to order permanent exclusion from entry into the United States of the articles in question, to order the below identified respondents to cease and desist the unlawful acts recited herein and to provide such other relief as the Commission deems appropriate.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of the Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 14, 1981 ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain modular pushbutton switches and components thereof into the United States, or in their sale, by reason of such switches' allegedly infringing claims 1, 10, and 14 of U.S. Letters Patent Re 27,963 and claims 1 through 4, 7, 11, and 12 of U.S. Letters Patent 4,044,213, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

ITT Schadow, Inc., 8081 Wallace Road, Eden Prairie, Minnesota 55344.

(b) The respondents alleged to be engaged in the importation into, or sale in, the United States of articles allegedly infringing claims 1 through 4, 7, 11, and 12 of U.S. Letters Patent 4,044,213 are:

Hosiden Company, Ltd., 4–33–1 Chrome Kitakuhoji, Yao City, Osaka, Japan.
Hosiden Company, 311 Lively Boulevard, Elk Grove Village, Illinois 60007.

(c) The respondents in paragraph (b) above and the following additional respondents are alleged to be engaged in the importation into, or sale in, the United States of articles allegedly infringing claims 1, 10, and 14 of U.S. Letters Patent Re 27,963:

Electronic Components Groupe, 26 North Fifth Street, Minneapolis, Minnesota 55403.
Tanaka Electronics, Inc., Ltd., 1–20–53 Kawara Zone, Koshigaya Samitama Pref. Japan.
Toneluck Electronics Industrial Co., Ltd., F Tat Factory, Flat B, 23/F, 4 Heung Yip Road, Wong Chuck Fang, Hong Kong.
Seewold Company, 55 Reservation Road, Andover, Massachusetts 01810.

(d) The complaint is to be served on all of the above identified respondents, and

(e) For the purpose of the investigation so instituted, John Milo Bryant, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION: Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: John Milo Bryant, Commission investigative attorney, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0419.

Issued: January 19, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-3195 Filed 1-27-81; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–97]

Certain Steel Rod Treating Apparatus and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 17, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Morgan Construction Co., 15 Belmont St., Worcester, Mass. 01605. The complaint alleges unfair methods of competition and unfair acts in the importation of certain steel rod treating apparatus and components thereof into the United States, or in their sale, by reason of such steel rod treating apparatus infringing claims 1–7 of U.S. Letters Patent 3,300,871. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, during the investigation, a temporary exclusion of the imports in question be ordered and that, after a full investigation, a permanent exclusion order and a cease and desist order be issued by the Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure.

Scope of the Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 14, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain steel rod treating apparatus and components

thereof into the United States, or in their sale, by reason of such steel rod treating apparatus infringing claims 1–7 of U.S. Letters Patent 3,390,871, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Morgan Construction Co., 15 Belmont St., Worcester, Mass. 01605.

(b) The respondents are the following companies allegedly engaged in the unlawful importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Korf Industrie & Handel GmbH & Co. K.G., Moltkestrasse 15, D 7570, Baden-Baden, West Germany.
Korf Engineering GmbH, Dusseldorf, West Germany.
Korf Industries, Inc., One NCNB Plaza, Charlotte, N.C. 28280.
Georgetown Steel Corp., South Fraser St., Georgetown, S.C. 29440.
Ashlow Steel & Engineering Co., Ltd., Sheffield Road, Rotherham, England.
Ashlow Corp., 4201 Pottsville, Pike, Reading, Pa. 19605.

(c) For the purpose of the investigation so instituted, Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION: Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.211(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Wilhelm A. Zeitler, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–0390.

Issued: January 23, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81–3196 Filed 1–27–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–84]

Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; Change of Designation of a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has granted a motion to change the designation of respondent Böhler & Weber KG to Böwe Maschinenfabrik GmbH.

Authority: The authority for this action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.22 of the Commission's Rules of Practice and Procedure (19 CFR 210.22).

SUPPLEMENTARY INFORMATION: On December 16, 1980, counsel for the respondent heretofore known as Böler & Weber KG advised the Commission that it has changed its trading style to Böe Maschinenfabrik GmbH. It also moved the Commission for an amendment to the notice of investigation to reflect this change. On January 16, 1981, the Commission granted the motion.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: January 22, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81–3192 Filed 1–27–81; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–28 (Final)]

Menthol From the People's Republic of China; Institution of Final Antidumping Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping duty investigation.

SUMMARY: On January 7, 1981, the United States Department of Commerce issued an affirmative preliminary determination that there is a reasonable basis to believe or suspect that menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Tariff Act of 1930 (19 U.S.C. 1673b). Accordingly, the United States International Trade Commission (hereinafter "the Commission") hereby gives notice of the institution of investigation No. 731–TA–28 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. For purposes of this investigation, the term "menthol" means menthol, whether natural or synthetic, provided for in items 413.28 and 437.64 of the Tariff Schedules of the United States (TSUS). This investigation will be conducted according to the provisions of Part 207 of the Commission's *Rules of Practice and Procedure* (19 CFR 207, 44 FR 76457), Subpart C, effective January 1, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam A. Bishop, Staff Investigator, Office of Investigations, U.S. International Trade Commission, Room 350, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523–0291.

SUPPLEMENTARY INFORMATION: On July 22, 1980, the Commission determined

(Commissioner Stern dissenting), on the basis of the information developed during the course of investigation No. 731-TA-28 (Preliminary), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of menthol from the People's Republic of China, provided for in TSUS items 413.28 and 437.64, which are allegedly sold or likely to be sold at less than fair value. As a result of the Commission's determination, the Department of Commerce continued its investigation into the question of less-than-fair-value sales. The final determination by the Department of Commerce of whether menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value will be made within 75 days after the date of its preliminary determination, or, in this case, by March 23, 1981.

Written Submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before April 20, 1981. All written submissions, except for confidential business data, will be available for public inspection.

Any submission of business information for which confidential treatment is desired shall be submitted separately from other documents. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on March 24, 1981.

Public Hearing: The Commission will hold a public hearing in connection with this investigation on April 13, 1981, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), April 8, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10:00 a.m., e.s.t., on April 10, 1981, in Room 117 at the U.S. International Trade Commission Building. Prehearing statements must be filed on or before April 8, 1981. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's *Rules of Practice and Procedure*, Part 207, Subpart C (19 CFR 207), and Part 201, Subparts A through E (19 CFR 201).

The Commission has waived Commission rule 201.12(d) as amended, "Submission of prepared statements" in connection with this investigation. This rule stated that "Copies of witnesses' prepared statements should be filed with the Office of the Secretary of the Commission not later than 3 business days prior to the hearing and submission of such statements shall comply with sections 201.6 and 201.8 of this subpart". It is nevertheless the Commission's request that parties submit copies of witnesses' prepared testimony as early as practicable before the hearing in order to permit Commission review.

This notice is published pursuant to section 207.20 of the Commission's *Rules of Practice and Procedure* (19 CFR 207.20, 44 FR 76458).

Issued: January 23, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-3194 Filed 1-27-81; 8:45 am]

BILLING CODE 7020-02-M

[332-122]

Study of the Economic Impact on the Domestic Jewelry Industry of the Subdivision of Item 740.10 of the Tariff Schedules of the United States for Purposes of the Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: At the request of the Committee on Finance, United States Senate, the Commission has instituted investigation No. 332-122 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of studying the economic impact on the domestic jewelry industry of the subdivision of item 740.10 of the Tariff Schedules of the United States (TSUS) for purposes of the Generalized System of Preferences. The scheduled subdivision consists of five new TSUS items comparable to the existing 7-digit statistical breaks under TSUS item 740.10.

EFFECTIVE DATE: January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Bodde, General Manufactures Division, Office of Industries, U.S. International Trade Commission, Washington, D.C. 20436 (Telephone 202-724-1730).

SUPPLEMENTAL INFORMATION:

Public Hearing

A public hearing in connection with the investigation will be held in the conference room of the Biltmore Hotel, Kennedy Plaza, Providence, RI on February 19, 1981 beginning at 10:00 a.m. All persons shall have the right to appear by counsel or in person, to present information, and to be heard.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 24, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 9, 1981.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 81-3193 Filed 1-27-81; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States versus Ciba-Geigy Corporation

Pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16(b), [APPA], the Antitrust Division publishes the following public comments on the proposed final judgment in the case of *United States v. Ciba-Geigy Corporation*, Civil Action No. 791-69, District of New Jersey. Also published, herewith, is the response of the Department of Justice to such comments.

This publication completes complicance with the provisions of the APPA.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Re: *U.S. v. Ciba-Geigy Corp., Civil Action No. 791-69 (D.N.J.)*

Robert B. Jones, Esq.,
Fitch, Even, Tabin, Flannery & Welsh,
Suite 900,
135 South LaSalle Street,
Chicago, Illinois 60603.

Dear Mr. Jones: This letter responds to your December 17, 1980 comments in which you suggest two changes to the proposed consent judgment in the above-identified case. For the reasons below, we do not believe that it is necessary or desirable to amend the consent judgment in either of the two suggested ways.

After discussing the pending litigation between your clients and Ciba-Geigy Corporation ("Ciba") and its relationship to the government's suit, you suggest amending the proposed consent judgment to ensure that nothing therein could be construed as adjudicating issues that were not before the Court in the government's case. There is no need for such an amendment. It is well established that consent judgments between the United States and a defendant do not immunize the defendant from liability for actions that violate rights of nonparties. *See e.g., Broadcast Music, Inc. v. CBS,* 441 U.S. 1, 13 (1979).

Your second suggestion relates to a program initiated by Ciba prior to the proposed consent decree wherein Ciba informed various state public health departments that certain firms, including at least one of your clients, were manufacturing hydrochlorothiazide without a license from Ciba. You suggest the consent judgment be amended to require Ciba to inform these state governmental agencies that as of March 31, 1981, Ciba's hydrochlorothiazide patent will no longer be in effect and that any manufacturer previously removed from a formulary list because it was not a Ciba licensee should be restored to the list.

In our view it is not appropriate for the government to insist that the Court deny entry of the consent judgment until Ciba agrees to include in the decree the undertaking that you propose. You do not suggest that Ciba's program with regard to these state agencies was not proper, or that your client or any other affected private party will not be able to inform the state agencies of the consent judgment after it is entered. The issue thus comes down to whether Ciba or affected private parties will be inconvenienced by having to provide the notice. In the context of this case, we see no compelling reason why the proposed consent judgment should be modified to obligate Ciba to provide this notice. In any event, in a letter to Judge Meanor, dated December 29, 1980, a copy of which was indicated to you, Ciba has voluntarily undertaken to inform the relevant agencies about the change in patent status resulting from the consent decree.

The Department of Justice remains convinced that entry of the final judgment in this case in its present from is in the public interest. Your comments and proposals in this matter, however, are appreciated.

Sincerely yours,

Roger B. Andewelt,

Assistant Chief, Intellectual Property Section, Antitrust Division (SAFE-704), U.S. Department of Justice, Washington, D.C. 20530, 202/724-7966.

January 19, 1981.

Fitch, Even, Tabin, Flannery & Welsh,
Chicago, Illinois December 17, 1980.

Re: Comments regarding the proposed consent judgement in *United States v. Ciba-Geigy Corporation,* United States District for the District of New Jersey, Civil Action No. 791-69

Roger B. Andewelt,
Assistant Chief,
Intellectual Property Section,
Antitrust Division (SAFE-704),
U.S. Department of Justice,
Washington, D.C. 20530.

Dear Mr. Andewelt: We represent two clients, both to whom have been sued by Ciba-Geigy Corporation ("Ciba") for infringement of United States Letters Patent No. 3,163,645 ("the '645 patent"). One client is Bolar Pharmaceutical Co. ("Bolar"), located in Copiague, Long Island, New York, defendant in Civil Action No. 77 C 2079, pending before the Honorable George C. Pratt in the Eastern District of New York. The other client is Danbury Pharmacal, Inc., ("Danbury"), located in Danbury, Connecticut, defendant in Civil Action No. B-78-276, pending before the Honorable Warren E. Eginton in the District of Connecticut. On behalf of those clients, we have certain comments concerning, and suggested additions to, the final judgment proposed to be entered by consent in the referenced Civil Action (the "New Jersey litigation").

Shortly after Judge Meanor entered judgment in the New Jersey litigation on October 16, 1979, Ciba moved for preliminary injunctive relief against both Bolar and Danbury in the respective New York and Connecticut federal courts, relying upon Judge Meanor's holding that Claim 3 of the '645 patent was valid. Ciba's motion in the action against Danbury, in Connecticut, was taken up first, where Judge Eginton set a schedule for discovery, briefing, and for an evidentiary hearing to be held in February 1980.

Danbury opposed Ciba's motion for preliminary injunction on various grounds, including the ground that Ciba's licensing program under the '645 patent constituted misuse of the '645 patent which barred Ciba from any relief, preliminary or permanent, under that patent. Danbury sought discovery from Ciba on the misuse issues, by interrrogatories and depositions, but Ciba refused to permit such discovery. As a consequence, Danbury brought a motion to compel discovery under Rule 37.

One basis for Danbury's misuse contentions is that Ciba has misused the '645 patent by conditioning the grant of licenses under that patent on agreement by its licensees or prospective licensees not to use hydrochlorothiazide ("HCT"), the patented compound, in combination with hydralazine, an unpatented compound, for the purpose and with the effect of extending the monpoly of an expired Ciba patent, No. 2,484,029, directed to hydralazine. Ciba has successfully used the '645 patent to extend its expired patent monopoly on hydralazine, at least insofar as competition with Ciba is concerned in hydralazine sold in combination with HCT. In support of its misuse contentions, Danbury relied upon *Prestole Corporation v. Tinnerman Products, Inc.,* 271 F. 2d 146 (6 Cir. 1959); *cert. den.* 361 U.S. 964 (1960), and *Tinnerman Products, Inc. v. George K. Garrett Company,* 185 F. Supp. 151 (E.D. Pa. 1960) (finding patent misuse), affirmed on other grounds 292 F. 2d 137 (3rd Cir. 1961), cert. den. 368 U.S. 833. The facts of the *Prestole* patent misuse are indistinguishable from the undisputed facts of the Ciba patent misuse.

Judge Eginton, on the authority of the *Prestole* case, ruled that Danbury was entitled to discovery relating to Ciba's exclusion from its licenses of the subject matter of the expired hydralazine patent. That ruling was made on January 31, 1980. Shortly thereafter, Ciba withdrew its motion for preliminary injuction in the *Danbury* case, and, subsequently, also withdrew its motion for preliminary injuction in the *Bolar* case in New York. We surmise that it was at about the same time that Ciba began negotiating with the United States for settlement of the appeal from the New Jersey litigation. In any event, the newly proposed settlement would eliminate the license restriction against the sale of hydralazine with HCT.

Although Ciba has still not complied with defendent's discovery requests, both Danbury and Bolar have since moved for summary judgment, in their respective courts, that Ciba's complaint against them be dismissed because of Ciba's misuse of the '645 patent by its licensing program. A copy of the memorandum submitted by Danbury in support of its motion for summary judgment is appended.

We believe that the final judgment contemplated in the New Jersey litigation should include a provision to make it clear that nothing contained in the judgment shall be construed as adjudicating patent misuse or nonenforceability issues which were not before the Court in the *U.S. v. Ciba* case, specifically including the propriety of Ciba's licensing program under the '645 patent, begun in 1977, under which licensees and prospective licensees were precluded from selling HCT in combination with hydralazine.

Such a provision would be consistent with the Government's inability to raise misuse and nonenforceability issues, Judge Meanor's rulings in the New Jersey litigation and the disposition of settlements of other infringement suits brought by Ciba under the '645 patent, consolidated before Judge Meanor.

In this connection, after Judge Meanor's antitrust decision rendered on April 15, 1976, the various private '645 patent infringement cases consolidated before Judge Meanor were settled and dismissed pursuant to consent judgments. Appended to each consent judgment was a Settlement Agreement and License in which, for the first time, appeared the provision excluding licensees from selling HCT in combination with hydralazine, as well as a bold typeface limitation of the inapplicability of the consent

judgment to third parties. Copies of the consent judgment in *Ciba-Geigy Corporation v. Towne, Paulsen & Co., Inc.*, one of these consolidated cases, is appended.

The same approach should be taken with regard to the proposed consent judgment, for the benefit of the public, Bolar, Danbury, and others in the same position as they. We proposed that it be done by adding the following provision:

> "The court's execution of this order binds the parties hereto but does not constitute an adjudication of any of the matters recited herein as against third parties, including but not limited to the issues of misuse or enforceability of U.S. Patent No. 3,163,645 by reason of CIBA's licensing program under said patent initiated in 1977."

This provision is identical in its general terms to the provision appearing in the consent judgment entered by Judge Meanor in the Towne, Paulsen suit (p. 3 thereof), with the addition of language relating it particularly to the misuse issues such as raised by Danbury's and Bolar's pending motions for summary judgement. Although this provision merely makes explicit what is implicit, we believe it to be desirable, in the public interest, and certainly not objectionable. Furthermore, Ciba has repeatedly asserted the *U.S. v. Ciba* case in an effort to limit discovery by Danbury and Bolar; this provision will make it clear that there should be no discovery limitations imposed on third parties by reason of the government litigation.

Another matter which is of concern to Danbury, Bolar, and others in the same position as they and which also has an impact on the public at large, has to do with a Ciba program for removing "unlicensed" companies from generic drug formulary lists maintained by various states. Annexed is a copy of a letter from the person at Ciba in charge of soliciting licensees under the '645 patent to a licensee's attorney, obtained in the course of discovery in the Danbury and Bolar actions. In it, he stated:

> "We have also begun a program of contacting state public health departments in order to seek to remove non-licensed companies from generic drug formulary lists."

Also annexed is a letter from a Ciba attorney to a state official naming Bolar as an unlicensed manufacturer.

There was also testimony in the Danbury and Bolar case indicating that Ciba was continuing with this program at least as recently as January 9, 1980.

We believe that the contemplated final judgment should include a provision requiring Ciba to write each agency which Ciba contacted during the course of this program and advise that agency that as of March 31, 1981 the Ciba patent covering HCT is no longer in effect, and that any manufacturers of such products removed from a formulary list because they were not Ciba licensees should be restored to the list. This would have the beneficial effect of immediately restoring competitive prices to the public.

We suggest the following specific language:

> "Ciba is ordered at or about the date of entry of this Final Judgment to communicate in writing with each and every governmental agency which Ciba has heretofore contacted with respect to licensees or non-licensees under the hydrochlorothiazide patent and advise each said agency that as of March 31, 1981 the Ciba patent covering hydrochlorothiazide is no longer in effect, and that any manufacturer of hydrochlorothiazide-containing products removed from a generic drug formulary list because it was not licensed by Ciba may be restored to such list."

We also bring to your attention the fact that Ciba has made extensive assertion of the attorney-client and work product privileges in withholding information sought by our discovery requests, in apparent contradistinction to Ciba's position in the Government litigation where Ciba gave the appearance of having produced virtually all of the information requested by the Government (e.g., see Ciba's responses to Goverment Interrogatories 28, 162, 185 and 213). In this regard, a copy of Ciba's responses to Bolar's interrogatories 1–87 is attached, on which Ciba's acknowledgements of the existence of documents withheld on the basis of privilege, are underlined in red pen. Despite repeated requests, Ciba has not yet provided a listing of all of these documents, and we continue to seek this identification. We note the inherent power of the Court to reopen this case in the event of new evidence under appropriate circumstances.

We also note that by providing these comments, we do not indicate agreement with any aspect of the proposed settlement or decisions in the Government litigation.

Very truly yours,

Fitch, Even, Tabin, Flannery & Welsh.

Robert B. Jones.

[FR Doc. 81-3164 Filed 1-27-81; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Denial of Petition To Transfer Cocaine From Schedule II to Schedule III

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule—Denial of petition.

SUMMARY: In January 1977, the Federal Public Defender for the District of New Jersey, on behalf of two of his clients, petitioned the Administrator of the Drug Enforcement Administration to institute administrative proceedings to consider the transfer of cocaine from Schedule II to Schedule III of the Controlled Substances Act. On July 18, 1977, the Administrator notified the petitioner that he had concluded that United States obligations under the Single Convention on Narcotic Drugs required that cocaine remain in Schedule II where it had been placed by Congress in 1970. The decision was not published in the **Federal Register**, since it was not considered to be a final order under Section 201 of the Controlled Substances Act, 21 U.S.C. 811, and since direct communication of a denial to a petitioner is generally sufficient. DEA has since adopted a policy of publishing all petitions relating to the scheduling of controlled substances, as well as all interim and final actions taken thereon.

The lack of a published final order in this particular matter has recently been subject to judicial examination. There is no question but that cocaine was properly classified by Congress when it enacted the Controlled Substances Act and that cocaine remains appropriately classified as a Schedule II substance at this time.

The classification of cocaine as a Schedule II narcotic has been considered by a large number of Federal District Courts and Courts of Appeal. Without exception, these Courts have sustained the legislature's classification of this drug. In order to clarify this matter, and to prevent any future misunderstanding, the Administrator is now publishing his decision in this matter, *nunc pro tunc*.

FOR FURTHER INFORMATION CONTACT: Robert T. Richardson, Deputy Chief Counsel, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 633–1141.

SUPPLEMENTARY INFORMATION: On January 19, 1977, the Federal Public Defender for the District of New Jersey, on behalf of two clients, filed with the Administrator of the Drug Enforcement Administration [DEA] a petition in which he requested the initiation of administrative proceedings to consider the transfer of cocaine from Schedule II to Schedule III of the Controlled Substances Act [CSA]. On July 18, 1977, the Administrator denied the petition on grounds that Schedule II was the minimum control regime consistent with United States obligations under the Single Convention.

The United States is a party to the Single Convention on Narcotic Drugs ["Single Convention"], which was opened for signature on March 30, 1961 and which entered into force with respect to the United States on June 24, 1967. 18 U.S.T. 1407, 30 T.I.A.S. No. 6298, 520 U.N.T.S. 151. The Single Convention establishes several classifications or "schedules" of substances to which verying regimes of control attach. Article 2 of the Single Convention contains a summary of the control provisions applicable to each schedule. The substances contained in each schedule are listed in the appendix to the treaty. Cocaine is listed in Schedule I of the Single Convention. 18 U.S.T.

1559. Schedule I contains substances considered to carry a relatively high abuse liability. In addition to cocaine and coca leaf, Schedule I of the Single Convention contains such substances as morphine, opium, heroin and methadone. Schedules II and III of the Single Convention include those substances regarded as being less susceptable of abuse. Finally, Schedule IV of the Single Convention contains certain Schedule I substances, such as heroin, the abuse liability of which is not offset by substantial therapeutic advantages.

Pursuant to Article 2, Section 1, of the Single Convention, the drugs in Schedule I are subject to all measures of control applicable to drugs covered by the Single Convention, particularly those prescribed in Articles 4(c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37. Hence, with respect to cocaine, parties to the Single Convention are required to limit production, manufacture, exportation, importation, trade, distribution, use and possession exclusively to medical and scientific purposes, (Article 4(c)); they are required to prepare and submit to the International Narcotics Control Board [INCB] detailed annual estimates of national drug requirements (Article 19) as well as specified statistical returns (Article 20); parties may not manufacture or import such drugs in excess of those quantities specified in their estimates and sanctions are imposed on countries which exceed their estimates (Article 21); licit manufacture must be carried out under license and the party must require that such licensees obtain periodic permits which specify the kinds and amounts of drugs they are permitted to manufacture and accumulate (Article 29); the trade in and distribution of such drugs must likewise be licensed (Article 30); parties may not permit the possession of these drugs, except under legal authority (Article 33); and they are required to impose penal sanctions for violation of the domestic laws enacted to carry out the treaty's requirements (Article 36).

Three years after the ratification of the Single Convention, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act of 1970 [P.L. 91–513]. Titles II and III of which are the Controlled Substances Act [21 U.S.C. 801, *et seq.*] and the Controlled Substances Import and Export Act [21 U.S.C. 951, *et seq.*]. As the legislative history of the Comprehensive Act indicates, it was intended both to rationalize Federal control of narcotics and dangerous drugs, that is, to collect and conform the more than fifty pieces of legislation relating to drug control enacted since 1914, and to specifically recognize this country's international obligations under the Single Convention. [1970] U.S. Code, Congressional and Administrative News, Volume 3, pages 4571–4572.

The CSA established five categories of controlled substances, designated as Schedules I through V and defined in terms of the relative dangers and benefits of the drugs. 21 U.S.C. 812(b)(1)–(5). (The CSA schedules should not be confused with those of the Single Convention; they are not interchangeable.) The control mechanisms imposed on the manufacture, acquisition, distribution and dispensing of substances listed under the CSA vary according to the schedule in which the substance is contained. See, generally, 21 U.S.C. 822 through 829, and 841 through 846. In enacting the CSA, Congress placed cocaine in Schedule II, the classification which provides for the most severe penalties and the strictest controls provided for substances which have legitimate medical and scientific uses. The special control regime applicable to Schedule II substances includes highly restrictive registration requirements for manufacturers (21 U.S.C. 823(a)); aggregate and individual production quotas, limiting the total quantities of the substances which may be manufactured to meet legitimate medical and scientific needs (21 U.S.C. 826); distribution only pursuant to written orders on forms issued by DEA (21 U.S.C. 828); and dispensing only pursuant to written prescriptions—except in certain emergency situations—which may not be refilled (21 U.S.C. 829). Additionally, manufacturers and distributors of these substances are required to submit periodic reports of all sales and other transactions involving these drugs (21 U.S.C. 827(d); 21 CFR §§ 1304.31—1304.41).

A comparison of the Single Convention and the CSA requirements reveals that Schedule II is not only the most appropriate schedule for cocaine, it is the only schedule available under the CSA which will permit continued legitmate medical and scientific use of the drug, while at the same time satisfying United States obligations under the Single Convention. Our obligation to limit manufacture and importation through the issuance of periodic permits and to produce and submit to the INCB the related estimates and returns can only be met through the CSA's quota system used in conjunction with the most comprehensive reporting and recordkeeping regimes available under the Act. While these recordkeeping and reporting obligations could conceivably be carried out were cocaine to be listed in a lower schedule, the quota requirement is only applicable to substances in Schedule I and II, and Schedule I, by definition, excludes drugs such as cocaine which have currently accepted medical uses in treatment in the United States.

Whether Congress relied solely upon these international considerations when it classified cocaine as a Schedule II narcotic, or whether it applied other bases for control, the Courts have consistently held that it had a rational legislative purpose in doing so. Nevertheless, Congress did provide a mechanism in the CSA for the transfer of substances between schedules and for the removal of a substance from control. Such actions may be initiated by the Administrator, as the designee of the Attorney General, on his own motion, at the request of the Secretary of Health and Human Services, or on the petiton of any interested party. 21 U.S.C. 811(a). The standards to be applied in such a rulemaking proceeding are contained in 21 U.S.C. 811(b) and 811(c). However, a separate mechanism is provided with respect to substances for which control is internationally mandated. Thus, 21 U.S.C. 811(d) provides that:

> (d) If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or [21 U.S.C. 812(b)] and without regard to the procedures prescribed by subsections (a) and (b) of this section.

The United States Court of Appeals for the District of Columbia Circuit has held that under 21 U.S.C. 811(d), the Attorney General, to satisfy treaty requirements, is directed to establish a minimum schedule below which the substance in question may not be placed. The establishment of this minimum schedule is based on a legal judgment as to the controls mandated by the Single Convention, and need not be justified by medical and scientific findings. *NORML* v. *Drug Enforcement Administration*, 559 F.2d 735, 752 (1977). The Court went on to hold that although a specially imposed combination of controls might meet the requirements of the Single Convention, Congress did not intend to require the creation of a hybrid schedule each time an interested party files a petition to reschedule a substance controlled by the treaty.

This is precisely the question raised by the Federal Public Defender's petition. For reasons discussed above, the Administrator has concluded that Schedule II of the Controlled Substances Act is the minimum schedule in which cocaine may be placed to satisfy treaty requirements.

Accordingly, pursuant to the authority vested in the Attorney General by Section 201(d) of the Controlled Substances Act, 21 U.S.C. 811(d), and redelegated to the Administrator of the Drug Enforcement Administration pursuant to 28 CFR 0.100, the Administrator hereby denies, *nunc pro tunc*, the petition to transfer cocaine from Schedule II to Schedule III of the Controlled Substances Act.

Dated: January 21, 1981.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 81-3142 Filed 1-27-81; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-37]

Herbert Webster Voorhies, M.D., Altadena, California; Hearing

Notice is hereby given that on October 20, 1980, the Drug Enforcement Administration, Department of Justice, issued to Herbert Webster Voorhies, M.D., Altadena, California, an Order To Show Cause as to why his DEA registration AV8917241 should not be revoked, and as to why his application for renewal of that registration as a practitioner with Schedule II–V controlled substances at a new address should not be denied.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Monday, February 2, 1981, in Courtroom No. 324, U.S. Courthouse, 312 North Spring Street, Los Angeles, California.

Dated: January 22, 1981.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 81-3143 Filed 1-27-81; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

(1)

Date: February 6, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1025.
Program: This meeting will review proposals for the Elevation and Assessment Studies Branch, Office of Planning and Policy Assessment.

(2)

Date: March 4, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(3)

Date: March 5, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historic Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(4)

Date: March 11, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historic Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(5)

Date: March 11, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: First Floor Conference Room.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(6)

Date: March 12, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: First Floor Conference Room.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(7)

Date: March 13, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: First Floor Conference Room.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(8)

Date: March 18, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historic Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(9)

Date: March 19, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(10)

Date: March 20, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(11)

Date: March 25, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(12)

Date: March 26, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

(13)

Date: March 27, 1981.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of Public Programs, for projects beginning after July 1, 1981.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute

a clearly unwarranted invasion of personal privacy; and

(3) Information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. Mcleary,

Advisory Committee Management Officer.

[FR Doc. 81–2396 Filed 1–27–81; 8:45 am]

BILLING CODE 7536–01–M

Museum Panel (Wider Availability of Museums); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Panel (Wider Availability of Museums) to the National Council on the Arts will be held on February 12, 1981, from 9:00 a.m.–5:30 p.m. in room 1340, Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 23, 1981.

[FR Doc. 81–3188 Filed 1–27–81; 8:45 am]

BILLING CODE 7537–01–M

National Council on the Arts; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the National Council on the Arts will be held on Friday, February 13, 1981 from 9:00 a.m.–5:30 p.m.; Saturday, February 14, 1981 from 9:00 a.m.–5:30 p.m. and Sunday, February 15, 1981 from 9:00 a.m.–5:30 p.m. at the Four Seasons Hotel, 2800 Pennsylvania Avenue, N.W., Washington, D.C.

A portion of this meeting will be open to the public on Friday, February 13, 1981 from 9:00 a.m.–4:00 p.m., Saturday, February 14, 1981 from 9:00 a.m.–3:30 p.m. and Sunday, February 15, 1981 from 9:00 a.m.–3:00 p.m. Topics for discussion will include Program Review and Guidelines for Dance, Music, Opera-Musical Theater, Challenge Grants and Inter-Arts Program; policy discussions concerning Touring and Presenting, community arts agencies and a variety of broad policy questions for the future.

The remaining sessions of this meeting on Friday, February 13, 1981 from 4:00 p.m.–5:30 p.m., Saturday, February 14, 1981 from 3:30 p.m.–5:30 p.m., and Sunday, February 15, 1981 from 3:00 p.m.–5:30 p.m. are for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980 these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 81–3187 Filed 1–27–81; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Panel (Exhibitions, Surveys, and Visual Artists Publications; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Exhibitions, Surveys, and Visual Artists Publications) to the National Council on the Arts will be held on February 10–11, 1981, from 9:00 a.m.–5:30 p.m., and on February 16–18, 1981, from 9:00 a.m.–5:30 p.m. in room 1340 of the Columbia Plaza Office Complex, 2401, E St., N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title ?? United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 81–3189 Filed 1–27–81; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Schedule for Awarding Senior Executive Service Bonuses

Office of Personnel Management guidelines require that each agency publish a notice in the **Federal Register** of the agency's schedule for awarding Senior Executive Service bonuses at least 14 days prior to the date on which the awards will be paid. The National Science Foundation intends to award Senior Executive Service bonuses for

the performance rating cycle of September 1, 1979, through August 31, 1980, with payouts scheduled by February 12, 1981.

Claudia Phelps,

Chief, Executive Personnel Branch.

[FR Doc. 81-3058 Filed 1-27-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station, Unit No. 1); Order for Modification of License

I

The Boston Edison Company (licensee) is the holder of Facility Operating License No. DPR-35 which authorizes the operation of the Pilgrim Nuclear Power Station, Unit No. 1, at steady state reactor power levels not in excess of 1998 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Plymouth, Massachusetts.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short- and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation or this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR-35 is hereby amended to add the following provisions.

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the sytem is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3217 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 2); Order for Modification of License

I

The Commonwealth Edison Company (licensee) is the holder of Provisional Operating License No. DPR-16 which authorizes the operation of the Oyster Creek Nuclear Generating Station at steady state reactor power levels not in excess of 1930 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 8, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short- and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Dirve (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short time in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevalauted the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Provisional Operating License No. DPR–19 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically intiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any requests for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 81-3218 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co. (Dresden Nuclear Power Station Unit No. 3); Order for Modification of License

I

The Commonweatlh Edison Company (licensee) is the holder of Facility Operating License NO. DPR–25 which authorizes the operation of the Dresden Nuclear Power Station, Unit No. 3, at steady state reactor power levels not in excess of 2527 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Morris, Illinois.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE

Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the atomic energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–25 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfullly completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3219 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–254]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co. (Quad Cities Nuclear Power Station, Unit No. 1); Order for Modification of License

I

The Commonwealth Edison Company, et al (licensee) is the holder of Facility Operating License No. DPR–29 which authorizes the operation of the Quad Cities Nuclear Power Station, Unit No. 1, at steady state reactor power levels not in excess of 2511 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Cordova, Illinois.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapdily, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at

high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of the Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–29 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the sytem is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing an or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3220 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–265]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co. (Quad Cities Nuclear Power Station, Unit No. 2); Order for Modification of License

I

The Commonwealth Edison Company, et al. (licensee) is the holder of Facility Operating License No. DPR–30 which authorizes the operation of the Quad Cities Nuclear Power Station, Unit No. 2, at steady state reactor power levels not in excess of 2511 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Cordova, Illinois.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiences requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined, based on staff evaluations of installed air systems, and on staff discussions with industry representatives, that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require that additional measures precribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–30 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., greater protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promply because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR Part 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3221 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Connecticut Light & Power, et al.; Order for Modification of License

I

The Connecticut Light and Power, The Hartford Electric Light Co., Western Massachusetts Electric Co., and Northeast Nuclear Energy Co. (licensees) are the holders of Provisional Operating License No. DPR-21 which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 1 at steady state reactor power levels not in excess of 2011 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Waterford, Connecticut.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this October and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Provisional Operating License No. DPR-21 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve operning pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram

will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularly the nature of their interest and the manner in which such interet may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 81-3222 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co., Issuance of Amendment to Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-6 for the Big Rock Point Nuclear Plant to Consumers Power Company (the licensee), which amended the license for operation of the Big Rock Point Nuclear Plant, located in Charlevoix County, Michigan. The amendment is effective as of the date of issuance.

The amendment (1) extends from December 31, 1980, until the completion of the NRC staff's review of those portions of the Big Rock Point Probabilistic Risk Assessment that relate to Anticipated Transients Without Scram, the date for compliance with the Commission's February 21, 1980 Confirmatory Order; this Order had previously amended the license to require the installation of a Recirculation Pump Trip by December 31, 1980, (2) requires that all portions of the Probabilistic Risk Assessment (PRA) that relate to the efficacy of a recirculation pump trip at Big Rock Point be submitted to the NRC by March 1, 1981, and (3) requires the submittal, prior to restart from the 1980 refueling outage, of the Big Rock Point Emergency procedures and training program that relate to the recognition and mitigation of an ATWS event.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment is not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated December 3, 1980, (2) Amendment No. 38 to Facility Operating License No. DPR-6 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 15th day of January, 1981.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 81-3212 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-251]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 54 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Plant, Unit No. 4 (the facility) located in Dade County, Florida. The amendment is effective January 13, 1981.

The amendment permits continued operation of Unit No. 4 for six equivalent months of operation from January 13, 1981, at which time the steam generators for Unit No. 4 shall be inspected. This action is subject to licensee submittal for staff review, information concerning the tube wasteage predicted to occur during the latter half of the operating period which begins January 13, 1981 and extends for six equivalent months of operation. This information is to be supplied by February 28, 1981.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that

the issuance of this amendment will not result in any significant environmental impact and that pursant to 10 CFR § 51–5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 18, 1980, (2) Amendment No. 54 to License No. DPR–41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 15th day of January 1981.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Divison of Licensing.

[FR Doc. 81-3213 Filed 1-27-81; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 27-39 SC]

Nuclear Engineering Co., Inc., (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site); Order Setting Prehearing Conference

January 22, 1981.

A prehearing conference in this matter is to be held to hear argument and discussion from all the parties on the various discovery requests, the objections thereto the various motions previously filed by the parties and any other matters that may arise. The conference will be for one day.

Ordered, That a prehearing conference in this matter will be held on February 13, 1981 commencing at 9:00 a.m. at Ramada The O'Hare Inn, 6600 N. Manheim Road, Des Plaines, Illinois 60018 Room D–22.

For the Atomic Safety and Licensing Board.

Andrew C. Goodhope,

Administrative Judge.

[FR Doc. 81-3214 Filed 1-27-81; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-321]

Georgia Power Co., et al. (Edwin I. Hatch Nuclear Plant, Unit 1); Order for Modification of License and Grant of Extension of Exemption

I

The Georgia Power Company (the Licensee) and three other co-owners are the holders of Facility Operating License No. DPR–57, which authorizes the operation of the Edwin I. Hatch Nuclear Plant, Unit 1 at steady state reactor power levels not in excess of 2,436 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Appling County, Georgia.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I containment Long-Term Program safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated August 7, 1980 and August 14, 1980 indicated a commitment to undertake plant-unique assessment based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by April 30, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program.

Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to confrom to the generic acceptance criteria by April 30, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exempton, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5 (d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. the licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its intallation shall be completed not later than April 30, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register.** Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to G.F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW, Washington, DC 20036, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will be come effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555 or through the Commission's local public document room at the Appling County Public Library, Parker Street, Baxley, Georgia 31513;

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letters from W.A. Widner, Georgia Power Company to USNRC, dated August 7, 1980 and August 14, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 81–3241 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–366]

Georgia Power Co., et al. (Edwin I. Hatch Nuclear Plant, Unit 2); Order for Modification of License and Grant of Extension of Exemption

I

The Georgia Power Company (the licensee) and three other co-owners are the holders of Facility Operating License No. NPF–5, which authorizes the operation of the Edwin I. Hatch Nuclear Plant, Unit 2 at steady state reactor power levels not in excess of 2436 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Appling County, Georgia.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that

a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated August 7, 1980 and August 14, 1980 indicated a commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by January 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternate assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in Order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by January 31, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5 (d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than January 31, 1982, or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street,

NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 or through the Commission's local public document room at the Appling County Public Library, Parker Street, Baxley, Georgia 31513:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letters from W. A. Widner, Georgia Power Company to USNRC, dated August 7, 1980 and August 14, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3242 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light & Power Co., et al.; Order for Modification of License and Grant of Extension of Exemption

I

Iowa Electric Light & Power Company, et al. (the licensee) is the holder of Facility Operating License No. DPR–49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria are described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plan modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plan modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated May 17, 1979, June 4, 1979, and August 25, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by June 30, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these

acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by June 30, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5 (d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661;

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than June 30, 1982 or, if the plant is shut down on that date, before the resumption of power operation thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Robert Lowenstein, Esquire, Harold F. Reis, Esquire, Lowenstein, Newman, Reis, and Axelrad, 1025 Connecticut Avenue, NW., Washington, D.C. 20035, attorneys for the licensee.

If a hearing is held concerning such Order, the issues to the considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C. 20555 or through the Commission's local public document room at the Cedar Rapids Public Library, 426 Third Avenue, SE, Cedar Rapids, Iowa 52401.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter dated May 17, 1979 to V. Stello (NRC) from Lee Liu (IELP).

5. Letter dated June 4, 1979 to V. Stello (NRC) from Lee Liu (IELP).

6. Letter dated August 25, 1980 to H. Denton (NRC) from L. D. Root (IELP).

7. Letter to licensee dated January 15, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3243 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

Jersey Central Power & Light Co. (Oyster Creek Nuclear Generating Station); Order for Modification of License

I

The Jersey Central Power and Light Company (licensee) is the holder of Provisional Operating License No. DPR–16 which authorizes the operation of the Oyster Creek Nuclear Generating Station at steady state reactor power levels not in excess of 1930 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Ocean County, New Jersey.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE

SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Provisional Operating License No. DPR–16 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555. A copy of the request should also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3223 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Power Station); Order for Modification of License

I

The Nebraska Public Power District (licensee) is the holder of Facility Operating License No. DPR-46 which authorizes the operation of the Cooper Nuclear Power Station at steady state reactor power levels not in excess of 2381 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analysis I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions aready required provide a signficant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed. I have determined that the public health and safety require the additional measures prescribed by this Order and their implementaiton on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR-46 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(1) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the Unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be; Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3224 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Power Station); Order for Modification of License and Grant of Extension of Exemption

I

The Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes the operation of the Cooper Nuclear Power Station at steady state reactor power levels not in excess of 2381 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria are described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owner Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO-24583.1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated August 14, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by September 30, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and

in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by September 30, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than September 30, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Arthur C. Gehr, Attorney, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 or through the Commission's local public document room at the Auburn Public Library, 118–15th Street, Auburn, Nebraska 68305:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from J. M. Pilant, NPPD, to T. A. Ippolito, NRC, dated August 14, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3244 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit No. 1); Order for Modification of License

I

The Niagara Mohawk Power Company (licensee) is the holder of Facility Operating License No. DPR-63 which authorizes the operation of the Nine Mile Point Nuclear Station, Unit No. 1, at steady state reactor power levels not in excess of 1850 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at

high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being made mandated by this Order is not being subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–63 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design and review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3225 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–220]

Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 1); Order for Modification of License and Grant of Extension of Exemption

I

The Niagara Mohawk Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–63 which authorizes the operation of the Nine Mile Point Nuclear Station, Unit 1 at power levels up to 1850 megawatts (thermal) rated power. The facility consists of a boiling water reactor located at the licensee's site in Osewego County, New York.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The Basis for acceptance critieria is described in the "Mark I containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix a to NUREG–0661. The basis for the staff's requirements and conclusions are also described in NUREG–0661.

III

In letters dated Mach 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated May 16, 1979 and September 29, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by January 31, 1983.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Thoughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group during the development and changes to the acceptance criteria in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by January 31, 1983 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be

completed not later than January 31, 1983 or, if the plant is shutdown on that date, before the resumption of power operation thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Eugene B. Thomas, Jr., Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue NW., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 or through the Commission's local public document room at the State University of Oswego, Penfield Library—Documents Oswego, New York 13126.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter dated May 16, 1979 to V. Stello, Jr. (NRC) from R. R. Schneider (NM).

5. Letter dated September 29, 1980 to T. A. Ippolito (NRC) from D. P. Dise (NM).

6. Letter to licensee dated January 13, 1980.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3245 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263

Northern States Power Co. (Monticello Nuclear Generating Plant); Order for Modification of License

I

The Northern States Power Company (licensee) is the holder of Provisional Operating License No. DPR–22 which authorizes the operation of the Monticello Nuclear Generating Plant, at steady state reactor power levels not in excess of 1670 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Wright County, Minnesota.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram to control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required be IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreased below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that automatic air dump systems be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further

determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Provisional Operating License No. DPR-22 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 8, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the mannner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3226 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co. (Monticello Nuclear Generating Plant); Order for Modification of License and Grant of Extension of Exemption

I

The Northern States Power Company (licensee) is the holder of Facility Operating License No. DPR-22 which authorizes the operations of the Monticello Nuclear Generating Plant at steady state reactor power levels not in excess of 1670 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Wright County, Minnesota.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural

assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated May 15, 1979 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by April 30, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, need to conform to the generic acceptance criteria by April 30, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any signficant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than April 30, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The liensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, 20036 Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C., attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 or through the Commission's local public document room at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter dated May 15, 1979 to the Director of Nuclear Reactor Regulation from L. O. Mayer (NSP).

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 81-3246 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-39]

Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site); Reconstitution of Board

Pursuant to the authority contained in 10 CFR § 2.721 (1980), the Atomic Safety and Licensing Board for *Nuclear Engineering Company, Inc.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), Docket No. 27-39, is hereby reconstituted by appointing the following Administrative Judge to the Board: Dr. Jerry R. Kline. Dr. Linda W. Little was a member of this Board but, because of a schedule conflict, is unable to continue her service on this Board.

As reconstituted, the Board is comprised of the following Administrative Judges: Andrew C. Goodhope, Chairman, Dr. Jerry R. Kline, and Dr. Forrest J. Remick.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Jerry R. Kline, U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 22nd day of January 1981.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

FR Doc. 81-3215 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-277]

Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Unit No. 2); Order for Modification of License

I

Philadelphia Electric Company (licensee) and three other co-owners are the holders of Facility Operating License No. DPR-44, which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 2, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short- and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long-term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–44 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3227 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-277]

Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Unit No. 2); Order for Modification of License and Grant of Extension of Exemption

I

Philadelphia Electric Company (the licensee) and three other co-owners are the holders of Facility Operating License No. DPR–44 which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 2, at steady state reactor power levels not in excess of 3292 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Conainment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated June 20, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by January 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by January 31, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmentl impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. the licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than January 31, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C. 20555 or through the Commission's local public document room at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from J. S. Kemper, Philadelpha Electric Company, to R. W. Reid, NRC, dated June 20, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3247 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Unit No. 3); Order for Modification of License

I

Philadelphia Electric Company (licensee) and three other co-owners are the holders of Facility Operating License

No. DPR–56 which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 3, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short- and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required be IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreased below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that automatic air dump systems be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evalations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–56 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may requests a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director,

Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee request a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be: Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3228 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-278]

Philadelphia Electric Co. et al. (Peach Bottom Atomic Power Station, Unit No. 3); Order for Modification of License and Grant of Extension of Exemption

I

Philadelphia Electric Company (the licensee) and three other co-owners are the holders of Facility Operating License No. DPR-56 which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 3, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (FR Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO-24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated June 20, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by January 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by January 31, 1982 should be confirmed and formalized by Order.

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than January 31, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing on or before February 27, 1981. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esquire, 1747 Pennsylvania Avenue, NW, Washington, DC 20006, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from J. S. Kemper, Philadelphia Electric Company, to R. W. Reid, NRC, dated June 20, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3248 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Order for Modification of License

I

The Power Authority of the State of New York (licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant, at steady state reactor power levels not in excess of 2436 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR SCRAM DISCHARGE SYSTEM, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (But with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that

reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the pubic health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR-59 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) the system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecesary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50.

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3229 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-259]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit No. 1); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-33 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit No. 1, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which identified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System,

dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80–17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80–17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80–17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined, based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low proabability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–33 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate contol rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3230 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit No. 2); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-52 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit No. 2, at steady state reactor power levels not in excess of 3293 megamatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the reqiurements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR-52 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need

not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3231 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-296]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit No. 3); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-68 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit No. 3, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30% power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short- and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a marked change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successfully carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evalations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the

Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR-68 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the system;

(h) Before the system is declared operable, a documented pre-operationl test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3232 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant); Order for Modification of License

I

The Vermont Yankee Nuclear Power Corporation (licensee) is the holder of Facility Operating License No. DPR-28 which authorizes the operation of the Vermont Yankee Nuclear Power Plant at steady state reactor power levels not in excess of 1593 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

II

During a routine shutdown of Browns Ferry Unit No. 3 on June 28, 1980, 76 of 185 control rods failed to fully insert in response to a manual scram from approximately 30 percent power. All rods were subsequently inserted within 15 minutes and no reactor damage or hazard to the public occurred. However, the event did cause an in-depth review of the current BWR Control Rod Drive Systems which indentified design deficiencies requiring both short and long-term corrective measures. These measures are set forth in the Generic Safety Evaluation Report—BWR Scram Discharge System, dated December 1, 1980, prepared by the NRC staff. One of the deficiencies identified was a failure mode of the control air system, which can conceivably cause an inability to scram the control rods. Sustained low pressure in the control air system could result in complete or partial opening of multiple scram outlet valves before opening of the scram inlet valves, causing the Scram Discharge Volume (SDV) to fill rapidly, thus leaving a relatively short time for the operator to take corrective action before scram capability is lost. It appears that an event of this general type (but with no adverse consequences) actually occurred at the Quad Cities Unit 1 reactor on January 3, 1977.

IE Bulletin 80-17 (Supplement 3) requires an immediate manual scram when low pressure occurs in the Control Rod Drive (CRD) air system or when other indications occur, such as multiple rod drift alarms or a market change in the number of control rods that are at high temperature. Beginning on December 1, 1980, protection was also provided by continuous monitoring of the SDV as required by IE Bulletin 80-17 (Supplement 1). However, since only a short time could be available for the operator to successfully initiate a reactor scram, a question remains as to the adequacy of equipment and procedures. This continuous monitoring system and operator response provide important protection against water accumulation in the SDV headers under slow fill conditions; however it does not address completely all the potential loss of air events. In addition, a human factors evaluation determined that reliance on the operator to successful carry out a manual scram within a limited time frame may not be assured. Therefore, in the short term in order to provide prompt added protection for credible degraded air conditions in BWR control air supply systems, it is necessary that an automatic system be operable to initiate control rod insertion by rapidly dumping the control air system header if the air pressure decreases below a prescribed value. The NRC staff is developing revised design and safety criteria for a long-term solution to this problem.

III

The Generic Safety Evaluation Report (SER) of December 1, 1980, recommended that this automatic air header dump system be installed within two months. As a result of questions as to whether a reliable system could be installed within two months, the staff continued to review this requirement. We have performed a more detailed risk assessment which has shown a lower probability for the loss of scram capability due to a loss of air than our original estimate. We have also reevaluated the human factors involved in carrying out the requirements of IE Bulletin 80-17 (Supplement 3) which requires a manual scram of the reactor on alarms related to the loss of air pressure in the air system. These alarms

provide some added assurance that the operator can trip the reactor before the scram discharge volume fills.

As a result of these analyses I have determined that the public health, safety and interest require that the automatic air dump system be in operation within 90 days of the date of this Order and that operation during this period does not present an undue risk to the public health and safety. I have further determined based on staff evaluations of installed air systems, and on staff discussions with industry representatives that a 90-day period will allow adequate time for design, procurement, fabrication, installation, and testing for an automatic air dump system of the type prescribed in this Order.

As discussed above, although (1) the failure of the control air system is a low probability event, (2) the actions already required provide a significant measure of assurance that such an event will not occur and (3) the criteria for a long term fix are currently being developed, I have determined that the public health and safety require the additional measures prescribed by this Order and their implementation on this short time schedule. However, in view of the immediacy of the need for this system, the system being mandated by this Order is not being made subject to the requirements of Appendices A and B to 10 CFR Part 50.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, including Sections 103 and 161i, and the Commission's rules and regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately, Facility Operating License No. DPR–28 is hereby amended to add the following provisions:

(1) An automatic system shall be operable to initiate control rod insertion on low pressure in the control air header, which meets the following criteria:

(a) The system shall automatically initiate control rod insertion at 10 psi or greater above scram outlet valve opening pressure;

(b) The system shall not degrade the existing safety systems (e.g., reactor protection system);

(c) The system shall allow for scram reset;

(d) The design shall consider the potential for inadvertent or unnecessary scrams;

(e) Any required power supply should not be subject to any failure mode which could also initiate the degraded-air conditions, unless it can be demonstrated that an automatic scram will occur promptly because of the failure mode of the power supply;

(f) The system is not subject to the requirements of Appendices A and B of 10 CFR 50;

(g) There shall be a documented independent design review of the systems;

(h) Before the system is declared operable, a documented pre-operational test of the system will be successfully completed; and

(i) The system shall be functionally tested at each Unit shutdown, but need not be tested more than once each 90 days.

(2) After April 9, 1981, the Automatic Dump System as described above shall be operable in all modes other than shutdown and refueling or the unit shall be placed in a cold shutdown condition within 72 hours unless system operability is restored.

V

The licensee or any person whose interests may be affected by this Order may request a hearing on or before February 17, 1981. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a person other than the licensee requests a hearing, that person shall set forth with particularity the nature of their interest and the manner in which such interest may be affected by this Order.

VI

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be:

Whether the licensee should be required to have the automatic system required by Section IV to be operable by April 9, 1981. Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated: January 9, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director Division of Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 81-3233 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

Availability of Report on Nuclear Power Plant Simulators

Notice is given that the Commission's Office of Nuclear Reactor Regulation has published a report on nuclear power plant simulators which was prepared for the Commission by the Oak Ridge National Laboratory of Oak Ridge, Tennessee. Identified as NEDO/CR 1482, the report is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in all other Commission Local Public Document Rooms. This document is a study of simulator use and development described in Task 1.A.4 of the NRC Action Plan developed as a result of the TIM–2 Accident, NEDO–0660. This report presents the results of a study performed for the Nuclear Regulatory Commission to evaluate the capabilities and use of nuclear power plant simulators either built or being built by the U.S. nuclear power industry; to determine the adequacy of existing standards for simulator design and for the training of power plant operators on simulators; and to assess the issues about simulator training programs raised by the March 28, 1979, accident at Three Mile Island Unit 2. The objective is to establish and sustain a high level of realism in the training and retraining of operators, including dealing with complex transients involving multiple permutations and combinations of failures and errors. Another overall objective is to improve operators' diagnostic capability and general knowledge of nuclear power plant systems.

Interested persons may submit comments on the report for the Commission's consideration. Operating reactor licensees, applicants for operating licenses, and designated Federal agencies and organizations with experience in simulation design and analysis are being provided with copies of the report. Comments on the report received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. Upon consideration of comments submitted with respect to the report, the NRC will prepare final recommendations for improvements in simulators and simulator training programs, the availability of which will be published in the **Federal Register.**

Comments on the Nuclear Power Plant Simulators Report should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Human

Factors Safety. Comments are due by April 6, 1981.

Dated at Bethesda, Maryland, this 6th day of January 1981.

Paul F. Collins,

Chief, Operator Licensing Branch, Division of Human Factors Safety.

[FR Doc. 81-3166 Filed 1-27-81; 8:40 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on the Advanced Reactors will hold a meeting at 8:30 a.m. on February 12 and 13, 1981 at the Royal Court Inn, 1750 S. Elmhurst Road, Des Plaines, IL, the Pier Room. The Subcommittee will discuss matters relating to the development of LMFBR safety design criteria. Notice of this meeting was published Jan. 23.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Thursday and Friday, February 12 and 13, 1981, 8:30 a.m. until the conclusion of business each day.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 21, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-3170 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1); Order for Modification of License and Grant of Extension of Exemption

I

The Boston Edison Company (licensee), is the holder of Facility Operating License No. DRP-35 which authorizes the operation of the Pilgrim Nuclear Power Station, Unit 1, at steady state reactor power levels not in excess of 1998 megawatts (thermal) rated power. The facility consists of a boiling water reactor located at the licensee's site near Plymouth, Massachusetts.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated August 15, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by October 31, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked

closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by October 31, 1981 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. the licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than October 31, 1981 or, if the plant is shut down on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 01581, attorneys for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. whether the licensees should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensees may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter, G. Carl Andognini, Boston Edison Company, to D. G. Eisenhut, NRC, dated August 15, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981, Bethesda, Maryland.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3234 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–325]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Unit 1); Order for Modification of License and Grant of Extension of Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR–71 which authorizes the operation of the Brunswick Steam Electric Plant, Unit 1 at steady state reactor power levels not in excess of 2436 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Brunswick County, North Carolina.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period

while more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO 24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such assessment. In response to our letter, the licensee's letter dated August 4, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by February 28, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by February 28, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO-21888 and NEDO-24583-1 and the Acceptance Criteria contained in Appendix A to NUREG-0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG-0661 shall be designed and its installation shall be completed not later than February 28, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW, Washington, D.C. 20035, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in

accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event, a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C. 20555 or through the Commission's local public document room at the Southport-Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from E. E. Utley, CP&L to T. A. Ippolito, NRC, dated August 4, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3235 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Unit 2); Order for Modification of License and Grant of Extension of Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR–62 which authorizes the operation of the Brunswick Steam Electric Plant, Unit 2 at steady state reactor power levels not in excess of 2436 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Brunswick County, North Carolina.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated August 4, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by November 30, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modification to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of

the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modificaitons, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by November 30, 1981 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemtpion will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than November 30, 1981 or, if the plant is shutdown on that data, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the Federal Register. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW, Washington, DC 20035, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrohynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modificaitons, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Southport—Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from E. E. Utley, CP&L to T. A. Ippolito, NRC, dated august 4, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3236 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 2); Order for Modification of License and Grant of Extension of Exemption

I

Commonwealth Edison Company (the licensee) is the holder of Provisional Operating License No. DPR–19 which authorizes the operation of the Dresden Nuclear Power Station, Unit 2 at steady state reactor power levels not in excess of 2527 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative)

loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO 24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated May 11, 1979 and July 2, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by January 31, 1983.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by January 31, 1983 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than January 31, 1983 or, if the plant is shutdown on that date, before the resumption or power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event, a

hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C. 20555 or through the Commission's local public document room at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.
2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.
3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.
4. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated May 11, 1979.
5. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated July 2, 1980.
6. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3237 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 3); Order for Modification of License and Grant of Extension of Exemption

I

Commonwealth Edison Company (the licensee) is the holder of Facility Operating License No. DPR–25 which authorizes the operation of the Dresden Nuclear Power Station, Unit 3 at steady state reactor power levels not in excess of 2527 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO 24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such assessment. In response to our letter, the licensee's letters dated May 11, 1979 and July 2, 1980 indicated a commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by July 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool

hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by July 31, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than July 31, 1982, or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensees should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated May 11, 1979.

5. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated July 2, 1980.

6. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3238 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co. (Quad Cities Nuclear Power Station, Unit 1); Order for Modification of License and Grant of Extension of Exemption

I

The Commonwealth Edison Company, et al (the licensee) is the holder of Facility Operating License No. DPR–29 which authorizes the operation of the Quad Cities Nuclear Power Station, Unit 1 at steady state reactor power levels not in excess of 2511 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Cordova, Illinois.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins

for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated May 11, 1979 and July 2, 1980 indicated a commitment to undertake plant-unique assessments based on the Owner Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by December 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by December 31, 1983 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than December 31, 1982 or, if the plant is shutdown on that date, before the resumption or power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorneys for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event, a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, D.C. 20555 or through the Commission's local public document room at the Moline Public Library, 504–17th Street, Moline, Illinois.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated May 1, 1979.

5. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated July 2, 1980.

6. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3239 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–265]

Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co. (Quad Cities Nuclear Power Station, Unit 2); Order for modification of License and Grant of Extension of Exemption

I

The Commonwealth Edison Company, et al. (the licensee) is the holder of Facility Operating License No. DPR–30 which authorizes the operation of the Quad Cities Nuclear Power Station, Unit 1 at steady state reactor power levels not in excess of 2511 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Cordova, Illinois.

II

On February 28, 1978, the Commisson granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions is also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated May 11, 1979 and July 2, 1980 indicated a commitment to undertake plant-unique assessments based on the Owners Group's generic assessment tchniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by July 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant

modifications, if any, needed to conform to the generic acceptance criteria by July 31, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. the licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than October 31, 1981 or, if the plant is shut down on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the Federal Register. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorneys for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Moline Public Library, 504–17th Street, Moline, Illinois.

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated May 11, 1979.

5. Letter from C. Reed, CECO, to D. G. Eisenhut, NRC, dated July 2, 1980.

6. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3240 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; Supplemental Notice of Proposed Issuance of Amendment to Facility Operating License

A notice of Proposed Issuance of Amendment to Facility Operating License was published in the Federal Register on October 24, 1979 (44 FR 61273) with respect to the application of Maine Yankee Atomic Power Co. (Licensee) for an amendment dated September 18, 1979, which would revise the provisions in the Technical Specifications to permit expansion of the spent fuel storage capacity from 953 to 1545 spent fuel assembling at the Maine Yankee Atomic Power Station (the facility) located in Lincoln County Maine. As indicated in this Federal Register notice, this increase in storage capacity was to be accomplished through a modified spent fuel pin storage concept involving the disassembly of spent fuel assemblies and reassembly into consolidated fuel bundles designed to provide a more compact fuel pin array within the existing spent fuel racks. The notice added that the amendment would not involve an increase in storage locations. On November 23, 1979, pursuant to the notice a petition for leave to intervene was filed by Sensible Maine Power. Also, on November 28, 1979, the State of Maine, by its Attorney General, notified the Commission of its intention to participate as an interested State pursuant to 10 CFR 2.715(c). Thereafter, on December 3, 1979, an Atomic Safety and Licensing Board (Board) was established to preside in this proceeding (44 FR 71490, December 11, 1979).

On September 29, 1980, the Licensee filed an application for an amendment which supplements the application for an amendment of September 18, 1979. The September 18, 1979 application for amendment as supplemented by the application for amendment which supplements the application for an amendment of September 29, 1980, would permit: (1) the increase of the long-term spent fuel storage capacity of the spent fuel pool from 953 storage locations to 1500 storage locations which can accommodate 1500 spent fuel assemblies in their as discharged form or 2430 spent fuel assemblies consolidated for spent fuel pin storage as described by the application for amendment dated September 18, 1979, and (2) the utilization of a spent fuel rack to occupy the facility's spent fuel cask laydown area for short-term storage, when necessary. The increase in long-term storage capacity would be

accomplished by replacement of the existing spent fuel racks in which spent fuel assemblies are stored on 12-inch centers with new racks in which spent fuel assemblies and/or spent fuel pin storage containers are stored on 10.5-inch centers. As a result of the proposal to use the new spent fuel storage racks, the Licensee has requested modification of the Technical Specifications to increase the K effective from equal to or less than 0.90 to equal to or less than 0.95.

Pursuant to an order issued by the Board in this proceeding on January 6, 1981 the Nuclear Regulatory Commission (Commission) is hereby issuing a Supplemental Notice of Proposed Issuance of Amendment to Facility Operating License for the facility. By this Supplemental Notice the Commission is affording any person whose interest may be affected by the additional proposed modifications (the utilization of the new spent fuel storage racks to increase spent fuel storage capacity and the utilization of the fuel cask laydown area for additional temporary storage) the opportunity to participate in this proceeding.

By February 27, 1981 any person whose interest may be affected by these additional modifications and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the provisions of 10 CFR 2.714. Those who have previously filed in response to the October 24, 1979 Notice of Proposed Issuance of Amendment need not refile unless they wish to do so. If they do not refile, their rights to participate will be considered on the basis of their previous filings.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who pursuant to this notice has either filed a petition for leave to intervene or been admitted as a party may amend his petition, without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated with regard to the additional proposed modifications, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 324-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Clark: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas G. Dignan, Jr., Esq. and R. K. Gad III, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the Licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the presiding officer of the Board that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see (1) the application for amendment dated September 18, 1979, and (2) the supplemental application dated September 29, 1980, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC and at the local Public Document Room at the Wiscasset Public Library Association, High Street, Wiscasset, Maine.

A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of January, 1981.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 81-3169 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 OL and 50-323 OL]

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) (Low Power Test Proceeding)

(Scheduling a Conference of Counsel)

January 21, 1981.

In a conference call on January 21, 1981 (which was finally convened after extended difficulty) it was agreed that there would be a conference with the Board and counsel for the Parties in the 5th floor hearing room at East-West Towers, 4350 East West Highway, Bethesda, Maryland. The conference will begin at 9:00 a.m. (local time) on January 28, 1981 and will continue the following day, if necessary. Matters to be considered were discussed in the conference call.

The public is invited but there will not be limited appearance statements received nor will this conference be an evidentiary hearing. Those matters will be considered for a later date near the site of the facility.

It is so ordered.

For the Atomic Safety and Licensing Board.

Elizabeth S. Bowers,

Administrative Judge.

[FR Doc. 81-3173 Filed 1-27-81; 8:40 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

In the Matter of Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Order for Modification of License and Grant of Extension of Exemption

I

The Power Authority of the State of New York (the Licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the operation of the James A. FitzPatrick Nucelar Power Plant at power levels up to 2436 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the partiulcar version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO-24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letters dated June 29, 1979 and September 9, 1980 indicated a commitment to undertake plant-unique assessments based on the Owner Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by October 31, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by October 31, 1981 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the

Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than October 31, 1981 or, if the plant is shut down on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, 10019, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Alabama:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter dated June 29, 1979 to T. A. Ippolito (NRC) from P. J. Early (PASNY).

5. Letter dated September 9, 1980 to T. A. Ippolito (NRC) from J. P. Bayne (PASNY).

6. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3249 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-259]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 1), Order for Modification of License and Grant of Extension of Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR–33 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 1 at steady state reactor power levels not in excess of 3293 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (**Federal Register** Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria are described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–21888 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions are also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated May 19, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by October 31, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group during the development and changes to the acceptance criteria in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has detemined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by October 31, 1981 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V of VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5 (d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than October 31, 1981 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register.** Any request for a hearing shall be Regulatory Commission, Washington, DC 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C, Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Athens Public Library, South and Forrest, Athens, Alabama:

1. "Mark I Contained Program Look Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from L. M. Mills, TVA, to D. G. Eisenhut, NRC, dated May 19, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3250 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 2); Order for Modification of License and Grant of Extension of Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR-52 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 2 at steady state reactor power levels not in excess of 3293 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria are described in the "Mark I containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583-1, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO-24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions are also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the lecensee's letter dated May 19, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by September 30, 1982

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group during the development and changes to the acceptance criteria in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by September 30, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than September 30, 1982 or, if the plant is shut down on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order Federal Register. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue E11B, 33C, Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Athens Public Library, South and Forrest, Athens, Alabama:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from L. M. Mills, TVA, to D. G. Eisenhut, NRC, dated May 19, 1980.

5. Leter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3251 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–296]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 3); Order for Modification of License and Grant of Extension of Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR–68 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 3 at steady state reactor power levels not in excess of 3293 megawatts thermal rated power. The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG–0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment system. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria are described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG–0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Loan Definition Report," NEDO–21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO–24583–1, dated October 1979, (subsequently referred to as NEDO–2188 and NEDO–24583–1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG–0661. The basis for the staff's requirements and conclusions are also described in NUREG–0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated May 19, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by March 31, 1982.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group during the development and changes to the acceptance criteria in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamics loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by March 31, 1982 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of the Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commissions regulations in 10 CFR Parts 2 and 50, it is hereby ordered that the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads ion accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than March 31, 1982 or, if the plant is shutdown on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensee should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Athens Public Library, South and Forrest, Athens, Alabama:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from L. M. MIls, TVA, to D. G. Eisenhut, NRC, dated May 19, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81-3252 Filed 1-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant); Order for Modification of License and Grant of Extension of Exemption

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR-28 which authorizes the operation of the Vermont Yankee Nuclear Power Plant at steady state reactor power levels not in excess of 1593 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

On February 28, 1978, the Commission granted to the licensee an interim exemption from the requirements of General Design Criterion 50, "Containment Design Basis," of Appendix A to 10 CFR Part 50 (Federal Register Vol. 43, No. 61, March 29, 1978). This exemption is related to the demonstrated safety margin of the Mark I containment system to withstand recently identified suppression pool hydrodynamic loads associated with postulated design basis loss-of-coolant accidents and primary system transients. Although there was a reduction in the margin of safety from that called for by General Design Criterion 50, the Commission found that a sufficient margin would exist to preclude undue risk to the health and safety of the public for an interim period while a more detailed review was being conducted.

The Commission's evaluation was documented in the NRC staff's "Mark I Containment Short-Term Program Safety Evaluation Report," NUREG-0408, dated December 1977, which concluded that the BWR facilities with the Mark I containment design could continue to operate without undue risk to the health and safety of the public while a more comprehensive Long-Term Program was being conducted. The purpose of the Long-Term Program was to define design basis (i.e., conservative) loads that are appropriate for the anticipated life (40 years) of each BWR/Mark I facility, and to restore the original intended design safety margins for each Mark I containment systems. In order to provide uniform, consistent, and explicable acceptance criteria for the Long-Term Program, the Summer 1977 Addenda of the ASME Boiler and Pressure Vessel Code have been used as the basis for defining the intended margin of safety, rather than using the particular version of the ASME Code which was applicable to the initial licensing of each facility. In some instances, the allowable stresses are higher under the later edition of the Code. The basis for acceptance criteria is described in the "Mark I Containment Long-Term Program Safety Evaluation Report," NUREG-0661, dated July 1980.

As a result of our review of the extensive experimental and analytical programs conducted by the Mark I Owners Group, the NRC staff has concluded that the Owners Group's proposed load definition and structural assessment techniques, as set forth in the "Mark I Containment Program Load Definition Report," NEDO-21888, dated December 1978, and the "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Application Guide," NEDO-24583, dated October 1979, (subsequently referred to as NEDO-21888 and NEDO-24583-1) and as modified in certain details by the staff's Acceptance Criteria, will provide a conservative basis for determining whether any structural or other plant modifications are needed to restore the original intended margin of safety in the containment design. The staff's Acceptance Criteria are contained in Appendix A to NUREG-0661. The basis for the staff's requirements and conclusions is also described in NUREG-0661.

III

In letters dated March 12, 1979, each BWR/Mark I licensee was requested by the NRC to submit a schedule for carrying out an assessment of the need for plant modifications for each of the licensee's BWR/Mark I units, based on the Owners Group's proposed generic load definition and assessment techniques, and for the subsequent installation of the plant modifications determined to be needed by such an assessment. In response to our letter, the licensee's letter dated July 25, 1980 indicated its commitment to undertake plant-unique assessments based on the Owners Group's generic assessment techniques, to modify the plant systems as needed, and also indicated that its schedule for this effort would result in a plant shutdown to complete the plant modifications by November 30, 1981.

On October 31, 1979, the staff issued an initial version of its acceptance criteria to the affected licensees. These criteria were subsequently revised in February 1980 to reflect acceptable alternative assessment techniques which would enhance the implementation of this program. Throughout the development of these acceptance criteria, the staff has worked closely with the Mark I Owners Group in order to encourage partial plant-unique assessments and modifications to be undertaken.

The modification schedules submitted in response to the March 12, 1979 letter have subsequently been revised to reflect the development of the acceptance criteria and additional information concerning plant modifications that will be needed to demonstrate conformance with those criteria. In consideration of the range of completion estimates reflected by all of the affected licensees and the staff's assessment of the nature of the effort involved in the reassessment work and in the design and installation of the needed plant modifications, the staff has concluded that the licensee's proposed completion schedule is both prompt and practicable.

Under the circumstances, the NRC staff has determined that the licensee's commitment to undertake the reassessment of suppression pool hydrodynamic loads and to design and complete installation of the plant modifications, if any, needed to conform to the generic acceptance criteria by November 30, 1981 should be confirmed and formalized by Order.

IV

The Commission hereby extends the exemption from General Design Criterion 50 of Appendix A to 10 CFR Part 50 granted to the licensee on February 28, 1978, only for the time necessary to complete the actions required by Section V or VI of this Order. Substantial improvements have already been made in the margins of safety of the containment systems and will continue to be improved during this period whenever practicable, and, in any event, all needed improvements, if any, must be completed in accordance with the provisions of Section V or VI of this Order.

The Commission has determined that good cause exists for the extension of this exemption, that such exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

V

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that

the license be amended to include the following conditions:

1. The licensee shall promptly assess the suppression pool hydrodynamic loads in accordance with NEDO–21888 and NEDO–24583–1 and the Acceptance Criteria contained in Appendix A to NUREG–0661.

2. Any plant modifications needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661 shall be designed and its installation shall be completed not later than November 30, 1981 or, if the plant is shut down on that date, before the resumption of power thereafter.

VI

The licensee or any person whose interest may be affected by the Order set forth in Section V hereof may request a hearing within thirty days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning such Order, the issues to be considered at the hearing shall be:

1. Whether the licensees should be required to promptly assess the suppression pool hydrodynamic loads in accordance with the requirements of Section V of this Order; and,

2. Whether the licensee should be required, as set forth in Section V of this Order, to complete the design and installation of plant modifications, if any, needed to assure that the facility conforms to the Acceptance Criteria contained in Appendix A to NUREG–0661.

The Order set forth in Section V hereof will become effective on expiration of the period during which the licensee may request a hearing or, in the event a hearing is held, on the date specified in an order issued following further proceedings on this Order.

VII

For further details concerning this action, refer to the following documents which are available for inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC 20555 or through the Commission's local public document room at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont:

1. "Mark I Containment Program Load Definition Report," General Electric Topical Report, NEDO–21888, December 1978.

2. "Mark I Containment Program Structural Acceptance Criteria Plant Unique Analysis Applications Guide," General Electric Topical Report, NEDO–24583–1, October 1979.

3. "Mark I Containment Long Term Program Safety Evaluation Report," NUREG–0661, July 1980.

4. Letter from R. L. Smith, VYNPC to T. A. Ippolito NRC, dated July 25, 1980.

5. Letter to licensee dated January 13, 1981.

Dated: January 13, 1981.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 81–3253 Filed 1–27–81; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 17472; File No. SR–CBOE–1980–29]

Chicago Board Options Exchange, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on December 22, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Substance of the Proposed Rule Change

Additions are italicized and deletions are bracketed.

Financial Arrangements of Market-Makers

Rule 8.10. Each Market-Maker who makes an arrangement to finance his transactions as a Market-Maker must [inform] *identify to* the Exchange [of] the *source* [name] of the *financing* [creditor] and [the] *its* terms [of such arrangement]. The Exchange must be informed immediately of the intention of any party [(1)] to terminate or change any such arrangement. [, or (2) to issue a margin call. On a form prescribed by the Exchange, a Market-Maker must submit to the Exchange a monthly report of his use of credit pursuant to this rule.]

Financial Reports

Rule 15.5. No change.

. . . Interpretations and Policies:

.01 No change.

.02 On a form prescribed by the Exchange, a Market-Maker must submit to the Exchange a monthly report of his use of credit under Section 220.4(g) of Regulation T of the Board of Governors of the Federal Reserve System.

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the change is to clarify that any type of arrangement for Market-Maker financing must be disclosed to the Exchange under Rule 8.10 and to move to Rule 15.5, a more appropriate location, the requirement that a monthly report respecting use of Regulation T credit be filed with the Exchange.

The basis under the Securities Exchange Act of 1934 for the proposed rule change is section 6(b)(5) because the change is part of the CBOE's attempt to prevent fraudulent and manipulative acts and practices in order to protect investors and the public interest.

No comments were solicited or received with respect to this proposed rule change.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

On or before March 4, 1981, 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, Securities and Exchange Commission, 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 February 13, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 19, 1981.

[FR Doc. 81-3071 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11575; 812-4799]

American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust; Filing of Application for Order of the Commission Permitting Partial Suspension of Payment for Securities Tendered for Redemption, and Order Granting Such Relief on a Temporary Basis

January 21, 1981.

In the matter of American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust, 815 Sixteenth Street, N.W. Washington, D.C. 20006 (812-4799).

Notice is hereby given that American Federation of Labor and Congress of Industrial Organizations Mortgage Investment Trust ("Trust"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified management investment company, filed an application on January 12, 1981, and amendments thereto on January 13, 1981, and January 19, 1981, requesting an order of the Commission pursuant to Section 22(e)(3) of the Act permitting the partial suspension of payment for securities tendered to the Trust for redemption, such order to continue until either: (1) 10 days after final resolution of any possible claim against the Trust for alleged income tax deficiencies, or (2) the Commission, on its own initiative, terminates the order applied for herein. The application further requests that such order be made effective as of January 22, 1981, on a temporary basis, pending issuance of an order following appropriate notice and opportunity for hearing. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Trust states that it is a commingled trust fund and was created in 1964 under the laws of the District of Columbia. The Trust is capitalized solely by limited-voting Participation Certificates ("Certificates") owned almost entirely by union organizations affiliated with the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") and their qualified labor-management welfare, pension or retirement plans ("benefit plans") as described in Sections 401(a) or 501(c) of the Internal Revenue Code of 1954, as amended (the "Code"). Since January 1, 1978, the Trust has not issued any additional Certificates.

The Trust states that its investment objective is to provide a safe, diversified investment opportunity to union organizations affiliated with the AFL-CIO and their benefit plans through a mortgage investment program. According to the application, the Trust invests only in federally insured or guaranteed first mortgage loans and construction loans secured by single-family houses or multi-family apartments and in such other federally insured or guaranteed mortgage loans as may be approved by its Board of Trustees ("Trustees"). The Trust further states that all such mortgage investments be in union-built projects.

The application states that the Trust's Certificates are entitled to participate equally on a pro-rata basis in semi-annual distributions of net income earned during the preceding six-month period. According to the application, Certificates are redeemable at their net asset value as of quarterly valuation dates and payment upon redemption is made within seven days after the determination of the Trust's net asset value as of such valuation date. The application also states that it takes the Trust from two to three weeks after each valuation date to calculate its net asset value as of that date.

Since its inception in 1964, the Trust states that it has consistently taken the position that it is a "simple trust" taxable only on realized capital gains, or a "labor organization" wholly exempt from income tax and has filed its fiduciary income tax returns with the Internal Revenue Service (the "IRS") and the District of Columbia ("D.C.") as a simple trust. The Trust further states that prior to its filing its first federal income tax return the Trust requested a ruling from the IRS as to whether it would be taxed as simple trust. According to the application, the response of the IRS to that ruling request was not consistent with the position of the Trust that it is a simple trust for federal income tax purposes, but the IRS has never challenged the Trust's position that it is a simple trust. The Trust states that to resolve the uncertainty as to its tax status, it applied for a ruling confirming its tax status as a simple trust. The Trust further states that the National Office of the IRS declined to rule on its request on the grounds that it concerned matters involving prior taxable years.

The Trust states that on October 23, 1979, it filed with the IRS an Application for Recognition of Exemption ("IRS Application") as a labor organization under Section 501(c)(5) of the Code. The Trust further states that in December, 1980, the Exempt Organizations Branch of the IRS advised the Trust that its IRS Application would be denied on the grounds that the Trust is a "feeder organization" under Section 502 of the Code. Because of the denial of its IRS Application, the Trust states that the IRS may assert a tax deficiency against it for the fiscal years ended June 30, 1977, and June 30, 1978. According to the application, if such a tax deficiency is assessed, the Trust estimates the amount with interest to December 31, 1980, including any D.C. deficiency and without penalties, to be as much as $8,378,459. The Trust's net asset value as of December 31, 1980, was $65,342,370.

The Trust states that because it believes there are substantial grounds to defend its position should the IRS and D.C. allege any tax deficiency, it is not probable that liability on account of the tax situation would have a material effect on its financial position and, therefore, accrual of a charge to income and establishment of a loss reserve is not proper. However, according to the application, since the IRS may seek to impose liability for the possible tax deficiency, the Trust believes that any such liability should fall evenly on all potentially affected certificateholders. To that end, the Trust states that it believes it appropriate to establish a mechanism that will insure that all present certificateholders of the Trust are treated equally whether or not they choose to redeem their interests. The Trust further states that it is the opinion of its Trustees that those certificateholders who choose to redeem now should not receive a more favorable treatment than those who choose to retain their Certificates. The Trust also states that with respect to those certificateholders who have already redeemed without having any amount withheld on account of the possible income tax liability, the Trustees have made no decision whether and to what extent any effort might be made to recoup those possible overpayments. According to the application, the Trustees believe that no decision is appropriate with respect to those possible overpayments until the fact and amount of any income tax liability is known. The Trust states that for the foregoing reasons, the Trustees

have proposed the following plan for partial suspension of payments of Certificates tendered for redemption ("Plan") which effective date would be December 31, 1980.

Pursuant to the Plan, the Trustees have adopted as the amount at risk for the possible federal and D.C. income tax deficiency ("Amount at Risk") to be $11,878,835 as of December 31, 1980, which is $65.00 per Certificate outstanding (the "Per Unit Allowance"). According to the Plan, when a Certificate is presented for redemption the holder thereof will receive the net asset value of the Certificate less the per Unit Allowance. In addition, the Trust shall issue to the holder of the redeemed Certificate a Notice of Continuing Interest in the Trust. A Continuing Interest will be determined as of the date a Certificate is tendered for redemption by dividing the Per Unit Allowance by the net asset value of the Trust and shall entitle the holder thereof to vote and to distributions of income form the Trust on the basis of the amount of such interest. Under the Plan the Trust may revise the Amount at Risk, thereby prospectively altering the Per Unit Allowance should events suggest that the amount required to cover the final resolution of the possible tax deficiency be different from the amount previously estimated. Finally, upon the resolution of the possible tax deficiency, there shall be paid in redemption of each Continuing Interest the difference between the Per Unit Allowance and the actual cost of the final resolution.

Section 22(e)(3) of the Act provides that the Commission may, by order, for the protection of the security holders of the company, permit a registered investment company to suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security.

The Trust also requests that the Commission issue, together with this notice, a temporary order, effective January 22, 1981, permitting suspension of a portion of the payment due upon redemption of the Trust's outstanding redeemable Certificates, as set forth in the above-described Plan, such order to continue in effect until further action is taken by the Commission.

The Commission has considered the matter and hereby finds, on the basis of the information stated in the application, that it is necessary for the protection of security holders of the Trust that there be issued, together with the notice of the application, a temporary order permitting, until further order of the Commission, the suspension of a portion of the payment due upon redemption of the Trust's Certificates in the manner provided in the Plan. It should, however, be noted that the Commission makes no finding as to whether the amounts of the Per Unit Allowance or Amount at Risk are appropriate.

It is ordered, pursuant to Section 22(e)(3) of the Act, that the Trust be, and hereby is, permitted, from January 22, 1981, until further order of the Commission, to suspend a portion of the payment due upon redemption of its outstanding Certificates, as set forth in the Plan.

Notice is further given that any interested person may, not later than February 17, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Trust at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is order, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-3048 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 21, 1981.

The above named national securities exchange has filed applications 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 following stocks:

CSX Corporation, Common Stock, $1 Par Value (File No. 7-5843);

JWT Group, Inc., Common Stock, $10 Par Value (File No. 7-5844).

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1981 written data, views and arguments concerning the above-referenced applications. 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-3050 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11574; 811-1958]

Heart of America Growth Fund, Inc.; Filing of Application for an Order Declaring That Applicant Has Ceased to be an Investment Company

January 21, 1981.

In the matter of Heart of America Growth Fund, Inc., Suite 120, 1900 West 47th Place, Shawnee Mission, Kansas 66205 (811-1958).

Notice is hereby given that Heart of America Growth Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on December 3, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, registered under the Act on October 16, 1969. On November 19, 1969, it filed a

registration statement (File No. 2-35322) under the Securities Act of 1933 to make a public offering of shares of its common stock. This registration statement became effective on April 6, 1971, and the initial public offering of Applicant's common stock commenced on April 7, 1971. As of September 30, 1980, Applicant had outstanding 115,199.994 shares of common stock having an aggregate net asset value of $757,129, or $6.57 per share.

According to the application, on May 29, 1980, Applicant's Board of Directors adopted a resolution recommending the dissolution and liquidation of Applicant and calling a meeting of Applicant's shareholders to consider and act upon such dissolution. At the meeting held on July 15, 1980, Applicant's shareholders, by an affirmative vote of 90,273.999 shares out of 115,865.939 shares then outstanding, adopted a resolution authorizing the dissolution and liquidation of Applicant, and authorized Applicant's Board of Directors and President to execute any and all documents necessary to effectuate such action. Applicant converted all its assets to cash, and on October 24, 1980, distributed checks to its remaining shareholders in the amount of $6.57 per share, which included $.32 per share as ordinary income and $6.25 per share as a liquidating distribution.

The application states that all of Applicant's assets have been distributed to the shareholders except for $4457.17 (which represented the net asset value of shares held by 72 persons who could not be located despite the best efforts of Applicant's officers, agents and employees) which has been placed in an escrow account. This escrow account continues to hold the above proceeds for the benefit of the 72 lost shareholders. The Escrow Agreement provides that all fees and charges of the Escrow Agent will be paid by Applicant's former investment adviser, Heart of America Investment Services, Inc., or principal underwriter, Weinrich Zitzmann Whitehead, Inc. All of the Applicant's expenses, other than brokerage costs, interest and taxes, in excess of 1½% of the average daily net asset value of Applicant were directly paid by such investment adviser or principal underwriter.

Applicant states, among other things, that it currently has no assets; that it has no known liabilities outstanding; and that it is not a party to any litigation or administrative proceeding. It further states that it is not now engaged in any business activities other than those necessary for the winding-up of its affairs. Finally, Applicant states that it has filed a Certificate of Dissolution with the Secretary of State of Delaware. Such filing resulted in the dissolution of Applicant pursuant to the laws of Delaware.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 19, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-3051 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5884]

Kidde, Walter Overseas Finance NV; Application To Withdraw From Listing and Registration

January 21, 1981.

In the matter of Kidde, Walter Overseas Finance NV 5% Convertible Subordinated Guaranteed Debentures Due 1989 (File No. 1-5884).

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 New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this secuity from listing and registration include the following:

1. The subject debentures of Walter Kidde Overseas Finance NV (the "Company") have been listed on the NYSE since they were issued in 1969. The NYSE has advised the Company that one debenture was traded during the calendar year 1970 and that there has been no trading in the debentures since that time. During the period 1970 to December 15, 1980, the National Quotation Bureau reports that there have been no published quotations for the debentures in the over-the-counter market. Therefore, the Company has determined that the continued expenses do not justify maintaining the listing of the debentures on the Exchange.

Any interested person may, on or before February 11, 1981, 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. 81-3052 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 21, 1981.

The above named national securities exchange has filed applications 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 following stocks:

Liberty National Insurance Holding Co., Common Stock $2 Par Value (File No. 7-5845);
Sullair Corporation, Common Stock No Par Value (File No. 7-5846).

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 11, 1981 written data, views and arguments concerning the above-referenced applications. 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-3052 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 1-7782 and 1-7783]

Parsons Corp. and RMP International, Ltd.; Application To Withdraw from Listing and Registration

January 21, 1981.

In the matter of the Parsons Corporation Common Stock, $1 Par Value (File No. 1-7782) and RMP International, Ltd. Common Shares, No Par Value (File No. 1-7783).

The above named issuers have filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

1. The common stock of the Parsons Corporation ("Parsons") and the common shares of RMP International, Ltd. ("RMP") are listed and registered on the Amex. Pursuant to a Joint Registration Statement on Form 8-A which became effective on December 3, 1980, Parsons and RMP are also listed and registered on the New York Stock Exchange ("NYSE"). Parsons' and RMP's shares are "paired" and trade as a unit. Parsons and RMP have determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock and the common shares on the Amex and the NYSE, and believes that dual listing would fragment the market for its common shares.

2. This application relates solely to withdrawal of the common shares from listing and registration on the Amex and shall have no effect upon the continued listing of such stocks on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before February 11, 1981, 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. 81-3054 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11577; 811-3045]

Treasury Trust; Filing of Application for an Order Declaring That Applicant Has Ceased To be an Investment Company

January 22, 1981.

In the matter of Treasury Trust, 421 Seventh Avenue Pittsburgh, PA 15219 (811-3045).

Notice is hereby given that Treasury Trust ("Applicant"), which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 21, 1980, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring the Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on April 10, 1980, and that it simultaneaously registered an indefinite number of its shares of beneficial interest of commmon stock under the Securities Act of 1933. According to the application, the registration of those shares became effective on April 17, 1980, at which time an initial public offering of those shares commenced. Applicant further states that it was dissolved pursuant to its Declaration of Trust and applicable state law on August 18, 1980.

According to the application, on August 18, 1980, Applicant's trustees recommended to its shareholders that Applicant's affairs be wound up and terminated and that unanimous consent of shareholders approving such termination was obtained on August 18, 1980. Applicant states that it voluntarily redeemed all of its 6,301,989.87 outstanding shares at their $1 net asset value per share and that such redemptions were completed on August 18, 1980. Applicant further states that all its portfolio securities either matured or were sold to Trust for U.S. Treasury Obligations (a money market fund registered under the Act) pursuant to Rule 6C-5(T) under the Act. According to the application, that liquidation resulted in transfer agent and administrative fees of $14,344.17, which were assumed by Cash Management Research Corp., Applicant's investment adviser.

Applicant states that as of the date of the filing of the application it had no assets or liabilities and was not a party to any litigation or administrative proceeding. Applicant further states that it is not engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs and that there are no shareholders of Applicant to whom distribution in complete liquidation of their interests has not been made. According to the application, Applicant intends to file Articles of Dissolution with the Secretary of State of the Commonwealth of Massachusetts.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company as defined by the Act, it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than

February 17, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-3055 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-1747; File No. SR-CBOE-1980-27]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options 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. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Text of Substance of the Proposed Rule Change

The proposed rule change would revise certain of the procedures utilized by the CBOE to discipline its members and their associated persons. Among other things, the proposed rule change would (1) permit a member prior to a Business Conduct Committee ("BCC") meeting concerning whether to issue a statement of charges against that member to submit a written statement to the BCC concerning why no disciplinary action should be taken; (2) permit a respondent to submit with an offer of settlement a written statement in support of the offer and in instances where the CBOE staff recommends against acceptance of the offer of settlement, to appear before the BCC to make an oral statement in support of his offer; (3) provide in instances where a member and the staff can agree as to the facts, violation and sanction, for an expedited proceeding which would enable a disciplinary matter to be disposed of without the formality of the issuance of a statement of charges; (4) authorize members of the Board of Directors to be appointed to the BCC and (5) preclude any Director who participated in a matter before the BCC or other Committee from participating in any review of that matter by the Board of Directors.

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The general purpose of this proposed rule change is to clarify procedural matters and to give members more access to the Exchange's Business Conduct Committee (BCC) without impairing the effectiveness of the Exchange's regulatory system. Some of the proposed changes seek to incorporate into the rule book a number of procedures adopted by the Executive Committee last year and described in a circular to the memership dated September 14, 1979. Those changes relate to submissions by a respondent prior to the BCC considering a staff report (Rule 17.2(d)), access to documents (Rules 17.2(d) and 17.4(c)) and submission of statements and personal appearances in connection with offers of settlements (Rule 17.8(b)).

The proposed rule change contains a provision for an expedited proceeding which would enable a disciplinary matter to be disposed of without the formality of the issuance of a statement of charges (Rule 17.3). Also included are certain housekeeping changes: authority of BCC to request appearances and submission of materials (Rule 17.8(c)), a requirement that offers of settlement be signed by respondents (Rule 17.8), clarification of the authority of the BCC in reviewing decisions of hearing panels (Rule 17.9), clarification of review procedures of the Board in BCC and Appeals Committee matters (Rules 17.10(b) and 19.5(b)) and provision for the appointment of a member of the Board to the BCC (Rule 2.5).

The basis under the Securities Exchange Act of 1934 for the proposed rule change is sections 6(b)(5) and (7), and section 6(d), in that the change helps to prevent fraudulent and manipulative acts and practices, as well as providing fair and effective procedures for the disciplining of members.

Although comments were solicited from members by means of a special mailing to the membership, no comments were received.

Exchange's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competion.

By March 4, 1981, 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, Securities and Exchange Commission, 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 by February 18, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 21, 1981.

[FR Doc. 81-3049 Filed 1-27-81; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1865; Amdt. No. 3]

South Dakota; Extension of Filing Dates

The above numbered declaration and amendment thereto (see FR 46264 and 59675) are amended further by extending the filing dates.

The termination date for filing applications for physical damage is close of business on February 1, 1981 and for economic injury until the close of business on May 1, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 2, 1981.

A Vernon Weaver,

Administrator.

[FR Doc. 81-3190 Filed 1-27-81; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/361]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 12, 1981 at 10:00 a.m. in Room 1408 of the Department of State, 2201 C Street, N.W., Washington, D.C. This Study Group deals with matters in telecommunications relating to the development of international digital data transmission.

The agenda for the February 12 meeting will include consideration of the following:

1. Report of the VIIth Plenary Assembly;
2. Program of work for the new Plenary period. Items to be discussed:
   —Data grams
   —ISDN interfacing as related to the work of Study Groups VII and XVII
   —Mini interface
   —Network architectual models
   —2400 bps full duplex modems
3. Report of the Modem Working Party;
4. Contributions for the April Study Group VII meeting;
5. Any other business.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to February 10, members of the general public who plan to attend the meeting so advise Mr. T. de Haas, Chairman of U.S. Study Group D. Mr. de Haas can be contacted at the Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Boulder, Colorado 80303, telephone number (303) 499-1000, Ext. 3728. Persons in the Washington, D.C. metropolitan area may contact Mr. Richard H. Howarth, Department of State, telephone number 632-1007. All non-government attendees must use the C Street entrance to the building.

Dated: Janury 23, 1981.

Richard H. Howarth

Chairman, U.S. CCITT National Committee.

[FR Doc. 81-3191 Filed 1-27-81; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp No. 18]

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation

On December 31, 1980, the Ranger Insurance Company, New York, New York changed its State of incorporation from New York to Delaware. The company was last listed as an acceptable surety on Federal bonds at 45 FR 44511, July 1,1980.

A certificate of authority as an acceptable surety on Federal bonds is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Ranger Insurance Company, incorporated in the State of Delaware. This new certificate replaces the company's former Treasury certificate, effective January 1, 1981. An underwriting limitation of $1,971,000 has been established for the company. The underwriting limitation is the same as was established as of July 1, 1980, under the certificate issued to the company in its previous State of incorporation.

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business, and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1980 Revision, at page 44511 to reflect this change. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: January 15, 1981.

Michael D. Serlin,

Acting Commissioner, Bureau of Government Financial Operations.

[FR Doc. 81-2353 Filed 1-27-81; 8:45 am]

BILLING CODE 4810-35-180-M

Office of Revenue Sharing

Data Improvement Program for Entitlement Period Twelve

AGENCY: Department of the Treasury, Office of Revenue Sharing.

ACTION: Notice.

SUMMARY: On about January 30, 1981 the data used by the Office of Revenue Sharing in calculating the initial alocations for all State areas and units of local government for Entitlement Period Twelve will be mailed to each government. The definition of each data element is provided in this notice.

FOR FURTHER INFORMATION CONTACT: Matthew Butler, Manager, Data and Demography Division, Office of Revenue Sharing, 2401 E Street, N.W., Washington, D.C. 20226, (202) 634-5166.

SUPPLEMENTARY INFORMATION: The data used by the Office of Revenue Sharing in calculating the revenue sharing allocations for all State areas and local governments under the State and Local Fiscal Assistance Act of 1972 (86 Stat. 919; 31 U.S.C. 1221 et seq.), as amended by the State and Local Fiscal Assistance Amendments of 1976 (90 Stat. 2341) and the State and Local Fiscal Assistance Act Amendments of 1980 (94 Stat. 3516) for Entitlement Period 12 (October 1, 1980 through September 30, 1981) will be mailed to each government on about January 30, 1981. This data has been compiled by the Bureau of the Census, Bureau of Economic Analysis, Internal Revenue Service, and Bureau of Indian Affairs. The definition of each data element is provided in this notice.

Additionally, the initial allocation amount for each State area and recipient local government is being provided to each government, to aid each government in its data verification efforts. If a government does not believe the allocation amount is correct, it should check its data carefully to find

the source of the discrepancy. The data may be corrected under this review program or other data improvement procedures. Currently, the Office of Revenue Sharing plans to replace the 1978 population estimates for local governments, and the 1979 population estimates and the 1970 urbanized population for State areas, with the 1980 Census data, if these new data are available from the Bureau of the Census in time for use in the final Entitlement Period 12 allocations.

After the final allocations for Entitlement Period 12 are computed, a State or local government (or the Secretary of the Treasury) has until September 30, 1982 to make a demand to adjust the allocations of local governments under Section 102(b) of the State and Local Fiscal Assistance Act of 1972, as amended by Section 6(e)(2) of the State and Local Fiscal Assistance Amendments of 1976. The State government may demand an adjustment of the allocations to local governments within its State area. If a demand for adjustment is made by a State or local government, the demand must be in writing with evidence justifying the proposed data correction. In that event, any adjustment in allocation will affect only the local government or State area for which a demand for adjustment was made.

The collective data for all State areas and local governments used in both the initial and final allocations for Entitlement Period 12 will be provided to libraries designated as depositories for Government publications (44 U.S.C. 1911).

State Areas

The State data will be mailed to the Governor of each State and to the Mayor of Washington, D.C. For purposes of the revenue sharing program, Washington is treated as the only municipality in the state area of the District of Columbia.

Although State governments are not eligible to receive revenue sharing funds for Entitlement Period 12 they will receive a letter showing their State's data used to calculate the amount for distribution among the State areas. The definition of each data element is provided in this notice. If a State government believes that there are errors in the data relative to the definitions and effective dates, it should notify the Office of Revenue Sharing in writing and provide evidence justifying the proposed data corrections.

A State government should send its data challenge to the Office of Revenue Sharing by March 2, 1981. Upon receipt of a written challenge from a State government, the Office of Revenue Sharing will work with the appropriate Federal agency to substantiate or correct the data questioned, and will advise the State government of its findings. Any resulting changes in the data for State areas will be used in computing the final allocations of local governments in those State areas for Entitlement Period 12.

Units of Local Government

The data for each unit of local government will be mailed to the official of record for the government. Each recipient local government will be sent either a Form 3233 or a Form 90–18.3. The Form 90–18.3 will be sent only to those governments in areas declared major disaster areas since April 1, 1974 under the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. chapter 58) whose data were possibly adversely affected by the major disaster. In order to be eligible for the data stabilization benefit of the Disaster Relief Act (which permits them to use their pre-disaster data figures rather than their post-disaster figures), the local governments which receive a Form 90–18.3 are required to certify that one or more of their data elements were adversely affected by the disaster.

Form 3233 will be sent to all other recipient governments. If a government believes that there are errors in the data relative to the definitions and effective dates, it should return the Form 3233 to the Office of Revenue Sharing by March 2, 1981 with evidence justifying the proposed data corrections. Governments which receive Form 90–18.3 will also have the opportunity to question their data elements by returning Form 90–18.3 to the Office of Revenue Sharing by March 2, 1981 with supporting evidence. Governments which do not wish to question their data or to certify a disaster need not return the form.

When the Office of Revenue Sharing receives a written challenge from a recipient government, it will work with the Bureau of the Census, the Bureau of Indian Affairs, or other appropriate Federal agency, to substantiate or correct all data questioned and will advise the government of its findings. Any resulting changes in the data for local governments will be used in computing the final allocations for Entitlement Period 12.

The definitions of the data elements used in the interstate and intrastate initial allocation processes for Entitlement Period 12 are as follows:

I. Population

The population of a State for the initial allocations for Entitlement Period 12 is the total resident population as of July 1, 1979 as determined by the Bureau of the Census. The July 1, 1979 State populations are provisional estimates which were published by the Bureau of the Census in *Current Population reports*, Series P–25. Incorporated in these population totals for the year ending July 1, 1979, are estimates of population change, including migration based on vital statistics, key population indicators, and extrapolations of past trends. For a complete description of the methodology used, please consult the full report in the Bureau of the Census' Series P–25. The April 1, 1980 State populations as determined in the 1980 Census will be used in the final allocation for Entitlement Period 12 if these data are available from the Bureau of the Census prior to the final allocation of the period.

II. Urbanized Population

The urbanized population of a State for the initial allocations for Entitlement Period 12 is the 1970 urbanized population of a State as determined by the Bureau of the Census. The 1980 urbanized population of States will be used for the final allocations for Entitlement Period 12 scheduled for June 1981 if these data are available from the Bureau of the Census before the final allocation and will incorporate a new set of standards for Metropolitan Statistical Areas (MSA's) published by the Office of Federal Statistical Policy and Standards of the Commerce Department.

A State's 1970 urbanized population is that State's 1970 population that was living in territory designated as urbanized areas according to the Bureau of the Census' 1974 Urbanized Area Criteria. The Bureau of the Census revised its definitional criteria for urbanized areas in 1974 to make them more consistent with the criteria for Standard Metropolitan Statistical Areas (SMSA's). Urbanized areas were defined using 1970 census population.

1. An urbanized area must include a central city or cities that qualify under one of the criteria listed below. All population criteria refer to 1970 census population counts (except as specified in item 1a).

a. A city of 50,000 inhabitants or more according to the 1970 census, a special census taken between 1960 and 1970, or the 1960 census, provided that the city is located in an SMSA and is not included in an existing urbanized area.

b. A city with at least 25,000 inhabitants which, together with those contiguous places (incorporated or unincorporated) having population densities of at least 1,000 persons per

square mile, has a combined population of 50,000 and constitutes for general economic and social purposes a single community, provided that the city is located within an SMSA and is not included in an existing urbanized area.

2. In addition to a central city or cities, an urbanized area includes contiguous territory meeting the following criteria:

a. Incorporated places of 2,500 inhabitants or more, but excluding the rural portions of extended cities.

b. Incorporated places with fewer than 2,500 inhabitants, provided that each has a closely settled area of 100 housing units or more, and all unincorporated places recognized in the 1970 census.

c. Contiguous small parcels of unincorporated land (delineated as either enumeration districts or block parcels prior to the 1970 census) determined to have a 1970 census population densitgy of 1,000 inhabitants or more per square mile. The areas of large nonresidential tracts devoted to such urban land uses as railroad yards, airports, factories, parks, golf courses, and cemeteries are excluded in computing the population density.

d. Other similar small areas in unincorporated territory without regard to population density provided that they serve

—to eliminate enclaves, or

—to close indentations of one mile or less in width across the open end of the urbanized areas in order to eliminate narrow fingers of "rural" area, or

—to link outlying areas of qualifying density provided that these are not more than 1½ miles from the main body of the urbanized area.

III. Income

The per capital income (PCI) of a State is the 1977 per capital income of the State as determined by the Bureau of the Census. The per capital income is the estimated mean or average amount of total money income received during calendar year 1977 by all persons residing in the State in April 1978. The 1977 PCI estimates are based on data from the 1970 census and reflect corrections to the census data which have been made since 1970.

Total money income is the sum of:

- Wage and salary income
- Net nonfarm self-employment income
- Net farm self-employment income
- Social Security and railroad retirement income
- Public assistance income
- All other income such as interest, dividends, veteran's payments, pensions, unemployment insurance, alimony, etc.

The total represents the amount of income received before deductions for personal income taxes, Social Security, bond purchases, union dues, medicare deductions, etc.

Receipts from the following sources are not included as income: money received from the sale of personal property; capital gains; the value of income "in kind" such as food produced and consumed in the home or free living quarters; withdrawals of bank deposits; money borrowed; tax refunds; exchange of money between relatives living in the same household; gifts and lump sum inheritances, insurance payments, and other types of lump sum receipts.

The 1970 census PCI data were updated to 1977, based on income data from the 1969 and 1977 Federal income tax returns and State income estimates prepared by the Bureau of Economic Analysis to measure the change from 1969 to 1977.

At the State level, 1977 per capita income estimates were developed by carrying forward the 1970 census aggregate wage and salary income and per capita income for the remaining types of income itemized above, and dividing the sum of the 1977 aggregates for each State by the estimated April 1978 population. The percent change in wage and salary income as reflected by the IRS data was used to update the 1970 census wage and salary amount, while the remaining income types were carried forward using the percent change implied in estimates developed by the Bureau of Economic Analysis.

The 1977 PCI estimates were published by the Bureau of the Census in *Current Population Reports*, Series P–25, in reports for the four Census regions. The estimates being used for revenue sharing purposes may not agree exactly with the figures in the P–25 reports, since corrections have been made to the estimates subsequent to the publication of the reports.

IV. State Individual Income Tax

The State individual income tax data of a State for Entitlement Period 12 is the total calander year 1979 collections of the tax imposed upon the income of individuals by such State and described as a State income tax under section 164(a)(3) of the Internal Revenue Code of 1954. These data also include collections of taxes of special types of income (e.g., interest, dividends, income from intangibles, etc.)

Actual calendar year 1979 State individual income tax collections data were obtained from the Bureau of the Census' publication entitled *Quarterly Summary of State and Local Tax Revenue, October-December 1979*. The calendar year 1979 State individual income tax collections data used for revenue sharing may not agree exactly with the figures in the Census Bureau's *Quarterly Summary of State and Local Tax Revenue*, if corrections to these data were made subsequent to its publication.

V. Federal Individual Income Tax Liabilities

The Federal individual income tax liability of a State for revenue sharing purposes is the total annual Federal individual income taxes after credits, attributed to the residents of the State by the Internal Revenue Service. Income tax after credits is determined by subtracting statutory credits from the total of income tax before credits and the tax surcharge. It does not include self-employment tax or tax from recomputing prior year investment credit, nor does it take into account refundable credits.

Income tax before credits is the tax liability computed on taxable income based on:

1. The regular combined normal tax and surchage including tax from the optional tax tables,
2. Alternative tax, or
3. Tax computed using the income averaging provisions.

Examples of credits which are applied against income taxes are:

1. Retirement income credit,
2. Investment credit,
3. Foreign tax credit, and
4. Other tax credits.

The most recent Federal individual income tax liabilities available for revenue sharing use in Entitlement Period 12 are the 1978 IRS estimates of Federal income tax liabilities of States. These estimated tax amounts for calendar year 1978 are the preliminary 1978 estimates from the Internal Revenue Service's *Statistics of Income*.

VI. State and Local Taxes

The State and local taxes data of a State are the compulsory contributions exacted by the State government or by any unit of local government or other political subdivision of the State for public purposes (other than employee and employer assessments and contributions to finance retirement and social insurance systems, and other than special assessments for capital outlay) as such contributions are determined by the Bureau of the Census for general statistical purposes.

State and local taxes data used for revenue sharing purposes are the Fiscal Year 1978–79 State and local taxes as reported by the Bureau of the Census in Table 5 of *Governmental Finances 1978-*

79 (GF 79, No. 5). Fiscal Year 1978–79 is a government's 12-month accounting period that ended between July 1, 1978 and June 30, 1979 except for three State governments and the school districts in two States. The State governments of Alabama and Michigan had fiscal years ended September 30, 1979, the Texas State government had a fiscal year ended August 31, 1979. Also, the school districts in Alabama and Texas had fiscal years ended September 30, 1979. These latter governments are treated as though they were part of the group with fiscal years ending prior to June 30, 1979.

Tax revenue comprises amounts collected from all taxes which are imposed by a government and collected by that government or which are collected for it by another government acting as its agent. This includes interest and penalties, but does not include amounts refunded or taxes paid under protest and held in suspense accounts subject to possible refund. These latter amounts are not regarded as revenue except as awarded to the government concerned. For purposes of this definition, local governments and other political subdivisions include counties (parishes in Louisiana and boroughs in Alaska), municipalities, townships, school districts, and special districts. A unit of government also includes, in addition to the central authority of the unit, any semi-autonomous boards, commissions, or other agencies dependent on it that do not in themselves meet requirements as to fiscal and administrative independence even though as to accounting records and other specific administrative aspects these agencies may operate outside the central accounting and administrative pattern of the unit.

The State government information contained in State and local taxes is based on the annual Bureau of the Census survey of State finances. State finance statistics are compiled by representatives of the Bureau of the Census from official records and reports of the various States. The local government portion of the State and local taxes data are estimates based on information received from all general purpose governments and from a sample of school districts and special districts. The sample consisted of districts whose relative importance in their State based on expenditure or debt was above a specified size, and a random sample of remaining units.

The Fiscal Year 1978–79 State and local taxes data may not agree exactly with the figures in *Governmental Finances 1978–79*, because corrections may have been made to these data subsequent to its publication.

VII. General Tax Effort Factor

The general tax effort factor of a State is the amount of Fiscal Year 1978–79 State and local taxes of the State divided by the aggregate personal income of the State for 1978. State and local taxes for Fiscal Year 1978–79 are as defined above, and as reported by the Bureau of the Census in Table 5 of *Governmental Finances 1978–79* (GF 79, No. 5).

Aggregate personal income of a State in calendar year 1978 is the income of individuals as estimated by the Bureau of Economic Analysis of the Department of Commerce for national income accounts purposes and as reported in "Personal Income By States and Regions for Selected Years," Table 1, *Survey of Current Business*, August 1980, Volume 60, Number 8.

Aggregate personal income represents the total current income received by persons residing in the State from all sources, including transfers from government and business but excluding transfers among "persons." Not only individuals (including owners of unincorporated enterprises), but also non-profit institutions, private trust funds, and private pension, health and welfare funds are classified as "persons." Personal income is measured on a before-tax basis, as the sum of wages and salary disbursements, other labor income, proprietors' and rental income, interest and dividends, and transfer payments, minus personal contributions for social insurance, etc.

I. Population

Population of Counties, Cities, Towns and Townships

The population of a unit of government for the initial allocations for Entitlement Period 12 of revenue sharing is the resident population as of July 1, 1978 as determined by the Bureau of the Census. The April 1, 1980 Census counts of population currently are scheduled to replace the 1978 estimates for the final allocations for Entitlement Period 12. However, the use of April 1, 1980 Census counts of population in calculating Entitlement Period 12 final allocations is contingent upon the availability of these data from the Bureau of the Census prior to the final allocation of the period. Governments will have the opportunity to review their 1980 population data if these data actually are used in the final allocations of Entitlement Period 12.

The 1978 population estimates were derived by the Bureau of the Census using a component procedure whereby components of population change are estimated separately and then added to the enumerated 1970 census populations of the units of local government. The 1970 population base reflects all population corrections made to the data after the initial Bureau of the Census publications as well as changes due to new incorporations, disincorporations and annexations.

The components of population change are:

1. Natural increase, i.e., the excess of births over deaths: Annual births and deaths were compiled from State vital statistics offices supplemented by data from the National Center for Health Statistics. County statistics were available for all States. When vital statistics were not available for all areas within a county, the births and deaths for these areas were estimated and adjusted to agree with county-level figures.

2. Net Migration: This component of population change was estimated for each unit of government by developing net migration rates from Federal income tax return data. Returns were matched from one filing date to another in order to determine mover/nonmover status. For the July 1, 1978 population estimates these rates were derived from 1976 and 1977 returns which were filed in April 1977 and 1978, respectively. The number of those who moved in, minus the number who moved out, yields the net migration. The rate computed from these data was applied to the total nongroup quarters population in an area, which was the population that was not residing in an institution, college, or military barracks. These latter special population groups were accounted for separately, as were immigrants from abroad.

For all areas where special censuses have been conducted by the Bureau of the Census close to the 1978 estimate date, and in selected areas where special censuses are conducted locally, the special census counts were used in the preparation of the estimates. In these cases the special census counts were adjusted to the July 1, 1978 estimate date. In addition, the subcounty estimates in six States prepared by the Bureau of the Census were averaged with estimates produced by State agencies participating in the Federal-State Cooperative Program for Local Population Estimates. These States are: California, Florida, New Jersey, Oregon, Washington and Wisconsin.

The July 1, 1978 population estimates for counties represent the average change between July 1, 1977 and July 1, 1978 administrative record-based estimates derived by the procedures

described above, and Component Method II estimates derived from the Federal-State Cooperative Program. This average change was added to the July 1, 1977 county estimates to yield July 1, 1978 county estimates. The county populations were further adjusted to be consistent with State estimates published by the Bureau of the Census in *Current Population Reports*, Series P-25, just as the population estimates for the governments in each county were adjusted to be consistent with the county population figures.

The July 1, 1978 population estimates relate to boundaries as of December 31, 1978. Adjustments to the 1970 population base were made for new incorporations, disincorporations, and qualifying annexations.

Population of Indian Tribes and Alaskan Native Villages

The population of an Indian tribe or Alaskan native village for the initial allocations for Entitlement Period 12 is the resident population as of July 1, 1978 as determined by the Bureau of Indian Affairs. The April 1, 1980 Census counts of population currently are scheduled to replace the 1978 estimates for the final allocations for Entitlement Period 12. However, the use of April 1, 1980 Census counts of population in calculating Entitlement Period 12 final allocations is contingent upon the availability of these data from the Bureau of the Census prior to the final allocation of the period. Tribes and native villages will have the opportunity to review their 1980 population data if these data actually are used in the final allocations of Entitlement Period 12.

For Indian tribes, the resident population is the number of Indians living within the boundaries of the tribal reservation plus the number of Indians living on trust land (including public domain allotments) adjacent to the reservation and pertaining to the tribe. The adjacent trust land may be tribally owned or individually owned. Resident non-Indian members of families with an Indian head or spouse are also included in the population estimate.

For Alaskan native villages, the resident population is the number of Indians, Aleuts and Eskimos living within the boundaries of the village. Resident non-Alaskan native members of families with an Alaskan native head or spouse are also included in the population estimate.

The methodology used by the Bureau of Indian Affairs to update the 1970 population of an Indian tribe or Alaskan native village depended on the type of accurate data that was available for that tribe or village. In general, the population estimates were derived using a component procedure incorporating a natural increase rate (births minus deaths) as reported by the Indian Health Service and a net migration rate from Bureau of the Census data. Another example of the type of data used to develop the July 1, 1978 population estimates are lists of residents supplied by the tribe or native village.

II. Per Capita Income

The 1977 per capita income (PCI) is the estimated mean or average amount of total money income received during calendar year 1977 by all persons residing in a given political jurisdiction in April 1978. The 1977 PCI estimates are based on data from the 1970 census and reflect corrections to the census data as well as changes in income, population and geographic boundaries which have occurred since 1970. The 1977 PCI estimates were published by the Bureau of the Census in *Current Population Reports*, Series P-25, in reports for the four Census regions. The estimates being used for revenue sharing will not agree exactly with all of the figures in the P-25 reports, since corrections have been made to the data subsequent to the publication of the reports.

The 1970 census PCI data were updated to 1977 based on income data from the 1969, 1972, 1974, 1975, and 1977 Federal income tax returns and State and county money income estimates prepared by the Bureau of Economic Analysis (BEA) to measure the change from 1969 to 1977.

Total money income is the sum of:

- Wage and salary income
- Net nonfarm self-employment income
- Net farm self-employment income
- Social Security and railroad retirement income
- Public assistance income
- All other income such as interest, dividends, veteran's payments, pensions, unemployment insurance, alimony, etc.

The total represents the amount of income received before deductions for personal income taxes, Social Security, bond purchases, union dues, medicare deductions, etc.

Receipts from the following sources are not included as income: Money received from the sale of personal property; capital gains; the value of income "in kind" such as food produced and consumed in the home or free living quarters; withdrawal of bank deposits; money borrowed; tax refunds; exchange of money between relatives living in the same household; gifts and lump sum inheritances, insurance payments, and other types of lump sum receipts.

County Estimates

At the county level, 1977 PCI estimates were developed by carrying forward the 1970 census per capita amount for each income type listed above. Census wage and salary per capita income amounts were updated using the percent change in the IRS wage and salary per exemption. For the remaining income types, the percent change in the BEA per capita amounts were used. The 1977 per capita amounts for each income type were then multiplied by the April 1, 1978 population estimate, and the resulting county income aggregates were adjusted to State income aggregates. For each county the aggregate amounts for each income type were added to get an estimated 1977 total money income, which was then divided by the estimated population to derive the 1977 PCI estimate.

Subcounty Governmental Unit Estimates

For all townships and municipalities, the updates were also developed using per capita amounts. Updated census estimates of Adjusted Gross Income per capita were developed using the percent change in IRS Adjusted Gross Income per exemption. The estimates for Social Security, public assistance and other forms of transfer income were made by assuming that the 1970 Census per capita amounts for this income type grew at the same rate as that for the county.

The rates of change in per capita income for governmental units with a 1970 population under 1,000 were computed in the same manner as those for larger areas. However, the 1970 census per capita income figures were not used as the base figure for these small area estimates. The 1969 base per capita income estimates for these areas were developed by computing a weighted average of their 1970 Census value and a regression estimate. This procedure was used to improve the statistical accuracy of these estimates.

The PCI estimates for all townships and for all municipalities outside of townships were adjusted to the county estimates to ensure conformity. The estimates for municipalities located within townships were adjusted to the township estimates.

III. Adjusted Taxes

The adjusted taxes for a unit of local government, as derived from the General Revenue Sharing Survey and Survey of Local Government Finances conducted by the Bureau of the Census in 1979, are the total taxes of the unit of government in Fiscal Year 1979 (that

government's 12-month accounting period that ended between July 1, 1978 and June 30, 1979) excluding taxes for schools and other educational purposes. A government's total Fiscal Year 1979 taxes are those which were exacted by that government and which were collected by or for that government during Fiscal Year 1979. Total taxes as defined by the Bureau of the Census for general statistical purposes include a government's:

1. Property taxes—county, municipal or township taxes levied on the value of real or personal property.

2. Sales taxes—county, municipal or township taxes, either general or selective, on goods and services, measured as a percent of sales or receipts, or as an amount per unit sold.

Sales taxes are of two types:

a. General sales or gross receipts taxes.

b. Selective sales or gross receipts taxes.

Examples of selective sales taxes are:

- Gasoline taxes
- Liquor taxes
- Cigarette and tobacco taxes
- Public utilities excise taxes
- Amusement taxes
- Hotel and motel room occupancy and meals taxes

3. Licenses, permits and other taxes—county, municipal or township taxes not included in items 1 and 2 above.

Examples of license taxes are:

- Alcoholic beverage licenses
- Business privilege licenses
- Motor vehicle and operators licenses
- Hunting and fishing licenses
- Marriage licenses
- Inspection fees charged in connection with the granting or renewal of a license.

Examples of permits are:

- Building permits
- Permits for a business or nonbusiness privilege

Examples of other taxes are:

- Income payroll or earnings taxes
- Mortgage transfer and recordation taxes
- Severance taxes
- Death and gift taxes

Taxes *do not* include receipts from service charges, special assessments not based on value, interest earnings or fines and forfeits.

All locally imposed taxes are credited to the local government, even if there is a mandatory distribution of funds required in the enabling legislation. This holds true even if the State collects the tax as administrative agent and makes distribution directly to all participating governments. State-imposed taxes that are State collected and retained will be credited as State taxes.

An example of the handling of various State-collected taxes would be a five percent sales tax of which four percent was imposed by the State government and one percent was imposed by local governments. In such case the amount of revenue realized by the four percent (State-imposed) portion would be credited to the State government, the revenue from the one percent (locally-imposed) portion would be credited as local taxes. This situation should be distinguished from a wholly State-imposed tax, where part of the tax revenue is shared with local governments. An example of a shared State tax would be a five percent sales tax wholly imposed by the State government, but which provides a 20 percent share to units of local government. The local government share of this State-imposed tax would be classified as an intergovernmental transfer and not as local taxes. Thus, in determining local taxes the point of reference is the government which *imposed* the tax rather than the government which expended the resulting tax revenue. Besides the "Memphis Rule" provisions described in the next paragraph, the only other exception to the foregoing description is that locally collected *and* retained shares of State-imposed taxes (including any collection fees retained) are classified as tax revenue of the government ultimately receiving the proceeds.

Certain sales taxes imposed by counties which meet the requirements of Section 109(e)(2)(B) of the Revenue Sharing Act may be considered to be taxes of the units of local government within the county rather than the county government. The "Memphis Rule," as this section is called, provides for situations whereby a county government imposes a sales tax within the geographic area of local governments within the county, and then shares part or all of the applicable tax revenue with those local governments. These taxes must be transferred by the county government without specifying the purposes for which the local governments may spend the revenues. In such cases, the Governor of the State must certify to the Secretary of the Treasury that the requirements of the "Memphis Rule" are met. This certification must be made by the Governor before the beginning of the entitlement period when the "Memphis Rule" is to take effect. The taxes which are transferred by the county to other units of local government will then be considered for revenue sharing purposes to be taxes of the other local governments and not the taxes of the county gvernment.

Amounts in lieu of taxes received by a government from a utility it operates are treated as internal transfers and are excluded from taxes. Amounts in lieu of taxes received from utilities operated by other governments are reported as intergovernmental transfers.

The amount of total taxes of a local government is adjusted for revenue sharing purposes to exclude taxes for educational purposes. Taxes for education include those allocated for school operation or facilities, support of other public or private schools, retirement of school debt principal, interest payments on school debt, payments to a teachers' retirement system, etc.

For some governments, tax revenues for educational purposes are not separately identifiable, since education and at least one other expenditure category is financed from a general-type fund or funds containing non-tax revenues. In these instances, an education tax amount must be derived. The governments affected are New York City, some places in Alabama, Alaska, Arizona, Maryland, North Carolina, South Carolina, Tennessee, and generally in Connecticut and Virginia. Education taxes are calculated by multiplying the ratio of the available taxes to total available revenue amounts by the education expenditures excluding dedicated amounts. Available taxes are defined as local tax revenues not restricted to any particular expenditure category. Total available revenue amounts are the sum of unrestricted revenues, and cash and investment assets spent during the year. Dedicated amounts are monies that must be spent on one or more specified expenditure categories.

IV. Intergovernmental Transfers of Revenue

Intergovernmental transfers are amounts received by a unit of government from other governments in Fiscal Year 1979 (the government's 12-month accounting period that ended between July 1, 1978 and June 30, 1979) for use either for specific functions or for general financial support. This amount is derived from the General Revenue Sharing Survey and Survey of Local Government Finances conducted by the Bureau of the Census in 1979. The figure includes grants, shared taxes, contingent loans and reimbursement for tuition costs, hospital care, construction costs, etc. Intergovernmental revenue does not include amounts received from the sale of property, commodities, or utility services to other governments, or

Federal general revenue sharing entitlement funds.

Dated: January 22, 1981.

Jose Pepe Lucero,

Director, Office of Revenue Sharing.

[FR Doc. 81-3160 Filed 1-27-81; 8:45 am]

BILLING CODE 4810-28-M

Office of the Secretary

[Order No. 101-5]

Supervision of Business and Offices, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

January 7, 1981.

1. The Deputy Secretary shall be under the direct supervision of the Secretary.

2. *The following officials shall be under the supervision of the Secretary, and shall report to the Secretary through the Deputy Secretary:*

Under Secretary for Monetary Affairs
Under Secretary
General Counsel
Assistant Secretary (Domestic Finance)
Assistant Secretary (Economic Policy)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Public Affairs)
Assistant Secretary (Tax Policy)
Executive Secretary
Comptroller of the Currency
Commissioner of Internal Revenue
Inspector General
Director, Office of Small and Disadvantaged Business Utilization
Special Assistant (Consumer Affairs)

3. *The following official shall be under the supervision of the Under Secretary for Monetary Affairs,* and shall exercise supervision over those officers and organizational entities listed:

Assistant Secretary (International Affairs)
- Deputy Assistant Secretary (Developing Nations)
- Deputy Assistant Secretary (International Monetary Affairs)
- Deputy Assistant Secretary (Trade and Investment Policy)
- Deputy Assistant Secretary (Commodities and Natural Resources)
- Deputy Assistant Secretary (International Economic Analysis)
- Deputy to the Assistant Secretary (Saudi Arabian Affairs)
- Deputy to the Assistant Secretary and Secretary of International Monetary Group

4. *The following officials shall be under the supervision of the Under Secretary,* and shall exercise supervision over those officers and organizational entities listed:

Assistant Secretary (Administration)
- Deputy Assistant Secretary (Administration)
- Director, Office of Administrative Programs
- Director, Office of Budget and Program Analysis
- Director, Office of Computer Science
- Director, Office of Equal Opportunity Program
- Director, Office of Management and Organization
- Director, Office of Personnel
- Director, Office of Procurement
- Director, Office of the Secretary Equal Employment Opportunity Staff

Assistant Secretary (Enforcement and Operations)
- Deputy Assistant Secretary (Operations)
- Deputy Assistant Secretary (Enforcement)
- *Director, Bureau of Alcohol, Tobacco and Firearms*
- *Commissioner of Customs*
- *Director, U.S. Secret Service*
- *Director, Federal Law Enforcement Training Center*
- Director, Office of Foreign Assets Control

Fiscal Assistant Secretary
- Deputy Fiscal Assistant Secretary
- *Commissioner, Bureau of Government Financial Operations*
- *Commissioner of the Public Debt*

Treasurer of the United States
- *National Director, U.S. Savings Bonds Division*

Director, Bureau of the Mint
Director, Bureau of Engraving and Printing

5. The following officials shall exercise supervision over those officers and organizational entities listed:

General Counsel
- Deputy General Counsel
- Legal Division

Assistant Secretary (Domestic Finance)
- Deputy Assistant Secretary (Federal Finance)
- Director, Office of Government Financing
- Director, Office of Market Analysis and Agency Finance
- Deputy Assistant Secretary (Financial Institutions and Capital Markets Policy)
- Director, Office of Capital Markets Legislation
- Director, Office of Securities Markets Policies
- Deputy to the Assistant Secretary (Corporate Finance)
- Director, Office of Corporate Finance and Special Projects
- Director, Office of Chrysler Finance
- Deputy Assistant Secretary (State and Local Finance)
- Director, Office of Municipal Finance
- Director, Office of Urban and Regional Economics
- Director, Office of State and Local Fiscal Research and Evaluation
- Director, Office of New York Finance
- Director, Office of Revenue Sharing

Assistant Secretary (Economic Policy)
- Deputy Assistant Secretary (Economic Policy)
- Director, Office of Financial Analysis
- Director, Office of Special Studies

Assistant Secretary (Legislative Affairs)
- Deputy Assistant Secretary (Legislative Affairs)
- Office of Legislative Affairs

Assistant Secretary (Public Affairs)
- Deputy Assistant Secretary (Public Affairs)
- Office of Public Affairs

Assistant Secretary (Tax Policy)
- Deputy Assistant Secretary (Tax Analysis)
- Director, Office of Tax Analysis
- Director, Office of Industrial Economics

Deputy Assistant Secretary (Tax Legislation)
- Office of Tax Legislative Counsel (also part of Legal Division)
- Office of International Tax Counsel (also part of Legal Division)

6. The Inspector General shall exercise supervision over:

Deputy Inspector General (Audit)
Deputy Inspector General (Operations and Investigations)

7. The Deputy Secretary, the Under Secretary for Monetary Affairs, the Under Secretary, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials shall perform functions under this authority in his or her own capacity and under his or her own title and shall be responsible for referring to the Secretary any matter on which action should appropriately be taken by the Secretary. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Any action heretofore taken by any of these officials in the incumbent's own capacity and under his or her own title is hereby affirmed and ratified as the action of the Secretary.

8. The following officers shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence, or sickness

of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

A. Deputy Secretary
B. Under Secretary for Monetary Affairs
C. Under Secretary
D. General Counsel
E. Assistant Secretaries, or Deputy Under Secretaries, appointed by the President with Senate confirmation, in the order in which they took the oath of office as Assistant Secretary, or Deputy Under Secretary.

9. Treasury Department Order No. 101–5, May 16, 1979, is rescinded.

G. William Miller,

Secretary.

[FR Doc. 81–3034 Filed 1–27–81; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 18
Wednesday, January 28, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Equal Employment Opportunity Commission	2
Federal Communications Commission	3, 4
Federal Deposit Insurance Corporation	5
Federal Energy Regulator Commission	6, 7
Federal Maritime Commission	8, 9, 10
Occupational Safety and Health Review Commission	11
Postal Rate Commission	12

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, February 6, 1981.

PLACE: 2033 K Street NW., Washington, D.C. eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-145-81 Filed 1-26-81; 12:01 pm]

BILLING CODE 6351-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-31-81.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, January 27, 1981.

CHANGE IN THE MEETING: The following item was added to the agenda for the open portion of the meeting:

"Freedom of Information Act Appeal No. 80-11-FOIA-16-CH, concerning a request for documents pertaining to the Commission's involvement in a case pending in the U.S. District Court"

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Eleanor Holmes Norton, Chair
Daniel E. Leach, Vice Chair
Armando M. Rodriguez, Commissioner
J. Clay Smith, Jr., Commissioner

Opposed:

None.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive; Secretariat, (202) 634-6748.

This notice issued January 23, 1981.

[S-144-81 Filed 1-26-81; 10:38 am]

BILLING CODE 6570-06-M

3

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 29, 1981, starting at 9:30 a.m., in Room 856, 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—The Office of Science and Technology proposes to establish an advisory committee to assist in preparation for the 1983 Region 2 Broadcasting Satellite Service Planning Conference. This committee will provide advice in various technical areas dealt with by the Conference, including identification of the types of service possible for a Direct Broadcasting Satellite Service (DBS) and the technical parameters of those services.

Membership of the committee will be solicited from diverse public, private, and governmental sources to ensure full representation of all views.

General—2—*Title:* Application for review of a ruling by the Chief, Broadcast Bureau, granting an FOIA request by Mary Kay Quinlan for inspection of financial reports filed by Beneficial Broadcasting Inc., interim permittee of stations KOIL and KEFM(FM). *Summary:* The Commission considers whether the financial reports are within the scope of the Commission's rule which bars routine disclosure of licensee financial reports, and, if so, whether there are persuasive reasons to disclose the reports.

General—3—*Title:* Report and Order regarding allocation of spectrum for an automated inland waterways communications system along the Mississippi River and connecting waterways (PR Docket No. 80-1, RM-3103, RM-3128, RM-3129). *Summary:* The FCC will consider whether it is in the public interest to provide for automated, interconnected, river-wide maritime communications systems on the Mississippi River System. If the FCC concludes such a system is in the public interest, it will also consider whether to allocate frequencies in either the 216-220 MHz band or the 808-890 MHz band for this purpose.

General—4—*Title:* Petition for modification of waiver of Part 18 filed by General Electric Company to remove limit on its Electronic Halarc light bulb production. *Summary:* The Commission considers a petition filed by Gneral Electric which requests an extension of and modification to a waiver of Part 18 previously granted to GE that limited production and marketing of its Electronic Halarc light bulb to 10,000 units. GE now seeks elimination of that restriction to allow full production.

General—5—*Title:* Petition filed by Clairol Incorporated for a waiver of Section 2.805 of the rules to permit the marketing of an ultrasonic denture cleaner. *Summary:* The Commission considers a petition from Clairol for waiver of the Commission's marketing rules. The waiver would permit Clairol to market an ultrasonic denture cleaner which does not comply with the technical requirements of Part 18 of the rules.

Common Carrier—1—*Subject:* Reconsideration of Commission action extending for six months the Section 214 authorization of a communications channel via CABLE NET I for use by Cable News Network. *Summary:* Cable News Network is asking the Commission to continue authorization of its CABLE NET I transponder use for three years, or, alternatively, for six months from a decision by the United States District Court for the Northern District of Georgia on its claimed permanent right of access to the primary cable satellite.

Common Carrier—2—*Title:* RCA American Communications, Inc., Revisions to Tariffs F.C.C. Nos. 1 and 2, Transmittal No. 242; Petitions to Reject and/or Suspend and Investigate. *Subject:* RCA Americom's tariff proposes an allocation for its domestic fixed transponder service. Under this proposal RCA Americom will lease an additional transponder to each permanent customer of its Cable Net II satellite. The Commission will consider the various arguments offered by petitioners in favor of rejection and suspension and investigation and will determine whether substantial questions of lawfulness have been raised under the Communications Act.

Common Carrier—3—*Title:* Regulatory Policies Concerning the Provision of Domestic Public Message Services by Entities Other than the Western Union Telegraph Company and Proposed Amendment of Parts 63 and 64 of the Commission's Rules. *Subject:* The Commission will consider Western Union's agreements with TRT and FTCC submitted for approval under Section 222(e) of the Act. The agreements relate to the distribution of unrouted international

message telegraph traffic to TRT and FTCC, to the collection rates for such traffic, and to the division of charges between Western Union and these two particular international record carriers.

Common Carrier—4—*Title:* CC Docket No. 79-105 (Accounting for Station Connections Costs, Sales of Terminal Equipment and Other Related Items).

Common Carrier—5—*Title:* Interim procedures for 43 MHz applications in Public Mobile Radio Services. *Summary:* The FCC is considering petitions for reconsideration of its earlier order freezing 43 MHz Public Mobile Radio Services applications. That policy was adopted in response to television interference associated with paging operations on 43.22 and 43.58 MHz.

Common Carrier—6—*Title:* Proposal to revise need standards for applications requesting two-way channels in the Public Mobile Radio Services. *Summary:* The FCC is considering whether to adopt rules for the Public Mobile Radio Services which (1) eliminate the requirement for need showings for applications requesting one new two-way channel; (2) establish objective need standards for applications requesting more than one new two-way channel and for applications for additional two-way channels for an existing system; and (3) limit to four the number of new or additional two-way channels that can be granted at any one time.

Common Carrier—7—*Title:* Application of Travel-Phone Corporation, File No. 3985-C2-P-71, for authority to establish a new two-way radio common carrier station at Johnston, Rhode Island. Petition for Reconsideration filed by Mobilphone-Paging Radio Corporation. *Subject:* The Commission will consider whether the various matters raised in Mobilephone's petition for reconsideration warrant returning the Travel-Phone application to pending status and designating it for evidentiary hearing on need, character qualifications, financial qualifications, premature construction and other issues.

Common Carrier—8—*Title:* Teleprompter of Fairmont, Inc. v. Chesapeake and Potomac Telephone Co., File No. PA-79-0029. *Summary:* The Commission will act on Chesapeake and Potomac Telephone Co.'s petition for reconsideration of a *Memorandum Opinion and Order*, FCC 80-372, 79 FCC 2d 232 (released July 16, 1980). In that order, the Commission granted Teleprompter's complaint, ordered a reduction in the annual rate for pole attachments, and directed a refund of excess payments. Chesapeake and Potomac asks the Commission to reconsider its order and to correct any errors in determining usable space, annual carrying charges, crossarms adjustment, and refund.

Cable Television—1—"Petition for Reconsideration" (CSR-1385) filed September 3, 1980, by Post-Newsweek Stations, Connecticut, Inc.

Post-Newsweek Stations, Connecticut, Inc., licensee of Station WFSB-TV (CBS, Channel 3), Hartford, Connecticut, requests reconsideration of the Commission's decision in *United Cable Television Corporation of Connecticut* (Berlin, Connecticut), FCC 80-401, 79 FCC 2d 338 (1980). This petition is opposed by United Cable Television Corporation of Connecticut, operator of cable systems serving Berlin, Bristol, Farmington, New Britain, and Plainville, Connecticut.

Cable Television—2—Petitions for Special Relief (CSR-1455, -1456, -1457, -1458) filed January 18, 1979, by Warner Cable Corp.

Warner Cable Corp., operator of several cable television systems in western Ohio, was conditionally granted a waiver of Section 76.59 of the Commission's Rules in *Warner Cable Corp.* (Sidney, Ohio), FCC 80-298, 78 FCC 2d 1195 (1980). Lima Communications Corporation, licensee of Television Broadcast Station WLIO (NBC/ABC, Channel 35), Lima, Ohio, has opposed this conditional grant.

Cable Television—3—"Petition for Reconsideration" (CSR-1399) filed July 28, 1980 by Midwest Television, Inc.

Midwest Television, Inc., licensee of Television Broadcast Station WCIA (CBS, Channel 3), Champaign, Illinois, requests reconsideration of the Commission's decision in *Cass Community Antenna TV, Inc.* (Pana, Illinois), FCC 80-341, —— FCC 2d —— (1980). This petition is opposed by Cass Community Antenna TV, Inc., operator of a cable system serving Pana, Illinois.

Cable Television—4—"Petition for Temporary Waiver" (CSR-1834X) filed November 10, 1980, by Oak Communications Inc.

Oak Communications Inc. is a subsidiary of Oak Industries, Inc., which has a 50% ownership interest in Oak Broadcasting Systems, Inc., licensee of Station KBSC-TV (Ind., Channel 52), Corona-Los Angeles, California. Oak Communications Inc. plans to purchase cable television systems which are located within KBSC-TV's Grade B contour, and therefore seeks a temporary waiver of Section 76.501(a)(2) of the Commission's Rules pending a divestiture of Oak Industries, Inc.'s interest in KBSC-TV.

Cable Television—5—"Petition for Declaratory Ruling" (CSR-1785) filed June 16, 1980 by Meredith Corporation.

Meredith Corporation is the licensee of Station WNEM-TV (NBC, Channel 5), Bay City, Michigan. Station WNEM-TV is objecting to its removal by Cablevision, Inc., operator of a cable system at Alma, St. Louis, Breckenridge and Ithaca, Michigan, from on-channel carriage under Section 76.55(a)(2) of the Commission's Rules. WNEM-TV also alleges that its carriage on cable Channel 20 violates the must carry requirements (Sections 76.57(a)(4) and 76.63(a) as it relates to Section 76.61(a)(5)). Meredith seeks forfeiture and show cause action. Cablevision opposes the petition and seeks a waiver of Section 76.55(a)(2).

Cable Television—6—"Petition for Temporary Special Relief" (CSR-1825X) filed October 17, 1980, by Westinghouse Broadcasting Company, Inc., and by Teleprompter Corporation.

Westinghouse Broadcasting Company, Inc. is the licensee of six television broadcast stations. Teleprompter Corporation is the owner of over one hundred cable television systems. Westinghouse and Teleprompter plan to merge in the near future, and they seek a temporary waiver of Section 76.501(a)(2) of the Commission's Rules, pending divestiture of thirteen co-located cable television systems.

Assignment and Transfer—1—*Title:* Application for the voluntary assignment of license for AM station WEVD, New York, New York, from the Forward Association, Inc. to Salem Media Corporation. *Summary:* A petition to deny the application has been filed by the Coalition to Save WEVD and informal objections have been submitted by, among others, the American Committee on Italian Migration. The principle issue presented is whether the proposed license assignment will result in the loss of a unique entertainment format in the New York City area. The petitioner also raises issues regarding the character qualifications of the assignor.

Aural—1—*Title:* Order re: Deadline Established in Docket No. 20735 for Class D Noncommercial Educational FM Stations to File Power Increase Applications in the Reserved Band. *Summary:* The Commission considers whether a change in its June 7, 1978 decision establishing a January 1, 1980 deadline for filing the above applications is warranted.

Broadcast—1—Memorandum Opinion and Order in BC Docket 80-10, In the matter of Operation of Visual and Aural Transmitters of TV Stations.

The Commission considers Petition for Limited Reconsideration filed by American Broadcasting Companies, Inc. on October 27, 1980.

Broadcast—2—*Subject:* Request for experimental authorization to conduct teletext experiments and waiver of Section 73.1510(c)(6) of the Commission's rules to permit the assessment of subscriber fees for the service. *Summary:* Commission will consider whether to grant the experimental authorization and waiver of rules concerning subscriber fees.

Broadcast—3—Subject: Applications for review of Order extending comment date in Docket No. 21313, AM Stereophonic Broadcasting, and denying requests that proceeding be bifurcated and Commission decide the marketplace issue first. *Summary:* The Commission will consider the applications of Hazeltine Corporation and Kahn Communications, Inc. asking that it reverse action taken on delegated authority which denied proposals to consider whether selection on AM stereophonic broadcasting systems should be left to the marketplace prior to consideration of technical data.

Broadcast—4—*Title:* Report and Order the the matter of amendment of the Rules governing the conversion of Radiation Patterns for AM Broadcast Stations. *Summary:* The Commission considers whether to adopt rules providing for the conversion of AM broadcast stations with directional antennas from measured, notified, and theoretical patterns to standard patterns.

This meeting may be continued the following work day to allow the

Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: January 23, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-147-81 Filed 1-26-81; 12:03 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

The Commission will hold a Closed Meeting on the subjects listed below on Thursday, January 29, 1981, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Draft Decision in the WWLE, Inc., Cornwall-on-Hudson, New York broadcast renewal proceeding (Docket Nos. 20591 and 20592).

Hearing—2—Draft Decision in the WIGO, Inc., Atlanta, Georgia, standard broadcast license revocation proceeding. (BC Docket No. 78–53).

Hearing—3—Draft Decision in the Alexander S. Klein, Jr., Media, Pennsylvania, comparative FM radio proceeding. (Docket Nos. 20567–9).

Hearing—4—Draft Decision in the WMJX, Inc., Miami, Florida, FM broadcast renewal proceeding (Docket No. 20826).

General—1—Internal Personnel Matters.

General—2—Administrative Matters.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Federal Communications Commission.

Issued: January 23, 1981.

William J. Tricarico,

Secretary.

[S-148-81 Filed 1-26-81; 12:03 p.m.]

BILLING CODE 6712-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:25 a.m. on Friday, January 23, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider certain personnel matters.

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by authority of subsections (c)(2) and (c)(6) thereof (5 U.S.C. 552b(c)(2) and (c)(6)).

Dated: January 23, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-142-81 Filed 1-23-81; 4:48 pm]

BILLING CODE 6714-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., January 30, 1981.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. CI77–298, Tenneco Inc.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary; telephone (202) 357–8400.

[S-143-81 Filed 1-26-81; 9:07 am]

BILLING CODE 6450-85-M

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 8160, January 26, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 28, 1981.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

ER–5. EF79–3021, Southeastern Power Administration—Cumberland Basin Projects

M–5. RM80–33, Final Rules for Part 270, Subpart B, Sections 270.201, 270.202 and 270.204

CP–8. CI81–22–000, Southern Union Gathering Company

Lois D. Cashell,

Acting Secretary.

[S-149-81 Filed 1-26-81; 1:13 pm]

BILLING CODE 6450-85-M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., January 23, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: General Rate Increases of Sea-Land Service, Inc., Gulf Caribbean Marine Lines, Inc. and Trailer Marine Transport Corporation in the Puerto Rican Trades.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S-140-81 Filed 1-23-81; 4:42 pm]

BILLING CODE 6730-01-M

9

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 7129, January 22, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., January 28, 1981.

CHANGES IN THE MEETING: Addition of the following item to the open session:

3. Review of Pending Agreements.

Addition of the following item to the closed session:

2. Agreement No. 10402: The Bank and Savill Line, Ltd., Service Agreement and reconsideration of Agreement No. 10355 between The Bank and Savill Line, Ltd., and the Shipping Corporation of New Zealand.

[S-138-81 Filed 1-23-81; 4:39 pm]

BILLING CODE 6730-01-M

10

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 26, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: General Rate Increases of Sea-Land Service, Inc., Gulf Caribbean Marine Lines, Inc. and Trailer Marine Transport Corporation in the Puerto Rican Trades.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S-139-81 Filed 1-23-81; 4:39 pm]

BILLING CODE 6730-01-M

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 188, January 2, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., January 27, 1981.

CHANGES IN THE MEETING: This meeting has been *rescheduled for 10 a.m. on January 29, 1981.*

Dated: January 26, 1981.

[S-150-81 Filed 1-26-81; 1:13 pm]

BILLING CODE 7600-01-M

12

POSTAL RATE COMMISSION.

TIME AND DATE: Periodic unscheduled meetings on business days from January 14 through February 17, 1981.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Issues in Docket No. R80–1. (Postal Rate and Fee Changes, 1980)
[Closed pursuant to 5 U.S.C. § 552b(c)(10)]

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, Telephone (202) 254–5614.

[S-146-81 Filed 1-26-81; 12:01 pm]

BILLING CODE 7715-01-M

Reader Aids

Federal Register

Vol. 46, No. 18

Wednesday, January 28, 1981

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	523-5282
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 President	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, JANUARY

1-858 2
859-1248 5
1249-1658 6
1659-2022 7
2023-2312 8
2313-2588 9
2589-2968 12
2969-3202 13
3203-3488 14
3489-3800 15
3801-4658 16
4659-5850 19
5851-6862 21
6863-7256 22
7257-7932 23
7933-8432 26
8433-9018 27
9019-9554 28

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3 7933
18 7162

3 CFR

Administrative Orders:

Presidential Determinations:

No. 73-10 of January 2, 1973 (Amended by Presidential Determination 81-1 of December 31, 1980) 3491
No. 81-1 of December 31, 1980 3491

Executive Orders:

April 30, 1919 (Revoked by PLO 5812) 6944
1398 (Revoked in part by PLO 5808) 6942
1713 (Revoked by PLO 5815) 6945
4096 (Revoked by PLO 5846) 7346
5118 (Revoked by PLO 5824) 6948
5864 (Revoked by PLO 5817) 6946
11063 (Amended by EO 12259) 1253
11145 (See EO 12258) 1251
11157 (Amended by 12274) 5855
11183 (See EO 12258) 1251
11287 (See EO 12258) 1251
11562 (See EO 12258) 1251
11776 (See EO 12258) 1251
11888 (Amended EO 12267) 1251, 4669
11922 (See EO 12258) 1251
11970 (See EO 12258) 1251
12022 (Revoked by EO 12258) 1251
12050 (See EO 12258) 1251
12054 (Revoked by EO 12258) 1251
12059 (See EO 12258 1251
12061 (Revoked by EO 12258) 1251
12063 (Revoked by EO 12258) 1251
12064 (See EO 12258) 1251
12078 (Revoked by EO 12258) 1251
12084 (See EO 12258) 1251
12093 (Revoked by EO 12258) 1251
12103 (Revoked by EO 12258) 1251
12110 (Superseded by EO 12258) 1251
12130 (Revoked by EO 12258) 1251
12131 (See EO 12258) 1251
12135 (See EO 12271) 4667
12137 (See EO 12258) 1251
12157 (Revoked by EO 12258) 1251
12160 (Amended by EO 12265) 4665
12170 (See EO 12276, 12277, 12278, 12279, 12280, 12281, 12282, 12283, 12284) 7913, 7915, 7917, 7919, 7921, 7923, 7923, 7925, 7927, 7929
12190 (See EO 12258) 1251
12195 (Revoked by EO 12258) 1251
12196 (See EO 12258) 1251
12205 (Revoked in part by EO 12282) 7925
12211 (Revoked in part by EO 12282; see EO 12276, 12277, 12278, 12279, 12280, 12281, 12283, 12284) 7913 7915, 7917, 7919, 7921, 7923, 7925, 7927, 7929
12216 (See EO 12258) 1251
12258 1251
12258 (Amended by EO 12271) 4677
12259 1253
12260 1653
12261 2023
12262 2313
12263 2315
12264 4659
12265 4665
12266 4667
12267 4669
12268 4671

12269.....4673
12270.....4675
12271.....4677
12272.....5853
12273.....5854
12274.....5855
12275.....5857
12276.....7913
12277.....7915
12278.....7917
12279.....7919
12280.....7921
12281.....7923
12282.....7925
12283.....7927
12284.....7929
12285.....7931

Proclamations:
4600 (Revoked by Proc. 4812).....1249
4667 (See Proc. 4813).....3489
4702 (Revoked in part by EO 12282).....7925
4707 (Amended by Proc. 4817).....5851
4750 (See Proc. 4813).....3489
4811.....1
4812.....1249
4813.....3489
4814.....3801
4815.....3803
4816.....4679
4817.....5851

5 CFR

351.....3805
352.....8433
531.....2317
550.....2323
738.....2582
1203.....2326

Proposed Rules:
293.....8529
359.....3903
715.....1278

7 CFR

Ch. XVIII.....4681
Ch. XXXI.....2971
Subtitle A.....2326
2.....2969, 3203
6.....1659
27.....3203
180.....2328
210.....3, 2329, 3812
215.....3, 2329
220.....2329, 3812
225.....6266
226.....4, 3814
230.....2329
235.....2329, 3812
245.....3814
246.....7846
247.....6338
250.....2331
271.....1421, 7257
272.....1421, 2332, 4622, 6310, 7257
273.....1421, 3194, 4622
274.....1421, 2332, 6310
275.....7257
277.....2336, 7257
280.....8922
354.....1661
371.....3816, 7266, 7933
416.....9019
722.....2970
725.....2971
905.....5859
907.....5, 2025, 3493, 5859, 6863, 8435
910.....5, 6, 2336, 4681, 7266
916.....1662
917.....1662
982.....2337
1484.....5860
1486.....5860
1701.....6, 2971
1900.....3817
1942.....8435
1945.....2589
2851.....1257
2852.....3824
2855.....7
2856.....7
2858.....1257
2859.....7
2870.....7

Proposed Rules:
210.....3903-3905
220.....3905
246.....7878
271.....4642
272.....4642, 7748
273.....4642, 7748
274.....4642, 7748,
278.....4642, 7748
280.....8923
411.....3536
420.....3536
421.....3221
422.....3538
423.....3539
425.....3222
426.....3223
427.....3224
428.....3540
431.....3226
432.....3229
433.....3232
434.....3233
435.....3234
436.....3235
437.....3236
438.....3540
907.....4936
908.....4936
979.....2084
982.....2622
987.....1742
991.....3541
1040.....1279, 6973
1065.....8533
1421.....2630
1430.....6973
1701.....3027, 3906-3908, 7387
1804.....7387
1901.....2900
1940.....2900

8 CFR

103.....9119
108.....9119
205.....9119
211.....2590, 4856, 9119
212.....9119
214.....4856, 7267, 9119
223.....9119
225.....9119
243.....9119
245.....3493, 9119
248.....3493, 9119
249.....9119
250.....9119
252.....9119
254.....9119
256.....9119
271.....9119
292.....9119
335.....9119
336.....9119

9 CFR

51.....5861
78.....7934
82.....859, 6863
307.....1258
319.....1257
331.....2338
350.....1258
351.....1258
354.....1258
355.....1258
362.....1258
381.....1258

Proposed Rules:
317.....7387
318.....1286
381.....1286, 7387

10 CFR

25.....8436
73.....2025, 4858
205.....2956
210.....4860
211.....3368, 5722
212.....1246, 3827, 5864, 7776
456.....1616
490.....8398
712.....2971
903.....6864
1020.....2971

Proposed Rules:
Ch. I.....1742, 7388
30.....3908
31.....3908
32.....3908
50.....3541
140.....9119
205.....71
211.....6014
212.....1287
456.....2522, 8996-9005
458.....4482
459.....8016
477.....8252
800.....5514

12 CFR

9.....6864
11.....6865
205.....2972
208.....2026
211.....2027, 8437
225.....2026
226.....1662
262.....5861
265.....1663, 2027, 5861-5863
341.....2974
400.....1132
523.....2029
541.....8438
545.....8438
701.....7934

Proposed Rules:
8.....3237
545.....3909
701.....920, 922
741.....922

13 CFR

101.....10, 8441
121.....2591
302.....9025
303.....9025
305.....859, 9025
309.....859, 9025

Proposed Rules:
113.....931
122.....4937

14 CFR

1.....2280
21.....3494
39.....14-17, 861-867, 2030, 7934 2031, 2594, 3495-3498, 4862-4866
71.....18, 402, 868, 2032, 2595, 2596, 2967, 4866, 7935
73.....18, 402, 868, 2967, 3499
75.....402, 868, 2596, 2967
91.....19, 2280
93.....3499
97.....2033
107.....3782
108.....3782
121.....2280, 3782, 5500
129.....3782, 7936
135.....3782, 5500
150.....8316
159.....3499
203.....1664, 7268
298.....8444
389.....8444

Proposed Rules:
Ch. I.....4944
21.....931, 3775, 8347
36.....931
39.....3543
45.....3775
67.....75
71.....932, 2085, 2088, 2630, 3544, 4945-4948, 6974
91.....76
93.....932, 933, 8028
121.....76, 5484, 5506
125.....76
135.....76, 5484, 5506
139.....6975
145.....5484
147.....5484
221.....934
250.....8561
296.....934
297.....934
298.....8566

15 CFR

Subtitle A.....2339
19.....1574
368.....868
370.....868
371.....20, 1665, 5864
372.....868
373.....868, 1665
374.....20, 5864
376.....1665

377 5865
378 1665
379 868
385 ..... 868, 1258, 1665
399 ..... 1258, 1665
936 7936
937 7946
938 7942

Proposed Rules:

Subtitle A 8566
Ch. IX 8566
7a 8910
7b 8910
7c 8910
806 ..... 7214, 7244

16 CFR

13 ..... 2034, 2035, 8445
305 ..... 2974, 3829
1512 3203

Proposed Rules:

13 ..... 2355–2361, 3544, 6014, 7390, 8567
423 935
450 3547
453 6976
1307 3034
1307 3034
1307 3034
1406 6016

17 CFR

1 21
200 7951
231 ..... 3500, 8446
240 1665
241 3204
249 2339
249b 1665
250 ..... 2035, 5867
261 3500
270 ..... 6879, 6882, 6884

Proposed Rules:

7 3027
210 1288
229 78
230 ..... 78, 2631, 2637
231 78
239 ..... 78, 2637
240 ..... 78, 1288, 8568
241 78
249 78

18 CFR

4 9027
12 9029
131 9027
260 6885
271 ..... 2975, 6901
274 ..... 6901, 8454
282 ..... 1666, 2036, 3830, 4867
290 2596
351 9043
352 9043
356 9043
357 9043
360 9043
361 9043
362 9043

Proposed Rules:

4 1291
35 3909
141 1743
260 1744
271 ..... 941, 8568
375 1291
430 23

19 CFR

4 4868
152 2597
353 1667
355 3500

20 CFR

404 4869
416 ..... 4869, 5870, 6903, 7269
601 7764
602 7764
603 7764
604 7764
614 7270
615 2976
653 7764
655 4568
656 3830
658 7764
676 ..... 7822, 7832
677 7822
678 7822
679 7822

Proposed Rules:

10 7392
404 ..... 2093, 3547, 4584, 8569
416 ..... 2093, 3547, 4584, 4949, 7893
609 7786
614 7796
653 6017
656 3910
675 ..... 7395, 9008
676 ..... 7395, 9008
702 8590
725 8569
730 6854

21 CFR

Ch. 1 8454
5 8454
7 8454
10 8454
12 8454
14 8454
16 8958
19 8454
20 8454
21 8454
25 8454
50 ..... 8942, 8979
56 8958
71 8942
74 8461
109 8454
110 8454
146 8462
145 2339
171 8942
172 8465
176 8466
178 ..... 27, 2341, 3830, 7271
180 8942
201 ..... 2977, 7271
203 ..... 28, 1259
310 8942
312 8942
314 8942
320 8942
330 ..... 8454, 8942
361 8942
430 ..... 2979, 2987, 3831, 3835, 8942
431 ..... 28, 8942
436 ..... 2979, 2987, 2989, 3831, 3835, 3838, 7273
442 ..... 2991, 2992, 3831
444 ..... 2979, 2987, 2994, 7273
446 ..... 3835, 7273
449 7274
452 2995
453 ..... 2996, 3838
509 8454
510 ..... 1260, 3834, 7273, 8454
520 ..... 1259, 1260
522 ..... 30, 2998 7273, 8467
524 ..... 1261, 8467
540 8467
558 ..... 31, 3834, 3841, 3842
601 ..... 2998, 8942
630 8942
808 8454
812 8942
813 8942
1003 8942
1010 ..... 8454, 8942
1030 8454
1240 8454
1250 8454

Proposed Rules:

16 ..... 3029, 3030
20 ..... 2364, 3029, 3030
101 2364
161 7397
207 2456
210 2456
225 2456
226 2456
310 ..... 2365, 3030
436 1298
501 2456
510 2456
514 2456
558 2456
601 4634
803 2364
876 7562–7639
899 ..... 3029, 3030
1020 111
1308 943

22 CFR

1 6358
2 6358
3 6358
4 6358
18 2608
51 ..... 2343, 8468
306 1611
1300 7952

Proposed Rules:

17 3547
41 2365

23 CFR

Ch. I 32
140 3501
450 5702
630 5702
655 2038
656 2298
770 8426
1217 ..... 32, 7953

Proposed Rules:

625 ..... 1228, 2020, 2093
630 943
655 ..... 2020, 2093
1221 2097

24 CFR

200 2343
201 4872
241 3842
300 1261
510 3503
885 3843

Proposed Rules:

114 3030

25 CFR

52 1668
53 1674
256 4873

Proposed Rules:

115 2366
251 1298
256 33
260 944

26 CFR

1 ..... 1676–1719, 3504, 3912, 6909, 6911, 6918, 6923, 6924, 7275, 7287
7 6924
20 7298
25 ..... 6926, 7298
31 3504
48 2998
54 6931
150 4873
154 2042
301 6926

Proposed Rules:

1 ..... 112, 114, 116, 1744, 1753, 6018, 6019, 7397, 7401
26 120
48 129
51 ..... 1754, 3560, 4950

27 CFR

4 1725
9 9061
19 2999
70 2999
211 8469
212 8469
240 2999
245 2999
250 2999
270 2999
275 2999

Proposed Rules:

6 7402

28 CFR

0 3843
16 ..... 3509, 9063
19 7953
40 3843
50 9064
51 870
61 7953

Proposed Rules:

59 1302
524 2962
544 2962
545 2962
547 2962

29 CFR

1 4306

2.....34
4.....4320, 4886, 5876
5.....4380
6.....4398
541.....3010
778.....7308
1620.....4888
1903.....3852
1910.....4034, 4078, 6134
1952.....3861-3863
1990.....4889, 5878
2520.....1261, 1265, 5882
2530.....8894
2550.....1266, 7320
2560.....5882
2603.....7958
2604.....4893
2607.....7958
2608.....9480
2609.....7323
2610.....3509, 9492
2613.....9520
2615.....9532
2652.....4894

Proposed Rules:

2.....7392
8.....4951, 6019
225.....7756
530.....3916
1603.....3916
1906.....7392
1910.....3916, 4182, 4412, 7692
1918a.....4182
1952.....3919
1955.....3919
1990.....7402
2510.....8571
2520.....1304
2530.....8906

30 CFR

Ch. VII.....2043
90.....5885
700.....7902
716.....7208, 7894
732.....7906
785.....7894
915.....5885
916.....5892
936.....4902
944.....5899
948.....5915, 7324
950.....9065

Proposed Rules:

715.....6982
731.....6997
732.....6997
816.....6982
817.....6982
901.....1306
913.....3238, 4951
914.....1309
915.....2368
917.....3030
918.....3238
936.....2369
942.....1309
944.....946
948.....1311, 3560

31 CFR

51.....1120

32 CFR

Ch. I.....2344
205.....9083
286f.....880
298a.....881
372a.....5956
706.....5962

Proposed Rules:

Ch. XVI.....6998
556.....3561

33 CFR

40.....4912
117.....2043
157.....3510
162.....7959
181.....3514
183.....3514

Proposed Rules:

1.....946
87.....8030
92.....946
117.....2120, 2652, 4953
161.....946

34 CFR

75.....3205
78.....881
104.....4912
200.....5136
201.....5136
211.....5372
215.....5372
223.....7196
230.....4536
231.....4536
300.....3865, 4912, 5460
305.....5372
307.....5372
309.....5372
315.....5372
318.....5372
322.....4913
324.....5372
332.....3206
338.....5372
361.....5522
362.....5416
365.....5522
366.....5410
369.....5416
370.....5416, 5522
371.....5416
372.....5416
373.....5416
374.....5416
375.....5416
378.....5416
379.....5416
395.....5416
408.....3207, 5372
525.....5372
526.....5372
527.....5372
538.....3378
539.....3387
624.....5372
643.....5372
644.....5372
645.....5372
646.....5372
649.....3394
674.....5238, 6322
675.....5238, 6322
676.....5238, 6322
682.....3866, 3871, 6322
683.....6322
690.....5320, 6322
726.....5372
735.....3873
740.....5372
753.....4606
757.....3877

Proposed Rules:

Subtitle A.....3920
64.....7002
104.....4954
200.....5236
201.....5236
223.....7206
322.....4955
366.....4955
369.....5436
370.....5436
371.....5436
372.....5436
373.....5436
374.....5436
375.....5436
378.....5436
379.....5436
540.....4560
541.....4560
605.....8032
606.....8032
617.....4956
618.....4956
619.....4956
620.....4956
621.....4956
642.....8032
643.....8032
644.....8032
645.....8032
646.....8032
649.....3239
668.....8032
674.....5295, 8032
675.....5295, 8032
676.....5295, 8032
682.....3922, 8032
683.....4956, 8032
690.....8032
692.....8032
791.....4991
792.....4991
793.....4991
794.....4991

35 CFR

253.....9084

36 CFR

219.....7327
223.....2611
1190.....4270

Proposed Rules:

7.....1312, 1313
13.....5642
261.....1758
262.....1758
801.....5578
1215.....5566, 9121

37 CFR

1.....2611
2.....6934
306.....884
307.....891
308.....892

Proposed Rules:

1.....2653, 3162, 5001, 9121
3.....9121

38 CFR

Proposed Rules:

3.....8574
21.....2654

39 CFR

111.....35, 6940
232.....897

Proposed Rules:

111.....3568
3001.....952

40 CFR

3.....5962
6.....3364
30.....3017
35.....7327
51.....1267, 7182
52.....35, 36, 898, 2043, 3516, 3883, 4916, 4918, 5965, 5980, 6941, 8471-8481
55.....7961, 8491, 8492
81.....899, 3883, 8495
86.....1590, 1599, 1603
87.....2044
122.....2045, 2344, 2802, 7666
123.....1727, 3207, 3517, 5616, 7964, 8298, 8312
125.....9404
160.....2344
162.....2008, 5696
180.....3018, 5980, 5981
205.....4918, 8497
257.....3021
261.....4614
262.....8395
264.....2802, 7666, 8395
265.....2802, 7666, 8395
401.....2264
403.....9404
413.....9462
429.....8260
762.....5981

Proposed Rules:

Ch. I.....3032, 3408
Ch. V.....2369
7.....2306
12.....2306
51.....7193, 9124
52.....133, 953, 1314-1316, 1760, 1761, 3569, 3923, 3924, 6021, 7004, 7005, 7007, 7008, 8575-8586, 9124-9128
58.....2655
60.....1102, 1136, 1317, 8033, 8352, 8587, 9130, 9131
61.....1165, 1318, 3033
81.....7009, 8588
85.....8982
86.....1910, 5001, 5838, 9131, 9132
123.....954, 2120, 3924, 8589
136.....3033
180.....5003
192.....2556
249.....9132
264.....2893, 7684
265.....2893
408.....2544
410.....8590
420.....1858

430 ..... 1430, 2369
431 ..... 1430, 2369
434 3136
465 2934
466 8860
720 8986
721 6021
762 6019
763 ..... 3033, 7011, 8200
772 8992

41 CFR

Ch. 1 3519
Ch. 101 ..... 1731, 3021, 7982
1-1 7966
1-3 7968
1-4 1196
1-15 7968
5-6 908
5-14 911
5-60 900
5A-1 5982
5A-2 5982
5A-6 908
5A-7 7981
5A-14 911
5A-16 7981
5A-60 900
5B-60 900
14-1 ..... 7327, 7984
14-2 ..... 1730, 7984
14-3 7984
14-4 7984
14-7 7984
14-16 7984
14-19 7984
14-26 7984
14-30 7984
29-70 3891
60-1 ..... 3892, 7332, 9084
60-2 ..... 7332, 9084
60-4 ..... 7332, 9084
60-20 ..... 7332, 9084
60-30 ..... 7332, 9084
60-50 ..... 7332, 9084
60-60 9084
60-250 7332
60-260 9084
60-741 ..... 7332, 9084
101-20 3523
101-26 3024
101-35 1213
101-36 ..... 1213, 8513
101-37 7983
101-38 3023
105-60 8513

Proposed Rules:

Ch. 16 6022
9-15 955
9-50 959
60-20 3916
101-11 ..... 3239, 3240

42 CFR

52 4918
60 8518
110 6354
435 6903
442 1268

Proposed Rules:

36 1318
50 5003
54c 7176
122 7166
403 6296
405 ..... 959, 3794, 5006, 7408
442 7408
432 7011
433 7011
435 5008
441 5003
481 959
482 959
483 7408

43 CFR

Subtitle A 2348
4 ..... 6942, 7334
9 5772
2090 5794
2091 1634
2200 1634
2210 1634
2220 1634
2230 1634
2240 1634
2250 1634
2260 1634
2270 1634
2300 5794
2310 5794
2320 5794
2340 5794
2350 5794
2920 5772
4100 ..... 5784, 7350

Proposed Rules:

4 3242
426 3250

Public Land Orders:

656 (Revoked by PLO 5827) 7339
1009 (Revoked by PLO 5838) 7343
1109 (Revoked by PLO 5849) 7347
1165 (Revoked by PLO 5831) 7341
1169 (Revoked by PLO 5821) 6947
1175 (Revoked in part and amended by PLO 5832) 7341
1258 (Revoked by PLO 5848) 7347
1362 (Revoked by PLO 5799) 2047
1438 (Revoked by PLO 5841) 7345
1867 (Revoked in part by PLO 5839) 7344
2013 (Amended by by PLO 5825) 7338
2112 (Amended by PLO 5816) 6945
2307 (Revoked by PLO 5798) 2046
2964 (Revoked by PLO 5829) 7340
3040 (Amended by PLO 5837) 7343
3837 (Revoked by PLO 5819) 6946
3869 (Revoked by PLO 5818) 6946
3917 (Partially revoked by PLO 5802) 2047
4849 (Partially revoked by PLO 5799) 2047
4863 (Revoked by PLO 5806) 2348
5791 2613
5797 ..... 2046, 6942
5798 2046
5799 2047
5800 1734
5801 1734
5802 2047
5803 1734
5804 2047
5805 2048
5806 2348
5808 6942
5809 6943
5810 6943
5811 6944
5812 6944
5813 6944
5814 6945
5815 6945
5816 6945
5817 6946
5818 6946
5819 6946
5820 6947
5821 6947
5822 6947
5823 6948
5824 6948
5825 7338
5826 7338
5827 7339
5828 7340
5829 7340
5830 7341
5831 7341
5832 7341
5833 7342
5834 7342
5835 7342
5836 7343
5837 7343
5838 7343
5839 7344
5840 7344
5841 7345
5842 7345
5843 7345
5844 7346
5845 7346
5846 7346
5847 7347
5848 7347
5849 7347
5850 7348
5851 7348
5852 7349
5853 7349
5854 8520
5855 8520

44 CFR

Ch. I 1270
9 9084
10 2049
59 1273
60 1273
64 ..... 1273, 3212, 3214, 7350, 7352, 7353
65 ..... 1274, 1736, 7356, 7365, 7366
67 ..... 1275, 7366-7368, 7987, 7996
70 9085-9091
332 2349

Proposed Rules:

67 ..... 1319, 7408-7411, 8034 8047, 8048

45 CFR

46 8366
73 7368
95 3527
126 8518
233 4919
304 ..... 1275, 6949
1012 5620
1060 6950
1067 1234
1069 4919
1213 6951
1225 1608
1226 8520
1232 6951
1300 4921
1396 6903

Proposed Rules:

Ch. XII 960
16 1644
74 1644
95 7011
205 7011
232 7011
301 1319
302 ..... 1321, 7011
303 1321
304 7011
1012 5632
1062 961
1392 7246
1393 7246
1395 7011
1396 7246
1397 7246

46 CFR

225 913
284 913
286 913
291 913
502 1276
530 9098

Proposed Rules:

108 3573
381 2370
401 2656
503 3250
524 5008
537 8599

47 CFR

Ch. I 6951
0 2352
1 3896
2 3896
15 ..... 4923, 4925
31 9098
64 5984
73 ..... 3530, 3531, 3897, 6970, 9110
90 3896

Proposed Rules:

Ch. I 3925-3939, 5008, 9133
2 ..... 5009, 5011
22 5011
25 3250
63 ..... 6025, 9138
73 ..... 3573-3575, 3939, 5011, 7014, 8048, 8600, 9141, 9145

76 6025
81 3939
90 ..... 5011, 9143

48 CFR

Proposed Rules:
42 8055

49 CFR

Subtitle A 2352
1 6012
171 5298
172 5298
173 ..... 5298, 8005
177 5298
179 8005
201 2613
397 5318
512 2049
525 2063
537 2063
555 2063
571 ..... 2064, 2618
577 6971
623 8426
635 5476
639 5480
642 5820
660 5808
845 3532
1002 ..... 2294, 2295, 8524
1003 ..... 2294, 4926, 8524
1011 ..... 2294, 3532, 8524
1014 8525
1033 ..... 1738, 3216, 3533, 3534, 4934
1100 ..... 2294, 4926, 8524
1111 9111
1136 2295
1137 2294
1204 9114
1205 9114
1208 9114
1209 9114
1210 9114
1240 9114
1241 9114
1248 9114
1249 9114
1250 9114
1251 9114
1260 9114
1261 9114
1331 ..... 2295, 6971, 7385, 9116

Proposed Rules:
Ch. V 5012
21 5588
23 969
100–199 8055
172 ..... 2121, 2126
173 ..... 2121, 2126
175 2126
178 2126
179 2126
192 39
195 ..... 39, 2130
387 8186
531 ..... 5022, 8056
533 8056
571 ..... 40, 55, 2132, 2136, 7015, 8062, 8066, 8067, 8070
575 8063
583 7025
604 5394
638 ..... 6334, 7031
641 5832
660 5815
1039 134
1056 3941
1100 8601
1109 3942
1201 ..... 1323, 2146
1206 1323
1207 1323
1208 1323
1209 1323
1210 1323
1241 2146
1300 1324
1301 1324
1303 1324
1305 1324
1310 8604

50 CFR

17 ..... 3178, 3184, 3361, 5730
26 ..... 913, 916, 2076, 8525
32 6013
33 ..... 917, 918, 2078, 2352, 3218
250 66
285 ..... 3025, 8012
296 ..... 2302, 3534
611 ..... 1738, 2079, 2081, 7385, 7386, 9117
652 ..... 1740, 3534

Proposed Rules:
17 3188
36 5668
216 ..... 1761, 2153
230 3942
611 ..... 2153, 2154, 7034
643 2153
658 7034
672 2154

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 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

NUCLEAR REGULATORY COMMISSION

71761 10-30-80 / Standards for protection against radiation; Burial of small quantities of radionuclides

TRANSPORTATION DEPARTMENT

Coast Guard—

85644 12-29-80 / Deepwater ports; safety zone amendments

Federal Highway Administration—

85449 12-29-80 / Electrical and fuel systems standards for recreational boats

Deadlines for Comments on Proposed Rules for the Week of February 1 through February 7, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

80533 12-5-80 / Onions grown in south Texas; handling regulation; comments by 2-4-81

Animal and Plant Health Inspection Service—

80098 12-3-80 / Contagious equine metritis (CEM); specifically approved States to receive stallions imported from CEM-affected countries; Colorado; comments by 2-2-81

80267 12-4-80 / Handling of certain garbage residues; comments by 2-2-81

80813 12-8-80 / Veterinary Services policy and procedures in cooperative programs concerning the eradication of Exotic Newcastle Disease from populations of birds including poultry; comments extended to 2-6-81

[Originally published at 45 FR 67052, 10-9-80]

Federal Grain Inspection Service—

80985 12-8-80 / Delay effective date of requirement for change in mode of operation; comments by 2-6-81

Food and Nutrition Service—

80790 12-5-80 / Food Stamp Program; monthly reporting/retrospective accounting; comments by 2-3-81

CIVIL AERONAUTICS BOARD

80117 12-3-80 / Canadian charter air taxi operations; registration procedure for operating authority; comments by 2-2-81

85075 12-24-80 / Cooperative shippers associations; permission to act as agents of direct air carriers; comments by 2-2-81

COMMERCE DEPARTMENT

International Trade Administration—

80484 12-5-80 / Export licensing requirements for computer software; interim rule; comments by 2-3-81

Patent and Trademark Office—

73965 11-7-80 / Additional procedure for filing continuation and divisional applications; comments by 2-4-81

78172 11-25-80 / Patent interference proceedings; comments by 2-4-81

COMMODITY FUTURES TRADING COMMISSION

84082 12-22-80 / Contract market rules; comments by 2-2-81

73499 11-5-80 / Contract markets; dormant and low volume contracts; comments by 2-1-81

73504 11-5-80 / Economic and public interest requirements for contract market designation; comments by 2-1-81

80539 12-5-80 / Proposed registration firms and rules; comments by 2-3-81

EDUCATION DEPARTMENT

83269 12-18-80 / Emergency school aid; comments by 2-2-81

ENERGY DEPARTMENT

Economic Regulatory Administration—

81012 12-8-80 / Standby procedures for emergency purchases and emergency allocation of natural gas during a declared emergency; comments by 2-6-81

Western Area Power Administration—

80349 12-4-80 / Compliance with Title II of the Public Utility Regulatory Policies Act; comments by 2-3-81

ENVIRONMENTAL PROTECTION AGENCY

1316 1-6-81 / Alabama State Implementation Plans; comments by 2-5-81

133 1-2-81 / Approval and promulgation of implementation plans; Kentucky: Bubble action for the Kentucky Utilities Co.—Green River Station; comments by 2-2-81

78980 11-26-80 / Beverage can surface coating industry; standards of performance; comments by 2-5-81

3963 1-16-81 / Certain chemicals; premanufacture notices; comments by 2-2-81

72984 11-3-80 / Construction of treatment works; cost effective analysis of facility plans prepared under grants; comments by 2-2-81

3033 1-13-81 / Guidelines establishing test procedures for analysis of pollutants; comments by 2-2-81

80286 12-4-80 / Hazardous waste management system; identification and listing of hazardous waste; comments by 2-2-81

3924 1-16-81 / Interstate air pollution abatement; comments by 2-5-81

1314 1-6-81 / Kentucky State Implementation Plan; comments by 2-5-81

1315 1-6-81 / Maryland State Implementation Plan; comments by 2-5-81

80556 12-5-80 / Michigan State Implementation Plan; approval of revision; comments by 2-5-81

1316 1-6-81 / Mississippi State Implementation Plan; comments by 2-5-81

72948 11-3-80 / Pesticide registration hazard evaluation of use for nontarget plants and microorganism; comments by 2-2-81

1760 1-7-81 / Proposed approval of Alabama air quality surveillance plan revision; comments by 2-6-81

1761 1-7-81 / Proposed approval of Kentucky air quality surveillance plan revision; comments by 2-6-81

3021 1-3-81 / Solid waste disposal facilities and practices; criteria for classification; interim regulations; comments by 2-2-81

85360 12-24-80 / Water pollution control; disposal states for dredged or fill material; specification guidelines testing requirements; comments by 2-6-81

FEDERAL COMMUNICATIONS COMMISSION

85125 12-24-80 / Direct broadcast satellites for the period following the 1983 Regional Administration Radio Conference, development of regulatory policy (interim systems); comments by 2-2-81

79841 12-2-80 / FM Broadcast station in Ainsworth, Nebr.; proposed changes in table of assignments; reply comments by 2-2-81

78189 11-25-80 / FM broadcast station in Spirit Lake, Iowa; proposed changes in table of assignments; reply comments by 2-2-81

78190 11-25-80 / FM broadcast station in Wiggins, Miss.; proposed changes in table of assignments; reply comments by 2-2-81

85126 12-24-80 / Preparation for an International Telecommunication Union World Administration Radio Conference on the use of the geostationary-Satellite orbit and the planning of the Space Services utilizing it; comments by 2-4-81

82282 12-15-80 / TV broadcast station in East St. Louis, Ill., proposed changes in table of assignments; comments by 2-2-81

84834 12-23-80 / TV Broadcast station in Sacramento, Calif.; proposed changes in table of assignments; comments by 2-2-81

FEDERAL EMERGENCY MANAGEMENT AGENCY

81215 12-10-80 / Disaster assistance, cost reimbursement policy; use of National Guard; comments by 2-1-81

FEDERAL TRADE COMMISSION

79823 12-2-80 / Advance notice of proposed rulemaking following investigation of impact of state and private restraints on practice of optometry and comments by 2-2-81

[Corrected at 45 FR 80833, 12-8-80]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

73955 11-7-80 / Hair grower and hair loss prevention drug products for over-the-counter human use; comments by 2-5-81

[Corrected at 46 FR 3030, 1-31-81].

27 1-2-81 / Indirect food additives: Adjuvants production aids and sanitizers; Tris (2,4-Di-Tert-Butylphenyl) phosphite; comments by 2-2-81

65609 10-3-80 / Wart remover drug products (OTC); monograph establishment; reply comments by 2-2-81

[Corrected at 45 FR 80551, 12-5-80]

Public Health Service—

1318 1-6-81 / Indian health; redesignation of contract health service delivery area; comments by 2-5-81

INTERIOR DEPARTMENT

Indian Affairs Bureau—

1298 1-6-81 / Business practices on Indian reservations other than Navajo, Hopi, or Zuni Reservations; comments by 2-5-81

National Park Service—

1313 1-6-81 / Delaware Water Gap National Recreation Area; snowmobile route designations; comments by 2-5-81

Surface Mining Reclamation and Enforcement Office—

1306 1-6-81 / Alabama program; comments by 2-5-81

1309 1-6-81 / Tennessee program; comments by 2-4-81

INTERSTATE COMMERCE COMMISSION

83300 12-18-80 / Rail general exemption authority; long and short haul transportation; comments by 2-2-81

134 1-2-81 / Rail general exemption authority, miscellaneous commodities; comments by 2-2-81

JUSTICE DEPARTMENT

Attorney General—

1302 1-6-81 / Guidelines on methods of obtaining documentary materials held by third parties; comments by 2-5-81

LABOR DEPARTMENT

Mine Safety and Health Administration—

74444 11-7-80 / Criteria and procedures for proposed assessment of civil penalties; comments by 2-5-81

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

79843 12-2-80 / Availability and request for comment on draft Federal Acquisition Regulation; comments by 2-6-81

NATIONAL CREDIT UNION ADMINISTRATION

84811 12-23-80 / Incidental Powers; advance notice of proposed rulemaking; Federal credit union Insurance and group purchasing activities; comments by 2-6-81

NUCLEAR REGULATORY COMMISSION

81602 12–11–80 / Design and other changes in nuclear power plant facilities after issuance of construction permit; comments by 2–1–81

PERSONNEL MANAGEMENT OFFICE

80472 12–5–80 / Basic Life Insurance; coverage for younger employees; interim rule; comments by 2–3–81

80467 12–5–80 / Senior Executive Service; appointment by reinstatement; former career and Presidential appointees; interim rules; comments by 2–3–81

TRANSPORTATION DEPARTMENT

Coast Guard—

83267 12–18–80 / COLREGS demarcation line, Chesapeake Bay Entrance, VA; comments by 2–2–81

84104 12–22–81 / Oceanographic research vessels; comments by 2–5–81

Federal Aviation Administration—

80450 12–4–80 / Federal Aviation Regulations (FAR); miscellaneous amendments; comments by 2–4–81

80296 12–4–80 / Medical standards and certification; issuance of airman medical certificates for certain conditions; comments by 2–4–81

Federal Highway Administration—

32 1–2–81 / Maximum width of trucks on the Interstate Highway System; notice of interpretation; comments by 2–2–81

41600 6–19–80 / National standards for traffic control: Manual on uniform traffic control devices; comments by 2–1–81

National Highway Traffic Safety Administration—

2097 1–8–81 / Performance standards for speed measuring radar devices; comments by 2–1–81

TREASURY DEPARTMENT

Internal Revenue Service—

2042 1–8–81 / Civil aircraft use tax; special rules for the period 7–1–80 through 9–30–80; deadline for filing returns, 2–2–81

80551 12–5–80 / Front-end tertiary oil under crude oil windfall profit tax of 1980; comments by 2–3–81

80309 12–4–80 / Manufacturers excise tax on tires, tubes, and tread rubber; comments by 2–2–81

Deadlines for Comments On Proposed Rules for the Week of February 8 through February 14, 1981

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

81530 12–11–80 / Foreign quarantine notices; importation of certain articles of chrysanthemum spp. from Canada; comments by 2–9–81

81728 12–12–80 / Mediterranean fruit fly; additions to list of regulated areas; comments on final rule by 2–10–81

Commodity Credit Corporation—

81534 12–11–80 / Grain Reserve Program for 1980 and subsequent crops and alternative program for 1980 and prior crops; comments by 2–9–81

81533 12–11–80 / Regulations governing the Grain Reserve Program for 1979 and subsequent crops and alternative program for 1979 and prior crops; comments by 2–9–81

81211 12–10–80 / Community domestic water and waste water disposal systems, development grants; comments by 2–9–81

Food and Nutrition Service—

81030 12–9–80 / Food Stamp Program—Performance Reporting System; Quality Control; (emergency final rulemaking); comments by 2–9–81

Food Safety and Quality Service—

77332 11–21–80 / U.S. standards for grades of canned fruits; comments extended to 12–12–81

[*See also* 45 FR 18378, 3–21–80]

81764 12–12–80 / Use of hexagon-shaped brands for imported horsemeat and other equines; comments by 2–10–81

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

82080 12–12–80 / Handicapped persons; standards for access and use of buildings; attorney's fees and costs; comments by 2–10–81

CIVIL AERONAUTICS BOARD

81604 12–11–80 / Rules of conduct in Board Proceedings; comment period extended until 2–10–81

[Originally published at 45 FR 73087, November 4, 1980]

COMMERCE DEPARTMENT

Maritime Administration—

2370 1–9–81 / Cargo preference—U.S. Flag vessels geographical allocation of preference cargoes; comments by 2–9–81

COMMODITY FUTURES TRADING COMMISSION

3027 1–13–81 / Contract market rules; disapproval and alteration of proposal by Chicago Board of Trade; comments by 2–12–81

CONSUMER PRODUCT SAFETY COMMISSION

82066 12–12–80 / Sunshine Act meetings and meetings between agency personnel and outside parties; policy; comments by 2–10–81

EDUCATION DEPARTMENT

85082 12–24–80 / Handicapped children; nondiscrimination in programs and activities receiving or benefitting from Federal financial assistance; comments by 2–9–81

86304 12–30–80 / State Student Incentive Grant Program provisions; comments by 2–13–81

ENERGY DEPARTMENT

Economic Regulatory Administration—

71 1–2–81 / Emergency interconnection of electric facilities and the transfer of electricity to alleviate an emergency shortage of electric power; comments by 2–13–81

Federal Energy Regulatory Commission—

1291 1–6–81 / Exemption from licensing requirements of category of small hydroelectric power projects with installed capacity of five megawatts or less; comments by 2–13–81

ENVIRONMENTAL PROTECTION AGENCY

2044 1–8–81 / Air pollution from aircraft and aircraft engines; comments by 2–9–81

3963 1–16–81 / Certain chemicals; premanufacture notices; comments by 2–9–81

81180 12–9–80 / Modification of effluent limitations guidelines and standards for pH values for point sources that continuously monitor their effluent; comments by 2–9–81

3033 1–13–81 / National emission standards for hazardous air pollutants; revisions and addition to test methods; comments by 2–13–81

81615 12–11–80 / Premanufacture notification requirements and review procedures; extension of comment period on the proposed economic impact and draft regulatory analyses; comments by 2–13–81

73699 11–6–80 / Proposed delayed compliance order for Atlantic City Electric Company's Deepwater Unit 8; comments by 2–8–81

79390 11–28–80 / Standards of performance for new stationary sources; surface coating of metal furniture; comments by 2–8–81

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

81039 12–9–80 / Interim procedural regulations on timely filing of charges with the Commission in deferral jurisdictions; comments by 2–9–81

FEDERAL COMMUNICATIONS COMMISSION

3573 1–15–81 / AM stereophonic broadcasting; comment period extended to 2–9–81

[*See also* 45 FR 59350, 9–9–80 and 45 FR 81797, 12–12–80]

81217 12-10-80 / Cable television systems and divestiture requirement; reply comment period extended to 2-9-81
[*See also* 45 FR 63011, 9-23-80]

84833 12-23-80 / FM broadcast station in Ponca City, Okla.; proposed changes in table of assignments; comments by 2-10-81

76717 11-20-80 / FM quadraphonic broadcasting; reply comments period extended to 2-9-81
[*See also* 45 FR 55491, 8-20-80]

3939 1-16-81 / Regarding public coast station replies to general calls on channel 16; comments by 2-13-81

84835 12-23-80 / TV broadcast station in Kerrville, Tex.; proposed changes in table of assignments; comments by 2-9-81

FEDERAL HOME LOAN BANK BOARD

3909 1-16-81 / Washington, D.C.—Md.—Va. SMSA branching; comments by 2-13-81

FEDERAL RESERVE SYSTEM

84070 12-22-80 / International banking facilities; comments by 2-13-81

FEDERAL TRADE COMMISSION

82656 12-16-80 / Citicorp Financial, Inc.; consent agreement with analysis to aid public comment; comments by 2-13-81

80307 12-4-80 / Mobile home sales and service; comments by 2-13-81
[Originally published at 45 FR 53839, Aug. 3, 1980]

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service—

3239 1-14-81 / Records management technical assistance program; comments by 2-13-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

81064 12-9-80 / Amendment of identity standards for flour and whole wheat flour; comments by 2-9-81

2339 1-9-81 / Canned fruits, canned berries; amendment of standard of identity; comments by 2-9-81

2992 1-13-81 / Cepha antibiotic drugs; certification of cefadroxil monohydrate tablets; comments by 2-12-81

2991 1-13-81 / Cepha antibiotic drugs; certification of new strength of cefadroxil capsules; coments by 2-12-81

2979 1-13-81 / Cyclacillin; amendment to antibiotic drug regulations; comments by 2-11-81

2989 1-13-81 / Erythromycin ethylsuccinate-sulfisoxazole acetyl for oral suspension; certification; comments by 2-12-81

2994 1-13-81 / Gentamicin sulfate injection; amendment to antibiotic drug regulations; comments by 2-12-81

2341 1-9-81 / Indirect food additives; adjuvants, production aids, and sanitizers; hydrogen peroxide; comments by 2-9-81

2996 1-13-81 / Linomycin antibiotic drug; certification of clindamycin phosphate topical solution; comments by 2-12-81

2995 1-13-81 / Macrolide antibiotic drugs; certification of erythromycin topical solution; comments by 2-12-81

81769 12-12-80 / Premarket approval of medical devices; proposed establishment of regulations; comments by 2-10-81

2987 1-13-81 / Sisomicin sulfate; amendments to antibiotic drug regulations; comments by 2-11-81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development—

Office of the Assistant Secretary—

82272 12-15-80 / Community development block grants, entitlement grants; comments by 2-13-81

Federal Housing Commissioner—

Office of the Assistant Secretary—

82273 12-15-80 / Review of applications for housing assistance and allocation of housing assistance funds; comments by 2-13-81

INTERIOR DEPARTMENT

Hearings and Appeals Office—

81074 12-9-80 / Department hearings and appeals procedures; comments by 2-9-81

Indian Affairs Bureau—

2366 1-9-81 / Payment of Sioux benefits; eligibility criteria and application procedures governing benefits; comments by 2-9-81

Office of the Secretary—

85376 12-24-80 / Regulatory Flexibility Act implementation; comments by 2-9-81

Surface Mining Reclamation and Enforcement Office—

3030 1-13-81 / Kentucky State Program; comments by 2-12-81

LABOR DEPARTMENT

Employment and Training Administration—

58143 9-2-80 / List of occupations meeting criteria for apprenticeability; comments period extended to 2-11-81

Pension and Welfare Benefit Programs Office—

85793 10-30-80 / Proposed revision of annual return report form and provisions for plans that participate in a master trust; comments by 2-13-81

MERIT SYSTEMS PROTECTION BOARD

2326 1-9-81 / Hearing procedures for original jurisdiction cases; comments by 2-13-81

PERSONNEL MANAGEMENT OFFICE

81764 12-12-80 / Federal Employees Health Benefits Survivor Annuitant Coverage; comments by 2-10-81

TRANSPORTATION DEPARTMENT

Coast Guard—

85488 12-29-80 / Marine engineering regulations for merchant vessels; acceptance of ASMEU or UM symbol stamp for pressure vessels, fittings, and accumulators; comments by 2-12-81

85471 12-29-80 / Prince William Sound vessel traffic service; comments by 2-12-81

Federal Aviation Administration—

80815 12-8-80 / Procedural rules; expeditious and uniform issuance of airworthiness directives for certain domestic and foreign manufactured products; comments by 2-9-81

National Highway Traffic Safety Administration—

81625 12-11-80 / Federal motor vehicle safety standards; seat belt assembly anchorages; anchorages for child restraint systems; comments by 2-9-81

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—

82275 12-15-80 / Labeling and advertising of wine (appellation of origin) under the Federal Alcohol Administration Act; comments by 2-13-81

82470 12-15-80 / Proposed establishment of five viticultural areas in California; comments by 2-13-81

Internal Revenue Service—

81066 12-9-80 / Treatment of income from qualified trade shows sponsored by certain exempt organizations; comments by 2-9-81

81606 12-11-80 / Windfall profit tax; definition of "producer"; comments by 2-9-81

Next Week's Meetings:

ARTS AND HUMANITIES, NATIONAL FOUNDATION

3098 1-13-81 / Visual Arts Panel (Painting Fellowships), Washington, D.C. (closed), 2-2 through 2-6-81

CIVIL RIGHTS COMMISSION

2372 1-9-81 / Massachusetts Advisory Committee, Boston, Mass. (open), 2-3-81

COMMERCE DEPARTMENT

International Trade Administration—

2374 1-9-81 / Electronic Instrumentation Technical Advisory Committee, Washington, D.C. (partially closed), 2-3-81

DEFENSE DEPARTMENT

Office of the Secretary—

1332 1-6-81 / Armed Forces Epidemiological Board, Bethesda, Md. (open), 2-5 and 2-6-81

85813 12-30-80 / DOD Advisory Group on Electron Devices, working Group D, Arlington, Va. (closed), 2-3 and 2-4-81

ENERGY DEPARTMENT

5053 1-19-81 / Davis/West Virginia Pumped Storage Project Alternatives Study, Washington, D.C. (open), 2-5-81

Energy Research Office—

3595 1-15-81 / Energy Research Advisory Board, Washington, D.C. (open), 2-5 and 2-6-81

Office of the Secretary—

81815 12-12-80 / National Petroleum Council, Environmental Conservation Committee, Coordinating Subcommittee, Washington, D.C. (open), 2-4-81

ENVIRONMENTAL PROTECTION AGENCY

83017 12-17-80 / Interagency Toxic Substances Data Committee, Washington, D.C. (open), 2-3-81

7065 1-22-81 / Science Advisory Board, Clean Air Scientific Advisory Committee, Washington, D.C. (open), 2-6-81

3272 1-14-81 / Science Advisory Board Ecology Committee; Task Group on Marine Ecosystem monitoring, Washington, D.C. (open), 2-2 through 2-4-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

3975 1-16-81 / National Advisory Council on Alcohol Abuse and Alcoholism, Bethesda, Md. (partially open), 2-2 and 2-3-81

3975 1-16-81 / Rape Prevention and Control Advisory Committee, Rockville, Md. (open), 2-5 and 2-6-81

3976 1-16-81 / Treatment and Rehabilitation Work Group, Rockville, Md. (open), 2-3-81

National Institutes of Health—

3283 1-14-81 / National Heart, Lung, and Blood Advisory Council and its Manpower and Research Subcommittee, Bethesda, Md. (partially open), 2-5 through 2-7-81

3282 1-14-81 / National Advisory Research Resources Council, Bethesda, Md. (partially open), 2-5 and 2-6-81

INTERIOR DEPARTMENT

Land Management Bureau—

2197 1-8-81 / La Sal Pipeline Co., environmental impact statement on proposed crude oil pipeline tentatively Grand Junction, Craig, and Denver, Colo., and Casper and Cheyenne, Wyo. (open), week of 2-2-81

86555 12-31-80 / Nevada Elko District, multiple use Advisory Council, Elko, Nev., (open), 2-4-81

LABOR DEPARTMENT

Employment and Training Administration—

3092 1-13-81 / Unemployment Insurance Federal Advisory Council, Washington, D.C. (open), 2-5 and 2-6-81

Occupational Safety and Health Administration—

4010 1-16-81 / Federal Advisory Council on Occupational Safety and Health, Washington, D.C. (open), 2-3-81

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

3096 1-13-81 / Aeronautics Advisory Committee, Informal Executive Subcommittee, Washington, D.C. (open), 2-6-81

3096 1-13-81 / Aeronautics Advisory Committee and Space Systems and Technology Advisory Committee, Washington, D.C. (open), 2-5-81

3097 1-13-81 / Historical Advisory Committee, New Haven, Conn. (open), 2-6-81

5104 1-19-81 / Space and Terrestrial Applications Steering Committee (STASC); Proposal Evaluation Advisory Subcommittee, Washington, D.C. (closed), 2-4-81

NATIONAL SCIENCE FOUNDATION

5106 Behavioral and Neural Sciences Advisory Committee, Linguistics Program Subcommittee, Washington, D.C. (closed), 2-5 and 2-6-81

5106 1-19-81 / Behavioral and Neural Sciences, Sensory Physiology and Perception Subcommittee, Washington, D.C. (closed), 2-5 and 2-6-81

5105 1-19-81 / Physics Advisory Committee, Washington, D.C. (open), 2-5 and 2-6-81

[Rescheduled at 46 FR 8137, 1-26-81]

5105 1-19-81 / Physiology, Cellular, and Molecular Biology Advisory Committee, Regulatory Biology Subcommittee, Washington, D.C. (closed), 2-4 through 2-6-81

NUCLEAR REGULATORY COMMISSION

5108 1-19-81 / Reactor Safeguards Advisory Committee, Plant Features Important to Safety Subcommittee, Washington, D.C. (open), 2-3-81

5107 1-19-81 / Reactor Safeguards Advisory Committee, NRC Safety Research Program Subcommittee, Washington, D.C. (open), 2-4-81

5108 1-19-81 / Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee, Washington, D.C. (open), 2-3-81

5108 1-19-81 / Reactor Safeguards Advisory Committee, Safety Philosphy, Technical and Criteria Subcommittee, Washington, D.C. (open), 2-4-81

STATE DEPARTMENT

5115 1-19-81 / Federal International Center, Washington, D.C. (open), 2-4-81

TRANSPORTATION DEPARTMENT

Federal Highway Administration—

5118 1-19-81 / Outdoor Advertising and Motorist Information National Advisory Committee, Washington, D.C. (open), 2-5 and 2-6-81

National Highway Traffic Safety Administration—

3714 1-15-81 / National Highway Safety Advisory Committee, Support for Highway Safety Programs Task Force, Washington, D.C. (open), 2-3, 2-4 and 2-5-81

VETERANS ADMINISTRATION

85243 12-24-80 / Health-Related Effects of Herbicides Advisory Committee, Washington, D.C., (open), 2-4-81

Next Week's Public Hearings

COMMERCE DEPARTMENT

Patent and Trademark Office—

73965 11-7-80 / Consideration of additional procedure for filing continuation and divisional applications, Arlington, Va., 2-4-81

ENVIRONMENTAL PROTECTION AGENCY

83448 12-18-80 / National emissions standards for hazardous air pollutants; Benzene emissions from ethylbenzene/styrene plants, Triangle Park, North Carolina, 2-5-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

2364 1-9-81 / Proposed mandatory device experience reporting regulation, Washington, D.C., 2-2-81

INTERIOR DEPARTMENT

Herstaze Conservation and Recreation Service—

5566 1-19-81 / Archeological Resources Protection Act of 1979; Proposed uniform rulemaking, Chicago, Ill., 2-7-81

TRANSPORTATION DEPARTMENT

Coast Guard—

79258 11-28-80 / Licensing of vessel pilots, New Orleans, La., 2-3-81

83290 12-18-80 / Tankerman requirements, New Orleans, La., 2-4-81

Federal Aviation Administration—

75 1-2-81 / Medical standards and certification; issuance of airman medical certificates for certain conditions, Washington, D.C., 2-3 and 2-4-81

[Originally published at 45 FR 80295, December 4, 1980]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—

82472 12-15-80 / Establishment of proposed viticultural areas, Fennville, Calif., 2-3-81

List of Public Laws

This is the first continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S.J. Res. 16 / Pub. L. 97-1 Designating January 29, 1981, as "A Day of Thanksgiving To Honor Our Safely Returned Hostages" (Jan. 26, 1981; 95 Stat. 3) Price $1.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

6950 1-22-81 / CSA—Community Action Programs; revision of income poverty guidelines; effective 1-23-81

5620 1-19-81 / CSA—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from financial assistance provided by CSA; effective 2-18-81

5808 1-19-81 / DOT/UMTA—Buy America requirements; effective 2-18-81

5820 1-19-81 / DOT/UNTA—Urban initiatives program; effective 2-18-81

4921 1-19-81 / HHS/HDSO—Consolidated grants to insular areas; effective 1-19-81

4918 1-19-81 / HHS/PHS—Extension of applicability provisions to include the research grant program of the National Center for Health Care Technology; Technical amendment; effective 1-19-81

7846 1-23-81 / USDA/FNS—Special Supplemental Food Program for Women, Infants, and Children; eligibility criteria; effective 7-1-81

DEADLINES FOR COMMENTS ON PROPOSED RULES

5578 1-19-81 / Advisory Council on Historic Preservation—Historic preservation requirements of the urban development action grant program; comments by 2-18-81

5632 1-19-81 / CSA—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from financial assistance provided by CSA; comments by 3-20-81

4955 1-19-81 / ED—Center for independent living program; comments by 3-20-81

5410 1-19-81 / ED—Center for independent living; comments by 3-20-81

5236 1-19-81 / ED—Financial assistance to local and State agencies to meet special educational needs; and financial assistance to local educational agencies for children with special educational needs; comments by 3-20-81

7002 1-22-81 / ED—Museum Services Programs; comments by 2-23-81

5238, 5295 1-19-81 / ED—National direct student loan program, College Work-Study program, and Supplemental educational opportunity grant program; comments by 3-20-81

4956 1-19-81 / ED—Parent loans for undergraduate students (PLUS) program; comments by 3-20-81

6322 1-21-81 / ED—Pell Grant, National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Parent Loans for Undergraduate Students Programs (final regulations); comments by 3-23-81

4991 1-19-81 / ED—Teacher Corps Program grants; comments by 3-5-81

4913 1-19-81 / ED—Training programs for teachers of handicapped children in areas with a shortage; comments by 3-5-81

4955 1-19-81 / ED—Training programs for teachers of handicapped children in areas with a shortage; comments by 3-5-81

5416 1-19-81 / ED—Vocational rehabilitation service projects; comments by 3-20-81

5686 1-19-81 / EPA—Intent to issue revised minority business enterprise policy for the construction grants program, Technical amendments to the women's business enterprise policy for the construction grants programs, and procedures for the implementation of the minority business enterprise and women's business enterprise policies; comments by 3-20-81

5616 1-19-81 / EPA—State hazardous waste programs; Requirements for public participation in the State enforcement process during interim authorization; comments by 3-20-81

7246 1-22-81 / HHS/HDSO—Adoption Assistance and Child Welfare Act; implementation and conforming amendments to social services programs; comments by 3-23-81

7011 1-22-81 / HHS/Sec'y—Public assistance programs; State agency cost allocation plans; preparation submission and approval (2 documents); comments by 3-9-81

7756 1-23-81 / Labor—Hospital employee protection program guidelines; comments by 3-24-81

5588 1-19-81 / DOT/Sec'y—Nondiscrimination in Federally assisted programs—Implementation of Title VI of the Civil Rights Act of 1964; comments by 4-20-81

5815 1-19-81 / DOT/UMTA—Buy America requirements; comments by 4-20-81

5394 1-19-81 / DOT/UMTA—Charter bus operations; comments by 3-5-81

7878 1-23-81 / USDA/FNS—Special Supplemental Food Program for Women, Infants, and Children; food delivery systems; comments by 3-24-81

APPLICATIONS DEADLINES

7152 1-22-81 / Commerce/NOAA—Fisheries development, financial assistance; availability and instructions to the public; apply by 3-2-81

5039 1-19-81 / ED—Desegrgation of public education; apply by 3-12-81

7075 1-22-81 / HHS/HSA—General Family Planning Services Delivery Improvement Research; apply by 4-1-81

7457 1-23-81 / HHS/HSA—Project grants for genetic disease testing and counseling services and sickle cell screening and education clinics; apply by 4-10-81

7072 1-22-81 / HHS/HCFA—Heart transplant study possible medicare coverage; solicitation of hospitals and medical centers; apply by 3-30-81

5075 1-19-81 / HHS/HDSO—Child abuse and neglect program; Demonstration and service improvement projects; apply by 4-9-81

5078 1-19-81 / HHS/HDSO—Child abuse and neglect program; Research projects; apply by 3-25-81

5072 1-19-81 / HHS/HDSO—Multidisciplinary Center of gerontology program; Long term care gerontology Centers; apply by 6-30-81 and 12-30-81

6029 1-21-81 / USDA/FNS—Food stamp program; availability of fiscal year funds for demonstration, research and evaluation projects; apply by 3-23-81

5100 1-19-81 / Justice/NIJ—Proposals to study various aspects of the local jail and its use; apply by 4-20-81

MEETINGS

5053 1-19-81 / DOE/SOLAR—Price support loans for municipal waste energy projects, Washington, D.C., 2-3-81

7047 1-22-81 / ED/NIE—Follow through research and development; Denver, Colo, 2-24-81; Chicago, Ill., 2-26-81 (both sessions open)

5069 1-19-81 / HHS/ADAMHA—Alcohol Abuse Prevention Review Committee, Bethesda, Md. (partially open), 2-23 and 2-24-81

5069 1-19-81 / HHS/ADAMHA—Alcohol Biomedical Research Review Committee, Washington, D.C. and Bethesda, Md. (partially open), 2-25 and 2-27-81

5069 1-19-81 / HHS/ADAMHA—Alcohol Human Resource Development Review Committee, Rockville, Md. (partially open), 2-12 and 2-13-81

5069 1-19-81 / HHS/ADAMHA—Basic Behavioral Processes Research Review Committee, Washington, D.C. (partially open), 2-27 and 2-28-81

5069 1-19-81 / HHS/ADAMHA—Basic Psychopharmacology and Neuropsychology Research Review Committee, Bethesda, Md. (partially open), 2-26 and 2-27-81

5072 1-19-81 / HHS/ADAMHA—Basic Sociocultural Research Review Committee, Washington, D.C. (partially open), 2-26 and 2-28-81

5069 1-19-81 / HHS/ADAMHA—Community Alcoholism Services Review Committee, Bethesda, Md. (partially open), 2-18 and 2-23-81

5069 1-19-81 / HHS/ADAMHA—Community Process and Social Policy Review Committee, Washington, D.C. (partially open), 2-12 and 2-14-81

5069 1-19-81 / HHS/ADAMHA—Criminal and Violent Behavior Review Committee, Washington, D.C. (partially open), 2-18 and 2-20-81

5069 1-19-81 / HHS/ADAMHA—Drug Abuse Resource Development Review Committee, Rockville, Md. (partially open), 2-23 and 2-27-81

5069 1-19-81 / HHS/ADAMHA—Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee, Rockville, Md. (partially open), 2-23 and 2-27-81

5069 1-19-81 / HHS/ADAMHA—Drug Abuse Biomedical Research Review Committee, Washington, D.C. (partially open), 2-23 and 2-27-81

5069 1-19-81 / HHS/ADAMHA—Life Course Review Committee, Washington, D.C. (partially open), 2-26 and 2-28-81

5069 1-19-81 / HHS/ADAMHA—Mental Health Services Manpower Development Review Committee, Rockville, Md. (partially open), 2-26 and 2-26-81

5069 1-19-81 / HHS/ADAMHA—Minority Group Mental Health Review Committee, Washington, D.C. (partially open), 2-25 and 2-27-81

5069 1-19-81 / HHS/ADAMHA—Paraprofessional Education Review Committee, Silver Spring and Rockville, Md. (partially open), 2-19 through 2-21-81

5069 1-19-81 / HHS/ADAMHA—Psychiatric Nursing Education Review Committee, Rockville, Md. (partially open), 2-17 through 2-19-81

5069 1-19-81 / HHS/ADAMHA—Psychology Education Review Committee, Silver Springs, Md. (partially open), 2-18 through 2-21-81

5069 1-19-81 / HHS/ADAMHA—Psychopathology and Clinical Biology Research Review Committee, Silver Spring, Md. (partially open), 2-26 and 2-29-81

5069 1-19-81 / HHS/ADAMHA—Social Work Education Review Committee, Washington, D.C. (partially open), 2-17 through 2-20-81

7071 1-22-81 / HHS/CDC—Mine Health Research Advisory Committee, Rockville, Md. (partially open), 2-4 and 2-5-81

6071 1-21-81 / HHS/NIH—Biotechnology Resources Committee, Bethesda, Md. (partially open), 2-10-81

6072 1-21-81 / HHS/NIH—Board of Scientific Counselors, Division of Cancer Treatment, Bethesda, Md. (partially open), 2-12 and 2-13-81

6072 1-21-81 / HHS/NIH—Cancer Clinical Investigation Review Committee, Bethesda, Md. (partially open), 2-23 and 2-24-81

6073 1-21-81 / HEW/NIH—Clinical Cancer Program Project and Cancer Center Support Review Committee [Cancer Center Support Review Subcommittee], Bethesda, Md. (partially open), 3-19 and 3-20-81

6073 1-21-81 / HHS/NIH—General Clinical Research Centers Committee, Bethesda, Md. (partially open), 2-23 and 2-24-81

6073 1-21-81 / HHS/NIH—Minority Access to Research Careers Review Committee, Bethesda, Md. (parially open), 3-5 and 3-6-81

6073 1-21-81 / HHS/NIH—Various Study Sections, Bethesda, Md. (partially open), 2-17 through 3-14-81

7075 1-22-81 / HHS/Sec'y—Grant Appeals Procedures, Washington, D.C. (open), 2-17-81

5107 1-19-81 / NSF—Advisory Council, Task Group No. 14, Washington, D.C. (open), 2-10-81

5106 1-19-81 / NSF—Behavioral and Neural Sciences Advisory Committee, Subcommittee for the Linguistics Program, Washington, D.C. (closed), 2-5 and 2-6-81

5105 1-19-81 / NSF—Behavioral and Neural Sciences Advisory Committee, Subcommittee on Memory and Coritive Processes, Washington, D.C. (closed), 2-9 and 2-10-81

5105 1-19-81 / NSF—Behavioral and Neural Sciences Advisory Committee, Neurobiology Subcommittee, Washington, D.C. (closed), 2-9 through 2-13-81

5106 1-19-81 / NSF—Behavioral and Neural Sciences Advisory Committee, Subcommittee for Sensory Physiology, Washington, D.C. (closed), 2-5 and 2-6-81

5107 1-19-81 / NSF—Behavioral and Neural Sciences Advisory Committee, Subcommittee on Social and Developmental Psychology, Washington, D.C. (closed), 2-12 and 2-13-81

5105 1-19-81 / NSF—Physics Advisory Committee, Washington, D.C. (open), 2-5 through 2-7-81

5107 1-19-81 / NSF—Psychology, Cellular and Molecular Biology Advisory Committee, Subcommittee on Genetic Biology, Washington, D.C. (closed), 2-12 through 2-14-81

5106 1-19-81 / NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Subcommittee on Molecular Biology, Group A, Washington, D.C. (closed), 2-9 and 2-10-81

5105 1-19-81 / NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Subcommittee on Regulatory Biology, Washington, D.C. (closed), 2-4 through 2-6-81

5106 1-19-81 / NSF—Research Advisory Committee, Subcommittee on Facilities, Washington, D.C. (closed), 2-9 and 2-10-81

OTHER ITEMS OF INTEREST

7046 1-22-81 / CSA—National Paralegal Institute; waiver of non-Federal share requirements

5053 1-19-81 / DOE/SOLAR—Price Support loans for municipal waste energy projects

5117 1-19-81 / DOT/FHWA—Formula grant program for areas other than urbanized areas

5438 1-19-81 / DOT/Sec'y—Citizen participation in local transportation planning, adoption of guidelines

5034 1-19-81 / ED—Annual operating plan for Fiscal Year 1981

4912 1-19-81 / ED—Assistance to States for education of handicapped children, and nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; interpretation

5460 1-19-81 / ED—Assistance to States for education of handicapped children; interpretation

5136 1-19-81 / ED—Financial assistance to local and State agencies to meet special educational needs; and financial assistance to local educational agencies for children with special educational needs

5320 1-19-81 / ED—Pell grant program, Family contribution schedules

5372 1-19-81 / ED—Selection criteria for Fiscal Year 1981

5522 1-19-81 / ED—State vocational rehabilitation and independent living rehabilitation programs

7432 1-23-81 / EPA—Change in development of the 1990 construction grants strategy

7458 1-23-81 / HHS—Delegation of authority to Commissioner of Social Security under Home Energy Assistance Act

7084 1-22-81 / Interior/HCRS—Urban Park and Recreation Recovery Program; grant rounds

7109 1-22-81 / Justice/OJJDP—Publication of final continuation funding policy

7509 1-23-81 / Justice/OJJDP—Proposed guidelines on prevention of juvenile delinquency through capacity building, cycle II

7415 1-23-81 / USDA/FNS—Notice of food and administrative funding formulas for the Women, Infants and Children Program

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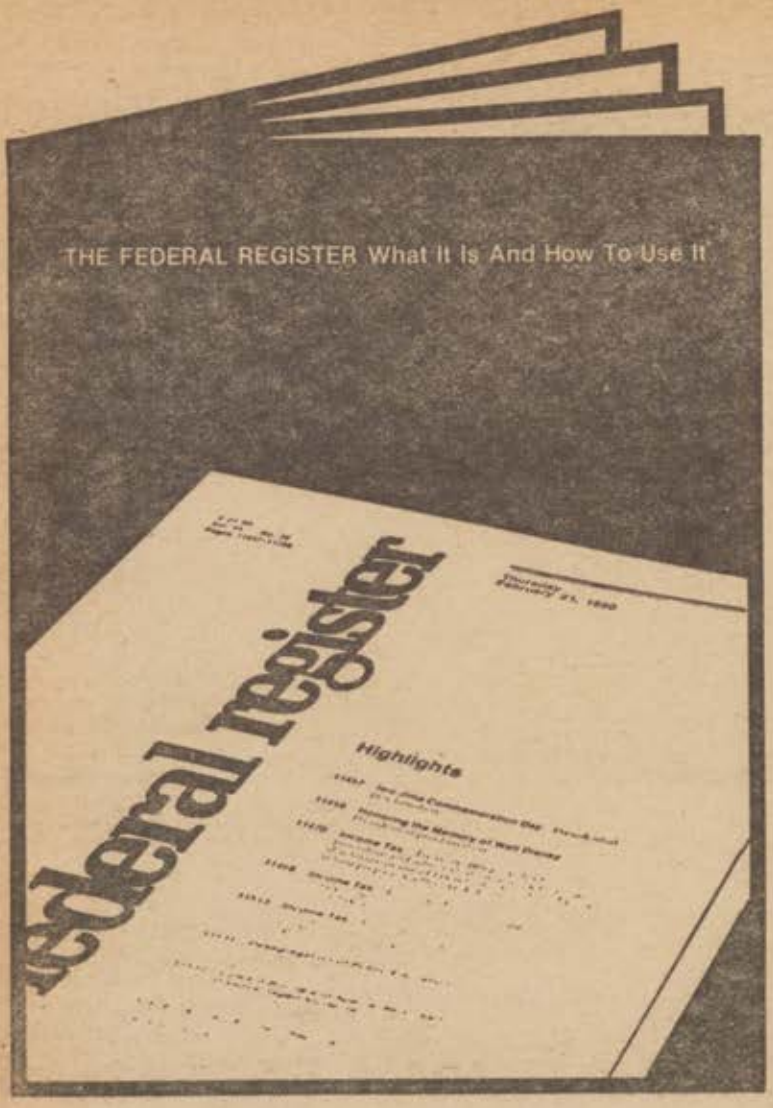
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Electroplating Pretreatment Standards: Denial of Petition for Reconsideration

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January 28, 1981

Part II

Environmental Protection Agency

General Pretreatment Regulations for Existing and New Sources

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 125 and 403

[EN FRL 1696-4]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 26, 1978, the Environmental Protection Agency published a rule [43 FR 27736–27773] which established mechanisms and procedures for enforcing national pretreatment standards controlling the introduction of wastes from non-domestic sources into publicly owned treatment works [POTWs]. Following the promulgation of the general pretreatment regulations, several actions were brought in Federal court challenging various aspects of these regulations. These actions were subsequently consolidated in the District of Columbia Circuit Court of Appeals in the action *Natural Resources Defense Council, Inc. et al.*, v. *EPA*, 78–1803.

On May 31, 1979, EPA entered into an agreement with the Chemical Manufacturers Association, the U.S. Brewers Association and others, which sought to settle most of the issues raised by the industry parties in this litigation. Under the terms of this settlement, EPA agreed to propose changes to the June, 1978 regulations to reflect the agreements reached in the settlement. Accordingly, proposed amendments to the general pretreatment regulations were published on October 29, 1979 at 44 FR 62260. The parties to the settlement agreed not to litigate the issues covered by the agreement if the final amended regulations dealt with settlement issues in a manner which did not differ significantly from the language proposed in October. In addition to changes proposed pursuant to the Settlement Agreement, the proposed regulations included changes initiated by EPA and directed at resolving inconsistent and ambiguous provisions of the June, 1978 regulations.

After considering numerous comments submitted on the proposed changes, EPA has developed the amended general pretreatment regulations which are promulgated in final form today.

DATES: The effective date of this regulation is March 13, 1981.

In accordance with 40 CFR 100.01 (45 FR 26048), these regulations shall be issued for the purposes of judicial review at 1:00 p.m. eastern time on February 10, 1981.

FOR FURTHER INFORMATION CONTACT: Nancy Hutzel, Environmental Protection Agency, Permits Division (EN-336), 401 M St., SW., Washington, DC 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

I. Background
II. Effect of Regulations
  A. General
  B. Effect on Users Subject to Electroplating Pretreatment Standards
III. Scope and Purpose of the National Pretreatment Program
  A. Size of Program
  B. Effects of Industrial Discharges to POTWs on the Public Health and Environment
  C. Data Supporting the Need for Pretreatment Standards to Restrict Pass-Through
  D. Data Supporting the Need for Pretreatment Standards to Restrict Unacceptable Sludge Contamination
IV. Statutory Considerations
V. Major Changes in the Final Amended Pretreatment Regualtions

I. Background

On February 2, 1977, EPA proposed a rule which would establish mechanisms and procedures for enforcing national pretreatment standards controlling the introduction of wastes from non-domestic sources into publicly owned treatment works (POTWs). On June 26, 1978, after more than a year of consideration during which time 4 public hearings and 16 public meetings were held and more than 400 individual comments received, the Agency promulgated the final general pretreatment regulations, 40 CFR Part 403 (43 FR 27736–27773).

Following the promulgation of the general pretreatment regulations, several actions were brought in Federal court challenging various aspects of these regulations. These actions were subsequently consolidated in the District of Columbia Circuit Court of Appeals in the action *Natural Resources Defense Council, Inc. et al.*, v. *EPA*. On May 31, 1979, EPA entered into an agreement with three of the Petitioners, the Chemical Manufacturer's Association (formerly the Manufacturing Chemists Association), the U.S. Brewers Association and the Pacific Legal Foundation, seeking to settle substantially all of the issues raised by the industry parties in this litigation.

On October 29, 1979, EPA proposed amendments to the regulations which reflected the agreements reached with the aforementioned parties (44 FR 62260). Today's regulations reflect a final Agency determination on the proposed changes after consideration of numerous comments received on the amendments. Detailed discussion of the final regulatory provisions and the proposed changes and comments which inspired them is found under section V, "Major Changes."

II. Effect of the Regulations

A. General

The scope of the regulations placed in final form today remains largely unaltered from the original regulations published in 1978. The effect of these regulations is essentially three-fold. First § 403.5 of the regulations sets forth general discharge prohibitions that apply to all non-domestic users of a POTW. The intent of these general limitations is to prevent: (1) interference with the operation of the treatment works, (2) pass-through of pollutants in violation of the POTW's NPDES permit limitations, and (3) municipal sludge contamination.

Second, the regulations, primarily through the operation of §§ 403.8–403.11, establish an administrative mechanism to ensure that these general discharge prohibitions of § 403.5, as well as categorical Pretreatment Standards, are applied and enforced. The regulations envision three levels of administrative control. Most major POTWs will be required to develop a locally-run pretreatment program to ensure that non-domestic users of the municipal system comply with applicable pretreatment requirements. The development of such programs is fundable through construction grants issued pursuant to section 201 of the Act. Where POTWs are not required to develop a local program, NPDES States with approved pretreatment programs and EPA will have first line responsibility for enforcing pretreatment requirements.

Third, these regulations contain provisions relating directly to the determination of and reporting on Pretreatment Standards. Sections 403.6 (request for category determination; adjustment of effluent limitations for combined wastestreams), 403.7 (removal allowances), 403.13 (fundamentally different factors variances) and 403.15 (calculation of effluent limits on a net basis) provide mechanisms for tailoring the effluent limit in a categorical Pretreatment Standard to the unique circumstances of a particular Industrial User. Section 403.12 prescribes reporting requirements for User subject to categorical Pretreatment Standards.

B. Effect on Users Subject to the Electroplating Pretreatment Standards

The promulgation of today's regulations affects the compliance obligations of Industrial Users subject to the Electroplating pretreatment standards.

On September 7, 1979, EPA promulgated final Pretreatment Standards for Existing Sources in the Electroplating Point Source Category (44 FR 52590). These standards were appealed by the National Association of Metal Finishers (NAMF), the Institute for Interconnecting and Packaging Electronic Circuits (IIPEC) and the Ford Motor Company (Ford). The lawsuits are still pending in the Court of Appeals.

NAMF and IIPEC. NAMF and IIPEC negotiated a Settlement Agreement with EPA which required EPA to propose certain amendments to the electroplating standards. The amendments, published July 3, 1980, 45 FR 45322, proposed to change the 30-day average maximum in the final regulation to a 4-day average, and proposed less stringent limitations for cyanide. EPA plans to promulgate final amendments shortly. In addition, in accordance with the Settlement Agreement, EPA expects to extend the compliance date for non-integrated facilities subject to the electroplating standards because of the delay in promulgation of the final amendments.

Ford. Ford and EPA submitted a joint motion to suspend further litigation until the combined wastestream formula, § 403.6(e), was published in final form. On March 25, 1980, at 45 FR 19245, the Agency published a notice which had the effect of removing "integrated facilities" like Ford from regulation by the electroplating standards until the effective date of § 403.6(e). In that notice, the term integrated facility was defined as a facility that performs more than electroplating operations and combines one or more plant electroplating process wastewater lines with non-electroplating process lines prior to or at the point of treatment. The applicability of electroplating standards to integrated facilities was suspended because it was determined that § 403.6(e) would have to be promulgated in final form before integrated facilities would understand their compliance obligations under the electroplating standards. For the same reason, EPA also agreed to extend the compliance date for integrated facilities until three years after the effective date of § 403.6(e).

Applicability of Electroplating Standards to Integrated Facilities. As a result of the March 25, 1980, notice, the electroplating pretreatment regulations promulgated on September 7, 1979, will apply to Industrial Users meeting the above definition of "integrated facility" commencing on the effective date of today's final amended general pretreatment regulations. Such Users will have three years from the effective date of today's regulations to comply with the effluent limits prescribed in the electroplating standard.

The variance and reporting requirements set forth in the general pretreatment regulations and triggered by the effective date of a categorical Pretreatment Standard, shall, in the case of these integrated facilities, be triggered by the effective date of today's regulations. Thus, integrated facilities must submit the § 403.12(b) baseline report, which is due within 180 days after the effective date of an applicable categorical Pretreatment Standard, within 180 days after the effective date of today's general pretreatment regulations. Similarly, the deadlines for requesting a categorical determination (§ 403.6) or a fundamentally different factors (FDF) variance (§ 403.13) shall also be determined by reference to the effective date of today's regulations.

It should be noted that these requirements are triggered despite the fact that final amendments to the electroplating standards are expected shortly. The electroplating standards published on September 7, 1979, were never the subject of a general stay. The amendments will not materially affect the baseline monitoring requirements of § 403.12, categorical determinations under § 403.6, or FDF variance requests under § 403.13. Because the final electroplating amendments should be promulgated shortly, we do not believe that integrated facilities will be disadvantaged by the deadlines triggered through today's regulation.

Applicability of Electroplating Standards to Non-Integrated Facilities. On June 19, 1980, at 45 FR 41419, the Agency published a notice suspending the deadline for requesting an FDF variance by electroplaters until the promulgation of the final amended general pretreatment regulations. Upon the effective date of today's regulations, the provisions of § 403.13 are once more applicable to Industrial Users in the electroplating category. These Users will be allowed 180 days from the effective date of today's regulation (or, alternatively, 30 days from the Agency's decision on a § 403.6 categorical determination) to request an FDF variance under the provisions of § 403.13.

As discussed above, the amendments to the electroplating standards will not materially affect FDF variance requests under § 403.13. Non-integrated facilities are already subject to the remaining requirements imposed by 40 CFR 403 including deadlines for baseline monitoring reports and categorical determinations.

III. Scope and Purpose of the National Pretreatment Program

The scope and complexity of the national pretreatment program and the significance of its potential impact on protection of health and the environment make it desirable to provide the public with a detailed statement of EPA pretreatment policy. The National Pretreatment Strategy which was published in Appendix A of the June 1978 regulations is presently being updated. Today's preamble will highlight some of the major objectives and considerations relied on in establishing the program.

A. Size of Program

While all non-domestic users of POTWs are covered by the general prohibitions contained in § 403.5 of this regulation, there are at least 60,000 existing industrial dischargers to POTWs in the 34 categories (see Appendix B, Coverage of Categorical Pretreatment Standards) which will be considered in the initial focus of categorical Pretreatment Standards. Categorical Pretreatment Standards promulgated under section 307 of the Act are based on the best available technology economically achievable (BAT). See section 301(b)(2)(A)(ii). BAT standards are discussed in detail in the preamble section on Pass Through, § 403.3(n). In the future, additional industrial categories may be added to the list of 34 industries. Industrial dischargers who dispose of their wastes through POTWs may also be subject to State or local pretreatment requirements developed to supplement the national program.

Most of the Industrial Users potentially subject to categorical Pretreatment Standards discharge to approximately 2,500 of the Nation's 14,000-plus permitted POTWs. While the majority of these POTWs provide primary treatment, less than half have constructed secondary treatment facilities. Current estimates indicate that about 2,000 of these POTWs will be required to develop local pretreatment programs under the provisions of these general regulations. These programs will vary in size and complexity depending upon the number of Industrial Users in the POTW system.

B. Effects of Industrial Discharges to POTWs on the Public Health and Environment

Industrial discharges to POTWs are known to be the source of significant problems. A number of the pollutants discharged by Industrial Users of POTWs are substances for which there is evidence of carcinogenicity, mutagenicity, and/or teratogenicity. Others are known to have acute toxic effects on human or aquatic organisms at sufficiently high concentrations. Many of the toxic pollutants are persistent in the environment and some bioaccumulate and enter food chains.

When industrial pollutants enter POTWs they can create three types of problems:

1. *Interference.* The most immediate impact of these pollutants can be on the operation of the POTW. Discharges of high volumes or concentrations of certain pollutants can inhibit or interfere with the proper operation of a POTW, thus causing it to do an inadequate job of treating normal domestic wastes as well as industrial wastes. As a result, the POTW can be prevented from meeting its permit requirements.

To a large extent, the identification and regulation of interference problems is a local responsibility. Pollutants which interfere with the operation of one POTW may not adversely affect the operation of another. These differences are attributable to several factors including the varying sensitivities of different POTWs and the constituent composition of the wastewater treated by the POTW.

Because the presence of an interference problem is so dependent on local conditions, regulation of interference is largely relegated to the prohibited discharge provisions of § 403.5 of these regulations rather than the categorical pretreatment standards. Under the provisions of § 403.5, a POTW must develop specific limits for Industrial Users to guard against intrference with the operation of the municipal treatment works.

2. *Sludge Management.* some toxic pollutants, removed from the effluent stream by treatment at the POTW, enter the POTW's sludge and can contribute significantly to sludge managment problems. Industrial pollutants, particularly metals, can limit the sludge management alternatives available to the POTW and increase the cost to the public of providing adequate sludge managment. Sludge contaminated with toxic materials can be rendered unusable as a soil conditioner. Many communities are already faced with serious problems in managing ever-increasing quantities of sludge. In some cases, improper handling of sludges contaminated with metals and other toxic pollutants can result in uptake of these pollutants by crops in the human food chain or leaching of these pollutants into ground water (currently the source of approximately 50 percent of the Nation's drinking water) as well as surface waters. As the following discussion indicates, the magnitude of the sludge contamination problem posed by certain pollutants is often significant enough to warrant regulation of these pollutants through categorical pretreatment standards.

3. *Pass-through.* Even when the inhibition/interference and sludge management problems mentioned above have been dealt with, there still are many toxic industrial pollutants that do not receive adequate treatment in most POTWs. These toxic pollutants pass through POTWs with removals that would be unacceptable if the POTW were an industrial direct discharger. Toxic industrial pollutants which pass through the POTW can prevent reuse of municipal wastewaters and the productive recycling of organic matter and nutrients in land treatment systems. The pass-through of toxic industrial pollutants can also prevent the attainment of water quality standards and increase the cost to consumers of treating drinking water. Like pollutants which interfere with sludge use or disposal, pollutants which generally pass-through the POTW in unacceptable concentrations or amounts may be subject to regulation through categorical Pretreatment Standards.

Pollutants which cause or have the potential to cause any of the above problems when discharged to a POTW are said to be "incompatible" within the meaning of that term as used in section 307(b) of the Act. Recent data indicate that categorical Preatreament Standards are necessary to control these pollutants.

C. Data Supporting the Need for Pretreatment Standards To Restrict Pass-Through

Recent data gathered by EPA validate the approach taken by Congress in protecting against the discharge of toxic pollutants to navigable waters by establishing Pretreatment Standards. The data indicate that industries are the major source of toxic pollutants in POTW's and that industrial pretreatment provides much superior removal of pollutants than does treatment at the POTW.

1. *Major Contributors of Toxic Pollutants to POTWs.*

A typical POTW receives 60% of its influent from residential flow, 20% from commercial and 20% from industrial. Information obtained from a recent EPA study has been used to determine the relative contribution of toxics from these three sources. (See Table 1). Despsite the small percentage of flow from industrial sources, industry contributed 67% of the total toxic metals entering the POTW. Moreover, for some individual toxic metals the percentage was even higher (e.g., industry contributed 85% of the cadmium, 83% of the chromium, and 89% of the cyanide entering the POTW).

Table 1.—*Contribution to a Typical POTW*

	60 pct. res.	20 pct. com.	20 pct. ind.
Metals and cyanide:			
Cadmium	12	3	85
Chromium	10	7	83
Copper	73	8	19
Lead	45	7	48
Nickel	14	9	77
Silver	10	2	88
Zinc	48	7	45
Cyanide	10	1	89
Ave. (pct.)	28	5	67
Organics:			
Benzene	19	55	26
1,1,1,- Trichlorethane	7	3	93
Chloroform	45	20	35
Ethyl Benzene	2	3	95
Tetrachloroethylene	27	17	56
Toluene	19	14	67
Trichloroethylene	9	31	60
Bis (2-Ethylhexyl) Phthalate	45	8	47
Di-N-Butyl Phthalate	47	8	45
Diethyl Phthalate	94	6	0
Phenol	26	3	72
Ave. (pct.)	29	17	54

Source: Vol 6, Enviromental Protection Agency, Sources of Toxic Pollutants Found in Influents to Sewage Treatment Plants, p. 75. EPA Contract Number 68-01-3857.

Not only does the POTW receive a large percentage of its pollutants from industry, but the POTW is not as efficient at removing these pollutants as the Industrial User would be if it installed pretreatment technology. There are two principal reasons for this result. First, the POTW is not designed to remove toxic pollutants. Second, even where pollutants are removed by the POTW's technology, the dilution that occurs at the POTW causes less efficient removal of toxic pollutants than would be achieved by the Industrial User with its more concentrated wastestream.

2. *Design of POTWs.*

POTWs are designed to meet the mandate of section 301(b)(1)(B) of the Act which requires all POTWs to meet effluent limitations based on secondary treatment by July 1, 1977. Pursuant to section 304(d)(1), the Agency has defined secondary treatment as that treatment necessary to arrive at specified effluent levels for biochemical oxygen demand (BOD), suspended solids (SS), and pH (40 CFR Part 133). As a result, POTWs have been designed to

remove these conventional pollutants and not toxic pollutants. In contrast, pretreatment systems operated by Industrial Users are designed to remove the toxic pollutants in that industry. For example, an electroplater discharging to a POTW would be likely to install a physical-chemical treatment system to remove toxic metals common in electroplating wastestreams. The POTW's system, designed to remove BOD and SS, would not remove toxic metals as efficiently as the Industrial Users' system. While the effect of toxic pollutants on a POTW is sometimes considered in the design of the facility to ensure adequate protection of a biological system and consequent ability to meet conventional pollutant limitations, the systems are not designed to enhance removal of toxic pollutants.

Whatever removal is obtained by POTWs for toxic pollutants is incidental to the POTW's main function of treating conventional pollutants. For example, the reduction of suspended solids in both the primary and secondary sedimentation tanks would produce a reduction in the more insoluble heavy metals as the metals would attach to the settled solids. It should be noted, however, that since heavy metals are not biodegraded, a decrease in heavy metals in the liquid phase produces an increase in heavy metals in the waste sludge. Partially because removal of toxic pollutants by the POTW is incidental to its normal operations, it is also variable. For example, some toxics are more soluble than others and, therefore, will not be absorbed by the solids. Removal of toxic pollutants by the POTW will therefore be more variable than removal by treatment technologies designed to remove such toxics.

3. *Removal Efficiency of POTWs.*

Even though a POTW may realize some incidental removal of toxic pollutants, the POTW will not remove these pollutants as efficiently as an industrial discharger would. Removal efficiency is largely dependent upon the concentration of pollutants in the wastestream to be treated. The higher the concentration of pollutants, the greater the removal efficiency of the treatment system. Because of the great dilution of toxic pollutants by large volumes of domestic sewage in the influent to a POTW, the POTW will be less effective at treating these toxics than the industry would have been had it treated the toxics while in concentrated form before introducing the industrial wastestream into the POTW. Thus, since the POTW's treatment of influent toxics is less efficient, the total mass of industrial pollutants removed at the POTW is less than the mass removal which would have been achieved had the industries pretreated their wastes.

In light of the foregoing discussion, it is not surprising that data from a recent study show that the removel efficiency of a POTW with secondary treatment installed is considerably less than the removal efficiency of a direct discharger applying appropriate treatment. (See Table 2.) The removal efficiency of POTWs operating at primary treatment was found to be significantly lower than that attained by a secondary treatment plant. In 1978, the Agency initiated a study to determine the removal of toxic pollutants in 40 POTWs that were meeting secondary treatment effluent limitations as required by section 304(d)(1) and regulations promulgated pursuant thereto at 40 CFR Part 133. The removals of 20 of the 40 cities are compared to removals obtained by BAT direct dischargers in the following table.

Table 2.—*Toxic Pollutant Removal (Percent)*

	Cr	Cu	Ni	Zn	Pb	Cd	Phenols
POTW	73	77	39	76	73	46	68
BAT directs:							
Metal finishing	99	97	96	98	95	93	
Iron and steel	82	93	98	80	79		
Inorganic chemicals	87	79	89	87	94	90	
Leather	98						
Coil coating	99	99	96	99	98	98	
Photographic	99	99	99	99	97	93	
Petroleum							99

Sources: Rulemaking data in the listed effluent limitation categories; Fate of Priority Pollutants in Publicly Owned Treatment Works, Interim Report, EPA 440/1-80/301, October 1980.

The table shows that while POTWs with secondary treatment remove some heavy metals and phenols, direct dischargers with BAT treatment systems are more efficient. As indicated in the prior discussion, this is largely due to the much higher concentration of pollutants at the industry than at the POTW. Because the industrial User's waste stream is diluted by many other streams before reaching the POTW, the POTW is unable to remove pollutants as efficiently as the User. Indeed, in those cities with extremely heavy industrial contributions, the removal efficiency improves as the concentration of pollutants in the POTW system increases. It should be noted, however, that the increased removal in these heavily industrialized cities does not result in a reduction in the mass of pollutants discharged to receiving waters. Because more toxic pollutants are in the system to begin with (as reflected in the increased concentrations) more of these pollutants continue to be discharged by heavily industrialized cities than would be discharged by less industrialized cities with lower levels of removal.

In summary, the data in Table 2 show that the POTW's removal of key toxic pollutants is less than an Industrial User would be able to achieve applying best available technology.

4. *Conclusion.*

This additional data on the removal efficiency of POTWs compared to the removal efficiency of direct dischargers at BAT supports EPA's view that toxic pollutants from Industrial Users are passing through POTWs into the navigable waters and, therefore, are appropriate candidates for control under pretreatment regulations.

The preamble discussion of § 403.3(n) describes EPA's basis for finding that pollutants are passing through POTWs inadequately treated. To restate that view, according to the language of § 307(b)(1), pollutants from a particular industrial category are deemed to be passing through the POTW in unacceptable amounts where the POTW effluent violates the limit for that pollutant which a direct discharger in that industrial category would be required to meet. However, rather than compare the mass or the concentration of pollutants discharged by the POTW with the mass or concentration of a BAT direct discharger, EPA has concluded that comparison of the percent of the pollutant removed by the POTW with the percent removed by a BAT direct discharger provides a real-world means of comparison of treatment capabilities. A comparison of mass discharged would be unacceptable because pollutants enter a POTW from non-industrial as well as industrial sources. A comparison of concentrations would also be unacceptable because the industrial streams discharged into the POTW are

diluted by other incoming streams. Accordingly, the Agency has sought to achieve the underlying intent of section 307(b) by focusing on a comparison of the removals provided by direct dischargers and POTWs.

As discussed previously, Table 2 *supra*, compares the removal achieved by POTWs with the removal achieved by direct dischargers for various toxic metals and phenols. The data demonstrate that POTWs are not as efficient at removing these toxic pollutants as direct dischargers applying BAT. Accordingly, the pollutants are passing through the POTW with treatment at levels less than BAT removal, and therefore pretreatment standards are necessary.

D. Data Supporting the Need for Pretreatment Standards to Restrict Unacceptable Sludge Contamination

In addition to requiring EPA to regulate pollutants that pass through the POTW, the Clean Water Act also requires EPA to control pollutants that interfere with the operation of the POTW. As indicated earlier, § 403.5 of the general pretreatment regulations covers the grossest forms of "interference" with the POTW, such as dumping flammables into the works, dumping acids or other solutions that will corrode the works, and so on. another form of interference occurs when the POTWs sludge disposal alternatives are limited as the result of contamination of the sludge with toxic pollutants from industrial dischargers. Section 307(b) of the Act requires Pretreatment Standards for pollutants introduced into POTWs, as defined in section 212 of the Act, which would interfere with the operation of such works. Section 212(2) defines treatment works to include land used for the ultimate disposal of residues, such as sludge, resulting from treatment. Thus, contamination of the residues or sludge that would interfere with its disposal constitutes interference with the POTW.

In addition, the 1977 amendments to the Act link removal allowances for Industrial Users to sludge use and disposal. If the POTW is removing the pollutant, the POTW may give credit for that removal to the Industrial User by modifying the User's Pretreatment Standard, but only if the discharge from the User does not prevent the POTW's sludge use or disposal from being in accordance with section 405 of the Act. By so providing, Congress indicated its intention that EPA prevent interference with POTW's sludge disposal alternatives by establishing Pretreatment Standards that would prevent toxic pollutants from entering the sludge in amounts that would interfere with the POTWs selected method of sludge use or disposal. Indeed, the Conference Report on the 1977 amendments states that "[i]n addition to the express criteria of section 307(b), the Administrator in establishing pretreatment standards shall consider the guidelines for sludge disposal or use established under section 405." (Conf. Report 95–830 at 88; *Reprinted in* Comm. on Environmental and Public Works, 95th Cong. 2d Sess., A Legislative History of the Clean Water Act of 1977 (hereafter referred to as "Legis. Hist."), vol. 3. at 272.)

As Congress recognized when it linked sludge disposal alternatives to Pretreatment Standards, there are sound scientific reasons for cleaning up the sludge. Toxic heavy metals and some toxic organic chemicals are commonly found in the sludge of POTWs that serve industry. (See Fate of Priority Pollutants in Publicly Owned Treatment Works, *supra*.) Some of these sludges are subject to regulatory requirements under section 405 of the Clean Water Act, the Resource Conservation and Recovery Act, and other statutes and regulations.

Heavy metals are commonly regulated in sludge disposal provisions due to the toxic effects of these pollutants on plant, animal life, and human health. For example, exposure to cadmium can result in kidney damage and chronic respiratory problems. Moreover, cadmium is readily taken up by many crops which are subsequently eaten by humans. Exposure to lead, especially in children, can damage the heme synthesis system, the nervous system, and the renal system. Anemia occurs in children at blood levels of 40 μg/100 ml of whole blood. Exposure to mercury can cause lesions on the mucuous membranes of the respiratory tract which lead to bronchitis. Ingestion of mercury over long periods of time can cause brain damage and loss of hearing and vision. Mercury is also readily absorbed by food crops. Exposure to arsenic can cause fatigue in mild cases, and damage to internal organs such as the kidneys, liver, and intestines in severe cases. It is also highly toxic to plants. Inhaled hexavalent chromium can cause lung tumors. Copper, nickel, and zinc can be toxic to plants, particularly on acid soils. In short, these metals are of national (as well as international) concern.

1. *"Removal" of Toxic Metals to the Sludge.*

As the discussion in part "C" indicated, POTWs may realize incidental removal of toxic pollutants. In the case of heavy metals, this "removal" simply means shifting the toxics from the POTWs liquid wastestream to the POTWs solid waste (sludge).

In a recent study, sludges at POTWs treating at secondary levels were tested for metal content (See Table 3.).

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Table 3

Concentration of Selected Metals in Secondary POTW Sludge
(mg/kg)

	Range	Average	Median
Cadmium	1 - 1622	157	14
Chromium	125 - 1762	730	422
Copper	150 - 3160	894	553
Nickel	13 - 803	240	121
Zinc	420 - 8468	2874	2167
Lead	40 - 1169	361	256

Metal mg/kg

	CITY															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Metal																
Cadmium	31	12	1	14	17	1,622	12	6	15	48	14	665	6	8	9	39
Chromium	927	317	125	563	422	1,499	1,762	1,199	254	415	841	1,956	360	865	178	302
Copper	1,256	418	540	334	150	934	1,111	1,427	436	833	1,346	3,160	553	848	531	426
Nickel	165	121	13	67	67	355	663	710	123	137	110	252	90	803	65	103
Zinc	2,480	1,045	420	3,740	1,313	7,413	3,111	8,468	677	2,491	1,148	5,044	1,735	3,936	2,167	801
Lead	571	289	40	1,074	498	196	1,070	1,169	244	398	236	36	413	190	256	103

Source: Fate of Priority Pollutants in Public Owned Treatment Works, Interim Report, EPA 440/1-80/301 October 1980 at 29. (Derived by dividing by total solids.)

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Another study showed the following concentrations of toxic metals in POTW sludges where not all the POTWs tested had secondary treatment.

Table 4.—*Concentration of Selected Metals in POTW Sludge*

Metal	Mg/kg-dry basis	
	Range	Median
As	6-230	*10
Cd	0-1,320	13
Cr	10-99,000	*890
Cu	1-23,124	646
Hg	0.5-10,600	*5
Ni	0-9,450	53
Pb	0-10,800	360
Zn	0-49,000	1,350

*Sommers, Chemical Composition of Sewage Sludges and Analysis of Their Potential Use as Fertilizers, 6 J. Environ. Qual. 225 (1977).

Source: Office of Solid Waste, EPA, Draft Preliminary Impact Assessment on Sludge Distribution and Marketing Regulations, 1980.

Improper disposal or utilization of sewage sludge containing excessive levels of these toxic pollutants could lead to serious adverse environmental and human health effects. Land application of contaminated sludges could result in the introduction of toxic metals into the food chain through uptake by plants or contamination of water supplies through runoff to surface waters or percolation into groundwaters. In addition, ready public access to disposal sites could significantly increase the possibility of direct exposure of the general population, particularly children, to these toxic pollutants. Incineration of contaminated POTW sludges could lead to the further introduction of these toxic elements into the air. It is, therefore, desirable to isolate these toxic pollutants in small, but concentrated, industrial sludges, rather than sending them on to the larger POTW sludge. This approach facilitiates proper handling and disposal of highly toxic sludges.

Comparisons of municipal sludges before and after pretreatment programs indicate that pretreatment programs have been effective in reducing metals concentrations in POTW sludges. For example, in Muncie, Indiana, the sludge concentration (mg/kg-dry basis) of chromium went from 2,000 before pretreatment to 9.5 after pretreatment. Copper went from 1,750 to 700; nickel from 8,500 to 150, and zinc from 5,800 to 2,700. Large reductions were also achieved in Buffalo, New York, and Grand Rapids, Michigan. (Source: Effluent Guidelines and Standards; Electroplating Point Source Category; Pretreatment Standards for Existing Sources, 44 FR 52598 (September 7, 1979).)

2. *Section 405 Regulations.*

As stated previously, in establishing pretreatment standards, the Administrator must consider guidelines for sludge disposal or use established under section 405 of the Act (See section 307(b) of the Act; Conf. Report 95-830 at 88; Legis. Hist. Vol. 2 at 272.). EPA has promulgated regulations entitled Criteria for Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257) which provide limits on cadmium and polychlorinated biphenyls (PCBs) in solid waste applied to land used for production of food-chain crops. The annual application of cadmium from solid waste is limited to 0.5 kg/hectare (ha) for land used for the production of certain crops shown to be cadmium accumulators. An initial limit of 2.0 kg/ha with a gradual phasing to 0.5 kg/ha of cadmium is specified for other food-chain crops. Furthermore, cumulative cadmium application ceilings are provided on the basis of soil pH and cation exchange capacity (CEC).

The restrictions imposed on PCBs provide that solid waste containing concentrations of PCBs equal to or greater than 10 mg/kg must be "incorporated into the soil," i.e., injected beneath the surface of the soil or mixed with the surface soil, when applied to land used for producing animal feed. Incorporation into the soil is not required if it is assured that the PCB content is less than 0.2 mg/kg in animal feed or less than 1.5 mg/kg in milk.

Regulations addressing the distribution and marketing of sewage sludge products under § 405 are presently in the proposal stage and scheduled for formal proposal in the **Federal Register** early in 1981. These regulations are expected to provide additional limitations on cadmium and PCBs, and restrictions on other metals, including boron, lead, copper, nickel and zinc in sludge products.

3. *Other Federal Regulations*

Other Federal reguations and guidelines, which are not promulgated pursuant to section 405, bear mentioning here. Although these regulations are not relied upon in setting categorical Pretreatment Standards, they nevertheless are indicative of the national concern regarding sludge handling and disposal. To the extent that individual POTWs must consider these regulations in making their sludge disposal choices, the regulations take on even more significance. The National Interim Primary Drinking Water Regulations (40 CFR 141) establish maximum contaminant levels for many substances in drinking water, including arsenic, cadmium, chromium, lead, and mercury, on the basis of their human health implications. These standards were also adopted for the protection of groundwater from contamination by solid waste disposal (40 CFR 257). The National Secondary Drinking Water Regulations (40 CFR 143) provide guidelines for contaminants that may adversely affect the aesthetic quality of drinking water such as taste, odor, color and appearance. In addition to setting recommended levels for other water quality parameters, these guidelines limit copper and zinc to 1.0 mg/l and 5.0 mg/l, respectively. The Ocean Dumping regulations (40 CFR 220-229) restrict the introduction of toxic pollutants into the marine environment. These regulations specifically prohibit the ocean dumping of any material containing either mercury or cadmium as other than trace contaminants.

EPA has recently published water quality criteria for 64 of the 65 pollutants designated as toxic under the Clean Water Act, including arsenic, cadmium, copper, mercury, nickel, lead and zinc. (45 FR 79318, November 28, 1980.) These criteria specify ambient concentrations of pollutants which are generally adequate to ensure the protection of human health and the protection and propagation of fish and other aquatic life.

In order to prevent significant adverse effects on plants and soils, the National Academy of Sciences and the National Academy of Engineering recommended maximum concentrations of trace elements in irrigation waters in the NAS/NAE *1972 Water Quality Criteria.*

Concern over the potential exposure to mercury and lead through inhalation has led to control of airborn mercury and lead by two additional national standards. The National Ambient Air Quality Standards for Hazardous Air Pollutants (40 CFR 61.50) restrict the emission of mercury to the atmosphere from sludge incineration plants, sludge drying plants, or a combination of these that process sewage sludges, to 3200 grams over a 24 hour period. They also restrict the emission of lead to 1.5 μg/cubic meter as a monthly average.

The Food and Drug Administration (FDA) stated that any new practices which would significantly increase the cadmium levels in foods should not be instituted. In order to protect the public health, FDA has recommended that sludges containing more than 25 mg/kg cadmium, 1000 mg/kg lead, or 10 mg/kg PCB's, on a dry basis, should not be applied to lands used to grow food-chain crops. FDA also proposed that the total amount of lead in sewage sludge added per hectare (ha) should not exceed 500 kg for soils with a cation exchange capacity (CEC) of less than 5.

1000 kg for a CEC between 5–15 and 2000 kg for a CEC over 120.

The U.S. Department of Agriculture (USDA) has issued guidelines for the land application of sludge. Five metals were addressed: cadmium, lead, copper, nickel and zinc. Based on an evaluation of the effects of municipal sludge application on plant life, soil productivity and human health, USDA recommended that on privately owned and controlled land, the maximum lifetime amount of sludge-borne metals which may be applied to any given site should not exceed certain limits, including 5 to 20 kg/ha for cadmium, and 125 to 500 kg/ha for copper. In the absence of regulatory requirements, the foregoing USDA guidelines have been adopted by EPA and are presented in its technical bulletin, *Municipal Sludge Management: Environmental Factors.*

4. *State Regulations.*

Most States have either enacted legislation or promulgated guidelines governing the application of sewage sludge to food-chain lands. One of the primary considerations in drafting State guidelines has been the potential for heavy metals, particularly cadmium and lead, and PCBs to enter the human food chain in dangerous concentrations. Some States have, accordingly, adopted guidelines and standards similar to those promulgated in 40 CFR Part 257. Again, to the extent that POTWs must comply with these requirements, they have significance beyond the demonstration of concern over toxic pollutants in municipal sludge. *See Sludge Management: A Comparision Between State and Proposed Federal Guidelines,* Contract No. 68075–068–003, EPA, October 16, 1979.

5. *Regulation of Sludge by Other Countries.*

There is international concern over control of these toxic metals in the environment. For example, the following organizations and countries have established guidelines and standards on the toxic metal content of sludges or on the use of contaminated sludges: World Health Organization/Food and Agriculture Organization of the United Nations, Canada, Great Britain, Federal Republic of Germany, Holland, Denmark, Finland, Norway and Sweden. France and Scotland are in the process of studying the problem. While these international regulations do not form the basis of EPA pretreatment Standards or section 405 regulations, they are indicative of the growing concern over contaminated sludges and may predict the future regulatory activity of the federal government and States in this area.

Based on the foregoing discussion, EPA concludes that the categorical Pretreatment Standard approach to the elimination of discharges of toxic pollutants is supported by evidence of toxic pollutants passing through POTWs and interfering with POTWs by contaminating municipal sludge.

IV. Statutory Considerations

The EPA pretreatment policy and the general pretreatment regulation are based upon the 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.

The Clean Water Act was meant to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by establishing as a national goal the elimination of the discharge of pollutants into the navigable waters by 1985. A major emphasis for attainment of this goal was placed upon technology-based regulations. Industries which discharge into waters of the U.S. are required to achieve limitations based on Best Practicable Control Technology Currently Available (BPT) by July 1, 1977, and Best Available Technology Economically Achievable (BAT) by July 1, 1984, in accordance with sections 301 and 304. New sources are required to comply with New Source Performance Standards (NSPS) based on Best Available Demonstrated Control Technology (BDT) under section 306. POTW's are obliged to meet "secondary treatment" by 1977, and Best Practicable Waste Treatment Technology (BPWTT) by 1983, in accordance with sections 301(b), 304(d), and 201(g)(2)(A). Users of a POTW are required to comply with Pretreatment Standards and any other requirements promulgated pursuant to section 307 (see section 301(b)(2)(A)(ii)).

Sections 307(b)–(d) are the key sections of the 1972 Act in terms of pretreatment. Section 307(b) requires the EPA Administrator to promulgate regulations establishing Pretreatment Standards for the introduction of pollutants by existing sources into POTWs. Pretreatment Standards promulgated under section 307(b) must be established to prevent the discharge of any pollutant which interferes with the POTW (or contaminates its sludge), passes through, or otherwise is "incompatible" with the POTW.

Section 307(c) requires that the Administrator promulgate Pretreatment Standards for a source which would be a new source subject to section 306 if it were to discharge pollutants to waters of the U.S. These regulations must be promulgated simultaneously with the promulgation of standards of performance under section 306. New source Pretreatment Standards must be designed to prevent the discharge of any pollutant into the POTW which may interfere with, pass through, or otherwise be incompatible with the operation of the works, including sludge use or disposal.

Under section 307(d), it is unlawful to operate a new or existing source in violation of a Pretreatment Standard promulgated under sections 307(b) and (c). Violations of section 307(d) are subject to enforcement actions brought by the EPA (under section 309) against both the POTW and the Industrial User who is in violation.

The Clean Water Act amendments of 1977 reflect a Congressional consensus that the approach discussed above is sound and, with modifications to ensure a special emphasis on control of toxic pollutants, should be continued. The Clean Water Act has added several new provisions relevant to pretreatment. Section 307(b)(1) was amended to allow for local modification of national categorical Pretreatment Standards to take into account the actual pollutant removal capabilities of particular POTWs. Section 402(b)(8) was amended to provide that any NPDES permit issued to a POTW should include, as permit conditions, requirements for identifying pollutants from significant Industrial Users and for instituting an adequate local program to ensure compliance by users with national Pretreatment Standards. Finally, section 405 was amended to expand the guideline provisions relating to the disposal and utilization of sludge and to provide that any permit for the discharge of sewage sludge shall be subject to the requirements of section 402 of the Clean Water Act.

V. Major Changes in the Final Amended General Pretreatment Regulations (By Section)

Note on Deletion of "Comments"

The proposed amendments published in October 1979 contained several "comments" intended to clarify certain provisions of the regulation. A "comment" does not have binding regulatory effect. Rather, it is equivalent to a preamble discussion and like a preamble, its purpose is to give the public and regulated parties more information on the regulatory provisions.

It is the policy of the Office of the Federal Register not to include "comments" within the regulatory text. Accordingly, the Agency has deleted from the regulation most of the

"comments" found in the October proposal. These comments are reproduced below with reference to the section of the final regulation in which they would have appeared.

§ *403.5(c)(2)*

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When the POTW's acceptance of compatible wastes results in difficulties in meeting NPDES permit conditions, the POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

§ *403.5(e)*

[Comment: The POTW's enforcement action will generally be deemed appropriate if: 1) the action is promptly commenced and seriously and vigorously pursued; 2) the violaters are placed on a legally enforceable, written schedule which achieves permanent pretreatment compliance as expeditiously as possible; 3) the POTW and the violators take all practicable temporary measures to eliminate or substantially abate the pretreatment problem until permanent compliance is achieved; and 4) the violators are penalized sufficiently to remove any economic benefit derived from the violations and to deter further violations. While this standard does not require the POTW to file a lawsuit against the Industrial User, the standard does establish that the mere initiation of negotiations with the User or the issuance of warning letters which do not result in immediate steps towards expeditious and permanent compliance are insufficient.]

§ *403.7(b)(4)*

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When the POTW's acceptance of compatible wastes results in difficulties in meeting NPDES permit conditions, the POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

§ *403.7(c)(3)*

[Comment: The Approval Authority is encouraged to review applications promptly upon receipt where failure to do so might result in substantial economic hardship to affected Industrial User(s) if such User(s) were required subsequently to install significantly different or more expensive pretreatment equipment in the event the POTW's revision of categorical Pretreatment Standards is denied or reduced. Prompt review will enable Industrial Users to make plans with greater confidence and will protect the environment from pollution which might result from inappropriate conditionally or provisionally revised discharge limits.]

§ *403.7(f)(5)(ii)*

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When the POTW's acceptance of compatible wastes results in difficulties in meeting NPDES permit conditions, the POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

§ *403.8(f)(1)(i)*

[Comment: This provision is not intended to require pretreatment for compatible waste as a substitute for adequate municipal treatment. When the POTW's acceptance of compatible wastes results in difficulties in meeting NPDES permit conditions, the POTW should consider a solution that is cost-effective and equitable, and consistent with the goal of joint treatment.]

§ *403.9(c)(1)*

[Comment: For example, where a compliance monitoring program for a certain industrial category is not yet required because the Pretreatment Standard for that industrial category has not been promulgated and no other pretreatment requirements apply to that source.]

§ *403.10(d)(1)*

[Comment: This clause allows the State six months from the date on which it is required to have an approvable State Pretreatment Program (see paragraph (b) of this section) in which to modify or reissue municipal permits to include pretreatment requirements.]

§ *403.10(f)(1)(iv)*

[Comment: However, in most cases the Director's authority to seek judicial relief will be exercised where there is no POTW Pretreatment Program or where the POTW has failed to act.]

§ *403.11(b)(3)*

[Comment: The Approval Authority may decide after the comment period provided in this public notice to review the Submission at once.]

§ *403.12(a)*

[Comment: In cases where there is an unapproved POTW pretreatment program, the Approval Authority may request that Industrial Users submit to the POTW copies of reports required under § 403.12.]

§ *403.12(e)(1)*

[Comment: Authority to require more detailed reporting of flows should in most cases, be preserved for those instances where the Industrial User is a major source of flow to the POTW or is a significant contributor of pollutants.]

§ *403.13(d)(1)*

[Comment: Wastestream(s) associated with a User's process wastewater which were not considered in the development of the Standard will not ordinarily be treated as fundamentally different under paragraph (c). Where an Industrial User elects to combine, prior to treatment, a regulated wastestream with a wastestream not considered in setting categorical Pretreatment Standards, § 403.6(e) provides the proper procedures for determining an adjusted Pretreatment Standard. Where an adjusted Pretreatment Standard has been calculated in accordance with § 403.6(e), the Industrial User may apply for a fundamentally different factors variance from this adjusted Standard in accordance with this section.]

§ *403.13(d)(6)*

[Comment: In determining whether factors concerning the Industrial User are fundamentally different, EPA will consider, where relevant, the applicable development document for the Standards; associated technical and economic data collected for use in developing each respective Standard; records of legal proceedings; and written and printed documentation, including records of communication and any pertinent information submitted by Requester, etc., relevant to the development of respective Standards which are kept on public file by EPA.]

§ *403.13(e)(1)*

[Comment: Under this section a variance request may be approved if it is based on factors which relate to the User's ability ultimately to achieve the Standards but not if based on factors which merely affect the User's ability to meet the statutory deadlines of section 301 and 307 of the Act such as labor difficulties; construction schedules, or unavailability of equipment;]

§ *403.1 Applicability of Regulation.*

§ *403.1(b) Coverage of the Pretreatment Regulations.*

This section has been modified to clarify which pollutants and sources are subject to the General Pretreatment regulation. All pollutants contributed to

POTWs by non-domestic sources are subject to the regulation, even those pollutants traditionally considered to be domestic in nature.

One commenter stated that pollutants traditionally considered to be domestic in nature should not be regulated by Pretreatment Standards when they are discharged from non-domestic sources. The Agency disagrees with the commenter. Section 307(b) of the Clean Water Act makes it clear that EPA must regulate any pollutant introduced into POTWs which interferes with, passes through or otherwise is incompatible with such works. The Act makes no distinction between domestic or non-domestic pollutants.

Several commenters sought clarification of a perceived conflict between § 403.1 and § 403.5(c). Section 403.1 states that this regulation applies to "pollutants from non-domestic sources". Section 403.5(c) states that where pollutants from users contribute to a violation of a POTW's NPDES permit, the POTW is required to take action to correct that violation including, possibly, the imposition of effluent limits on several classes of users. The commenters were concerned that the language in § 403.1 limiting application of this regulation to non-domestic sources might be interpreted to restrict the POTW's options in remedying permit violations. EPA sees no conflict between the two sections. Section 403.1 correctly states which pollutants and sources are subject to nationally developed regulations. As discussed in the preamble to the proposed amendments, § 403.5(c) recognizes the POTWs authority to set additional limits or take other measures as necessary to cure permit violations. Although a POTW must remedy its permit violation, EPA does not by regulation mandate what form of action the POTW must take. The municipal authority may elect to commence appropriate enforcement actions; impose specific effluent limits or prohibitions on all or certain classes of users; modify the treatment plant or operation; or undertake some combination of these actions.

The second sentence of § 403.1(b) elicited comments on the applicability of the general pretreatment regulations to POTWs not required to obtain an NPDES permit, and on the applicability of categorical Pretreatment Standards and § 403.5 general prohibitive discharge limits to industries introducing wastes into such POTWs.

Section 307(b) of the Clean Water Act governs the applicability of categorical Pretreatment Standards and prohibitive discharge limitations. That section specifies that such standards and prohibitions are applicable to any "source" contributing incompatible pollutants into "treatment works (as defined in section 212 of this Act)." The referenced definition includes POTWs which are not point sources of pollutants and which, consequently, do not require an NPDES permit. Thus, industries can be subject to § 307 (b) or (c) standards where they contribute pollutants to a POTW not required to have an NPDES permit.

Section 402(b)(8) of the Clean Water Act identifies the POTWs which are required to comply with the general pretreatment regulations. That section requires only POTWs with NPDES permits to develop a pretreatment program. Thus, section 402(b)(8) does not require that POTWs without NPDES permits develop pretreatment programs. Examples of these non-NPDES POTWs include municipal facilities which treat their entire effluent through evaporation lagoons, land tratement systems or water reuse or recycling systems.

However, as indicated previously, non-domestic users contributing to these systems will be subject to applicable Pretreatment Standards. Thus, while the Agency will not require a non-NPDES POTW to develop and submit a pretreatment program, such a POTW may elect to do so and assume primary responsibility for ensuring compliance by its Users with applicable requirements. Where non-NPDES POTWs so elect, EPA or the State, as appropriate, will assume a supplementary role in ensuring compliance. Where the non-NPDES POTW does not develop and obtain approval for a pretreatment program, EPA and the State will assume primary responsibility for ensuring compliance with Pretreatment Standards by regulated Users.

§ 403. Definitions.

§ 403.3(f) Definition of "Enforcement Division Director."

Because reference to EPA's ten Enforcement Division Directors is made in several sections of the regulation, a definition of this term has been included in the central definition section.

§ 403.3(g) Definition of "Discharge" or "Indirect Discharge."

EPA agrees with the commenters who suggested that it is inappropriate to use the word "discharge" in defining the term "discharge." Thus, § 403(g) has been amended accordingly. Another commenter felt that confusion might arise from defining "discharge" and "indirect discharge" to mean the same thing. The Agency recognizes that the term "discharge" as defined in the CWA and the Consolidated Permit regulations conveys a very distinct meaning which differs from the use of the term "indirect discharge" in the general pretreatment regulations. However, for the purposes of simplifying the language of this regulation whenever possible, the term "discharge" is used interchangeably with the term "indirect discharge." The Agency believes that the advantages to be gained by avoiding awkward regulatory provisions outweigh any confusion which might arise over the interchangeable use of these terms.

§ 403.3(i) Definition of "Interference."

The proposed amendments to § 403.3(i) provide that contributions by Industrial Users will be deemed to result in Interference where such contributions *cause or significantly contribute* to a violation of the POTW's NPDES permit. Prior to the proposed revision, the regulation provided that any industrial user *contributing* to a violation of the permit would be deemed to be causing Interference. The proposed revision obviously establishes a more stringent standard of proof to be met before an industrial contribution can be held to cause Interference. A majority of the commenters addressing this proposed provision objected to this more stringent standard of proof. Many of these commenters, as well as other commenters who generally supported the proposed amendment, suggested that the definition of Interference would be more workable if the Agency defined those discharges which would constitute a significant contribution to a violation.

EPA agrees that further definition of a significant contribution is advantageous both to give industry better notice of that standard of conduct to which it is expected to conform and to provide clear guidelines for establishing violations of the Interference prohibition. Therefore, § 403.3(i) has been amended to specify that an Industrial User significantly contributes to the relevant permit violation or sludge problem if it either exceeds its authorized daily pollutant loading, discharges wastewater which differs substantially from the User's average discharge, or if it knows or has reason to know that its discharge would result in such violation or sludge problem. The first category (exceeding a daily pollutant loading) establishes a clear threshold, rendering the Industrial User liable if its discharge violates any contract, law or ordinance, and there is an NPDES permit violation or sludge problem. The second category establishes another strict and objective test: if the discharge, albeit not in

violation of local limits, is in substantial variance with the User's average discharge (taking into account the historically normal variations in production or process of the User) and there is a permit violation or sludge problem, then the User is deemed to have significantly contributed to such situation.

The third category approaches "significant contribution" from the standpoint of the User's actual or imputed knowledge of the foreseeable effects of its discharge. This separate category is less strigent but relies upon the judicially familiar concepts of knowledge, foreseeability and reasonableness. It should also be noted that the definition of Interference provides that Interference exists if the User is a cause of or significantly contributes to the magnitude or duration of an existing permit violation. The definiton of Interference further provides that a User may be held liable for Interference where his discharge, in conjunction with discharges from other sources, results in a violation of the POTW's permit or non-compliance with the cited statutory, regulatory and permit requirements.

It should be noted that an Interference violation based on interference with sludge disposal or use only exists where the Industrial User causes or contributes to the POTW's inability to comply with one of the cited statutes (or regulations and permits) as it applies to the POTW's selected manner of sludge use or disposal. An Interference violation will not lie where the Industrial User's discharge would prevent the POTW's sludge from complying with requirements applicable to a method of sludge disposal which is not used by the POTW.

Limit on Liability by Complying with Effluent Standards. The proposed amendment to the definition of "Interference" does not consider pollutants to be interfering with the POTW when the discharge of such pollutants into the POTW is in compliance with Federal, State and local limits. One half of the commenters addressing this proposed change supported the amendment. The balance of the commenters felt that the amendment should be deleted. The latter group found the proposed amendment to be confusing, in conflict with the provisions of § 403.5, and inappropriately placed in the definition section. One commenter stated that it is "ridiculous" to exempt a discharge from the interference prohibition because that discharge is in compliance with an effluent limitation if the discharge is indeed meeting all the criteria for causing Interference set forth in § 403.3(i).

The Agency agrees with those commenters who found it confusing and logically inconsistent to define Interference in § 403.3(i) and then, in the same provision, exclude some sources meeting that definition. In order to avoid the confusion which apparently resulted from including the proposed limit on liability in § 403.3(i), the Agency is deleting the last two sentences of that paragraph. EPA continues to support the intent behind the proposed amendment and believes that this intent is preserved by the language of § 403.5(e) which provides that, where an Industrial User is causing Interference, yet complying with Federal, State and local standards, the POTW has an opportunity to adjust the relevant standard. However, if the POTW fails to commence corrective action within the 30-day period provided in § 403.5(e), EPA or the State may take appropriate action.

Reference to Other Statutes. Several commenters challenged the Agency's authority to define Interference by reference to the Toxic Substances Control Act, the Solid Waste Disposal Act (including the Resource Conservation and Recovery Act), and the Clean Air Act. These comments indicate a misunderstanding of the effect and purpose of EPA's reference to these statutes and regulations.

Effect

Reference to these statutes does not in any way impose upon the Industrial User the obligations and penalties of these laws. The POTW's ability to comply with relevant requirements under these laws simply is used as one of the standards by which to determine the existence of an Interference violation under the Clean Water Act. The primary effect of this reference is to permit the POTW to impose specific limitations on the Industrial User to prevent future Interference with sludge disposal alternatives. By so doing the regulation ensures a sensible coordination of the Acts and regulations affecting POTW sludge use and disposal by enabling the POTW to control discharges from Industrial Users which inhibit any of the POTW's selected methods of sludge disposal.

Purpose. The purpose of these references is to recognize the obligation of POTWs to meet sludge requirements under these referenced statutes, regulations and permits and to provide a means for the POTW to control discharges from Industrial Users that would cause the POTW to violate these sludge standards. For example, land disposal regulations promulgated under RCRA and the CWA limit the amount of cadmium that can be disposed on land used to grow food-chain crops. (40 CFR Part 257, 44 FR 53438). If a POTW has elected to dispose of its sludge by applying it to food-chain cropland, it must comply with the cadmium limits prescribed by the foregoing regulations. Since POTWs will be held responsible if their sludge is not in compliance, they should have some means of controlling discharges of cadmium from one of its major sources, Industrial Users. In the absence of such authority, the sludge disposal alternatives of the POTW would be limited—a result that is contrary to the intent of Congress in establishing sludge disposal requirements under section 405 of the Act. Accordingly, it is the Agency's position that it is essential to enable POTWs to prevent Interference with any of their sludge disposal alternatives by permitting them to set specific limits for their Industrial Users if the discharges by such Users would prevent their desired method of sludge use or disposal. In addition, where the POTW is not able to take appropriate action to ensure that industrial contributions do not interfere with its sludge-disposal practices, it is important that the State or EPA be able to seek appropriate relief.

Moreover, in an effort to promulgate consistent regulations, EPA and other agencies routinely refer to related statutes. For example, the Consolidated Permit regulations require that "[p]ermits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws . . ." including the Wild and Scenic Rivers Act, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and Executive Orders. (40 CFR § 122.12, 45 FR 33428 (May 19, 1980)). The preamble discussion of that section explained that "[t]his does not impose any legal requirements beyond those imposed by the terms of the laws themselves. The purpose of the section is to inform the public and permit-issuers of the requirements applicable to the permit programs regulated under this Part." (45 FR 33311 (May 19, 1980)) *See also* 33 CFR § 323.4–2(b)(1) where the Army Corps of Engineers refers to the Endangered Species Act in a regulation promulgated under the Clean Water Act.

Legal Authority to Refer to Other Statutes. In addition to the practical reasons for referencing these other

statutes, section 501(a) of the Act gives the administrator broad authority to "prescribe such regulations as are necessary to carry out his functions under this Act." Consistent promulgation of regulations is an important Agency function under the Act. Authorities much broader than the authority to preserve consistency and reasonableness of regulations have been held to stem from expansive rulemaking clauses similar to section 501(a). *See, e.g., National Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974). *Cf.* Senate Debate on Conference Report, Dec. 15, 1977, *reprinted in* Legis. Hist., Vol. 3, at 461 (1978) (credit approvals to be conditioned initially on compliance with the Resource Conservation & Recovery Act, subtitles C & D, and later on section 405 of the Clean Water Act.) Moreover, two of the referenced statutes contain provisions specifically requiring the Administrator to integrate and avoid duplication of other Acts which grant regulatory authority to the Administrator. (Section 2006(b) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6905(b); section 9(b), Toxic Substances Control Act, 15 U.S.C. § 2608(b).)

A related issue that has been raised by commenters is whether reference to other statutes and regulations deprives Industrial Users of adequate notice of their requirements under the general pretreatment regulations. The response is twofold. First, in most instances, POTW's will provide Users with notice of the Users' obligations by setting specific limits for those pollutants that cause the POTW to violate the requirements of the referenced statutes. (See § 403.5(c).) Second, § 403.5(e) ensures that the Industrial User will have adequate notice before an enforcement action will be taken for causing or contributing to the POTW's inability to comply with sludge requirements under any of the referenced authorities.

In some circumstances, the State or EPA may enforce the general prohibition of Interference in § 403.5(a) against the Industrial User. However, in these cases the Industrial User will still have sufficient notice because the definition of Interference requires that in order to be held liable under this provision, the User must either: (1) discharge in excess of prescribed effluent limits; (2) discharge wastewater which substantially differs in nature or constituents from the User's average discharge or (3) know or have reason to know that its discharge would result in a permit violation or prevent authorized sewage sludge use or disposal. The first two requirements create a clear standard of conduct and the last addresses a situation where the User has actual or constructive knowledge that a permit violation or sludge disposal problem would result.

§ 403.3(n) Definition of "Pass Through."

Section 307(b) of the Clean Water Act provides that EPA shall establish national Pretreatment Standards to "prevent the discharge of any pollutant . . . [which] interferes with, passes through, or otherwise is incompatible with [the POTW]." Thus, the Act establishes two main criteria to be considered in setting Standards: the prevention of interference and the elimination of pass through. The selection of appropriate POTW protection standards to guard against Interference is predominately a local determination and it is, accordingly, left largely to the discretion of the POTW. Section 403.5 of the general pretreatment regulation establishes minimum criteria to be incorporated in local prohibited discharge limits.

A concern of greater national scope is directed at the amount of industrial pollutants passing through POTW's across the nation and ending up in our navigable waters. In calling for the establishment of Pretreatment Standards under § 307(b) of the Clean Water Act, Congress recognized that pollutants from industrial sources reaching navigable waters *indirectly*, after passing through a POTW, can have the same detrimental effect on national waters as pollutants from their direct discharger counterparts.

Thus, in the Federal Water Pollution Control Act and amendments thereto, Congress established a parity between the requirements imposed on direct and indirect dischargers. Both direct and indirect dischargers of toxic pollutants are to be subject to technology-based effluent limitations which will reduce their discharges of toxic pollutants to acceptable levels.

Section 301(b)(2)(A) of the Clean Water Act specifies that direct dischargers shall be required to meet Standards based on "best available technology economically achievable for [each industrial] category or class" and that indirect dischargers shall be subject to these same requirements. The Conference Report on the Clean Water Act amendments also emphasizes that Standards for indirect dischargers and their direct discharger counterparts shall be similarly determined: "Under the amendment to section 307(b), the Administrator would establish national pretreatment standards for toxic pollutants based on the best available technology economically achievable, or any more stringent effluent standards under section 307(a)." (Conference Report 95–830, p. 87, *reprinted in* Legis. Hist., Vol. 3, at 271.)

While recognizing the essential parity between direct and indirect dischargers and electing to regulate them similarly through the imposition of technology-based Standards, Congress also appreciated that the POTW may provide some treatment of the discharge from indirect industries. thus, the Administrator was directed to establish Pretreatment Standards only for those pollutants that pass through, interfere with, or are otherwise incompatible with the treatment works. In addition, in order to avoid redundant treatment, Congress provided for a case-by-case relaxation of nationally-established Pretreatment Standards for indirect dischargers where the POTW can show that it treats any or all of the regulated pollutants. See discussions of removal allowance policy below. In order to preserve the parity between direct and indirect dischargers initially established with the National Standards, Congress required that the treatment provided by the POTW and indirect discharger working in concert shall result in the effluent quality required of a direct discharger. (Section 307(b)(1)).

By so specifying, Congress also established an appropriate standard for assessing unacceptable pass through. According to the language of section 307(b)(1), pollutants from a particular industrial category would be deemed to be passing through the POTW in unacceptable amounts where the POTW effluent violates the limit for that pollutant which a direct discharger in that industrial category would be required to meet.

In recognition of real-world differences between the effluents of POTWs and industries, the Agency has interpreted this provision to require a comparison of the percent removal of pollutants at an industry applying Best Available Technology with the percent removal of pollutants at the POTW. While it might be argued that comparison of effluent quality would be more appropriate than comparison of percent removals, the Agency disagrees with this position. If one were to compare the mass loadings of regulated pollutants at the end of a POTW and at the end of a regulated industry, the POTW's discharge, because its effluent is a composite of the effluents from various contributing industries and other sources, would likely exceed the amount

of pollutants allowed for a single direct discharger. A similar problem however attends the use of concentration-based limits. Because of the great amount of non-industrial wastewater flowing into and from a POTW, the concentration of a particular toxic parameter at the end of the POTW would, as the result of dilution, most often be less than the concentration required of a direct discharger. Thus, it appears that the proper parity between direct and indirect dischargers cannot be determined by looking at the effluent quality from the POTW in comparison with effluent quality from a direct discharger. Instead, the Agency has sought to achieve the underlying intent of this provision by focusing on a comparison of the removals provided by direct dischargers and POTWs.

In determining whether a particular pollutant is Passing Through the POTW and is, therefore, appropriately subject to regulation through categorical Pretreatment Standards, the Agency compares POTW removal with removal obtained by a direct discharger. A pollutant will be deemed to Pass Through the POTW, and will thus be characterized as incompatible, where the average treatment provided by POTWs nationwide does not realize the same percentage of removal of the regulated parameter as would be required of direct dischargers with national effluent standards for that pollutant. Thus, if, in order to comply with their direct discharge BAT standard, direct dischargers in category Y were required to remove 85 percent of pollutant X, then POTWs must achieve an average of at least 85 percent removal of pollutant X in order to avoid reaching the conclusion that pollutant X presents a Pass-Through problem.

Where pollutants are regulated in categorical Pretreatment Standards through application of this pass-through justification, there should be no need to bring case-by-case enforcement actions based on a similar theory. Thus, EPA does not intend to assess case-by-case Pass-Through liability against an Industrial User where the removal provided by the User's particular POTW is not as great as the removal obtained by a direct discharger in that User's industrial category. Instead today's regulation limits its Pass-Through action to cases in which pollutants introduced into the POTW Pass Through is in quantities which result in a violation of the POTW's NPDES permit limits. Under this definition of Pass-Through, liability is predicated on demonstrations similar to those enumerated in the Interference definition. The User is liable for a Pass-Through violation where he discharges in excess of Federal, State or local limits or discharges wastewater which substantially differs in nature and constituents from the User's average discharge. Subparagraphs (3) and (4) of § 403.3(n) recognize that, in addition to the liability imposed by subparagraphs (1) and (2), a User may be held liable for a Pass Through violation where the User knows, or reasonably should have known, that his Discharge could result in a permit violation or increase the duration or magnitude of such a violation.

The Agency is publishing the definition of Pass Through in final form today. The cause of action and standard of liability for Pass Through and Interfence violations are almost identical. EPA received considerable comment on the proposed Interfernce standard, and the final definitions of Pass Through and Interference reflect these comments. Because the language and conceptual underpinnings of these two provisions are so similar, the Agency believes that it is unnecessary to propose the definition of Pass Through.

§ 403.3(a) Definition of "Publicly Owned Treatment Works" or "POTWs."

The definition of "POTWs" in the general pretreatment regulations conforms to the definition of this term found in § 122.3 of the Consolidated Permit regulations. Both regulations do not include within the definition of POTWs, sewers, pipes or other conveyances that do not convey wastewater to a treatment facility. Industries that routinely discharge their wastes into such sewers, pipes or other conveyances are direct dischargers and are subject to NPDES permit requirements.

§ 403.3(q) Definition of "Pretreatment"—Use of Equalization Tanks.

The proposed amendments to this section elaborate on the definition of "pretreatment" by indicating that, in appropriate circumstances, the use of equalization tanks constitutes an acceptable pretreatment technology. The proposed comment to this section provides further that where equalization tanks are resulting in dilution, the Control Authority should impose mass limits on the facility. Several commenters expressed concern with this proposed comment explaining that one of the functions of equalization tanks is to dilute high concentrations of pollutants to lower, more acceptable levels. These commenters concluded that the proposed amendment would frequently result in the imposition of mass limitations since dilution almost invariably accompanies the use of equalization tanks.

EPA agrees that the language of this proposed amendment awkwardly expresses the intention of the provision. The object of the provision is to recognize that the use of equalization facilities is an appropriate means of achieving the concentration limit imposed by an applicable categorical Pretreatment Standard *on a given regulated process.* However, when the regulated process waste is mixed in an equalization tank with wastewater from an unregulated process or wastewater from another regulated process, the result is unacceptable dilution of the regulated wastestream. In such circumstances, EPA believes that the appropriate recourse is to apply the combined wastestream formula set forth in § 403.6(e) to the effluent from the equalization tank rather than imposing mass limitations on the flow from the tank as previously proposed.

Thus, EPA has amended § 403.3(q) by making it clear that equalization tanks are an appropriate means of pretreating the wastes within a regulated process. However, the amended regulation provides that where the wastewaters from an unregulated process or process regulated by another Standard are mixed in an equalization facility with the regulated process water in question, the limits applied to the effluent should be calculated in accordance with the combined wastestream formula set forth in § 403.6(e).

§ 403.5(a) Prohibited Discharges—General.

The first sentence of this section has been modified for clarification. "Non-domestic source" has been substituted for "source of a non-domestic discharge" to be consistent with the change to § 403.1(b) concerning regulated sources. In addition, the Agency has included a prohibition on allowing pollutants to "Pass-Through" the POTW. Unacceptable "Pass-Through" is defined in § 403.3(n). As indicated in the preamble discussion on § 403.3(n), the Agency believes that the institution of Pass-Through prohibitions is necessary to meet the mandate of Section 307(b) of the Clean Water Act.

§ 403.5(b)(4) Prohibited Discharge—Slug Loans.

Section 403.5(b)(4) as promulgated in the June 26, 1978 regulations established a strict liability standard for Industrial Users. That provision prohibited the contribution of "any pollutant—released in a discharge of such volume or

strength as to cause Interference in the POTW." Following negotiations with industry groups, EPA agreed to propose changes to this provision. Industry groups were concerned that the language appearing in the 1978 regulation did not present a clear standard to which the industry could conform. The proposed language amended the prohibitions by introducing a foreseeable-consequences standard. Under the amended language proposed in October, the Industrial User would be held liable under § 403.5(b)(4) if he "knows or has reason to know" that his discharge would cause Interference.

EPA agrees that a clearer standard should be established. However, because the definition of "Interference" found in § 403.3(i) has now been amended to include a similar knowledge standard for certain situations (as well as a much more specific standard in other situations), the inclusion of the knowledge requirement in § 403.5(b)(4) is unnecessary. Therefore, the final regulation published today has deleted the knowledge requirement from the provisions of § 403.5(b)(4).

Several commenters expressed concern that the knowledge standard standing alone falls short of describing an acceptable standard of performance. We believe that the more explicit language set forth in § 403.3(i) gives Industrial Users better notice of the standard to which they are to conform.

§ 403.5(b)(5) Prohibited Discharge—Heat.

The June 1978 regulations placed a maximum temperature limit of 40°C (104°F) on the influent to the POTW, but did not specify a maximum temperature to be met at the Industrial Users' effluent. The proposed amendment to this section added the requirement that an Industrial User limit the temperature of its discharge to the POTW to 65°C (150°F). This requirement was designed to provide the Industrial User with clearer notice of the maximum temperature that can be discharged safely into a POTW.

Only two commenters supported this proposed change. A number of commenters objected to the new provision as unnecessary and overly restrictive. The chief objection to the proposal was that the 65° C limitation on discharges to the sewer is not logically related to the temperature necessary to protect the POTW plant. Commenters argued that the maximum allowable temperture for the Industrial User would vary depending on changing factors, such as the quantity of the discharge and the distance the water must travel, which have a great effect upon the resultant POTW plant temperature. Those objecting to the 65° C limit uniformly asserted that the original provision was superior and that the imposition of stricter limits, if necessary, should be left to the discretion of the POTWs.

EPA agrees with the majority of the commenters and has returned to language similar to that originally promulgated in June of 1978. We believe that the concern for sufficient notice which inspired the proposed change is adequately addressed by the changes made to the definition of "Interference" in § 403.3(i). As indicated previously, the new definition of Interference includes a clear standard of liability. Municipal authorities are encouraged to exercise the authority provided in § 403.5(b)(5) and (c) and set specific temperature limits on Industrial Users posing potential problems in order to erase all uncertainty as to acceptable effluent temperatures.

§ 403.5(c) Prohibited Discharges—POTW-Specific Limits.

Several commenters sought clarification of the provisions in amended § 403.5(c) prescribing those instances in which a POTW will be required to translate the general prohibitions in § 403.5(a) and (b) into source-specific effluent limits. Section § 403.5(c) provides for the development of specific limits in two situations. First, paragraph (c)(1) requires that POTW's developing pretreatment programs pursuant to these regulations translate the general prohibitions of § 403.5(a) and (b) into industry-specific limits. These limits are developed initially as a prerequisite to POTW pretreatment program approval and are updated thereafter as necessary to reflect changing conditions at the POTW. The limits may be developed on a pollutant or industry basis and may be included in a municipal ordinance which is applied to the affected classes. In addition, or alternatively, the POTW may develop specific limits for each individual facility and incorporate these limits in the facility's municipally-issued permit or contract. By translating the regulations's general prohibitions into specific limits for Industrial Users, the POTW will ensure that the users are given a clear standard to which they are to conform.

The second paragraph of § 403.5(c) provides that all POTWs not required to develop a pretreatment program only have to develop specific prohibitive discharge limits where an Interference or Pass-Through problem has occurred and is likely to recur. This paragraph further provides that in developing these prohibitive discharge limits to "ensure renewed and continued compliance," the POTW may, at its discretion, seek to regulate not only Industrial Users, as defined by this regulation, but, in addition, any other source which might be contributing to the Interference or Pass-Through problem. Under the provisions of the paragraph, the POTW may supplement source control with any changes in the POTW's treatment plant facility or operation needed to resolve the Interference or Pass-Through problem.

To the extent that the POTW elects to control the recurrence of a Pass-Through or Interference problem through modifications in its facilities or operations or through imposition of controls on sources other than Industrial Users, the limits placed on Industrial Users would be correspondingly less stringent. The comment following this paragraph indicates that in some instances, where the Pass-Through or Interference problem results from compatible pollutants which the POTW was designed to treat, the burden of correcting the problem may more appropriately lie with the POTW itself through adjustment of its facilities or operation.

Changes have been made in the phrasing of this comment as it appeared in the proposed regulations. The wording of the proposed comment implied that liability for non-compliance with NPDES permit provisions rests ultimately and entirely with the POTW. This is obviously not true where an Industrial User's contribution is found to be a cause of the violation. In such a case, the provisions of § 403.5 clearly place liability directly on the User. The comment is intended to reflect an Agency policy that responsibility for avoiding Interference and Pass-Through problems may be shared, where appropriate, by the Industrial User and its users. The revised wording places emphasis more appropriately on the cooperative nature of this effort.

Paragraph (3) of § 403.5(c) adopts the proposed language requiring the POTW to provide notice and comment prior to developing and enforcing specific effluent limits for Industrial Users.

§ 403.5(d) Prohibited Discharges—Incorporation in Permits.

This section has been amended to adopt the language of the proposal and eliminate the resource-demanding need to modify an NPDES permit each time a POTW changes a specific discharge prohibition. The requirement that such prohibitions be incorporated in the permit has been deleted. Instead, as the proposed modification indicated, these

POTW-developed limits will be deemed "prohibitions" for the purposes of section 307(d) of the Act. As such, a violation of these prohibitions is enforceable both against the applicable Industrial User and against the POTW under section 309 of the Act.

One commenter suggested that this section should allow enforcement of POTW-developed limits only after public notice and opportunity for comment regarding imposition of such limitations. In light of the public notice requirement added to § 403.5(c), the Agency believes additional language to that effect in this section is unnecessary.

§ 403.5(e) EPA/State Enforcement of Prohibitive Discharge Limits.

The next to last sentence of § 403.5(c) as proposed in October has been reorganized to form new paragraph (e) in the final regulation. This paragraph provides that, upon identifying a Pass-Through or Interference violation, the State or EPA will give the POTW an opportunity to take prompt and effective remedial action. State or federal action is available where the POTW fails to commence appropriate enforcement action within the 30-day period provided by the regulation.

§ 403.5(f) Compliance Deadlines.

Compliance with the provisions of § 403.5, except for paragraph (b)(5) is required beginning on March 13, 1981. No additional time has been given to meet the prohibited discharge standards set forth in this section because these standards have been in effect in substantially similar form since August 25, 1978, and no additional time is necessary to comply with them.

§ 403.6(a) Category Determinations.

§ 403.6(a)(1) Category Determination Request.

This provision has been modified to allow more time for filing of requests for category determinations. It has also been expanded from the proposal to include notice for the affected Industrial User in the case where a POTW requests a category certification.

The proposed amendment shortened the period for making categorical determination requests from thirty days after the effective date of a Pretreatment Standard to thirty days after the promulgation date of a Standard. Many commenters objected that this was an unrealistically brief period based on the normal time requirements associated with receiving, reviewing and responding to complex Federal Register regulations. Other commenters noted that before requesting a determination, the Industrial User needed the opportunity to review the details and rationale of its industry's subcategorization. This material is found in the technical development document published in conjunction with each categorical Standard. Although the development document is to be made available to the public at the time the Standard is promulgated, this has not always been the case. To address these concerns, EPA has extended the period for requesting categorical certifications to 60 days after the effective date of a Pretreatment Standard or after the date the development document becomes available, whichever is later. This expanded period should allow adequate time to review Standards, especially since many of the Standards and associated development information will have been made available to the public before final promulgation in the form of proposed standards and pre-proposal drafts.

In response to a comment, a sentence has been added to this section specifying that if a new source wishes to request a categorical certification, it must do so prior to commencing discharge.

One reader interpreted the proposed wording of the section as requiring an implicit admission of subcategory classification since an Industrial User would apparently need to "believe itself to be included" in a subcategory prior to submitting a request for administrative determination of applicability. This commenter also noted that the provision could be read to suggest that an Industrial User which, although possibly covered by a Standard, believed itself not included could rely on that belief and take no action to come into compliance. These suggested interpretations do not fall within the intent of the section. This section is intended as a mechanism to resolve legitimate questions of applicability and notify Industrial Users of applicable Standards when there is some doubt. A certification will provide an Industrial User with certainty regarding its specific categorical limits. The language has therefore been clarified to provide that an Industrial User may request a category determination if it believes that it "may be included" under a categorical Standard. If an Industrial User is in doubt as to the applicability of a Standard and it cannot be resolved by his preliminary inquiries, he should request a determination so the confusion can be eliminated as soon as possible.

Finally, the Agency agrees with those commenters who suggested that if POTWs are to be authorized to request categorical certification for Industrial Users, the Users should be notified of the request and provided with an opportunity to comment on it. Language to this effect has been added to this section.

§ 403.6(a)(4)(iii) Category Determination—Final Decision.

The amendments to this section identify those parties who may submit requests to the Enforcement Division Director by adding the phrase, "by the Industrial User or POTW". This addition distinguishes those direct submissions from decisions by the Director that are forwarded to EPA for review.

§ 403.6(a)(4)(iv) Category Determination—Notice of Decision.

The language of this section has been altered to require that the decision on the categorical determination be sent to both the affected Industrial User and the POTW in conformance with the change in § 403.6(a)(1).

§ 403.6(a)(5) Category Determination—Requests for Reconsideration.

The amendment to this section deletes the provision allowing for a hearing on the determination of an industry's subcategory classification. The section provides instead that those wishing to challenge a categorical determination may submit a petition to reconsider the decision to the Regional Administrator who will respond expeditiously in writing. Another change clarifies that not only may the original requestor file a reconsideration petition, but also the affected Industrial User where the original request was made by a POTW.

Comments were divided on the deletion of the opportunity for a hearing. Certain commenters contended the opportunity to request a hearing should be retained as a means of avoiding litigation and assuring procedural guarantees. Other commenters felt the deletion was acceptable in light of the deletion of § 403.6(a)(6). The Agency agrees with those supporting the hearing deletion. The amended section still provides a mechanism for reconsideration of an EPA decision. The Regional Administrator's decision on petitions for reconsideration will constitute final Agency action and is thereby subject to judicial review. Further, the deletion of § 403.6(a)(6) means an Industrial User may raise as a defense in an enforcement action the fact that it is not in the industrial subcategory alleged by the Agency. Industrial Users are therefore assured the opportunity to raise the issue in a proceeding with adequate procedural protections.

Two commenters protested that the thirty-day period for requesting reconsideration was too brief. This provision remains unchanged from the original regulation and EPA believes it allows adequate time for appeal.

§ 403.6(a)(6) Category Determination—Failure To Request.

This paragraph, which provided that Industrial Users failing to seek a determination as to the appropriate subcategory within the prescribed time would be bound by EPA's subsequent determination as to the subcategory, was deleted in the proposed amendments. After reviewing the comments EPA continues to believe that it can not legally bar an Industrial User from raising as a defense to an enforcement action the allegation that the facility is not in the industry category claimed. Therefore, today's final regulation also deletes former paragraph (a)(6).

§ 403.6(d) Prohibition on Dilution.

The provision allowing Control Authorities to impose mass limits on Industrial Users using dilution to meet Pretreatment Standards has been moved from § 403.12(e)(2) to § 403.6(d). This provision is more appropriately placed in § 403.6(d), which deals generically with the question of dilution, than in the reporting requirements section under § 403.12.

Prohibition on Dilution—Generally. The imposition of Pretreatment Standards and requirements is meant to achieve three major objectives, one of which is the prevention of surges in either volume or concentration of pollutants which might interfere with the operation of the POTW. While the use of equalization tanks is an appropriate technology for protection against such surges and slug loadings, EPA does not feel that the reduction of concentration by dilution is an appropriate means of addressing the two remaining objectives of the program: reduction of the total amount of pollutants passing through the POTW untreated, and reduction of pollutants migrating to the municipal sludge in unacceptable quantities. This proscription on dilution finds its basis in the legislative history of the Act, consistent Agency policy, and judicial decisions.

It has been the consistent policy of the Agency that dilution is no substitute for treatment of pollutants. The General Pretreatment regulations promulgated in 1978 clearly stated this policy. The underlying policy of the Clean Water Act is to reduce the amount of pollutants entering the Nation's waters. (Section 101.) This policy will not be met if Industrial Users discharge the same mass of pollutants at a lower concentration rate. While dilution may in the short term minimize some water quality problems, it does not reduce the mass of pollutants entering the POTW.

It has been argued that a prohibition of dilution should only apply to direct dischargers because POTWs provide sufficient treatment of pollutants. This argument would only have merit if POTWs were able to eliminate the pollutants. However, the recent data discussed earlier demonstrates that this does not occur. Pollutants regulated under categorical Pretreatment Standards pass through the POTWs, contaminate the POTWs sludge, or interfere with operation of the treatment works. Dilution does not solve these problems. In fact, dilution worsens the removal efficiency of the POTWs because the treatment technology operates less efficiently on dilute streams.

Congress considered the question of dilution as a substitute for treatment in the context of reservoir planning in section 102(b)(1) of the Act. As enacted, section 102(b)(1) provides for consideration of water storage as a mans of regulating stream flow, "except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source." This provision was described in the Conference Report as specifically banning pollution dilution as an alternative to waste treatment. (Conference Report 92–1236, at 101; *reprinted in* Legis. Hist., Vol 1 at 284.)

Furthermore, this legislative history was held by the U.S. Court Of Appeals for District of Columbia Circuit to be "a general view not limited to the [the reservoir storage issue]." *Hercules, Inc. v. EPA*, 598 F.2d 91, 108 n. 30 (D.C. Cir. 1978). In *Hercules*, the court upheld EPA's use of mass limitations as an alternative to concentration limitations for toxic pollutants, stating that the use of mass limits was supported by the 1972 Act "in order that [EPA's] effluent discharge standard would not be subverted" by dilution. (598 F.2d at 108.)

One commenter cited *Ford Motor Co. v. EPA*, 567 F.2d 661 (6th Cir. 1977) for the proposition that prohibition of dilution is impermissible. This was not the holding of that case. In the *Ford* case, a Ford plant was meeting EPA-imposed best practicable technology effluent limits and wanted to dilute its waste stream to meet the more stringent Michigan water quality standards. EPA vetoed Ford's NPDES permit modification which would have allowed this dilution. The Agency, however, had not officially stated its policy that dilution to meet State water quality standards was impermissible. On appeal, the court held that EPA's veto was invalid because the underlying policy had not been publicly declared prior to the veto. The court did not hold that dilution was permissible under the Clean Water Act, but rather that if EPA was going to prohibit dilution, it would have to announce its policy in regulations or guidelines. By including a statement of the Agency's position on dilution in the June 1978 regulations and again in today's regulations, EPA remedied the principal concerns raised by the Sixth Ciruit in the *Ford* case.

§ 403.6(e) Combined Wastestream Formula.

Introduction. The proposed addition of this section generated substantial comment. At issue was the method for calculating alternative pollutant limits at industrial facilities where regulated process effluent is mixed with other wastewaters (either regulated or unregulated) prior to treatment. The formula proposed in October was not new. It was originally included as part of the National Pretreatment Strategy which appeared as Appendix A to the June 26, 1978 general pretreatment regulations. Since that time, increasing evidence has indicated the widespread importance of such a procedure to a large segment of industries to be regulated by national categorical Pretreatment Standards. In the October 1979 proposal, the Agency revealed its decision to formalize this procedure as part of the regulations to eliminate uncertainty among Control Authorities and affected industries, and to ensure consistent application nationwide.

The importance of a formula to explain how effluent limitations will be adjusted when several streams are combined is of primary importance to large, diversified Industrial Users with multiple processes. These Industrial Users of POTWs frequently have a number of individual processes producing different wastestreams that are not regulated by the same categorical Pretreatment Standard or are not regulated at all. Many of these integrated facilities have combined process sewers and a number have already constructed combined waste treatment plants. In these situations, the Industrial User often prefers to install a pretreatment system on the combined stream rather than installing separate parallel systems on each individual stream. A combined wastestream formula permits a facility to mix wastestreams prior to treatment by

providing it with an alternative effluent limit for this combined discharge.

EPA wishes to minimize the need for separation of wastestreams and for treatment by parallel systems when comparable levels of treatment can be attained in combined treatment plants. Separate treatment of wastes at an integrated plant can be costly, wasteful of energy, inefficient and environmentally counterproductive. In addition, such an approach reduces the environmental gains resulting from the voluntary treatment of unregulated streams prior to the imposition of regulatory requirements. However, the agency also recognizes that the countervailing concerns of avoiding the attainment of limits through dilution and ensuring that adequate treatment is provided may sometimes lead to the conclusion that segreation of steams is the only appropriate way to meet applicable pretreatment limits. The final formula attempts to strike a proper balance between these considerations.

The combined wastestream formula proposed in the October 1979 package was critized by most commenters. EPA agrees that the proposed formula for calculating an alternative effluent limit would have made combined treatment of wastestreams impractical in most cases. The proposed formula assumed that there was only one regulated process contributing to the mixed discharge. It also established a *de facto* zero discharge limit for the unregulated wastestreams being combined by taking no account of the presence of pollutants in those streams. While the formula was intended to permit combined treatment where process effluent was mixed with other wastewaters, in practice this objective was frustrated by creating combined stream limits that were technically unattainable in most instances.

The combined wastestream formula promulgated in these amendments rectifies the problems with the original proposal. It will permit combined treatment of wastewater in many cases. Some restrictions are imposed on the combination of certain streams to protect against abuse of the process. Formulas for calculating both concentration and mass-based alternative effluent limits have been promulgated.

Alternative Discharge Limit. Where the combined wastestream formula is utilized it will result in fixed alternative categorical limits for the Industrial User. The calculation of the alternative limits may be performed by the Control Authority or by the Industrial User with the written concurrence of the Control Authority. These alternative discharge limits must be complied with by the Industrial User in lieu of the promulgated national categorical Pretreatment Standards and are enforceable as such.

In most cases, several calculations will be necessary to establish the alternative limits. An alternative categorical limit must be established for each regulated pollutant in each regulated process stream that is treated in the combined treatment facility. For each regulated pollutant both an alternative daily maximum limit and an alternative long-term average limit shall be calculated. These calculations will use the values set forth in the appropriate categorical Standard.

Once established, an Industrial User's alternative categorical Pretreatment Standards shall remain fixed until modified by the Control Authority. The Control Authority may recalculate the alternative limits at any time at its discretion or in response to a request by the Industrial User because of material or significant changes in any of the values used in the calculation to establish the alternative limits. To insure that the Control Authority has notice of any changes which justify a modification, the Industrial User must report any such material and significant changes immediately. Where these changes justify new alternative limits they shall be calculated and effective within 30 days.

The Control Authority may, of course, elect to impose limits which are more stringent than those established by the formulas in this section. However, a Control Authority may not allow alternative limits at a level less stringent than those established by this section.

Formula. The adopted concentration formula sets the alternative concentration limit for each pollutant by multiplying the categorical limit for a regulated stream by the flow of that stream and then adding the resultant products for all regulated wastestreams that are combined. This amount is then divided by the sum of the flow for each regulated stream. In statistical terms, a flow-weighted average of the categorical Standards is taken over the regulated streams. If only regulated streams are being combined, this is all one would have to do the compute the alternate limit. However, if the User combines regulated with unregulated streams, to prevent inappropriate dilution, the resulting number is multiplied by a fraction, the numerator of which is the total flow through the treatment system minus certain dilute streams. The denominator for this fraction is the total flow through the treatment facility. If the unregulated streams are not dilute streams as defined by F_D, the fraction becomes 1 and no further adjustment is made on the alternative limit. If an unregulated stream is a dilute stream, this fraction will adjust the alternative limit to account for the dilution that is taking place.

Mass-based limits are established by adding the categorical mass limits for a pollutant in each regulated stream. The sum is multiplied by a fraction to account for dilution. The numerator is the total flow through the treatment facility minus the flow of certain dilute streams. The denominator for the fraction is the sum of the flow of the regulated streams. These formulas are as follows:

(1) Alternative Concentration Limit

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

Where

C_T = the alternative concentration limit for the combined wastestream

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons:

(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) the pollutants of concern are present ony in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = the average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams)

N = the total number of regulated streams

(2) Alternative Mass Limit

$$M_T = \left(\sum_{i=1}^{N} M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i} \right)$$

where

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons:

(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(ii));

(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = the average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams)

N = the total number of regulated streams

The streams represented in the formula by the symbol F_D are those which have been found to contain no toxic pollutants or low levels of toxics. If such streams were to be combined with regulated streams without factoring in their dilution impact, it is possible that the effluent limit would be met by dilution and, consequently, no treatment would be required on the combined wastestream. Such a result would mean no pollutant reduction from the Industrial User and be contrary to the mandate of the Clean Water Act (see preamble discussion on dilution under § 403.6(d)).

The definition of F_D has carefully specified which of those streams exempted from regulation pursuant to paragraph 8 of the Consent Decree are dilute streams. The dilute streams include those exempted from coverage under paragraph 8 because they contain trace or non-detectable amounts of the 129 priority pollutants. Those process wastestreams exempted from regulation under the provisions of paragraph 8 because they are found in only a small number of sources nationwide are not treated as dilute streams.

The regulation states that the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. The Control Authority should ensure that the flow values used to calculate this 30-day average are representative of the Industrial User's normal flow during periods of production. An Industrial User may demonstrate the accuracy of his figures using any historical data or data from actual flow monitoring conducted for purposes of this calculation.

Section 403.6(e)(2) provides that an alternative pretreatment limit calculated by the formula may not be used if the alternative limit is below the analytical detection limit for that pollutant. This prohibition is necessary to provide the Control Authority with a means of checking compliance. If the alternative limit is below the detection limit there is no way to demonstrate that the appropriate level of treatment has been achieved. Where the alternative limit is below the detection limit, the Industrial User has the option of not combining the dilute streams represented by F_D prior to his combined treatment facility or segregating his wastestreams entirely. It should be noted that where the cost of segregating already-combined wastestreams is wholly disproportional to the cost of compliance considered by EPA in setting the Pretreatment Standard, the Industrial User may be eligible for a variance under the provisions of § 403.13.

Monitoring Requirements. A certain amount of monitoring is required to establish and maintain these alternative limits. When only a single regulated stream is being combined with unregulated streams which are not dilute streams, no flow or pollutant monitoring is required prior to treatment in order to calculate the alternative limit. When more than one regulated stream is combined, each such stream must be flow-monitored prior to combination. The total flow through the combined treatment facility and the flow of the dilute streams represented by F_D must also be monitored when a dilute stream is combined prior to the treatment facility.

The type and the frequency of sampling, analysis and flow measurement needed to determine compliance with the alternative discharge limit will be the same as that required by the self-monitoring requirements in the applicable categorical Pretreatment Standards. Those requirements will be spelled out in detail in each Standard. If the self-monitoring schedules for the appropriate categorical Pretreatment Standards differ, monitoring shall be done according to the most frequent schedule. In certain categorical Pretreatment Standards, regulated flow determines the frequency of self-monitoring. In those cases, the sum of all regulated flows combined in the treatment facility is the flow to be used to determine self-monitoring frequency.

Discussion. Before selecting the approach promulgated in these regulations, the Agency considered many options. A number of formulas were suggested in the comments on this section. Further possibilities evolved from variations or combinations of the suggested formulas. The Agency believes the selected approach will be fair to integrated Industrial Users while achieving environmental results comparable to those achieved by treating regulated wastestreams separately. These considerations of environmental versus economic impact dominated EPA's deliberations on this issue.

Many commenters stressed that the original combined wastestream formula would force segregation of wastestreams and separate treatment of process wastewaters in most cases. This would occur because the formula did not take into account the presence of pollutants in the unregulated streams. The initial formula adjusted the categorical effluent limit by lowering it in proportion to the flow of the other streams mixed with the regulated stream. This often produced an alternative effluent limit either below the analytical detection limit or below

the treatability level. In either instance segregation of streams would have resulted as a practical matter. Although the Agency does not have sufficient data to estimate with confidence the percentage of existing integrated facilities which would have been required to segregate wastestreams under the proposed formula, comments indicated it could have been substantial. Commenters also argued that the cost of this segregation would be high while the environmental benefits would be questionable compared to alternative proposals. EPA believes that the selected formula adequately addresses these concerns.

The Agency's concern about forcing segregation of wastestreams as a practical matter is most clearly brought to light in the electroplating category. It is the Agency's policy not to establish BAT standards which would be inconsistent with the technology routinely installed to meet BPT requirements. However, the BPT-equivalent electroplating categorical Pretreatment Standards for existing sources promulgated in September 1979, regulated individual electroplating process wastestreams. On the other hand, the BAT–PSES Metal Finishing regulation, which is scheduled for promulgation in November 1981, and which includes electroplating activities, will probably contain limitations that will allow wastestreams to be combined after appropriate isolated treatment for certain pollutants (e.g., cyanide destruction). This change could work a tremendous hardship on integrated facilities with electroplating operations. The BPT-equivalent electroplating Pretreatment Standards might require segregated treatment of wastestreams, whereas the BAT standards for these Industrial Users will probably allow combined treatment for most of these same wastestreams. We have adopted a combined wastestream approach that will eliminate this result by allowing the appropriate wastestreams to be combined in meeting the BPT-equivalent electroplating Pretreatment Standards.

The selected option accomplishes several goals. It avoids the need for segregation and parallel treatment in many cases since the alternative indirect discharge limit should not fall below the level of treatability achievable in a combined system unless the User is combining inappropriate streams. Thus, many Industrial Users will be saved the cost of installing multiple treatment systems. This formula also reduces, relative to other formulas that were considered, the monitoring burden on a facility and the corresponding administrative burden on the control authority to oversee the monitoring.

In addition to monitoring and cost savings for integrated facilities, the selected formula can result in environmental benefits. An Industrial User may have process wastestreams which contain environmentally significant levels of pollutants but which are not yet regulated. If the User decides to install a combined treatment facility, it is more likely to treat such streams prior to Standards being promulgated.

The primary drawback of the formula is that it allows higher mass loadings of pollutants to be discharged where combined unregulated streams contain regulated pollutants at a concentration below the categorical limit established for a regulated stream. There is insufficient data to estimate how often use of the formula will result in such dilution. As mentioned above there are corresponding gains where pollutant levels are higher than the categorical limits. The formula promulgated today strikes a proper balance between these environmental trade-offs. Short-term environmental gains will be realized where unregulated wastestreams with high levels of pollutants (most often wastestreams which are scheduled for future regulations) are combined with regulated streams and treated jointly. As additional categorical Standards are promulgated, the number of unregulated wastestreams with high levels of pollutants should decrease, and an increasing proportion of the combined unregulated streams will have lower pollutant levels. While this shift may result in some environmental loss through dilution, it is anticipated that the dilution factor in the combined wastestream equation will maintain a proper balance between environmental gains and losses.

The comments of several persons could be read to criticize the adopted formula because it imposes limits on pollutants in wastestreams not regulated by categorical Standards. To illustrate, under the promulgated formula, if an unregulated stream with high concentrations of regulated pollutants is mixed with a regulated stream with a lower concentration limit, the higher pollutant levels in the unregulated stream must be "reduced" so that the concentration of the combined effluent after treatment does not exceed the concentration for the regulated stream specified in the categorical Standard. These commenters recommended that a formula be utilized which takes full account of the presence of regulated pollutants in the unregulated streams. They argued that to do otherwise would be to *de facto* regulate the pollutant levels in these unregulated streams, an improper exercise of authority in the absence of a promulgated categorical Standard.

We disagree that the effect of the selected formula is to improperly regulate an unregulated stream. The Agency is directed by the Act and the provisions of the NRDC Consent Decree to develop technology-based standards for specific industrial subcategories. Where an industry elects to mix the process effluent from various subcategories with unregulated process water before treatment, the Agency believes that it has the discretion to impose those conditions reasonably necessary to ensure that BPT or BAT level treatment is provided for the regulated streams. The industry always retains the option of segregating unregulated streams and providing treatment only for the regulated streams.

A second drawback of the alternative concentration limit fomula is that it provides no incentive for an Industrial User to conserve water. However, the availability of the formula to calculate an alternative limit in terms of mass insures that no facility is penalized for their conservation efforts.

The bulk of the commenters endorsed a combined wastestream formula which in all cases would produce an alternative pollutant limit requiring removal equivalent to that achieved by separate treatment. Under this approach, the alternative limit would reflect full credit for the pollutants in any combined wastestreams not regulated by a categorical Pretreatment Standard. EPA rejected this approach for two major reasons. First, some commenters suggested that this formula would, in many cases, effectively bar combined treatment and force stream segregation with little environmental benefit. This would occur when combined unregulated streams contained regulated pollutants at lower levels than the categorical limit, resulting in alternative effluent numbers less than the treatability level of the combined wastestream. Second, if the Agency were to avoid the foregoing problem it would have to develop a process to respond to requests to ameliorate the impact of this equation by relaxing the untreatably low limits to reach the treatability level. This case-by-case calculation of treatability levels for combined waste systems would impose a heavy resource burden that EPA and the States are not capable of supporting.

EPA also rejected the option of not adopting any formula, and relying

instead on guidance and the discretion of local pretreatment authorities to regulate combined streams as they deemed appropriate. As discussed earlier, the Agency decided it was necessary to promulgate a formula to eliminate confusion and provide national uniformity and equity in the application of federally-developed Standards.

Several comments also supported an approach calling for the establishment of alternative effluent limits through best engineering judgment determinations on a case-by-case basis rather than through use of a national formula. This would allow numerous criteria to be factored into the judgment and be most sensitive to the situation of an individual Industrial User. A commenter suggested that it also would most nearly parallel the method of control for direct dischargers. EPA believes this approach is unacceptable. It would require an extensive commitment of resources that neither EPA, States or local POTWs have available for the task. Equally important is that such a case-specific setting of effluent limitations is contrary to the Clean Water Act's requirements of a national categorical Pretreatment Standard approach.

Effect of Today's Regulation on Integrated Facilities. In a March 26, 1980 Federal Register notice, EPA suspended the general pretreatment regulations base-line monitoring and reporting requirements (§ 403.12(b)) as they apply to integrated facilities until promulgation of § 403.6(e). The effective date of today's amendments will trigger the responsibilities of these integrated facilities pursuant to § 403.12(b).

§ 403.7 Removal Allowances.

A substantial number of comments were devoted to the removal allowance provisions set forth in this section. In light of the apparent interest, and occasional misunderstanding, associated with these provisions, a quick restatement of the Agency's removal allowance policy would appear to be warranted. Section 307(b)(1) of the Clean Water Act sets forth the original authority for removal allowances. This provision provides that EPA-established categorical Pretreatment Standards may be relaxed to reflect the POTW's removal of the regulated pollutants. An objective of this provision, as set forth in the statute, is to ensure that the removal achieved by the indirect discharger in concert with the removal achieved by the POTW equals the removal required of a direct discharger in the same industrial category. In order to meet this objective, it is obvious that the POTW should be credited only with that removal which it actually achieves. Thus, EPA has imposed, through the provisions of § 403.7, several requirements which ensure that industry Standards are relaxed only to the extent that the POTW actually removes the pollutants in question.

The first such requirement prohibits removal allowances for indicator or surrogate pollutants unless the categorical Standard employing the indicator or surrogate pollutant specifies that a removal allowance may be authorized for these pollutants. In addition, the provisions of § 403.7(b) provide that a removal allowance must reflect those periods where industrial pollutant-bearing wastes Overflow the POTW and there is, consequently no actual removal of these pollutants by the POTW. Finally, the provisions of proposed § 403.7(c) (now § 403.7(d)) require that a demonstration of actual removal be based on representative sampling at the POTW.

Although some commenters have indicated that the foregoing requirements place unduly burdensome restrictions on the POTW wishing to request a removal allowance, the Agency believes that it has properly interpreted the statute to provide that the POTW will be credited only with that level of removal which is actually and consistently achieved. Support for this interpretation is found in the conference report accompanying the Clean Water Act and in the House debate on the Conference Report where it is stated that removal allowances must "reflect the degree of reduction of . . . pollutant(s) achieved by the treatment works." (Conference Report, 95–830, p. 87; House Debate, December 15, 1977, *reprinted in* Legis. Hist., vol. 3, at 343). In addition, the Senate debate on the Conference Report specified that in order to grant a removal allowance "there must be a demonstration that the pollutant is degraded or treated; credits will not be given for dilution." (Senate Debate, December 15, 1977, *reprinted in* Legis. Hist., vol. 3, at 461).

§ 403.7 Introductory paragraph. Removal Allowance and Indicator or Surrogate Pollutants.

EPA received numerous comments on the proposed provision which would eliminate removal allowances for indicator or surrogate pollutants. The comments were divided roughly into two areas. First, many commenters voiced general objections to the Agency policy of regulating toxic pollutants indirectly through indicator or surrogate parameters. Second, commenters objected to the provision, found in the introductory language to § 403.7, prohibiting the approval of removal allowances for indicator or surrogate pollutants.

Before undertaking a discussion of the latter point dealing with the proposed amendment to § 403.7, it is important to note that the suggested language change in no way can or should be interpreted as a definitive Agency policy statement favoring the use of indicator or surrogate pollutants in setting Pretreatment Standards. The decision on whether or not to use indicator or surrogate pollutants in regulating underlying toxic parameters will be made on a case-by-case basis as individual categorical Standards are developed for each industrial category. The proper forum for resolving any divergence of opinion on the propriety of using indicators or surrogates is the public participation proceedings attendant to the development of those Standards and not the general pretreatment regulations placed in final form today. Therefore, this preamble will not address the numerous comments which raised substantive questions about EPA's authority to employ indicator or surrogate pollutants in regulating toxics.

The terms "surrogate" and "indicator" are sometimes used interchangeably. However, in their traditional use these terms have distinctly different meanings. While a strict statistical relationship exists between the surrogate pollutant and the underlying toxic pollutants, a statistical relationship does not exist between an indicator pollutant and the underlying toxic parameters. Thus, when a given level of the surrogate pollutant is removed, one can quantify the amount of removal obtained for the underlying toxic pollutant. On the other hand, while removal of a given level of the indicator pollutant should also result in removal of the underlying toxics, it is impossible to strictly identify how much. However, the usefulness of both indicator and surrogate pollutants is limited to the individual technology for which they are prescribed. The correlation between indicator and surrogate pollutants and the underlying toxics can be made because one can predict with some confidence that when a particular technology is installed and results in the discharge of a prescribed amount of an indicator or surrogate pollutant, the appropriate level of removal is also being achieved for the underlying toxic pollutants in that wastestream. This correlation holds true only where the underlying assumption regarding the generic type of technology employed remains unaltered.

The indicator or surrogate correlation that can be drawn for a particular industrial subcategory presumes the use of a class of treatment technologies which may be different from the treatment employed by the POTW. Where these technologies are different, one cannot equate the POTW's ability to remove the indicator or surrogate pollutants with its ability to remove a corresponding amount of the underlying toxic pollutants. Because a determination on whether the POTW's removal of an indicator pollutant (and the consequent granting of a removal allowance for this indicator or surrogate to the User) will result in an acceptable amount of removal for the underlying pollutants is so dependent on the technologies employed by the class of Users in question, the Agency has determined that decisions on whether a removal allowance will be allowed for an indicator or surrogate pollutant will be made in the context of each categorical Pretreatment Standard. Each Standard which limits an indicator or surrogate parameter will specify whether or not a removal allowance, developed pursuant to § 403.7, will be available for that indicator or surrogate. Section 403.7 of today's regulations has been modified to reflect this change.

§ 403.7(a) Definitions.

§ 403.7(a)(1) "Removal."

This section has been rearranged to provide a generic definition of "Removal" distinct from the definition of "Consistent Removal." The definition of "Removal" makes it clear that Removal means the alteration of the nature of a pollutant after it is introduced into the sewer and before it is discharged by the POTW or a reduction in the amount of a pollutant as determined by comparing the amount of that pollutant in the influent to and effluent from the POTW. The dilution of a pollutant in the POTW system or at the treatment plant does not constitute "Removal".

§ 403.7(a)(2) "Consistent Removal"

The June 26, 1978 regulations defined "Consistent Removal" as that level of removal observed in 95% of the influent/effluent samples taken at the POTW. Under this scheme, if the POTW were to conduct 12 influent/effluent samplings at the POTW (as is now required by section 403.7(d)(2)(iii)), the POTW's Consistent Removal level would be the lowest of the 12 Removals obtained. This result is statistically unsound in that it identifies as the "Consistent Removal" level, a level of Removal at the extreme end of the data distribution. The data at the extremes of this 12 point distribution have the greatest chance of being in error. Thus, if the lowest level of Removal identified were unrepresentatively low, the POTW would be held to an unreasonably small level of Removal. This, in turn, would result in greater instances of redundant treatment as the Industrial Users would be required to meet effluent limits based on the low Removal level when the POTW frequently achieved greater levels of Removal.

In order to avoid the aforementioned statistical flaws and attendant potential for redundant treatment, the October amendments proposed to revise this Consistent Removal calculation.

Proposed § 403.7(a)(1) (now paragraph (a)(2)) defines "Consistent Removal" as that level of Removal demonstrated by averaging the lowest 50% of the Removals measured by 12 or more samples. Several commenters objected to this change and requested a return to the original calculation. These commenters premised their objections on two points: (1) the new calculation will result in higher Consistent Removal levels and therefore in less stringent Industrial User pretreatment limits, and (2) these less stringent pretreatment limits will result in unacceptable levels of pollutants passing through the POTW and into navigable waters.

In most cases the proposed calculation will indeed result in higher removal allowances and consequently, less stringent Industrial User pretreatment limits. The original computation selected the approved removal level from the extreme low end of the spectrum of removals achieved. The proposed calculation would average the lowest 50% of the removals documented. Stated another way, the original computation had the intent of ensuring that the approved removal allowance level could be achieved about 95% of the time. The modified calculation ensures that the approved level is one that the POTW will be able to meet about 75% of the time.

Hqwever, the fact that more generous removal levels would be granted under the modified computation does not lead to the conclusion that unacceptable amounts of pollutants will be discharged to navigable waters. Industrial users are subject to "daily maximum" and "long term average" pretreatment limits. If the Industrial User is to meet the long term average, the User can only infrequently approach the daily maximum number in its daily discharge. For the joint treatment provided by the Industrial User and POTW to be less effective than that required of a direct discharger, a discharge by the User at the daily maximum level would have to coincide with abnormally lower removal at the POTW. The statistical complexities of the situation do not permit a numerical estimate of the number of times this coincidence might occur, but EPA expects it to be small. One comment received by EPA on this subject stated that a computer simulation of the problem showed that violations of the daily maximum would occur less than 2% of the time. This simulation made certain assumptions concerning the statistical distributions which EPA is unable to verify, and EPA did not rely on this result in reaching a decision on the final method of calculation of Consistent Removal.

The Agency believes for the foregoing reasons that the modified Consistent Removal calculation promulgated today will ensure a level of pollution control equivalent to that required of a direct discharger with identical BAT standards. This computation is admittedly a compromise. It seeks, on the one hand, to avoid placing more extensive sampling requirements on the POTW. More extensive sampling would be required to avoid the skewed statistical results which arise from employing the "95%" removal computation with a limited number of data points (12 or less). On the other hand, this revised calculation seeks to ensure that a reasonably consistent level of removal is maintained. The Agency believes that the final computation found in § 403.7(a)(2) addresses both of these concerns.

Pollutants not Detectable in Influent to POTW. If a pollutant, known to be contributed by Users discharging to a POTW sewer system, does not appear in the influent analysis performed at the POTW there are three possible explanations. First, the pollutant is one that settles out in the sewer pipes during the normal course of operations, and is only flushed through the POTW system during storm events with the associated high flows. Second, the pollutant may actually be degraded in the sewer lines. Third, and most likely, the pollutant is there at the POTW influent, but is masked from our analytical detection capabilities by the great dilution from all other inflowing wastes.

The Agency has three options for dealing with removal allowances where a pollutant does not appear at the influent to the POTW: (1) it can elect not to grant removal allowances at all; (2) it can assume that the pollutant is fully treated and grant a 100% removal allowance; or (3) it can grant removal allowances based on an alternative demonstration of Removal (i.e., one not

based on a simple analysis of influent vs. effluent concentration).

The Agency recognizes the inequities which would flow from option one and thus has rejected this solution. However, we do not believe that the opposite extreme, embodied in option two, is any more reasonable. Where pollutants settle in the sewer lines only to be flushed out during storm events, often by-passing *any* treatment by the POTW, it is not reasonable to give the POTW credit for 100% treatment. Similarly, where such pollutants are present at the influent in undetectable concentrations because of the high dilution factor, there is no justification for assuming 100% treatment. This is especially true in light of the fact that treatment efficiency generally decreases as the concentration of influent pollutants decreases. For these reasons the Agency disagrees with the two commenters who asserted that pretreatment requirements should be waived for all pollutants not detected in the influent to the POTW.

The Agency endorses option three which we find to be the most reasonable approach. Section 403.7(a)(2) provides that where the POTW, for whatever reason, cannot detect regulated pollutants in its influent it may nevertheless demonstrate to EPA or the regulating State that such pollutants are indeed Removed.

§ 403.7(a)(3) "Overflow."

The term "Overflow" has been substituted for the term "Bypass" throughout the final regulation. The term Bypass is employed in the Consolidated Permit regulations and, in the context of those regulations, has a meaning which is quite distinct from the intended use of the word in the pretreatment regulations. To avoid confusion, the general pretreatment regulations now employ the term Overflow instead of Bypass. New paragraph (a)(3) of § 403.7 defines an Overflow as any diversion of flow from the POTW's pipes, sewers or other conveyances which occurs before the flow reaches the headworks of the POTW, i.e., that portion of the POTW designed to provide treatment. The diversion may either be intentional, e.g., through manual diversion of flow, or unintentional, e.g., through diversion at combined sewer overflow points due to precipitation events which exceed the hydraulic capacity of the POTW.

Diversion of flow from the POTW Treatment Plant itself, e.g., diversion of flow after primary treatment by before secondary, will not consitute "Overflow." It should be noted, however, that frequent diversion of flow from the POTW Treatment Plant, because the plant's hydraulic capacity is underdesigned or for other reasons, must be reflected in the determination of average Removal made in accordance with § 403.7(d)(2). Thus, in order to obtain a "representative" demonstration of the POTW's Removal as required by § 403.7(d)(2)(i) and (ii), POTW's which frequently provided only primary treatment because of diversions from the Treatment Plant would have to reflect this fact by including in the samples used to establish Removal an appropriate number of samples taken during wet weather flows. Further guidance on the compilation of "representative" sampling data will be provided through the removal allowance guidance document to be distributed shortly.

§ 403.7(b)(2) Conditional Removal Allowance Approval.

The overwhelming majority of commenters on this section favored EPA's proposal to allow conditional removal allowances prior to POTW program approval. However, three commenters raised questions about EPA's authority to require POTW program approval as a precondition to removal allowance approval. The major argument raised by all three commenters was that EPA has no legislative basis for tying pretreatment programs to removal allowances.

The Agency disagrees with these comments, and believes that the statute and the legislative history of the Clean Water Act when read together provide the Agency with authority to condition removal allowances on the eventual development of local pretreatment program. The 1977 amendments to the FWPCA introduced two major new provisions dealing with pretreatment. Section 402 (b)(8) was amended to provide that POTWs receiving waste from industries subject to categorical Pretreatment Standards will be required to develop a local program to ensure that these industries comply with applicable Standards. Section 307(b)(1) was amended to provide that a POTW can relax its industries' categorical Pretreatment Standards to reflect the degree to which the POTW removes any or all of the regulated pollutants. When these two provisions dealing with pretreatment are read in light of the legislative history of the Clean Water Act, it is apparent that Congress intended that removal allowances be integrally tied to the presence of a local pretreatment program.

The Senate debate on the Conference Report on the Clean Water Act amendments addressed the connection between removal allowances, or "local credits" and local programs in the following manner:

> Where a local compliance program is approved, EPA and the permitting States may approve case-by-case modifications of the national pretreatment standards—or local credits—for documented pollutant removals attained by a publicly owned treatment works. To receive a local credit there must be a demonstration that the pollutant is degraded or treated; credits will not be given for dilution. . . . Tying local credits to local compliance programs not only provides an incentive for local participation, but more importantly, it provides assurance that the removal levels which justified the local credits will be maintained by a publicly owned treatment works committed to operating a sound pretreatment program. (Legis. Hist., Vol. 3, p. 461–462)

The House debate on the conference Report reflects a similar intention to connect the provisions of 402(b)(8) and 307(b). In that debate, the following statement was made:

> Under the amendment to section 307(b) the Administrator would establish national pretreatment standards for toxic pollutants based on the best available technology economically achievable, or any more stringent effluent standards under section 307(a). Then in applying these pretreatment standards *through its pretreatment programs*, the owner or operator of a municipal treatment works could modify the requirements applicable to individual classes of sources introducing that pollutant into the treatment works to reflect the degree of reduction of that pollutant achieved by the treatment works. (Emphasis added) (Legis. Hist., Vol. 3, at 342–343.)

The language reflected in the House debate was drawn directly from the Conference Report. (Legis. Hist., Vol. 3, at 271).

Thus, it is apparent to the Agency that the Congress intended the provisions of sections 307(b) and 402(b)(8) to be read together to require that a local program be developed as a condition to granting removal allowances. In addition, in promulgating regulations which condition the approval of removal allowances on the development of a program, the Agency is exercising its broad authority to establish any regulatory provision reasonably related to the purpose of the enabling legislation. (*Mourning* v. *Family Publications Service*, 411 U.S. 356, 369 (1973), *National Petroleum Refiners Association* v. *FTC*, 482 F. 2d. 672, 678–79 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974).)

Provisional Removal Allowances. Section 403.7(d)(2)(vii) (see preamble discussion of that section) provides that a POTW requesting provisional removal allowance authorization for pollutants not yet being discharged must comply

with the requirements of § 403.7(b)(1)–(4). EPA agrees with the commenter who noted that it is inappropriate to require compliance with proposed § 403.7(b)(2)(iii) as a precondition to receiving a provisional allowance. Proposed paragraph (b)(2)(iii) requires Industrial Users currently discharging into the POTW to enter into a compliance schedule which obligates the User to install pretreatment technology within a specified time. Industries subject to the provisional allowance section (403.7(d)(2)(vii)) are required to comply with applicable new or existing source Pretreatment Standards before the commencement of discharge. Thus, it is unnecessary and inappropriate for these Industrial Users to enter into a compliance schedule which would allow for the installation of treatment technology beyond the point in time that discharge commences. The provisions of paragraph (b)(2) have accordingly been amended to provide that industries need not enter into the required compliance schedule when the POTW is requesting a provisional removal allowance for pollutants not yet being discharged. Language to this effect in now found in § 403.7(b)(2)(i). Paragraph (b)(2)(iii) as proposed has been deleted altogether since the requirement that Industrial Users enter into a compliance schedule is already encompassed by the provisions of paragraph (b)(2)(i) requiring that Users submit the compliance schedule required by § 403.12(b)(7).

§ 403.7(b)(3) Removal Allowances for POTWs That Overflow.

This provision has been modified to allow POTWs with combined sewers or systems which at least once annually Overflow (as defined in § 403.7(a)(3)) untreated wastewater to receiving waters to obtain a removal allowance if either one of two conditions is met. First POTWs with Overflows may receive removal allowance authorization to revise discharge limits for Industrial Users that demonstrate that they can contain or cease discharges to the POTW during circumstances in which an Overflow event reasonably can be expected to occur. Alternatively POTWs which Overflow may receive removal allowance authorization if they calculate consistent removal according to an equation which factors in hours of Overflow and, after July 1, 1983, are making an effort to implement an Overflow-control program in accordance with requirements of "PRM 75-34." (See Appendix A.)

In light of some of the comments received on this provision, it appears desirable to discuss the Agency's rationale for conditioning removal allowances on the institution of some Overflow controls. Section 307(b)(1) of the Clean Water Act states that a POTW may obtain a removal allowance if it "removes all or any part of . . . [a] toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works. . . ." The obvious intent of this provision, as indicated by the plain words of the statute and by the legislative history of the Clean Water Act, is to avoid redundant treatment while at the same time ensuring that the treatment provided by the POTW and indirect discharger working together is equivalent to the treatment which would be required of a direct discharger. Thus, the above-cited language of the statute establishes a clearly conditioned authority. The POTW may grant a removal allowance, but this allowance may be granted only if, after treatment by the POTW and indirect discharger, the reduction in pollutants discharged to the receiving water is equivalent to the reduction which would be achieved by a direct discharger in the same industrial category and subject to BAT standards. In order to adequately fix the amount of pollution control for which the Industrial User is responsible, the POTW must establish a fixed and consistent level of removal. In order to arrive at an average consistent removal level, the POTW must factor in both those periods of high removal and those periods of low or zero removal. Thus, in determining consistent removal, the POTW must factor in those periods when no removal is obtained because untreated waste is Overflowing the POTW. The regulation provides that Overflows may be factored into the calculation of consistent removal either by using the equation of § 403.7(b)(3)(ii) or by demonstrating that regulated industrial wastes will not Overflow in unacceptable amounts during storm events (§ 403.7(b)(3)(i)).

One commenter indicated that the Agency did not go far enough in factoring periods of Overflow into the computation of consistent removal. That commenter suggested that where the discharge from an Industrial User completely Overflows the POTW during storm events no removal allowance should be allowed. In addition, that commenter suggested that, where only part of the industry's discharge Overflows the POTW during storm events, the removal be calculated by taking a weighted average of the removal of the various portions of the industrial discharge. The Agency believes that this approach would be unduly burdensome for POTWs to implement because few POTWs are capable of distinguishing that portion of each Industrial User's waste which Overflows. Fewer POTWs would be able to grant removal allowances and, consequently, increased numbers of Industrial Users would be unable to take advantage of pollutant abatement achieved by the POTW. This result is clearly contrary to the Congressional intent that redundant treatment be avoided to the extent possible. The Agency has concluded that the position set forth in amended § 403.7(b)(3) reflects a justifiable compromise.

Other commenters felt that the provisions of proposed § 403.7(b)(3) went too far in imposing requirements on POTWs which have Overflows. In particular, comment was directed at the provision of § 403.7(b)(3)(i) which provides that, as an alternative to using the calculation of subparagraph (3)(ii), Industrial Users of a POTW may contain their discharge during periods of peak flow. Specifically, one commenter indicated that the provisions of this subparagraph were practically unworkable for the industries in its system as containment would require considerable space, which many existing facilities did not have, and since containment potentially would require Industrial Users to shut down their operations during what could be an extended period of time. EPA recognizes the difficulties which may be inherent with this option, and thus has not mandated containment during times of Overflow. The option simply is available to those industries and municipalities for which it is a practical alternative. It is anticipated that most municipalities and industries will make use of the alternative equation in § 403.7(b)(3)(ii).

Another commenter felt that the provision of § 403.7(b)(3)(i) requiring industries to cease all discharges during times of Overflow was unreasonable since the POTW may provide some treatment of influent wastes even during Overflow events. EPA agrees with this commenter and therefore has amended the section to provide that Industrial Users must reduce discharges or increase pretreatment during Overflow events in an amount equivalent to the removal not being provided by the POTW. The Agency also agrees with this commenter's position that Industrial Users need only demonstrate containment when Overflows occur from the POTW treatment plant or sewer to which the Industrial User is

connected. The regulations have been so clarified.

Two commenters asserted that it would be difficult to comply with the Overflow calculation set forth in § 403.7(b)(3)(ii)(A) because the unique features of their POTW systems made actual monitoring of Overflow events administratively and technically infeasible. These commenters appear to be proceeding under the misunderstanding that the provisions of subparagraph (ii)(A) require actual monitoring at the Overflow points. While, ideally, actual POTW removal should be documented to meet the requirements of Section 307 of the Act, we appreciate that this may be impossible in some situations. Therefore it is appropriate to read the language of § 403.7(b)(3)(ii)(A) to allow for a verifiable engineering estimate of the annual hours of Overflow where actual monitoring of Overflow points is infeasible. The demonstration accompanying this estimate should reflect, at a minimum, actual historical rainfall information, the area served by combined sewers, local soil and topographic conditions, the age and maintenance of the combined sewers, ground water levels and any inflow/infiltration problems. Further information on how these factors should be incorporated into an estimate of annual Overflow will be available from an EPA guidance document on computing removal allowances to be distributed in the near future.

Another commenter suggested that Overflows should not inhibit approval of a removal allowance as long as the pollutants Overflowed do not constitute a public health problem. This comment highlights a common misapprehension of the pretreatment program's objectives. The pretreatment program, like its sister direct discharge NPDES program is charged with controlling industrial pollutants to the extent that current technology allows. The POTW and industry working together must achieve that level of pollution control obtained by direct dischargers employing the "best available technology". This technology-based mandate focuses the Agency's attention on the current state of our technical expertise rather than on the varying water quality needs of diverse stream segments. As a result, the imposition of technology controls, may, for some water bodies, achieve a higher level of water quality than would be required by applicable water quality criteria or standards.

The rationale for this approach is well-documented throughout the legislative history of the FWPCA and amendments thereto and the Agency does not have the authority or the intention to depart from the technology-based control approach in the pretreatment program. Thus, returning to the commenter's suggestion, the POTW must actually remove (along with removal provided by the industrial User) that level of pollutants dictated by available technology and not that level suggested by the condition of local water quality.

Two additional changes have been made to § 403.7(b)(3). First, the equation of § 403.7(b)(3)(ii) has changed from the proposal. The original formula was mathematically incorrect in that it corrected the revised categorical Standard, rather than the consistent removal. The error can best be illustrated by an example. Assume a POTW Overflows one-half of the time. Further assume an original categorical limit, X, of 4 mg/1 and a removal, r, of .2. The old formula calculates a revised categorical limit of:

$$\frac{4}{1-.2}\ (1/2) \quad = 5(1/2) = 2.5\ \text{mg/1},$$

This revised limit is lower than the original categorical limit. The new formula calculates a corrected removal of .10 and therefore a revised limit of 4.4 mg/1 (applying the equation of § 403.7(d)(4)).

In addition, a non-substantive change was made to the introductory paragraph of § 403.7(b)(3). The first sentence, requiring that the POTW demonstrate "Consistent Removal" before obtaining a removal credit, has been moved to a more appropriate spot in the introductory language to paragraph (b). Similarily, the language formerly found in paragraph (b)(3)(ii)(B), exempting POTWs from the requirement to factor Overflow into removal allowances where no Overflow occurs between the industry and the POTW, has been moved to a more appropriate place in paragraph (b)(3).

§403.7(b)(4). Compliance with sludge disposal requirements.

General Discussion

Before entering into a detailed discussion of the comments received on this section, it would appear to be desirable to explain briefly the connection between removal allowances and compliance with municipal sludge disposal regulations. Several commenters apparently misread the provisions of § 403.7(b)(4) to demand compliance with requirements currently published under section 405 of the Clean Water Act (See 44 FR 53438) regardless of the manner in which the POTW is disposing of its sludge.

The manner of sludge disposal is a local decision. EPA regulations and guidelines do not prescribe methods of disposal. Instead, the requirements developed pursuant to the authority of section 405 of the CWA and related statutory provisions specify applicable constraints on the disposition of the sludge depending upon the disposal method selected. Thus, the POTW first determines the manner in which it will dispose of its sludge, then it identifies and complies with the appropriate Federal regulations or guidelines pertaining to that method of disposal. Section 403.7 provides that the POTW will not be able to receive removal allowance approval (§ 403.7(b)(4)) or maintain an approved level of removal (§ 403.7(f)(2)) if it fails to comply with Federal, State or local requirements applicable to its selected method of sludge disposal.

For example, if a POTW has elected to dispose of its sludge on agricultural land, it must comply with the regulations for land application, 40 CFR Part 257, promulgated on September 13, 1979 at 44 FR 53438. As long as the municipal sludge is disposed of in compliance with these regulations, the POTW may continue to grant a removal allowance to its Industrial Users relaxing their categorical Pretreatment Standards. Application of the sludge to the land in concentrations which are found to violate the limits prescribed in the September 13th regulation would constitute grounds for potential revocation or modification of the removal allowance. Similarly, if a POTW's sludge is contaminated to the degree that it is classified as a hazardous waste under the provisions of Subtitle C of RCRA, the POTW must comply with all applicable requirements of the Subtitle C regulations, including the requirements for land disposal under 40 CFR Part 264, in order to continue to grant removal allowances.

Where the POTW is employing more than one sludge-disposal method, and a parameter for which a removal allowance has been requested fails to meet federal (or State or local) requirements pertaining to one of the methods of disposal, but not the other, then the removal allowance may not be granted until the disposal of sludge containing that parameter is brought into compliance with federal (or State or

local) requirements pertaining to all methods of disposal employed by the POTW. Similarly, if the removal allowance for this parameter has already been authorized at the time the violation is found, the allowance for that pollutant will be modified or withdrawn until the POTW complies with federal (or State or local) requirements for that pollutant for all methods of disposal employed by the POTW.

The chart below sets forth the major federal regulations which should be reviewed in order to determine whether the POTW's selected sludge disposal option is in compliance with the appropriate regulatory provisions.

Major Federal Regulations Relating to Sewage Sludge Disposal

Sludge disposal	Regulation	Date of promulgation	Authority
1. Landspreading:			
a. Food-chain application	40 CFR Part 257	9/79	RCRA/CWA.
b. Non-food-chain application	40 CFR Part 257	9/79	RCRA/CWA.
c. Distribution and marketing	40 CFR Part 258	[1] 12/81	CWA and others.
2. Land disposal:			
a. Solid wastes (nonhazardous)	40 CFR Part 257	9/79	RCRA/CWA.
b. Hazardous wastes	40 CFR Parts 260 et seq	5/80	RCRA.
c. PCB's; criteria modification	40 CFR Part 761	5/79	TSCA.
3. Incineration:			
a. New stationary sources of air emissions	40 CFR Part 60	10/75	CAA.
b. Hazardous pollutants	40 CFR Part 61	10/75	CAA.
c. Hazardous wastes	40 CFR Parts 260 et seq	5/80	RCRA.
d. PCB's; criteria modification	40 CFR Part 761	5/79	TSCA.

[1] Estimated.

Key

RCRA=Resource Conservation and Recovery Act. CWA=Clean Water Act. TSCA=Toxic Substances Control Act. CAA=Clean Air Act.

Reference to Other Statutes. Several commenters challenged the Agency's authority to condition removal allowances on the POTW's compliance with statutory provisions outside of the Clean Water Act. These commenters argued that section 307(b) of the Clean Water Act requires compliance only with those standards and guidelines promulgated under section 405 of the Clean Water Act. The Agency believes that it is acting within the authority granted to it by sections 307(b) and 405 of the Clean Water Act in conditioning removal allowances on compliance with applicable requirements established under the Solid Waste Disposal Act (including Title II of this Act, more commonly referred to as the Resource Conservation and Recovery Act (RCRA)), the Clean Air Act, the Toxic Substances Control Act (TSCA), and State regulations developed under Subtitle D of RCRA.

Section 405 of the Clean Water Act grants the Agency authority to promulgate "regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes." The disposal of sludge may of course involve various media. Incineration of sludge will result in an impact on air quality; land disposal of sludge may result in effects on ground water and local flora. Therefore, in fulfilling its mandate to develop regulations under section 405 which "identify concentrations of pollutants which interfere with each . . . [sludge] use or disposal" the Agency must of necessity make reference to environmental protection standards set forth in regulations developed under various statutes including the Clean Water Act, Clean Air Act, TSCA, and RCRA. In order to avoid duplication of effort and to ensure consistency between the regulatory provisions promulgated under section 405 and those related provisions found under these various statutes, the section 405 regulations will, to a large degree, simply reference the existing requirements applicable to sludge disposal found under the aforementioned statutes. The Agency's plan for developing this consolidated sludge disposal regulation is discussed in the pre-proposal draft regulation for Distribution and Marketing of Sewage Sludge Products dated May 6, 1980.

Thus, if the Agency, in the general pretreatment regulation, were simply to reference the section 405 regulations in defining appropriate circumstances for granting removal allowances, it would achieve the same result as is realized by referencing the statutory provisions directly. Therefore, the Agency is not over-stepping its statutory authority in making direct reference to the aforementioned statutes. By referencing these statutes directly, § 403.7(b)(4) ensures that the regulated community has notice that continued authorization to grant removal allowances may depend upon compliance with various statutorily-derived requirements applicable to the selected manner of sludge disposal.

In addition, in referencing these related statutory provisions the Agency is acting well within its authority to implement those regulatory provisions which are reasonably related to carrying out the intent established by Congress. Relevant sections of the Clean Water Act and the referenced statutes were discussed above in the context of the definition of Interference. (See § 403.3(i).) The Legislative History also supports references to other statutes. Senator Muskie stated that "[s]uch credit approvals will be conditioned initially upon municipal compliance with Resource Conservation and Recovery Act requirements under subtitles C and D, and in 1983 upon treatment works being capable of making beneficial use of its municipal sludge as established under subsection 405—unless such use is shown to be infeasible." Senate Debate on Conference Report, *reprinted in* Legis. Hist., Vol. 3, at 461–62 (1978). This remark indicates that Senator Muskie contemplated consideration of at least one other statute in the creation of removal allowances or "credits." It is logical that the Administrator consider other relevant standards in establishing the criteria for removal allowances.

Finally, removal allowances are not required by law but are an option of the POTW (section 307(b) of the Act). It is perfectly reasonable for the Administrator to impose conditions on the granting of removal allowances which effectively carry out the intent of Congress, i.e., that removal allowances not be granted where they might result in Interference with the POTW's selected sludge disposal alternatives.

The October 1979 proposal amended § 403.7(b)(4) by deleting the requirement that the POTW comply with "guidelines" or "criteria" adopted under the referenced statutes. This deletion avoided legal problems which might arise from requiring POTWs to comply with Agency policies not subject to rulemaking procedures, including notice and public comment. However, one commenter noted that the Agency went too far in limiting the compliance requirement only to "regulations"

promulgated under these statutes. That commenter accurately noted that the provisions of these statutes often have vitality apart from regulations promulgated thereunder. For example, section 405(a) of the Clean Water Act contains a prohibition that does not require implementing regulations to be effective. Similarly, the requirements of section 405 as well as Subtitle C of RCRA may be established through permits whether or not regulations exist. Therefore, limiting compliance to regulations established under a statute would unduly limit the intended scope of the statutes' authority. In response to this comment, EPA has amended the reference to statutory provisions found in § 403.7(b)(4) (and § 403.3(i)) to require sludge use and disposal in accordance with the statutes themselves, or regulations or permits issued thereunder, if a removal allowance is to be authorized.

§ 403.7(c) Application for Removal Allowances.

The final amendments to this section adopt the proposed changes published in October, 1979. Section 403.7(c) provides that application for removal allowance authorization may be requested once a year with respect to certain pollutants instead of only at the time of program approval or subsequent permit reissuance as provided for in the existing regulation. All such requests for removal allowance authorization submitted prior to program approval are considered to be "conditional" allowances, as described in § 403.7(b), if the Approval Authority does not review and make a decision on them. The Approval Authority may review and make a determination on the POTW's authority to revise discharge limits at any time after the submission of an application for removal allowance approval up until the time of pretreatment program approval. At the time of pretreatment program approval the Approval Authority is required to review and make a determination on any pending requests for removal allowance approval.

One commenter sought to clarify whether removal allowance requests would be entertained after POTW pretreatment program approval or the reissuance of the POTW's permit. Additional requests for removal allowances may be submitted, on a yearly basis, after POTW program approval and permit reissuance. The Approval Authority may elect to act on these requests upon receipt, or may defer consideration until the next permit reissuance date.

Several commenters objected to the provision of § 403.7(c) which requires the POTW to apply for a removal allowance for a particular pollutant within 18 months of the effective date of a categorical Pretreatment Standard regulating that pollutant. These commenters felt that the 18-month period is too restrictive and suggested that requests for removal allowances should be entertained at any time. The Agency continues to believe that an 18-month period provides sufficient time for the POTW to determine its ability to remove a regulated pollutant. Section 403.7(d) of this regulation requires, at a maximum, 12 months of operating data in order to establish a removal level. In addition, comments from POTWs have indicated that they expect to conduct sampling and analysis to determine their removal capability for all pollutants at one time. Once the removal capability has been established for all pollutants for which regulations are anticipated, when the final Pretreatment Standard is promulgated, the removal data will already be on hand. For the foregoing reasons, the final regulations continue to employ an 18-month time limit. Allowing POTWs to request removal allowances at any time would overburden the State and EPA reviewing authorities and defeat the Act's and regulation's goal of defining a fixed and constant level of removal.

§ 403.7(d)(2)(iii) Sampling Schedule for Determining Removal Allowances.

In an attempt to improve the readability of the regulations, paragraphs (c)(1)–(7) of § 403.7, pertaining to the contents of a Removal Allowance application, have been redesignated paragraphs (d)(1)–(7).

The October 1979 amendments to the general pretreatment regulations proposed to revise the sampling period needed to demonstrate the POTW's removal of regulated pollutants. The proposed revision provides for a minimum of twelve composite samples taken at approximately equal intervals throughout the year. This revision provides data less dependent on short term trends and, therefore, more representative of seasonal and yearly trends in influent and effluent quality. The original regulations had provided for a composite sample taken on each of three consecutive days during each season.

Several commenters suggested that the proposed modified sampling regime is still unduly restrictive. For example, one commenter indicated that a more representative indication of the average removal achieved by his city's POTW could be obtained by collecting seven consecutive days of samples once per quarter. The Agency agrees that there should be more flexibility in the sampling requirements imposed by this section. Therefore, today's regulations amend § 403.7(d)(2)(iii) to provide that the POTW may seek approval from the Approval Authority of an alternative sampling scheme where the scheme outlined in the regulation will not provide the most representative determination of the POTW's removal ability. The Approval Authority may also approve the use of supporting historical data maintained by the POTW where such data provide a representative demonstration of annual removal performance.

Another commenter indicated that EPA's proposed procedures for collecting flow-proportional composite samples were too narrowly drawn. Specifically, that commenter suggested that section 403.7(d)(2)(iii) be amended to allow the collection of flow-proportional samples through 1) continuous, rather than discrete sampling at varying rates corresponding to flow; 2) discrete sampling at a constant rate or aliquot volume but at varying frequencies depending upon flow, as well as 3) discrete sampling at a constant frequency but varying aliquot volume as proposed by EPA. EPA agrees with this commenter and has modified § 403.7(d)(2)(iii) to provide for these alternative methods of obtaining flow-proportional samples.

The same commenter expressed concern that the provision of the amended regulations requiring that effluent sampling at the POTW be conducted one detention time later than the corresponding influent sample will result in erroneous and misleading estimates of the POTW's removal. The commenter also noted that, ideally, collection of influent samples should precede collection of effluent samples by a period of time equal to in-plant detention at the 24-hour average flow during the sampling period.

EPA believes that in most cases the results of 24-hour POTW composite sampling are not significantly affected by the failure to compensate for a calculated hydraulic detention time. At most treatment works, small amounts of influent constituents pass through the POTW in time periods less than the calculated hydraulic detention period. Thus, the operation of most treatment works serves to dampen out variations in POTW effluent concentrations which would otherwise appear as a result of influent concentration variations. There is Agency experience which suggests that very small differences, well within

normal sample error, arise by not compensating for hydraulic detention time for composite sampling. Hence, the fact that the prescribed methods of § 403.7(d) require a 24-hour sampling event, which encompasses one or more detention periods at most POTWs, leads the Agency to conclude that for the general case the added burden of delaying effluent sampling by one detention period is not worth the minimal benefit obtained. However, it is within the discretion of either the POTW or the Approval Authority to include detention time compensation. The Approval Authority may wish to require that influent sampling precede effluent sampling by approximately one detention period (based on an estimated average daily flow during a corresponding period in the previous year) in cases where to do otherwise would yield unrepresentative results. Circumstances where such compensation may be justified include, but are not limited to, instances of extremely long detention periods or pure plug flow operation and batch discharges by Industrial users.

§ 403.7(d)(2)(vii) (formerly paragraph (c)(2)(v)) Provisional Removal Allowances.

The proposed amendments to the General Pretreatment Regulation included a new paragraph, Section 403.7(c)(2)(v) (now redesignated paragraph (d)(2)(vii)), which would enable the POTW to provisionally revise categorical Standards for new pollutants discharged into its system in the same manner as it grants conditional revisions for existing discharges under § 403.7(b)(2). The new provision allows the POTW to estimate the percentage of removal the POTW would achieve for these pollutants based on treatability studies for the pollutants in question or data indicating the level of removal obtained for those pollutants by similar municipal treatment systems.

EPA agrees with the commenter who suggested that the amended language does not clearly indicate that the provisional allowance would be contingent upon the POTW's compliance with applicable sludge disposal requirements set forth in § 403.7(b)(4).

The Agency has amended this section to make it clear that in order to receive a provisional removal allowance, a POTW must comply with the same requirements, set forth in § 403.7(b)(1)–(4), which must be met prior to obtaining the more conventional removal allowance. Thus, under the provisions of paragraph (b)(4), the provisional allowance may not be authorized if it contributes to the POTW's inability to comply with its NPDES permit or with applicable sludge disposal requirements.

Under the provisions of paragraph (b)(1) the POTW must apply for the provisional allowance. Paragraph (b)(2) allows the POTW to receive conditional approval of its provisional allowance prior to the development of a local pretreatment program. Finally, if the POTW requesting the provisional allowance has a combined sewer system which at least once annually overflows untreated wastewater to receiving waters, then the provisional removal allowance must comply with the requirements of § 403.7(b)(3).

Section 403.7(d)(2)(vii) has also been amended, in response to comments, to provide a specific time frame in which the POTW must commence a demonstration of removal as required by § 403.7(d). The final regulation establishes that the POTW must provide the operating data required by § 403.7(d) to support the provisional credit within 18 months after commencing discharge of the pollutant for which the provisional allowance is requested.

§ 403.7(f)(5) (formerly paragraph (e)(4) Withdrawal or Modification of Removal Allowances.

The Agency received comments that the phrase "significantly contributing" is unworkably vague. While EPA believes that a reasonable person would understand the meaning of this phrase, the Agency has clarified its meaning by including in the final language of § 403.7(f)(5) a reference to the definition of this phrase found in § 403.3(i). Thus, all uses of this phrase in the regulation shall be accorded the meaning set forth in that paragraph.

Another commenter expressed concern with the provision providing for withdrawal or modification of the removal allowance unless corrective action is taken in a reasonable time "not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake appropriate corrective action." This commenter was concerned that the quoted language could be used to justify allowing problems to continue for long periods of time while major construction or long-term upgrading projects were undertaken. The above-quoted language should not be read to provide for such long-term remedies. The Agency intends the quoted language to allow time for the correction of only relatively minor, short-term problems. If a POTW is not meeting its approved removal level and a long-term modification is necessary to improve the POTW's removal, the existing allowance should be adjusted downward until the higher removals are actually attained.

§ 403.7(e)(2) (Formerly paragraph (d)(2)) POTW's Receiving Construction Grants.

A new sentence added to the end of this paragraph highlights the interaction between the pretreatment regulations and the construction grants regulations (49 CFR Part 35) by pointing out that POTWs receiving grant funds for sludge disposal or treatment technology should consider the impacts which the granting of removal credits will have on the grant eligibility of sludge disposal or treatment systems in accordance with 35.917–1(d)(6) and Appendix A of Part 35 (40 CFR Part 35). In addition, the Construction Grant regulations are currently being amended to establish procedures for assessing the impact of granting removal credits on sludge disposal alternatives. These amendments are expected to clarify that sludge disposal or treatment systems are subject to the same cost-effective analysis contained in Appendix A of 40 CFR Part 35 as are all other projects funded under Title II of the CWA. Additionally, the amendments are expected to clarify that the level of federal participation will be limited to the most cost-effective, environmentally sound treatment technologies. In light of these anticipated amendments, POTWs expecting to seek Title II funding for sludge disposal systems should be prepared to consider the impact of granting removal credits on potential federal participation.

§ 403.7(g) (formerly paragraph (f)) Removal Allowances for POTWs not Required to Develop a Pretreatment Program.

The proposed § 403.7(f) (now designated paragraph (g)) provided that POTWs in States electing to exercise their § 403.10(e) authority to forego requiring the developing of local pretreatment programs may nevertheless receive removal allowances. Several commenters raised questions pertaining to the implementation of this provision. Section 403.10(e) allows a State to run a centralized pretreatment program at State-level which would be responsible for carrying out those responsibilities otherwise relegated to the POTW, i.e., the responsibilities set forth in § 403.8(f). The State would, for example, receive the various reports required of industry by § 403.12 and would be responsible for seeing that applicable categorical Pretreatment Standards were complied with. States make application for the authority to run a § 403.10(e) program in

the State Pretreatment Program submission required by § 403.10(b) or amendments thereto.

Where the State elects to run a centralized program under § 403.10(e), certain responsibilities should nevertheless remain with the POTW. Section 403.7(g) provides that, where the State develops a program under § 403.10(e), the POTW must remain responsible for the demonstration of and periodic reporting on removal according to the provisions of § 403.7 in order to receive and maintain a removal allowance. The approved removal level is incorporated into the POTWs State- or EPA-issued section 402 permit and becomes enforceable as a condition thereof.

In addition, several commenters noted an apparent contradiction between the provisions of § 403.7(g) and those of § 403.8(a) requiring that a POTW program be developed as a condition to receiving removal allowance approval. As the following discussion indicates, § 403.8(a) has been amended to rectify this inconsistency. Where the State exercises its § 403.10(e) authority and assumes, at the State level, the responsibility for developing the components of a local pretreatment program, the POTW is deemed to have a program sufficient to meet the requirements of § 403.8(a).

§ 403.8 POTW Pretreatment Programs.

§ 403.8(a) Local Programs and Removal Credits.

Several commenters pointed out that the last sentence in § 403.8(a) requiring that a local pretreatment program be developed where removal allowances are approved appears to be inconsistent with the new provisions of § 403.7(b)(2) allowing for conditional removal allowance approval prior to the submission of a local pretreatment program and with the provisions of § 403.7(g) which authorize removal allowance approval in selected circumstances where a local program does not exist. The relevant language of § 403.8(a) promulgated on June 26, 1978 provided that "any POTW desiring to modify national Pretreatment Standards for pollutants removed by the POTW (as provided for by § 403.7) must first have an approved POTW Pretreatment Program." The word "first" was deleted in the October proposal so that this provision would be consistent with the provision of § 403.7(b)(2) allowing for conditional allowances. It is apparent from the comments received that this language change did not clearly convey this intent. Therefore, paragraph (a) has again been amended to avoid any appearance of inconsistency with § 403.7(b)(2). Section 403.8(a) now provides that in order to receive *final* approval of a removal allowance, a POTW program must first have been developed and approved by or submitted to the approval authority. Where a *conditional* removal allowance has been requested, § 403.8(a) provides that the POTW must develop a local pretreatment program according to the requirements of § 403.7(b)(2).

We agree that the proposed provision is inconsistent with the new language of § 403.7(g). Paragraph (a) of § 403.8 has accordingly been amended to provide for an explicit exception to the rule that a POTW receiving a removal allowance must ultimately develop a pretreatment program. The amended paragraph provides for an exception in the case outlined in § 403.7(g) where the State has elected to assume responsibility for running a local program in lieu of the POTW in accordance with § 403.10(e), and the POTW is accordingly not required to develop a local program.

§ 403.8(e) Cause for Reissuance or Modification of Permits.

Two additional circumstances constituting cause to modify or reissue a POTW's NPDES permit have been added to this paragraph. Paragraphs (e)(4) and (5) now make explicit State and EPA authority to modify or reissue permits to incorporate the provisions of an approved pretreatment program or a compliance schedule for the development of such a program. These authorities were already provided for by paragraphs (c) and (d) and have been consolidated in paragraph (e) for the sake of clarity.

§ 403.8(f)(1)(iv) Confidential Information.

The comment following this paragraph has been deleted in the final regulation. The comment provided that POTWs and NPDES States are encouraged to develop procedures to protect trade secrets and confidential information. Section 403.14 of the regulation now requires that POTW's and States develop such procedures. In addition, a new paragraph, (f)(1)(vii) has been added which requires the POTW to comply with the requirements of § 403.14. In light of these changes, the comment is redundant and has been deleted accordingly.

§ 403.8(f)(1)(v)(B) POTW's Emergency Authorities.

The proposed regulations amend this section to require that the POTW provide Industrial Users with: (1) informal notice before requiring them to halt discharges that appear to present an imminent danger to health or welfare; and (2) a more formal notice prior to halting discharges which threaten the environment or the operation of the POTW. Two of the three commenters who addressed this issue directed their concerns at the more substantive provisions of this paragraph rather than at the proposed changes with regard to notice. These commenters expressed concern that POTWs might overzealously exercise this authority if more definition were not given to the term "imminent endangerment." One of these commenters went further to suggest that this emergency response provision only be applied to demonstrated rather than potential dangers. It would appear to be useful to reiterate the rationale behind these provisions.

The Agency does not believe that it is desirable or possible to chronicle all situations which would constitute an imminent endangerment to human welfare, the POTW, or the environment. The local POTW is, in most cases, must better able to identify those circumstances which constitute an immediate danger to local inhabitants, local streams, or the operation of the treatment works. The Agency therefore believes that it should accord wide discretion to the POTW to act in those instances which it deems to constitute an imminent danger. In addition, one of the major functions of the emergency provision would be severely undercut if it were limited to situations where an actual harm had become manifest. One of the primary purposes of this provision is to give the POTW authority to intervene in dangerous circumstances before they result in harm to persons, the environment, or to the operation of the treatment works. Therefore, the final regulations promulgated today preserve the POTW emergency response authority promulgated in the June, 1978 regulations.

§ 403.8(f)(2)(vii). Newspaper Notification of Pretreatment Violations.

In the June 26, 1978 regulations, this paragraph provided that the POTW should provide for annual notice in the municipality's largest newspaper of Industrial Users that were not in compliance with Pretreatment Standards or other pretreatment Requirements during the preceding twelve months. This provision inspired concern that the language might be too broadly interpreted to cover very minor instances of noncompliance, such as the delay of one day in submitting a status report. The provision was amended accordingly to provide that only

significant violations occurring during the year need be reported. The amended paragraph then defined a significant violation as those violations which remain uncorrected forty-five days after notification of noncompliance, which are part of a pattern of noncompliance over a twelve month period, or which involve a failure to accurately report noncompliance. Several commenters addressing this proposed change suggested a return to the original language. Another suggested that the modified language also include provision for notification of violations pertaining to toxic pollutants or violations having severe consequences.

The Agency believes that the proposed language adequately addresses its concern that the public receive notice of significant industrial violations while avoiding inequities which might arise from publishing notices of very minor excursions. Requiring the POTW to report *any* violation appears unduly burdensome on the POTW and unduly harsh for those Users responsible only for minor reporting violations. Therefore, in the final regulations promulgated today, the Agency has adopted the basic changes incorporated in the proposed amendments. The final regulations also reflect a change in response to the aforementioned commenter who favored incorporation of a notice requirement where toxic pollutants or discharges resulting in serious damage to health, environment or the operation of the POTW were concerned. Section 403.8(f)(2)(vii) now provides that a violation is deemed to be significant if it results in the exercise of the POTW's emergency authority under § 403.8(f)(2)(vi)(B). Thus, the POTW must give newspaper notice of those violations which elicited an "imminent endangerment" response under the above-referenced paragraph.

Another commenter indicated that the public participation provisions of 40 CFR Part 25, referenced in § 403.8(f)(2)(vii), were so varied in nature that reference to this part was unworkably vague. This commenter suggested that the Agency specify those requirements to be complied with in order to avoid regional discrepancies. EPA agrees with this comment, but feels that the proper forum for such distinctions is guidance rather than regulations. The Agency therefore will ensure that the Pretreatment Guidance package to be distributed following the promulgation of this regulation will discuss the public participation mandated by 40 CFR Part 25.

§ 403.9 Submission of POTW Program and Removal Allowance Approval Requests.

§ 403.9(a) Responsible Approval Authority.

Paragraph (a) has been amended to make it clear that requests for local program and removal allowance approval are to be submitted to a State for a final approval determination only if the State has an approved pretreatment program. In all other cases, these requests are to be approved by the appropriate EPA Regional office. This provision does not preclude an agreement between the State and EPA that the State will conduct an initial review and make an advisory determination on the approvability of a POTW program or removal allowance where the State does not have actual approval authority. The provision also is not intended to relieve the State of responsibility for making an approval determination where it has been determined (as provided for by § 403.10(a)) that the State has authority to make such a determination.

§ 403.9(c)(3) (formerly paragraph (b)(3)) Conditional Program Arppovals.

As originally promulgated this section required that removal allowances be withdrawn if funding was not acquired to implement any delayed elements of a conditionally approved local pretreatment program within the necessary time period. To conform to the change in § 403.7(f)(5), this provision has been amended to make clear that allowances may be modified rather than withdrawn. The sole commenter on this section supported the change and it is adopted as proposed.

§ 403.9(f) Pretreatment Program Submissions—Procedural Defects.

The proposed amendment to this section would have required public notice by the EPA or State in the event it was determined that a submission for pretreatment program approval or removal allowance approval did not comply with the procedural application requirements set forth in the regulation. POTW and State comments all objected to this proposal on grounds that it would impose a heavy administrative and resource burden with minimal benefits. They pointed out that any procedural defects were usually remedied most expeditiously by direct contact with POTWs during the review process prior to formal submission. A POTW also noted that publication of a "notice of noncompliance" is misleading in that it implies that the POTW failed to meet its permit compliance schedule for the development of a program.

The one commenter supporting the change felt public notice was necessary to alert Industrial Users who could then assist the POTW in complying with the procedural requirements in resubmitting its proposal. The Agency agrees that such notice can prove useful and the final regulations, accordingly, provide that the Approval Authority shall provide notice of program deficiencies to all persons who have specifically requested such notice. The Agency is convinced by the comments that it is unnecessary to impose a mandatory public notice requirement in this situation.

§ 403.10 State Pretreatment Programs.

§ 403.10(a) State Pretreatment Programs—Exercise of Current Authorities.

Section 403.10(b)(1) of the proposed amendments provides that an NPDES State will be required to exercise those authorities related to the operation of a State pretreatment program which it possesses even if the State has not yet obtained approval of its pretreatment program. In most States these are authorities, such as the authority to apply and enforce requirements under section 307(b) and (c) of the Clean Water Act, which the State already attested to in its application for NPDES program approval. Since former paragraph (b)(1) has been deleted in today's final regulation (it imposed a reporting requirement which states have subsequently complied with), the language discussed above has been moved to paragraph (a). No comments were received on this amendment and it is adopted as proposed.

§ 403.10(c) EPA Pretreatment Authority.

This amendment substituted "EPA" for "Administrator" in describing the Agency's exercise of pretreatment authority prior to State implementing action. This technical change will be adopted as proposed.

Several commenters suggested that EPA replace the word "may" in the phrase ". . . EPA may exercise the authorities . . ." to recognize the mandatory nature of the Agency's obligation in this situation. EPA agrees and "shall" has been substituted in the phrase.

§ 403.10(e) State Program in Lieu of POTW Program.

The preamble to this section in the proposed amendments suggested a new policy which would prohibit granting

section 201 funds to a POTW for development of a pretreatment program where the State had elected to implement the program at the local level. This suggestion generated considerable comment in opposition to the policy and endorsing the merits of local pretreatment programs as opposed to those run by States. EPA agrees that in most cases local pretreatment programs are preferable to State-operated programs. However, this section makes provision for those circumstances when the State determines that its resources and capabilities are better suited to administer the program than its local POTW's. The regulation makes it clear that there is no bar to a POTW developing its own program even where a State has elected to operate a program. In response to the comments, EPA has rejected the proposed policy of not funding the development of these local programs. Therefore, POTWs in this situation will be at no economic disadvantage in establishing pretreatment programs relative to POTWs in States not operating local programs.

Several commenters suggested that a conflict existed between this provision and the language in § 403.8(a) requiring POTWs with a daily flow in excess of 5 million gallons to develop local pretreatment programs. These commenters believed a State decision to operate local programs would be limited by § 403.8(a) to those POTWs with less than 5 mgd flow. This is not the intent of the regulation. The language of this section has been clarified to indicate a State decision to operate a pretreatment program in lieu of a POTW will supersede the requirements of § 403.8(a) even for those facilities with daily flows greater than or equal to 5 mgd.

§ 403.10(f)(2)(iii) Compliance Schedules.

The amendment to this section deletes the word "expiring" prior to "POTW permits." This change clarifies that the State must develop procedures to include pretreatment compliance schedules in all permits, not just those which are expiring. In response to the sole commenter on this section, EPA has added a phrase indicating that the shortest reasonable compliance schedule may not extend the time for POTW compliance beyond the July 1, 1983 deadline.

§ 403.10(h) EPA Approval of State Programs.

The proposed amendment altered the references in this section from "Administrator" to "Regional Administrator" to reflect the delegation of the authority to review the initial State program submission. No comments were received on this amendment and it is adopted as proposed.

§ 403.10(h)(2) Approval Procedures for State Programs.

This amendment alters the reference concerning State pretreatment program approval procedures from § 403.11 to 40 CFR Part 123.13 pursuant to the changes in the revision of the NPDES regulations in the June 7, 1979 **Federal Register** and the promulgation of the Consolidated Permit regulations in the May 19, 1980 **Federal Register.**

§ 403.11 Approval Procedures for POTW Programs and Removal Allowances.

This section has been modified to delete references to State program approval procedure. As § 403.10(h)(2) now indicates, State program approvals are now governed by the procedural requirements found in Part 123 of the Consolidated Permit regulations.

§ 403.11(b) Review and Preparation of Notice.

The proposed amendment to this paragraph required the Approval Authority to have a Submission ready for public review and comment within 5 days of its receipt. A commenter noted that this period may be unrealistically brief for the Approval Authority to conduct a preliminary review of the Submission to determine its procedural sufficiency and prepare the required public notice. The language has been changed to indicate that the 5 day period for preparing the public notice commences after the Approval Authority has made its preliminary determination that the Submission contains all the required information.

§ 403.11(b)(1)(i)(A) Notice.

The final amendment to this section provides that those persons requesting individual notice must also be included among the persons to whom copies of the request for program or removal allowance approval must be mailed. The Approval Authority may notify persons and organizations other than those listed in paragraph (b)(1)(i)(A) as the Approval Authority deems necessary. The opportunity for the exercise of discretion should address one commenter's concern that in certain circumstances notices of requests for approval of Submissions should be sent to adjoining States whose waters may be affected.

§ 403.11(b)(3) Review of Conditional Removal Allowances.

The proposed amendment added a new section requiring the Approval Authority to publish notice of its decision to defer review of a Submission which authorizes a POTW to grant conditional revised discharge limits. Commenters indicated that this requirement would impose a large additional burden upon the Approval Authority. The requirement imposes no greater burden upon the Approval Authority than if it chose to review the package rather than defer the review. One commenter argued that formal action of record by the Approval Authority was required prior to a POTW exercising its power to grant conditional revised discharge limits. This is not the intention of §§ 403.7(b)(2) and (c). Submission of the request alone authorizes the POTW to grant removal allowances. The section is adopted as proposed.

§ 403.11(c) and former paragraph (e) Approval Authority Decision.

Paragraph (e) of the proposed regulation provides that the Approval Authority shall provide notice of a decision not to approve a Submission and that this notice shall be accompanied by suggested revisions needed to bring the Submission into compliance with applicable requirements. This provision has been moved to a more appropriate location in paragraph (c) which discusses the Approval Authority's decision to approve or deny a Submission.

§ 403.12(b) Industrial Reporting Requirements—General.

The first part of § 403.12(b) has been amended today to incorporate the changes proposed on October 1979 which make clear EPA's intent to require the 180 day baseline reports only of those Industrial Users subject to specific categorical Standards. Industrial Users subject only to prohibited discharge limits need not submit baseline reports unless otherwise required by the Control Authority.

A commenter noted, and the regulations today reflect, that since the effective date of 40 CFR 403 is August 25, 1978, the reporting dates triggered by the effective date of Part 403 can be deleted.

One commenter suggested that the baseline report required by § 403.12(b) should be due 180 days after the final decision concerning the applicable subcategory determination made pursuant to § 403.6 instead of 180 days

after the effective date of a categorical Pretreatment Standard. EPA agrees that a good-faith category determination submission warrants the delay of the baseline report deadline because in some cases extensive engineering analysis may be critically dependent upon the category determination outcome. The regulations have been amended accordingly. However, this change does not affect the final compliance date established by the Pretreatment Standard.

Several commenters sought additional guidance on the procedures to be followed in preparing the baseline report required by § 403.12(b). Interim guidance on preparing this report was published in the Wednesday, March 26, 1980 **Federal Register** at page 19556 (45 FR 19556). The sampling and analysis procedures incorporated into today's final regulation adopt the procedures specified in the March 26 notice. Like the March 26 notice, today's regulation allows facilities with average daily process flows less than 250,000 gallons/day to take fewer samples in arriving at the baseline effluent data. Facilities with flows under 250,000 gallons/day must take 3 samples within a two-week period. Facilities with process flows over 250,000 gallons/day are required to take 6 samples within a two-week period. More than ⅔ of the industries to be regulated by categorical Pretreatment Standards (and more than 81% of electroplaters) have average daily process flows less than 250,000 gallons/day.

One commenter expressed concern that the regulations provided no guidance as to reporting format, amount of data required or degree of detail expected in documenting compliance plans (§ 403.12(b)(7)). EPA's response to this commenter and to others who have individually sought guidance is that any reasonable and orderly format will be an acceptable format for the reports. The degree of detail required is the degree of detail sufficient to explain to the Control Authority the logical analysis used by the Industrial User in arriving at dates for identifiable benchmarks toward full compliance, and adequate description of the benchmarks so that a reasonable POTW operator can recognize whether or not those benchmarks toward full compliance are being achieved on schedule.

There is presently no prepared form for use in fulfilling the baseline monitoring report requirements of § 403.12(b). In preparing this first report, the User should simply provide the information required by the 7 subparagraphs of § 403.12(b) in the order given with as much detail and clarity as possible. Any orderly submission containing all of the required information will be considered adequate.

EPA intends to develop baseline reporting forms. That action will not be retroactive. Industrial Users submitting reports based on the requirements of § 403.12(b) will not be required to re-do the reports to conform to the formal reporting format when it is developed.

§ 403.12(b)(4) Reporting of Flow.

The October 1979 proposal to change § 403.12(b)(4) has been adopted today to allow reporting of *estimated* flows rather than *measured* flows where the Control Authority approves of these estimates in recognition of cost or feasibility considerations. For example, where existing structural conditions would result in serious disruption of business operations or require extensive replumbing, verifiable estimates may be accepted at the discretion of the Control Authority.

One POTW commented that it believes that large Industrial Users should be required to install flow monitoring equipment because of significant error observed in the use of estimated flows based on potable water metering readings. The promulgated version of § 403.12(b)(4) reserves to the Control Authority the necessary discretion to deal with local concerns in this area.

In addition, paragraph (b)(4)(ii) cross-references subparagraph (b)(5)(v) of this section and provides that Industrial Users electing to employ an alternate combined wastestream limit in accordance with § 403.6(e) submit the flow informaton necessary to calculate this alternate limit.

§ 403.12(b)(5) Reporting of Pollutants.

Several commenters maintained that the proposed § 403.12(b)(5) imposed upon Industrial Users an unjustified and unwarranted burden to monitor *all* pollutants from each regulated process. The intent of the paragraph is made clear today by the amendment to § 403.12(b)(5)(ii) which requires that, the Industrial Users must report on the nature and concentration of *regulated* pollutants which are controlled in the applicable Pretreatment Standard.

Paragraph (b)(5)(ii) also has been amended to provide that information on the mass of pollutants in the User's discharge may be required in certain circumstances. For example, where the categorical Pretreatment Standard employs mass rather than concentration limits, the User will be required to report, under paragraph (b)(5)(ii), on the mass of the regulated pollutants in the regulated process. Similarly, the User would be required to provide information on mass where the Control Authority has elected to exercise its discretion to impose mass limitations.

In addition, this paragraph has been amended to include subparagraph (v) which requires that Users employing an adjusted limit, as provided for by § 403.6(e), submit the flow and concentration information needed to establish the alternate limit. Reference to the equation in § 403.6(e) reveals that, under certain circumstances, information is needed on the flow of the regulated stream(s), the total flow through the combined treatment facility and the flow from certain streams having a high potential for dilution as listed under the definition of F_D in § 403.6(e)(1).

§ 403.12(b)(7) Reporting on Adjusted Limits.

Two subparagraphs have been added to paragraph (b)(7). Subparagraph (i) provides that the information required by paragraphs (b) (6) and (7) will pertain to an adjusted categorical Pretreatment Standard in certain circumstances. Where the categorical Pretreatment Standard limit has been adjusted, prior to the deadline for submitting the § 403.12(b) report, as a result of a removal allowance, fundamentally different factors variance or application of the combined wastestream formula, the User will report on this adjusted Standard.

Subparagraph (ii) addresses the situation where the § 403.12(b) report has been submitted prior to the adjustment of a categorical Pretreatment Standard limit under one of the above-cited provisions. Where an adjusted standard is arrived at after the § 403.12(b) report deadline, the information required by paragraphs (b) (6) and (7) must be amended where necessary. For example, the original certification under paragraph (b)(6) may have indicated that the applicable categorical Pretreatment Standard was not being complied with and the User, accordingly, would have submitted a compliance schedule under the provisions of paragraph (b)(7). If a fundamentally different factors variance relaxing the Standard was granted subsequent to the submission of the § 403.12(b) report resulting in a relaxation of the Standard to the extent that the User was able to meet the adjusted limit without additional treatment, the Use would send in an amended paragraph (b)(6) statement indicating current compliance and would concurrently amend the

compliance schedule to reflect the fact that the adjusted standard was being met. According to paragraph (b)(7)(ii), the User has 60 days from the date on which the adjusted limit is approved in which to submit this amended information.

§ 403.12(g) Frequency of Self-Monitoring for Compliance with Categorical Pretreatment Standards.

The proposed amendments to the electroplating categorical Pretreatment Standards (45 FR 45322 (July 3, 1980)) indicated that the frequency of monitoring for those Industrial Users subject to the Pretreatment Standards would be prescribed by the general pretreatment regulations. The Agency has decided to abide by its original decision, reflected in § 403.12(g) of the general pretreatment regulations promulgated on June 26, 1978 to include these monitoring requirements in the individual categorical Pretreatment Standards rather than in the general pretreatment regulations. The Agency decided that the development of generic monitoring requirements to be included in the general pretreatment reguations and applied uniformly to all Users would result in an unacceptable sacrifice of EPA's ability to tailor these requirements to the circumstances of individual industries. Factors such as cost and the toxicity of the regulated parameters should be factored into a determination of necessary monitoring frequency and techniques on an industry-by-industry basis.

§ 403.13 Fundamentally Different Factors Variances.

Today's final reguation makes several changes to the fundamentally different factors (FDF) variance provision proposed in the January 16, 1980 Federal Register. First, the Agency has made slight modifications to § 403.13(c)(1) describing the conditions under which a fundamentally different factors variance will be granted. Second, the Agency has modified the FDF regulations to reflect the interaction between § 403.13 and the combined flow formula of § 403.6(e). Finally, the Agency has modified § 403.13 to include public participation provisions not originally included in the January 1980 proposal. In addition, the Agency has amended 40 CFR Part 125 of the Consolidated Permit Regulations (prescribing FDF variance criteria for direct discharges) to make it clear that FDF criteria and procedures applicable to indirect dischargers are determined exclusively by the provisions of § 403.13.

§ 403.13(c) Standards for Approving FDF Variances.

Section 403.13(c)(1) has been reorganized to place subparagraphs (i) through (iii) in a more logical order. In addition, the reference to a permit found in subparagraph (c)(1)(i) has been deleted and replaced by a reference to the categorical Pretreatment Standard. The reference to a permit was inappropriate since indirect dischargers are regulated through categorical Pretreatment Standards published in the Federal Register rather than through individual permits.

Subparagraph (ii) of § 403.13(c)(2) has been amended to indicate that an FDF variance request for less stringent standards will be approved only if the alternative limit requested will not cause the industry to violate any of the prohibited discharge standards set forth in § 403.5 of these regulations. In the January 1980 proposal, this subparagraph specified that the alternative limit must not cause Interference with the POTW. The subparagraph has been amended to reflect the changes made to § 403.5 which adds to the interference prohibition a prohibition on the unacceptable pass-through of pollutants.

In addition, a new subparagraph has been added under § 403.13(c)(2) which provides that a less stringent limit may not be approved if such a limit would result in a non-water quality impact fundamentally more adverse than the impact considered during the development of the Standards. This new subparagraph mirrors a comparable provision found in § 403.13(c)(3) pertaining to requests for more stringent standards through an FDF variance. Section 403.13(c)(3)(ii)(B) provides that a more stringent standard will not be approved if the amended limit would result in a more adverse non-water quality impact.

§ 403.13(d) Factors Considered Fundamentally Different.

Today's final regulation amends the comment following § 403.13(d)(1). The comment proposed in the January 1980 amendments reflects a similar provision found in the NPDES Permit regulation provisions pertaining to FDF variances (40 CFR 125.31(d)(1); 44 FR 32951, June 7, 1979). The comment in the NPDES Reguations explains that processes considered in setting the effluent guideline will be eligible for an FDF variance while process water wastestreams which are not considered in the development of the national limits will not be treated as fundamentally different. The comment to § 125.31(d)(1) provides that limits for these unregulated wastestreams will be developed on a case-by-case basis according to the Agency's authority under section 402(a)(1) of the CWA. The Agency's authority to place limits on wastestreams not specifically regulated by Pretreatment Standards differs from its authority to regulate such streams for direct dischargers. The modification to the comment in § 403.13(d)(1) reflects this difference. Where a facility with processes regulated by categorical Pretreatment Standards elects to mix this process wastewater with wastewater from lines not regulated by Federal standards, the formula in § 403.6(e) provides a mechanism for computing alternative concentration-based limits to be met at the end of the joint treatment. The comment to § 403.13(d)(1) provides that Industrial Users may request an FDF variance from this modified effluent limitation.

In addition, in response to a suggested modification, the comment following paragraph 403.13(d)(6) (formerly in paragraph (c)(3)) has been amended to clarify that in determining whether or not a particular factor is fundamentally different the EPA will consider pertinent information submitted by the requestor.

§ 403.13(g) Application Deadline.

Several commenters indicated that the proposed time period for requesting an FDF variance is unduly restrictive. The proposed regulation provides that an indirect discharger desiring to request an FDF variance must do so within 90 days after the promulgation of the categorical Pretreatment Standard from which the variance is requested. In light of the time period traditionally allowed for direct dischargers requesting an FDF variance, this 90-day deadline would not appear unduly restrictive. Under the provisions of 40 CFR 122.53(i)(1), a direct discharger requesting an FDF variance must do so within the 30 day comment period provided for the draft permit. However, most direct dischargers have some idea of the effluent limit which will be imposed through the permit a good deal of time before the permit appears in draft form. The effluent standard on which the permit is based may be promulgated months before the permit-development work begins. Thus direct dischargers may begin preliminary work on their FDF variance prior to the 30-day period allowed by the consolidated permit regulation. In an attempt to provide indirect dischargers with approximately the same amount of time for developing an FDF variance as is allowed for direct dischargers the Agency is extending the FDF deadline to 180 days from the effective date of the

applicable categorical Pretreatment Standard.

In addition, paragraph (g)(3) provides that an Industrial User which has requested a determination by EPA or the State as to its proper industrial category (see § 403.6(a)) may elect to await the outcome of that determination prior to requesting an FDF variance. A User wishing to take advantage of this provision must submit a request for an FDF variance within 30 days after the State or EPA makes a determination on the User's category classification.

§ 403.13(j) Public Notice.

The provisions of § 403.13 have been amended to provide for public notice and public participation in the FDF variance decision-making process. Section 403.13(j) provides that upon receipt of an FDF variance the State or EPA must provide notice to interested parties of the application. A 30 day period is then allowed for interested parties to review this submission and submit comments. At the end of this thirty day review and comment period the State or EPA will make a final determination on the FDF request and provide notice of this determination. Paragraph (j) provides that the person requesting the variance or any other interested party may request a hearing on the Enforcement Division Director's final variance determination within thirty days following receipt of notice of that determination.

§ 403.14 Confidentiality.

Section 403.14 has been amended to specify the trade secret and confidential information protection to be provided by EPA and State and local governments. Paragraph (a) provides that EPA must comply with 40 CFR Part 2 in granting protection to confidential information once the submitter follows certain steps in claiming confidentiality.

Paragraph (b) makes it clear that effluent data, whether submitted to the POTW, State or EPA, shall be available to the public without restriction.

Paragraph (c) provides that States and POTWs must grant public access to at least the same type of information as does EPA. The Agency will not, however, dictate how a State or POTW must treat other information submitted to it.

These changes were made to conform § 403.14 to the Consolidated Permit regulations (40 CFR § 122.19 and § 123.7 (May 19, 1980.))

Section 403.15 Net/Gross. Section 403.15 provides for calculation of Industrial User effluent limits based on net terms rather than gross terms. Industrial Users subject to categorical Pretreatment Standards may receive a credit, under specified conditions, for pollutants present in their intake waters. This provision is patterned after a similar provision applicable to direct dischargers and found in § 122.63(h) of the Consolidated Permit regulations.

Comments on § 403.15 are roughly divisible into two major categories. Several commenters objected only to the language of § 403.15(a)(1) which precludes the calculation of a net limitation for pollutants found in intake water drawn from the city water system. This language appears in § 403.15 but not in the consolidated permit regulations. Another group of commenters voiced more fundamental objections to the net/gross system as set forth in both in the consolidated and pretreatment regulations.

EPA agrees with the commenters who felt that the restriction on granting net/gross credits for pollutants found in city water was unreasonable and this limitation accordingly has been eliminated in the final regulation. With this one exception, the final reuglation continues to limit the availability of the credit to those dischargers who discharge their effluent to the same body of water from which they received their influent. The rationale for this restriction continues to be that enunciated in the preamble to the net/gross provision in the June 7, 1979 NPDES regs (44 FR 32865). While a discharger should not be held responsible for pollutants already existing in its water supply if the discharge is into the same body of water from which the discharger took water, the same reasoning cannot support allowance of a credit where the discharge is into another body of water. The grant of a credit in the latter case would allow a discharger to transfer pollutants from one body of water to another, thus, adding pollutants to receiving waters for the first time.

The second group of commenters suggested major changes to the net/gross provisions appearing both in § 403.15 of the general pretreatment regulations and in § 122.63 of the Consolidated Permit regulations. For the reasons set forth in the preamble to the aforementioned June 7, 1979, NPDES regulations, EPA has not deleted any of the conditions necessary for achieving a net/gross credit. EPA considers these conditions to be reasonable, consistent with court decisions, and necessary to achieving the goals of the Act.

The limitations upon the net/gross provision in these final regulations grow out of the technical basis on which categorical Pretreatment Standards are established. Without exception, EPA has developed Pretreatment Standards on a gross, not a net, basis. The Standards assume that a treatment technology will achieve a final effluent concentration which is independent of fluctuations in influent concentration, within a very broad range. The effluent levels achieved by good treatment may be close to background levels in some receiving waters. This fact underlines the mischief which can result from an indiscriminate application of net limitations. A plant may have a treatment system which, properly operated, achieves a suspended solids limit of 15 mg/l with a raw waste between 150–600 mg/l or more. If the intake concentration is 15 mg/l, this will have no effect upon the achievable final effluent concentration. Yet indiscriminate application of the net requirement would allow the User to discharge 30 mg/l, or twice the concentration which a well-run treatment system should achieve. For this reason, EPA has restricted the application of the net allowance to those cases where the treatment required by the Act will not remove the pollutants in the intake water (such as, for example, where cooling water is discharged without settling).

Some commenters objected to the requirement that a credit will only be allowed for pollutants present after any treatment steps have been performed on the intake water. These commenters suggested that EPA has no jurisdiction to regulate intake pollutants but may only regulate pollutants added by the discharger. See *Appalachian Power Co. v. Train*, 545 F.2d 1351, 1377 (4th Cir. 1976). In *Appalachian Power* the court held that EPA only had jurisdiction over pollutants added by the discharger. EPA believes that when a source changes the character or concentration of an intake pollutant and then discharges it, the source is, in effect, adding a pollutant to the water. For example, one step in the pretreatment of intake water in many industries is chlorination to protect pipes and process equipment from algae formation. This treatment will result in chlorination of the intake pollutants thereby rendering them more toxic. When this occurs, the User should not be allowed to pass through those pollutants in its wastestream without some responsibility for treatment. If the User can demonstrate that the character or concentration of the pollutants has not changed after pretreatment, or that any change in concentration will not have a detrimental effect on the POTW or the POTW's receiving water, then a credit for the pollutants will be allowed.

These determinations will have to be made on a case-by-case basis.

A credit may be allowed for the amount of pollutant remaining in a User's intake water after any treatment of the intake waters and wastewater treatment. Thus, if a User treats its intake water and removes 90 percent of a pollutant, the User may be entitled to a credit for the remaining ten percent left in the water used in the plant process. If the User's waste treatment system also removes 90 percent of the pollutant, the User's credit of ten percent shall be reduced by 90 percent because the pollutant remaining in the influent is being treated a second time, thereby, reducing the pollutant by an additional 90 percent. Therefore, the User's total credit following both treatments would be one percent of the pollutant in the original influent.

Some commenters objected to the requirement in § 403.15(a)(3) that a credit could not be granted where the pollutants in the intake waters were "chemically or biologically" different from the discharge water. This requirement was considered vague and overly broad. EPA disagrees. Generic pollutant parameters such as biochemical oxygen demand [BOD], chemical oxygen demand [COD], total organic carbon [TOC] or total suspended solids [TSS] are broad measurements of a number of specific chemicals or materials. TSS, as measured at an intake point, may consist mostly of river silt; but after being used in a process the TSS, as measured at the outfall, may include substantial quantities of metals or other materials with toxic characteristics. EPA considers it essential to avoid allowance of credit when the pollutants in the discharge water vary significantly in toxicity from the pollutants in the intake water. Industrial Users should not be allowed an unrestricted right to add more toxic pollutants to their discharge waters.

In addition, several commenters objected to the 60-day deadline for requesting a net/gross credit, noting that the Consolidated Permit regulations do not impose a similar constraint. These commenters pointed out that in many cases treatment technology would need to be installed before a User could satisfy the demonstrations needed to receive a credit. EPA agrees with this comment and accordingly has deleted the time limitation on applying for a net/gross credit.

§ 403.16 Upset.

The Upset Provision proposed in October 1979 was modeled after 40 CFR Part 122.60(b) and (h) (formerly found in § 122.14(l) of the NPDES regulation promulgated on June 7, 1979). EPA adheres to the explanation and rationale for the upset provision enunciated in the preamble to the NPDES regulation promulgated on June 7, 1979 (44 FR 32863). The language of § 403.16 also has been modified to conform with the changes made to the upset provision in the May 19, 1980 Consolidated permit regulations (45 FR 33448). The only other change in the amended version of § 403.16 is the specification of the recipient of upset reports.

§ 403.16(a) Definition of Upset.

Many comments were received on this provision from Industrial Users concerned that literal reading of the phrases pertaining to the applicability of this provision would the defense useless. It must be pointed out that the provision governs one area of prosecutorial discretion. Failure to meet specific criteria described here does not prohibit Agency enforcement personnel from exercising discretion in other cases where prosecution is not warranted. Furthermore, upsets themselves are deemed exceptional incidents that are temporary, unintentional and beyond reasonable control of the Industrial User. The failure to have properly designed treatment facilities or lack of proper maintenance and operation will result in more than occasional upsets.

Though variability in process waste output and pretreatment equipment performance are normally expected, upsets are abnormal excursions from the variability already contemplated by EPA in establishing technology based pretreatment standards. Properly designed and operated pretreatment facilities should not experience upset except for causes which are beyond reasonable expectation.

Several commenters specifically directed their remarks to the exclusion by EPA of operator error as a grounds for the upset defense. The purpose and the coverage of the upset provision is not to provide a blanket excuse for failure to meet Pretreatment Standards. Operator error is clearly within the reasonable control and responsibility of the Industrial User. The legal consequences of such error cannot be dealt with by providing simple regulatory absolution. This section does not impair judicial and prosecutorial discretion to deal with the occasional benign operator error situation. Furthermore, it is only fair to the many dischargers who expend substantial effort to maintain and operate properly their treatment works that those who use less care are not categorically exempted from liability. Finally, operator error does not include improper responses to new and exceptional circumstances as determined by hindsight. Operator error can only be judged according to the standard of what would have been a reasonable response to any given situation as it presented itself. However, operator error arising out of negligence or failure to attempt to control incipient upsets, or the failure to operate in a workmanlike manner are not grounds for the use of the upset provision.

One POTW commented that the upset provision should apply to Standards developed under § 403.5 by the Control Authority as well as to the categorial Standards. EPA's response is that it remains the option of the Control Authority to adopt parallel provisions to govern violation of local Standards. However, EPA's use of the upset provision is limited to the technology based categorical limits.

§ 403.16(c) Conditions Necessary for Demonstration of Upset.

The requirement to describe with specificity the cause(s) of upset generated several comments disparaging the ability of an Industrial User to know or discover in all cases the actual cause of an upset. EPA recognizes that in some cases an actual cause for an upset cannot be determined. However, as was explained in the June 7, 1979 preamble to § 122.14(l) (now § 122.60(h)) the Agency may still exercise prosecutorial discretion not to enforce in situations where prosecution is not warranted. The purpose of § 403.16 is to set out one affirmative defense and outline for the exercise of prosecutorial discretion. This regulation encourages the Industrial User to examine its treatment operation and to understand its vulnerability and sensitivity to upsets. It reasonably places the burden to establish upset causes upon the Industrial User. The Agency would be hindering its discretionary judgement by allowing upsets without known causes to be automatically exempt from liability.

Section 403.16(c)(3) has been promulgated today with a clarification that the POTW and Control authority are to receive the information required under § 403.16. EPA will require documentation of any reporting before exercising its discretion under § 403.16.

§ 403.16(f) User Responsibility in Case of Upset.

The proposal requires an Industrial User to control production and all discharges upon reduction, loss, or failure of the treatment facility, until the facility is restored or an alternate method of treatment provided. Some

commenters argued that this requirement to control both production and discharges is burdensome and that some flexibility should be allowed based on the degree of noncompliance. EPA agrees in part and has revised § 403.16(f) to require a User to control either production or all discharges rather than both. However, if the circumstances warrant the Industrial User may still be required to control both production and all discharges.

VI. Reporting Impacts

Two new reporting requirements are imposed by the final amended regulations. These requirements are only invoked where the Industrial User exercises his discretion to make use of a variance provision provided by EPA. Where a User elects to develop an alternate limit through use of the combined wastestream formula in § 403.6(e), the User must report the necessary flow information to EPA in the 180-day report required by § 403.12(b). Similarly, when an Industrial User elects to make use of the net/gross provision of § 403.15, the User must make application for this variance as provided for in that section.

The Agency has received numerous requests from Industrial Users seeking clarification of reporting requirements. In response to these requests, the Agency is developing reporting forms for use by industries. EPA has initiated discussion on these forms with the Office of Management and Budget (OMB), and expects to submit the forms to OMB shortly.

VII. Executive Order 12044

These amendments to the general pretreatment regulations are "Significant regulations" under Executive Order 12044, and, therefore, are subject to the requirements of that Order. However, these amendments do not meet the criteria for a Regulatory Analysis. The Administrator had determined that the changes embodied in these amendments do not have "major economic consequences" requiring preparation of an economic impact statement under Executive Order 12044 because the amendments do not impose additional costs on Industrial Users, States, or municipalities. The analysis conducted prior to the promulgation of the original pretreatment regulations in June of 1978 estimated that the following total costs would be borne by POTWs, NPDES States and industrial users over the next 5 years:

Annual Costs

[In thousands of dollars]

	1979	1980	1981	1982	1983
Municipal costs	$231	$842	$5,586	$9,371	$17,043
NPDES State cost	13,434	13,662	11,829	9,962	3,213
Industry costs	2,196	3,686	5,790	4,298	0
Total	15,861	18,190	23,205	23,631	20,256

Costs for each POTW, NPDES State and industrial user were broken down as follows:

	1979	1980	1981	1982	1983
Municipal costs (dollars per POTW)	$1,737	$2,913	$9,635	$16,496	$48,920
NPDES State costs (dollars per State)	447,800	455,400	394,300	332,067	107,100
Industry costs (dollars per discharger)	460	460	460	460	0

The decreasing NPDES State costs and increasing POTW costs represent the effect of shifting the burden of the pretreatment program from the States to municipalities as POTW pretreatment programs become operational. (The costs to POTWs shown above are net of the estimated benefits realized by some POTWs who are able to shift from sludge disposal to beneficial use of sludge.)

We have no reason to believe that these figures have ceased to be accurate. Some NPDES States have estimated costs several magnitudes greater than those listed above, but the cost information from the currently-operating State pretreatment programs generally supports the figures above. The total industry costs per year listed on the first chart are possibly higher because more industries may be regulated than the 40,000 assumed for the purpose of that chart. Since effluent guidelines for all industrial users have not yet been developed, it is difficult to be more specific about costs.

The changes made in the amended final regulations will not result in additional costs beyond those considered in the original economic impact analysis. Indeed, there may be cost savings attributable to some of the new provisions. For example, § 403.12(b)(5) now makes it clear that industries need only sample for the presence of pollutants regulated by applicable Standards, not all 65 parameters specified in the Act, in conducting the baseline survey required by this paragraph. In addition, inclusion of the combined wastestream formula in § 403.6(e) allows many industries presently operating combined treatment operations to continue to treat streams jointly rather than forcing them to undertake costly measures to segregate the streams and treat them separately. The latter course would have been required by operation of the categorical pretreatment standards in the absence of a combined wastestream formula. Finally, the "consistent removal" definition as originally promulgated would have required POTWs to obtain more than 12 samples of the POTW's influent and effluent in order to arrive at a statistically sound representation of the POTW's removal ability. The adjusted definition in the final amendments allows the POTW to compile a statistically sound representation using fewer sampling points and thereby lowers the cost of demonstrating removal.

In accordance with the remaining requirements of Executive Order 12044, EPA is committed to evaluating significant new regulations within five years of implementation. An evaluation plan will be included as part of the guidance package that will be prepared in the near future. EPA anticipates the evaluation plan will include assessments of reporting requirements.

VIII. Effect of Reprinting Entire Text of Part 403

Today's amendments revise part, but not all, of the existing 40 CFR Part 403 published on June 26, 1978. In the regulatory section of this notice, however, EPA has reprinted the entire Part 403 as it is revised by these amendments. Those portions of the June 26, 1978 regulations that are not substantively amended in today's **Federal Register** are only subject to judicial review in those petitions for review that were filed within 90 days of

the date of issuance of the June 26, 1978 regulations.

Douglas M. Costle,

Administrator.

January 13, 1981.

40 CFR Part 403 is revised to read as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Sec.

403.1 Purpose and applicability.
403.2 Objective of general pretreatment regulation.
403.3 Definitions.
403.4 State or local law.
403.5 National pretreatment standards: prohibited discharges.
403.6 National pretreatment standards: categorical standards.
403.7 Revision of categorical pretreatment standards to reflect POTW removal of pollutants.
403.8 POTW pretreatment programs: development by POTW.
403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.
403.10 Development and submission of NPDES State pretreatment programs.
403.11 Approval procedures for POTW programs and revisions of categorical pretreatment standards.
403.12 Reporting requirements for POTW's and industrial users.
403.13 Variances from categorical pretreatment standards for fundamentally different factors.
403.14 Confidentiality.
403.15 Net/Gross calculation.
403.16 Upset provision.
Appendix A—PRM 75-34.
Appendix B—65 Toxic pollutants.
Appendix C—34 Industrial categories.
Appendix D—Selected industrial subcategories exempted from regulated pursuant to paragraph 8 of the *NRDC* v. *Costle* consent decree.

Authority: Section 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), §§ 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977.

§ 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act." It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies: (1) to pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in § 403.3; (2) to POTWs which receive wastewater from sources subject to National Pretreatment Standards; (3) to States which have or are applying for National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and (4) to any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which Discharge to a sewer which is not connected to a POTW Treatment Plant.

§ 403.2 Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives: (a) to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (b) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and (c) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3. Definitions.

For the purpose of this regulation:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

(b) The term "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(c) The term "Approval Authority" means the Director in an NPDES State with an approved State pretreatment program and the appropriate Regional Administrator in a non-NPDES State or NPDES State without an approved State pretreatment program.

(d) The term "Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in this regulation (§§ 403.3 and 403.9) and which has been approved by a Regional Administrator or State Director in accordance with § 403.11 of this regulation.

(e) The term "Director" means the chief administrative officer of a State or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act and an approved State pretreatment program.

(f) The term "Enforcement Division Director" means one of the Directors of the Enforcement Divisions within the Regional offices of the Environmental Protection Agency or this person's delegated representative.

(g) The term "Indirect Discharge" or "Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.

(h) The term "Industrial User" or "User" means a source of Indirect Discharge.

(i) The term "Interference" means an inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use or disposal which is a cause of or significantly contributes to either a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or to the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II more commonly referred to as the Resource Conservation and Recovery Act (RCRA) and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, and the Toxic Substances Control Act. An Industrial User significantly contributes to such a permit violation or prevention of sludge use or disposal in accordance with above-cited authorities whenever such User:

(1) Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State or local law;

(2) Discharges wastewater which substantially differs in nature or constituents from the User's average Discharge; or

(3) Knows or has reason to know that its Discharge, alone or in conjunction with Discharges from other sources, would result in a POTW permit violation or prevent sewage sludge use or disposal in accordance with the above-cited authorities as they apply to the POTW's selected method of sludge management.

(j) The term "National Pretreatment Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to § 403.5.

(k) The term "New Source" means any building, structure, facility, or installation from which there is or may be a Discharge, the construction of which commenced:

(1) After promulgation of Pretreatment Standards under section 307(c) of the Act which are applicable to such source; or

(2) After proposal of Pretreatment Standards in accordance with section 307(c) of the Act which are applicable to such source, but only if the Standards are promulgated in accordance with section 307(c) within 120 days of their proposal.

(l) The terms "NPDES Permit" or "Permit" means a permit issued to a POTW pursuant to section 402 of the Act.

(m) The term "NPDES State" means a State (as defined in 40 CFR § 122.3) or Interstate water pollution control agency with an NPDES permit program approved pursuant to section 402(b) of the Act.

(n) The term "Pass Through" means the Discharge of pollutants through the POTW into navigable waters in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). An Industrial User significantly contributes to such permit violation where it:

(1) Discharges a daily pollutant loading in excess of that allowed by contract with the POTW or by Federal, State, or local law;

(2) Discharges wastewater which substantially differs in nature and constituents from the User's average Discharge;

(3) Knows or has reason to know that its Discharge, alone or in conjunction with Discharges from other sources, would result in a permit violation; or

(4) Knows or has reason to know that the POTW is, for any reason, violating its final effluent limitations in its permit and that such Industrial User's Discharge either alone or in conjunction with Discharges from other sources, increases the magnitude or duration of the POTW's violations.

(o) The term "Publicly Owned Treatment Works" or "POTW" means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

(p) The term "POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(q) The term "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by § 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with § 403.6(e).

(r) The term "Pretreatment Requirements" means any substantive or procedural requirement related to Pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

(s) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(t) The term "Submission" means: (1) a request by a POTW for approval of a Pretreatment Program to the EPA or a Director; (2) a request by a POTW to the EPA or a Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or (3) a request to the EPA by an NPDES State for approval of its State pretreatment program.

§ 403.4 State or local law.

Nothing in this regulation is intended to affect any Pretreatment Requirements, including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Act or this regulation. States with an NPDES permit program approved in accordance with section 402 (b) and (c) of the Act, or States requesting NPDES programs, are responsible for developing a State pretreatment program in accordance with § 403.10 of this regulation.

§ 403.5 National pretreatment standards: prohibited discharges.

(a) *General prohibitions.* Pollutants introduced into POTW's by an non-domestic source shall not Pass Through the POTW or Interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in paragraph (b) of this section apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

(b) *Specific prohibitions.* In addition, the following pollutants shall not be introduced into a POTW:

(1) Pollutants which creat a fire or explosion hazard in the POTW;

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges;

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40°C (104°F) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits.

(c) *When Specific Limits Must be Developed by POTW.* (1) POTW's developing POTW Pretreatment Programs pursuant to § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in § 403.5 (a) and (b).

(2) All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur,

develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

(3) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

(d) *Local Limits.* Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

(e) *EPA and State Enforcement Actions.* If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA or the NPDES State to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA or the NPDES State may take appropriate enforcement action.

(f) *Compliance Deadlines.* Compliance with the provisions of this section is required beginning on [44 days after publication in the **Federal Register**], except for paragraph (b)(5) of this section which must be complied with by August 25, 1981.

§ 403.6 National Pretreatment Standards: Categorical Standards.

National Pretreatment Standards specifying quantities or concentrations of pollutants or pollutant properties which may be Discharged to a POTW by existing or new Industrial Users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. These Standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in § 403.5 of this regulation.

(a) *Category Determination Request.* (1) *Application Deadline.* Within 60 days after the effective date of a Pretreatment Standard for a subcategory under which an Industrial User may be included, or within 60 days after the **Federal Register** notice announcing the availability of the technical development document for that subcategory, whichever is later, the existing Industrial User or POTW may request that the Enforcement Division Director or Director, as appropriate, provide written certification on whether the Industrial User falls within that particular subcategory. A new source must request this certification prior to commencing discharge. Where a request for certification is submitted by a POTW, the POTW shall notify any affected Industrial User of such submission. The Industrial User may provide written comments on the POTW submission to the Enforcement Division Director or Director, as appropriate, within 30 days of notification.

(2) *Contents of application.* Each request shall contain a statement:

(i) Describing which subcategories might be applicable; and

(ii) Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Each such statement shall contain an oath stating that the facts contained therein are true on the basis of the applicant's personal knowledge or to the best of his information and belief. The oath shall be that set forth in § 403.7(b)(2)(ii), except that the phrase "§ 403.7(d)" shall be replaced with "§ 403.6(a)."

(3) *Deficient Requests.* The Enforcement Division Director or Director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Enforcement Division Director or Director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Enforcement Division Director or the Director, the request for a determination shall be denied.

(4) *Final Decision.*

(i) When the Enforcement Division Director or Director receives a submittal he or she will, after determining that it contains all of the information required by paragraph (2) of this section, consider the submission, any additional evidence that may have been requested, and any other available information relevant to the request. The Enforcement Division Director or Director will then make a written determination of the applicable subcategory and state the reasons for the determination.

(ii) Where the request is submitted to the Director, the Director shall forward the determination described in this paragraph to the Enforcement Division Director who may make a final determination. The Enforcement Division Director may waive receipt of these determinations. If the Enforcement Division Director does not modify the Director's decision within 60 days after receipt thereof, or if the Enforcement Division Director waives receipt of the determination, the Director's decision is final.

(iii) Where the request is submitted by the Industrial User or POTW to the Enforcement Division Director or where the Enforcement Division Director elects to modify the Director's decision, the Enforcement Division Director's decision will be final.

(iv) The Enforcement Division Director or Director, as appropriate, shall send a copy of the determination to the affected Industrial User and the POTW. Where the final determination is made by the Enforcement Division Director, he or she shall send a copy of the determination to the Director.

(5) *Requests for Hearing and/or Legal Decision.* Within 30 days following the date of receipt of notice of the final determination as provided for by paragraph (a)(4)(iv) of this section, the Requester may submit a petition to reconsider or contest the decision to the Regional Administrator who shall act on such petition expeditiously and state the reasons for his or her determination in writing.

(b) *Deadline for Compliance With Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N but in any case no later than July 1, 1984. Direct Discharges with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set forth in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). Compliance with categorical Pretreatment Standards for New Sources will be required upon promulgation.

(c) *Concentration and Mass Limits.* Pollutant discharge limits in categorical Pretreatment Standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards, equivalent mass limits will be provided so that local, State or Federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical Pretreatment Standards shall apply to the effluent of the process regulated by the Standard, or as otherwise specified by the Standard.

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable categorical Pretreatment Standard, no Industrial User shall ever increase the use of process water or, in any other way, attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a categorical Pretreatment Standard. The Control Authority (as defined in § 403.12(a)) may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined Wastestream Formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority, as defined in § 403.12(a), or by the Industrial User with the written concurrence of the Control Authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the Control Authority or Industrial User shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical Pretreatment Standard(s) and an alternative consecutive sampling day average value using the long-term average value(s) specified in the appropriate categorical Pretreatment Standard(s). The Industrial User shall comply with the alternative daily maximum and long-term average limits fixed by the Control Authority until the Control Authority modifies the limits or approves an Industrial User modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An Industrial User must immediately report any such material or significant change to the Control Authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

(1) *Alternative limit calculation.* For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

(i) *Alternative Concentration Limit:*

$$C_T = \left(\frac{\sum_{i=1}^{N} C_i F_i}{\sum_{i=1}^{N} F_i}\right)\left(\frac{F_T - F_D}{F_T}\right)$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical Pretreatment Standard concentration limit for a pollutant in the regulated stream i.

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D):

(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = the average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).

N = the total number of regulated streams.

(ii) *Alternative Mass Limit:*

$$M_T = \left(\sum_{i=1}^{N} M_i\right)\left(\frac{F_T - F_D}{\sum_{i=1}^{N} F_i}\right)$$

where

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical Pretreatment Standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average flow (at least a 30-day average) from boiler blowdown streams, non-contact cooling streams, sanitary wastestreams (where such streams are not regulated by a categorical Pretreatment Standard) and from any process wastestreams which were or could have been entirely exempted from categorical Pretreatment Standards pursuant to paragraph 8 of the *NRDC* v. *Costle* Consent Decree (12 ERC 1833) for one or more of the following reasons (see Appendix D):

(1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph (8)(a)(iii));

(2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii));

(3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(4) the wastestream contains only pollutants which are compatible with the POTW (paragraph (8)(b)(i)).

F_T = the average flow (at least a 30-day average) through the combined treatment facility (includes F_i, F_D and unregulated streams).

N = the total number of regulated streams.

(2) *Alternate Limits Below Detection Limit.* An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(3) *Self-monitoring.* Self-monitoring required to insure compliance with the alternative categorical limit shall be as follows:

(i) The type and frequency of sampling, analysis and flow measurement shall be determined by reference to the self-monitoring requirements of the appropriate categorical Pretreatment Standard(s);

(ii) Where the self-monitoring schedules for the appropriate Standards differ, monitoring shall be done according to the most frequent schedule;

(iii) Where flow determines the frequency of self-monitoring in a categorical Pretreatment Standard, the sum of all regulated flows (F_i) is the flow which shall be used to determine self-monitoring frequency.

§ 403.7 Revision of categorical pretreatment standards to reflect POTW removal of pollutants.

This section provides the criteria and procedures to be used by a POTW in revising the pollutant discharge limits specified in categorical Pretreatment Standards to reflect Removal of pollutants by the POTW.

(a) *Definitions.* For the purpose of this section: (1) "Removal" shall mean a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or it may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW. The demonstration of Removal shall consist of data which reflect the Removal achieved by the POTW for those specific pollutants of concern included on the list developed pursuant to section 307(a) of the Act. Each categorical Pretreatment Standard will specify whether or not a Removal Allowance may be granted for indicator or surrogate pollutants regulated in that Standard.

(2) "Consistent Removal" shall mean the average of the lowest 50 percent of the removals measured according to paragraph (d)(2) of this section. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (d)(2) of this section must be reported and used in computing Consistent Removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the Approval Authority. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between 8 and 12, the average of the lowest 6 removals shall be used. If there are less than 8 samples with concentrations equal to or above the limit of measurement, the Approval Authority may approve alternate means for demonstrating Consistent Removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(3) "Overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW Treatment Plant.

(b) *Revision of Categorical Pretreatment Standards to Reflect POTW Pollutant Removal.* Any POTW receiving wastes from an Industrial User to which a categorical Pretreatment Standard applies may, subject to the conditions of this section, revise the discharge limits for a specific pollutant(s) covered in the categorical Pretreatment Standard applicable to that User. Revisions will only be made where the POTW demonstrates Consistent Removal of each pollutant for which the discharge limit in a categorical Pretreatment Standard is to be revised at a level which justifies the amount of revision to the discharge limit. In addition, revision of pollutant discharge limits in categorical Pretreatment Standards by a POTW may only be made provided that:

(1) *Application.* The POTW applies for, and receives, authorization from the Regional Administrator and/or Director to revise the discharge limits in Pretreatment Standards, for specific pollutants, in accordance with the requirements and procedures set out in this section and §§ 403.9 and 403.11; and

(2) *POTW Pretreatment Programs.* The POTW has a Pretreatment Program approved in accordance with §§ 403.8, 403.9, and 403.11; provided, however, a POTW may conditionally revise the discharge limits for specific pollutants, even though a Pretreatment Program has not been approved, in accordance with the following terms and conditions. These provision also govern the issuance of provisional authorizations under § 403.7(d)(2)(vii);

(i) All Industrial Users who wish to receive a conditional or provisional revision of categorical Pretreatment Standards must submit to the POTW the information required in § 403.12(b)(1)–(7) pertaining to the categorical Pretreatment Standard as modified by the conditional or provisional removal allowance, except that the compliance schedule required by § 403.12(b)(7) is not required where a provisional allowance is requested. The submission shall indicate what additional technology, if any, will be needed to comply with the categorical Pretreatment Standards as revised by the POTW;

(ii) The POTW must compile and submit data demonstrating removal in accordance with the requirements of paragraphs (d)(1)–(7) of this section. The POTW shall submit to the Approval Authority a removal report which comports with the signatory and certification requirements of § 403.12 (l) and (m). This report shall contain a certification by any of the persons specified in § 403.12(1) or by an independent engineer containing the following statement: "I have personally examined and am familiar with the information submitted in the attached document, and I hereby certify under penalty of law that this information was obtained in accordance with the requirements of § 403.7(d). Moreover, based upon my inquiry of those individuals immediately responsible for obtaining the information reported herein, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.";

(iii) The POTW must submit to the Approval Authority an application for pretreatment program approval meeting the requirements of §§ 403.8 and 403.9(a) or (b) in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's NPDES permit;

(iv) If a POTW grants conditional or provisional revision(s) and the Approval Authority subsequently makes a final determination, after notice and an opportunity for a hearing, that the POTW failed to comply with the conditions in paragraphs (b)(2)(ii) or (iii) of this section, or that its sludge use or disposal practices are not in compliance with the provisions of paragraph (b)(4) of this section, the revision shall be terminated by the Approval Authority and all Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s)) as specified by the Approval Authority. However, the revision(s) shall not be terminated where the POTW has not made a timely application for program approval if the POTW has made demonstrable progress towards and has demonstrated and continues to demonstrate an intention to submit an approvable pretreatment program as expeditiously as possible within an additional period of time, not to exceed one year, established by the Approval Authority;

(v) If a POTW grants conditional or provisional revision(s) and the POTW or Approval Authority subsequently makes a final determination, after notice and an opportunity for a hearing, that the Industrial User(s) failed to comply with conditions in paragraph (b)(2)(i) of this section, including in the case of a conditional revision, the dates specified in the compliance schedule required by

§ 403.12(b)(7), the revision shall be terminated by the POTW or the Approval Authority for the non-complying Industrial Users and all non-complying Industrial Users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical Pretreatment Standard(s) within the time period specified in such Standard(s). The revision(s) shall not be terminated where a violation of the provisions of this subparagraph results from causes entirely outside of the control of the Industrial User or the Industrial User has demonstrated substantial compliance; and

(vi) The POTW shall submit to the Approval Authority by December 31 of each year the name and address of each Industrial User that has received a conditionally or provisionally revised discharge limit. If the revised discharge limit is revoked, the POTW must submit the information in paragraph (b)'2)(i) above to the Approval Authority;

(3) *Compensation for overflow.* POTW's which at least once annually Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraphs (b)(3)(i) or (ii) below. However, this subsection shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant;

(i) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur at the POTW or at a sewer to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(A) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an Overflow event can reasonably be expected to occur. Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(B) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (b)(3)(i)(C) herein to insure that Industrial Users are containing, ceasing or reducing operations during POTW System Overflow; and

(C) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available upon request by the POTW, State Director or EPA Regional Administrator daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(ii)(A) The Consistent Removal claimed is reduced pursuant to the following equation:

$$r_c = r_m \quad \frac{8760-Z}{8760}$$

Where:

r_m = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(1) and (d)(2) of this section

r_c = removal corrected by the Overflow factor

Z = hours per year that Overflow occurred between the Industrial User(s) and the POTW Treatment Plant, the hours either to be shown in the POTW's current NPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular Industrial User's Discharge Overflows between the Industrial User and the POTW Treatment Plant; and

(B)*(1)* After July 1, 1983, Consistent Removal may be claimed only where efforts to correct the conditions resulting in untreated Discharges by the POTW are underway in accordance with the policy and procedures set forth in "PRM 75–34" or "Program Guidance Memorandum–61" (same document) published on December 16, 1975 by EPA Office of Water Program Operations (WH–546). (See Appendix A.) Revisions to discharge limits in categorical Pretreatment Standards may not be made where efforts have not been committed to by the POTW to minimize pollution from Overflows. At minimum, by July 1, 1983, the POTW must have completed the analysis required by PRM 75–34 and be making an effort to implement the plan.

(2) If, by July 1, 1983, a POTW has begun the PRM 75–34 analysis but due to circumstances beyond its control has not completed it, Consistent Removal, subject to the approval of the Approval Authority, may continue to be claimed according to the formula in paragraph (b)(3)(ii)(A) above so long as the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the non-structural cost-effective measures identified by the analysis; and so long as the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement any other cost-effective Overflow controls identified in the analysis should federal funds become available, so applies for such funds, and proceeds with the required construction in an expeditious manner. In addition, Consistent Removal may, subject to the approval of the Approval Authority, continue to be claimed according to the formula in paragraph (b)(3)(ii)(A) above where the POTW has completed and the Approval Authority has accepted the analysis required by PRM 75–34 and the POTW has requested inclusion in its NPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. (In considering what is timely implementation, the Approval Authority shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.); and

(4) *Compliance with applicable sludge requirements.* Such revision will not contribute to the POTW's inability to comply with its NPDES permit or with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations) as they apply to the sludge management methods being used: section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of SWDA)), the Clean Air Act and the Toxic Substances Control Act. The POTW will be authorized to revise discharge limits only for those pollutants that do not contribute to the violation of

its NPDES permit or any of the above statutes.

(c) *POTW application for authorization to revise discharge limits.* (1) Application for authorization to revise discharge limits for Industrial Users who are or in the future may be subject to categorical Pretreatment Standards, or approval of discharge limits conditionally or provisionally revised for Industrial Users by the POTW pursuant to paragraphs (b)(2) and (d)(2)(vii) shall be submitted by the POTW to the Approval Authority.

(2) Each POTW may submit such an application no more than once per year with respect to either:

(i) any categorical Pretreatment Standard promulgated in the prior 18 months;

(ii) any new or modified facilities or production changes resulting in the Discharge of pollutants which were not previously discharged and which are subject to promulgated categorical Standards; or

(iii) any significant increase in Removal efficiency attributable to specific identifiable circumstances or corrective measures (such as improvements in operation and maintenance practices, new treatment or treatment capacity, or a significant change in the influent to the POTW Treatment Plant).

(3) The Approval Authority may, however, elect not to review such application(s) upon receipt, in which case the POTW's conditionally or provisionally revised discharge limits will remain in effect until reviewed by the Approval Authority. This review may occur at any time in accordance with the procedures of § 403.11, but in no event later than the time of any pretreatment program approval or any NPDES permit reissuance thereafter.

(4) If the Consistent Removal claimed is based on an analytical technique other than the technique specified for the applicable categorical Pretreatment Standard, the Approval Authority may require the POTW perform additional analyses.

(d) *Contents of application to revise discharge limits.* Requests for authorization to revise discharge limits in categorical Pretreatment Standards must be supported by the following information:

(1) *List of Pollutants.* A list of pollutants for which discharge limit revisions are proposed.

(2) *Consistent Removal Data.* Influent and effluent operational data demonstrating Consistent Removal or other information, as provided for in paragraph (a)(2) of this section, which demonstrates Consistent Removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

(i) *Representative Data: Seasonal.* The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.

(ii) *Representative Data: Quality and Quantity.* The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate Consistent Removal as provided for in paragraph (a)(2) of this section.

(iii) *Sampling Procedures: Composite.* (A) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to either stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(B)*(1)* Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include non-workdays as well as workdays. If the Approval Authority determines that this schedule will not be most representative of the actual operation of the POTW Treatment Plant, an alternative sampling schedule will be approved.

(2) In addition, upon the Approval Authority's concurrence, a POTW may utilize an historical data base amassed prior to the effective date of this section provided that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(C) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the Approval Authority requires detention time compensation. The Approval Authority may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

(iv) *Sampling Procedures: Grab.* Where composite sampling is not an appropriate sampling technique, a grab sample(s) shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should preceed collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes.

(v) *Analytical methods.* The sampling referred to in paragraphs (d)(2)(i)-(iv) and (d)(5) of this section and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(vi) *Calculation of removal.* All data acquired under the provisions of this section must be submitted to the Approval Authority. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, where such data cannot be obtained, Removal may be demonstrated using other data

or procedures subject to concurrence by the Approval Authority as provided for in paragraph (a)(2) of this section.

(vii) *Exception to sampling data requirement: provisional removal demonstration.* For pollutants which are not currently being discharged (new or modified facilities, or production changes) application may be made by the POTW for provisional authorization to revise the applicable categorical Pretreatment Standard prior to initial discharge of the pollutant. Consistent Removal may be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. In calculating and applying for provisional removal allowances, the POTW must comply with the provisions of paragraphs (b)(1)–(4) of this section. Within 18 months after the commencement of Discharge of the pollutants in question, Consistent Removal must be demonstrated pursuant to the requirements of paragraphs (a)(2) and (d)(2)(i)–(vi) of this section.

(3) *List of industrial subcategories.* A list of the industrial subcategories for which discharge limits in categorical Pretreatment Standards will be revised, including the number of Industrial Users in each such subcategory and an identification of which of the pollutants on the list prepared under paragraph (d)(1) of this section are Discharged by each subcategory.

(4) *Calculation of revised discharge limits.* Proposed revised discharge limits for each of the subcategories of Industrial Users identified in paragraph (d)(3) of this section calculated in the following manner:

(i) The proposed revised discharge limit for a specified pollutant shall be derived by use of the following formula:

$$Y = \frac{x}{1-r}$$

where:

x = pollutant discharge limit specified in the applicable categorical Pretreatment Standard

r = POTW's Consistent Removal rate for that pollutant as established under paragraphs (a)(2), (d)(2) and, if appropriate, (b)(3)(ii)(A) of this section. (percentage expressed as a decimal)

Y = revised discharged limit for the specified pollutant (expressed in same units as x)

(ii) In calculating revised discharge limits, such revision for POTW Removal of a specified pollutant shall be applied equally to all existing and new Industrial Users in an industrial subcategory subject to categorical Pretreatment Standards which Discharge that pollutant to the POTW.

(5) *Data on sludge characteristics.* Data showing the concentrations and amounts in the POTW's sludge of the pollutants for which discharge limit revisions are proposed and for which EPA, the State or locality have published sludge disposal or use criteria applicable to the POTW's current method of sludge use or disposal. These data shall meet the following requirements.

(i) The data shall be obtained through a composite sample taken during the same sampling periods selected to measure Consistent POTW Removals in accordance with the requirements of paragraph (d)(2) of this section. Each composite sample will contain a minimum of 12 discrete samples taken at equal time intervals over a 24 hour period. Where a composite sample is not an appropriate sampling technique, grab samples shall be taken.

(ii) Sampling and analysis of the samples referred to in paragraph (d)(5)(i) of this section shall be performed in accordance with the sampling and analytical techniques described previously in paragraph (d)(2)(v) of this section.

(6) *Description of sludge management.* A specific description of the POTW's current methods of use or disposal of its sludge and data demonstrating that the current sludge use or disposal methods comply and will continue to comply with the requirements of paragraph (b)(4) of this section.

(7) *Certification statement.* The certification statement required by paragraph (b)(2)(ii) of this section stating that the pollutant Removals and associated revised discharged limits have been or will be calculated in accordance with this regulation and any guidelines issued by EPA under Section 304(g) of the Act.

(e) *Procedure for authorizing modification of standards.* (1) Application for authorization to revise National Pretreatment Standards shall comply with § 403.9(d) and paragraphs (c) and (d) of this section. Notice, public comment, and review by the Approval Authority shall comply with § 403.11.

(2) POTW's which have received a construction grant from funds authorized for any fiscal year beginning after September 30, 1978, will only be considered for authorization to modify National Standards after they have completed the analysis required by section 201(g)(5) of the Act and demonstrated that modification of the discharge limits in National Standards will not preclude the use of innovative or alternative technology. In addition, where sludge disposal or treatment technology is or will be acquired or constructed with construction grant funds, POTWs should refer to § 35.917(d)(6) and Appendix A of Part 35 of Title 40 of the Code of Federal Regulations to determine the funding eligibility of sludge disposal or treatment facilities.

(3) The Approval Authority shall, at such time as it elects to review the Submission under paragraph (c) of this section, or at the time of POTW pretreatment program approval or NPDES permit reissuance thereafter, authorize the POTW to revise Industrial User discharge limits, as submitted pursuant to paragraph (d)(4) of this section, which comply with the provisions of this section.

(4) Nothing in these regulations precludes an Industrial User or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization to revise categorical Pretreatment Standards.

(f) *Continuation and withdrawal of authorization.* (1) *Monitoring and reporting of consistent removal.* Following authorization to revise the discharge limits in Pretreatment Standards, the POTW shall continue to monitor and report on (at such frequencies and over such intervals as may be specified by the Regional Administrator, but in no case less than two times per year) the POTW's Removal capabilities for all pollutants for which authority to revise the Standards was granted. Such monitoring and reporting shall be in accordance with § 403.12 (i) and (j) pertaining to pollutant removal capability reports.

(2) *Re-evaluation of revisions.* Approval of authority to revise Pretreatment Standards will be re-examined whenever the POTWs NPDES Permit is reissued, unless the Regional Administrator determines the need to re-evaluate the authority pursuant to paragraph (f)(5) of this section. In order

to maintain a removal allowance, the POTW must comply with all federal, State and local Statutes, regulations and permits applicable to the POTWs selected method of sludge use or disposal. In addition, where Overflows of untreated waste by the POTW continue to occur the Regional Administrator may condition continued authorization to revise discharge limits upon the POTW performing additional analysis and/or implementing additional control measures as is consistent with EPA policy on POTW Overflows.

(3) *Inclusion in POTW permit.* Once authority to revise discharge limits for a specified pollutant is granted, the revised discharge limits for Industrial Users of the system as well as the Consistent Removal documented by the POTW for that pollutant and the other requirements of paragraph (b) of this section, shall be included in the POTW's NPDES Permit upon the earliest reissuance or modification (at or following Program approval) and shall become enforceable requirements of the POTW's NPDES Permit.

(4) *EPA review of state removal allowance approvals.* Where the NPDES State has an approved pretreatment program, the Regional Administrator may agree, in the Memorandum of Agreement under 40 CFR 123.7, to waive the right to review and object to Submissions for authority to revise discharge limits under this section. Such an agreement shall not restrict the Regional Administrator's right to comment upon or object to permits issued to POTW's except to the extent permitted under 40 CFR 123.7(b)(3)(i)(D).

(5) *Modification or withdrawal of revised limits.*—(i) *Notice to POTW.* The Approval Authority shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (f)(1) of this section or other information available to it, the Approval Authority determines:

(A) that one or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this section, or

(B) that such discharge limit revisions are causing or significantly contributing to a violation of any conditions or limits contained in the POTW's NPDES Permit. A revised discharge limit is significantly contributing to a violation of the POTW's permit if it satisfies the definition set forth in § 40.33 (i) or (n).

(ii) *Corrective action.* If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected Industrial Users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the Approval Authority shall either withdraw such discharge limits or require modifications in the revised discharge limits.

(iii) *Public notice of withdrawal or modification.* The Approval Authority shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all Industrial Users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a hearing. Following such notice and withdrawal or modification, all Industrial Users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical Pretreatment Standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical Pretreatment Standard(s) as may be specified by the Approval Authority.

(g) *Removal allowances in State-run pretreatment programs under § 403.10(e).* Where an NPDES State with an approved pretreatment program elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program (see § 403.10(e)) the POTW shall nevertheless be responsible for demonstrating Consistent Removal as provided for in this section. The POTW will not, however, be required to develop a pretreatment program as a precondition to obtaining approval of the allowance as required by paragraph (b)(2) of this section. Instead, before a removal allowance is approved, the State will be required to demonstrate that sufficient technical personnel and resources are available to ensure that modified discharge limits are correctly applied to affected Users and that Consistent Removal is maintained.

§ 403.8 POTW pretreatment programs: development by POTW.

(a) *POTW's required to develop a pretreatment program.* Any POTW (of combination of POTW's operated by the same authority) with a total design flow greater than 5 million gallons per day (mgd) and receiving from Industrial Users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program unless the NPDES State exercises its option to assume local responsibilities as provided for in § 403.10(e). The Regional Administrator or Director may require that a POTW with a design flow of 5 mgd or less develop a POTW Pretreatment Program if he or she finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant in order to prevent Interference with the POTW or Pass Through. In addition, any POTW desiring to modify categorical Pretreatment Standards for pollutants Removed by the POTW (as provided for by § 403.7) must have an approved POTW Pretreatment Program prior to obtaining final approval of a removal allowance. POTW's may receive conditional approval of a removal allowance, as provided for by § 403.7(b)(2), prior to obtaining POTW Pretreatment Program Approval. A POTW may receive § 403.7(g) authority to revise Pretreatment Standards without being required to develop a POTW Pretreatment Program where the NPDES State has assumed responsibility for running a local program in lieu of the POTW in accordance with § 403.10(e).

(b) *Deadline for Program Approval.* A POTW which meets the criteria of paragraph (a) of this section must receive approval of a POTW Pretreatment Program no later than 3 years after the reissuance or modification of its existing NPDES permit but in no case later than July 1, 1983. POTW's whose NPDES permits are modified under section 301(h) of the Act shall have a Pretreatment Program within less than 3 years as provided for in 40 CFR Part 125, Subpart G (44 FR 34783 (1979). The POTW Pretreatment Program shall meet the criteria set forth in paragraph (f) of this section and will be administered by the POTW to ensure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

(c) *Incorporation of approved programs in permits.* A POTW may develop an approvable POTW Pretreatment Program any time before the time limit set forth in paragraph (b) of this section. If (1) the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10; or (2) the POTW is located in a State which does not have an approved permit program under section 402 of the Act; the POTW's NPDES Permit will be reissued or modified by the NPDEs State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. If

the POTW is located in an NPDES State which does not have an approved State pretreatment program, the approved POTW Pretreatment Program shall be incorporated into the POTW's NPDES Permit as provided for in § 403.10(d).

(d) *Incorporation of compliance schedules in permits.* If the POTW does not have an approved Pretreatment Program at the time the POTW's existing Permit is reissued or modified, the reissued or modified Permit will contain the shortest reasonable compliance schedule, not to exceed three years or July 1, 1983, whichever is sooner, for the approval of the legal authority, procedures and funding required by paragraph (f) of this section. Where the POTW is located in an NPDES State currently without authority to require a POTW Pretreatment Program, the Permit shall incorporate a modification or termination clause as provided for in § 403.10(d) and the compliance schedule shall be incorporated when the Permit is modified or reissued pursuant to such clause.

(e) *Cause for Reissuance or Modification of Permits.* Under the authority of section 402(b)(1)(C) of the Act, the Approval Authority may modify, or alternatively, revoke and reissue a POTW's Permit in order to:

(1) put the POTW on a compliance schedule for the development of a POTW Pretreatment Program where the addition of pollutants into a POTW by an Industrial User or combination of Industrial Users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

(2) coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW Pretreatment Program;

(3) incorporate a modification of the permit approved under sections 301(h) or 301(i) of the Act;

(4) incorporate an approved POTW Pretreatment Program in the POTW permit; or

(5) incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(f) *POTW pretreatment program requirements.* A POTW Pretreatment Program shall meet the following requirements:

(1) *Legal Authority.* The POTW shall operate pursuant to legal authority enforceable in Federal, State or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by State law. At a minimum, this legal authority shall enable the POTW to:

(i) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment Standards and Requirements or where such contributions would cause the POTW to violate its NPDES permit;

(ii) Require compliance with applicable Pretreatment Standards and Requirements by Industrial Users;

(iii) Control, through permit, contract, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements;

(iv) Require (A) the development of a compliance schedule by each Industrial User for the installation of technology required to meet applicable Pretreatment Standards and Requirements and (B) the submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards and Requirements, including but not limited to the reports required in § 403.12;

(v) Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by Industrial Users. Representatives of the POTW shall be authorized to enter any premises of any Industrial User in which a Discharge source or treatment system is located or in which records are required to be kept under § 403.12(m) to assure compliance with Pretreatment Standards. Such authority shall be at least as extensive as the authority provided under section 308 of the Act;

(vi) (A) Obtain remedies for noncompliance by any Industrial User with any Pretreatment Standard and Requirement. All POTW's shall be able to seek injuctive relief for noncompliance by Industrial Users with Pretreatment Standards and Requirements. In cases where State law has authorized the municipality or POTW to pass ordinances or other local legislation, the POTW shall exercise such authorities in passing legislation to seek and assess civil or criminal penalties for noncompliance by Industrial Users with Pretreatment Standards and Requirements. POTW's without such authorities shall enter into contracts with Industrial Users to assure compliance by Industrial Users with Pretreatment Standards and Requirements. An adequate contract will provide for liquidated damages for violation of Pretreatment Standards and Requirements and will include an agreement by the Industrial User to submit to the remedy of specific performance for breach of contract.

(B) Pretreatment Requirements which will be enforced through the remedies set forth in paragraph (f)(1)(vi)(A) will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any Discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected Industrial Users and an opportunity to respond) to halt or prevent any Discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The Approval Authority shall have authority to seek judicial relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval Authority finds to be insufficient. The procedures for notice to dischargers where the POTW is seeking *ex parte* temporary judicial injunctive relief will be governed by applicable state or federal law and not by this provision; and

(vii) Comply with the confidentiality requirements set forth in § 403.14.

(2) *Procedures.* The POTW shall develop and implement procedures to ensure compliance with the requirements of a Pretreatment Program. At a minimum, these procedures shall enable the POTW to:

(i) Identify and locate all possible Industrial Users which might be subject to the POTW Pretreatment Program. Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request;

(ii) Identify the character and volume of pollutants contributed to the POTW by the Industrial Users identified under § 403.8(f)(2)(i). This information shall be made available to the Regional Administrator or Director upon request;

(iii) Notify Industrial Users identified under § 403.8(f)(2)(i) of applicable Pretreatment Standards and any applicable requirements under section 204(b) and 405 of the Act and Subtitles C and D of the Resource Conservation and Recovery Act.

(iv) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in § 403.12;

(v) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards. The results of these activities shall be made available to the Regional Administrator or Director upon request;

(vi) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under § 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(vii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of Industrial Users which, during the previous 12 months, were significantly violating applicable Pretreatment Standards or other Pretreatment Requirements. For the purposes of this provision, a significant violation is a violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority under § 403.8(f)(1)(iv)(B).

(3) *Funding.* The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (f) (1) and (2) of this section. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the Pretreatment Program requirements described in this section, and (ii) a limited aspect of the Program does not need to be implemented immediately (see § 403.9(b)).

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

(a) *Who Approves Program.* A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1)–(4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in § 403.11.

(b) *Contents of POTW program submission.* The program description must contain the following information:

(1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in § 403.8. This statement shall:

(i) Identify the provision of the legal authority under § 403.8(f)(1) which provides the basis for each procedure under § 403.8(f)(2);

(ii) Identify the manner in which the POTW will implement the program requirements set forth in § 403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, contract, etc.); and,

(iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;

(2) A copy of any statutes, ordinances, regulations, contracts, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;

(3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

(4) A description of the funding levels and full- and part-time manpower available to implement the Program;

(c) *Conditional POTW program approval.* The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) may be relaxed if the Submission demonstrates that:

(1) A limited aspect of the Program does not need to be implemented immediately;

(2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and

(3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.

(d) *Content of removal allowance submission.* The request for authority to revise categorical Pretreatment Standards must contain the information required in § 403.7(d).

(e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and, if appropriate, (d) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (b) and, if appropriate, (d), of this section, the Approval Authority shall:

(1) Notify the POTW that the Submission has been received and is under review; and

(2) Commence the public notice and evaluation activities set forth in § 403.11.

(f) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the

requirements of paragraphs (b) or (c), and, if appropriate, (d), of this section, the Approval Authority shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the Submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of paragraphs (b), (c), and, if appropriate, (d) of this section.

(g) *Consistency with water quality management plans.* (1) In order to be approved the POTW Pretreatment Program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, 131, as revised, where such 208 plan includes Management Agency designations and addresses pretreatment in a manner consistent with 40 CFR Part 403. In order to assure such consistency the Approval Authority shall solicit the review and comment of the appropriate 208 Planning Agency during the public comment period provided for in § 403.11(b)(1)(ii) prior to approval or disapproval of the Program.

(2) Where no 208 plan has been approved or where a plan has been approved but lacks Management Agency designations and/or does not address pretreatment in a manner consistent with this regulation, the Approval Authority shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

§ 403.10 Development and submission of NPDES State pretreatment programs.

(a) *Approval of State Programs.* No State NPDES program shall be approved under section 402 of the Act after the effective date of these regulations unless it is determined to meet the requirements of paragraph (f) of this section. Notwithstanding any other provision of this regulation, a State will be required to act upon those authorities which it currently possesses before the approval of a State Pretreatment Program.

(b) *Deadline for requesting approval.* Any NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, which requires modification to conform to the requirements set forth in paragraph (f) of this section will be required to submit a request for approval of a modified program (hereafter State Pretreatment Program approval) by March 27, 1979 unless an NPDES State must amend or enact a law to make required modifications, in which case the NPDES State shall request State Pretreatment Program approval by March 27, 1980.

(c) *Failure to request approval.* The EPA shall exercise the authorities available to it to apply and enforce Pretreatment Standards and Requirements until the necessary implementing action is taken by the State. Failure of a State to seek approval of a State Pretreatment Program as provided for in paragraph (b) and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

(d) *Modification clause in POTW permits prior to submission deadline.* (1) Before the submission deadline for State Pretreatment Program approval set forth in paragraph (b) of this section, any Permit issued to a POTW which meets the requirements of § 403.8(a) by an NPDES State without an approved State pretreatment program shall include a modification clause. This clause will require that such Permits be promptly modified or, alternatively, revoked and reissued after the submission deadline for State Pretreatment Program approval set forth in (b) of this section to incorporate into the POTW's Permit an approved POTW Pretreatment Program or a compliance schedule for the development of a POTW Pretreatment Program according to the requirements of § 403.8 (b) and (d) and § 403.12(h). The following language is an acceptable clause for the purposes of this subparagraph:

> This permit shall be modified, or alternatively, revoked and reissued, by September 27, 1979 (or September 27, 1980, as appropriate) to incorporate an approved POTW Pretreatment Program or a compliance schedule for the development of a POTW Pretreatment Program as required under section 402(b)(8) of the Clean Water Act and implementing regulations or by the requirements of the approved State Pretreatment Program, as appropriate.

(2) All Permits subject to the requirements of paragraph (d)(1) of this section which do not contain the modification clause referred to in that paragraph will be subject to objection by EPA under section 402(d) of the Act as being outside the guidelines and requirements of the Act.

(3) Permits issued by an NPDES State after the Submission deadline for State Pretreatment Program approval (set forth in paragraph (b) of this section) shall contain conditions of an approved Pretreatment Program or a compliance schedule for developing such a program in accordance with § 403.8 (b) and (d) and § 403.12(h).

(e) *State Program in lieu of POTW Program.* Notwithstanding the provision of § 403.8(a), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements set forth in § 403.8(f) in lieu of requiring the POTW to develop a Pretreatment Program. However, this does not preclude POTW's from independently developing Pretreatment Programs.

(f) *State Pretreatment Program requirements.* In order to be approved, a request for State Pretreatment Program Approval must demonstrate that the State Pretreatment Program has the following elements:

(1) *Legal authority.* The Attorney General's Statement submitted in accordance with subparagraph (g)(1)(i) shall certify that the Director has authority under State law to operate and enforce the State Pretreatment Program to the extent required by this Part and by 40 CFR § 123.9. At a minimum, the Director shall have the authority to:

(i) Incorporate POTW Pretreatment Program conditions into permits issued to POTW's; require compliance by POTW's with these incorporated permit conditions; and require compliance by Industrial Users with Pretreatment Standards;

(ii) Ensure continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the Director by the POTW in accordance with § 403.12 and ensure continuing compliance by Industrial Users with Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to the Director by the Industrial Users in accordance with § 403.12;

(iii) Carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorportated into the POTW Permit; and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards;

(iv) Seek civil and criminal penalties, and injunctive relief, for noncompliance by the POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in § 403.8(f)(1)(vi). The Director shall have authority to seek judicial relief for noncompliance by Industrial Users even when the POTW

has acted to seek such relief (e.g., if the POTW has sought a penalty which the Director finds to be insufficient);

(v) Approve and deny requests for approval of POTW Pretreatment Programs submitted by a POTW to the Director;

(vi) Deny and recommend approval of (but not approve) requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13; and

(vii) Approve and deny requests for authority to modify categorical Pretreatment Standards to reflect removals achieved by the POTW in accordance with the criteria and procedures set forth in §§ 403.7, 403.9 and 403.11.

(2) *Procedures.* The Director shall have developed procedures to carry out the requirements of sections 307 (b) and (c), and 402(b)(1), 402(b)(2), 402(b)(8), and 402(b)(9) of the Act. At a minimum, these procedures shall enable the Director to:

(i) Identify POTW's required to develop Pretreatment Programs in accordance with § 403.8(a) and notify these POTW's of the need to develop a POTW Pretreatment Program. In the absence of a POTW Pretreatment Program, the State shall have procedures to carry out the activities set forth in § 403.8(f)(2);

(ii) Provide technical and legal assistance to POTW's in developing Pretreatment Programs;

(iii) Develop compliance schedules for inclusion in POTW Permits which set forth the shortest reasonable time schedule for the completion of tasks needed to implement a POTW Pretreatment Program. The final compliance date in these schedules shall be no later than July 1, 1983;

(iv) Sample and analyze:

(A) Influent and effluent of the POTW to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit (see § 403.7); and

(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;

(v) Investigate evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed. This data acquisition shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court;

(vi) Review and approve requests for approval of POTW Pretreatment Programs and authority to modify categorical Pretreatment Standards submitted by a POTW to the Director; and

(vii) Consider requests for Fundamentally Different Factors variances submitted by Industrial Users in accordance with the criteria and procedures set forth in § 403.13.

(3) *Funding.* The Director shall assure that funding and qualified personnel are available to carry out the authorities and procedures described in paragraphs (f)(1) and (2) of this section.

(g) *Content of State Pretreatment Program Submission.* 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; and

(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.

(2) A description of the funding levels and full- and part-time personnel available to implement the program; and

(3) Any modifications or additions to the Momorandum of Agreement (required by 40 CFR 123.6) which may be necessary for EPA and the State to implement the requirements of this Part.

(h) *EPA Action.* Any approved NPDES State requesting State Pretreatment Program approval shall submit to the Regional Administrator three copies of the Submission described in paragraph (g) of this section. Upon a preliminary determination that the Submission meets the requirements of paragraph (g) the Regional Administrator shall:

(1) Notify the Director that the Submission has been received and is under review; and

(2) Commence the program revision process set out in 40 CFR § 123.13. For purposes of that section all requests for approval of State Pretreatment Programs shall be deemed substantial program modifications. A comment period of at least 30 days and the opportunity for a hearing shall be afforded the public on all such proposed program revisions.

(i) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (h) of this section, EPA determines that the Submission does not comply with the requirements of paragraphs (f) or (g) of this section EPA shall so notify the applying NPDES State in writing. This notification shall identify any defects in the Submission and advise the NPDES State of the means by which it can comply with the requirements of this Part.

§ 403.11 Approval Procedures for POTW Pretreatment Programs and POTW Revision of Categorical Pretreatment Standards.

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and revising Categorical Pretreatment Standards, including requests for authorization to grant conditional revised discharge limitations and provisional limitations:

(a) *Deadline for review of submission.* The Approval Authority shall have 90 days from the date of public notice of any Submission complying with the requirements of § 403.9(b) and, where removal allowance approval is sought, with §§ 403.7(d) and 403.9(d), to review the Submission. The Approval Authority shall review the Submission to determine compliance with the requirements of § 403.8(b) and (f), and, where removal allowance approval is sought, with § 403.7(a)–(e) and (g). The Approval Authority may have up to an additional 90 days to complete the evaluation of the Submission if the public comment period provided for in paragraph (b)(1)(ii) of this section is extended beyond 30 days or if a public hearing is held as provided for in paragraph (b)(2) of this section. In no event, however, shall the time for evaluation of the Submission exceed a total of 180 days from the date of public notice of a Submission meeting the requirements of § 403.9(b) and, in the case of removal allowance application, §§ 403.7(d) and 403.9(d).

(b) *Public notice and opportunity for hearing.* Upon receipt of a Submission

the Approval Authority shall commence its review. Within 5 days after making a determination that a Submission meets the requirements of § 403.9(b), and, where removal allowance approval is sought, §§ 403.7(d) and 403.9(d), or at such later time under § 403.7(c) that the Approval Authority elects to review the removal allowance Submission, the Approval Authority shall:

(1) Issue a public notice of request for approval of the Submission;

(i) This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the Submission. Procedures for the circulation of public notice shall include:

(A) Mailing notices of the request for approval of the Submission to designated 208 planning agencies, Federal and State fish, shellfish, and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

(B) Publication of a notice of request for approval of the Submission in the largest daily newspaper within the jurisdiction(s) served by the POTW.

(ii) The public notice shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the Submission.

(iii) All written comments submitted during the 30 day comment period shall be retained by the Approval Authority and considered in the decision on whether or not to approve the Submission. The period for comment may be extended at the discretion of the Approval Authority; and

(2) Provide an opportunity for the applicant, any affected State, any interested State or Federal agency, person or group of persons to request a public hearing with respect to the Submission.

(i) This request for public hearing shall be filed within the 30 day (or extended) comment period described in paragraph (b)(1)(ii) of this section and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

(ii) The Approval Authority shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the Submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

(iii) Public notice of a hearing to consider a Submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the Submission under paragraph (b)(1)(i)(B) of this section. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(3) Whenever the approval authority elects to defer review of a submission which authorizes the POTW to grant conditional revised discharge limits under § 403.7(b)(2) and 403.7(c), the Approval Authority shall publish public notice of its election in accordance with paragraph (b)(1) of this section.

(c) *Approval authority decision.* At the end of the 30 day (or extended) comment period and within the 90 day (or extended) period provided for in paragraph (a) of this section, the Approval Authority shall approve or deny the Submission based upon the evaluation in paragraph (a) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the Approval Authority makes a determination to deny the request, the Approval Authority shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the Approval Authority may allow the requestor additional time to bring the Submission into compliance with applicable requirements.

(d) *EPA objection to Director's decision.* No POTW pretreatment program or authorization to grant removal allowances shall be approved by the Director if following the 30 day (or extended) evaluation period provided for in paragraph (b)(1)(ii) of this section and any hearing held pursuant to paragraph (b)(2) of this section the Regional Administrator sets forth in writing objections to the approval of such Submission and the reasons for such objections. A copy of the Regional Administrator's objections shall be provided to the applicant, and each person who has requested individual notice. The Regional Administrator shall provide an opportunity for written comments and may convene a public hearing on his or her objections. Unless retracted, the Regional Administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

(e) *Notice of decision.* The Approval Authority shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the Submission. In addition, the Approval Authority shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the Submission was published. The Approval Authority shall identify in any notice of POTW Pretreatment Program approval any authorization to modify categorical Pretreatment Standards which the POTW may make, in accordance with § 403.7, for removal of pollutants subject to Pretreatment Standards.

(f) *Public access to submission.* The Approval Authority shall ensure that the Submission and any comments upon such Submission are available to the public for inspection and copying.

§ 403.12 Reporting requirements for POTW's and industrial users.

(a) *Definition.* The term "Control Authority" as it is used in this section refers to: (1) The POTW if the POTW's Submission for its pretreatment program (§ 403.3(t)(1)) has been approved in accordance with the requirements of § 403.11; or (2) the Approval Authority if the Submission has not been approved.

(b) *Reporting requirement for industrial users upon effective date of categorical pretreatment standard—baseline report.* Within 180 days after the effective date of a categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under § 403.6(a)(4), whichever is later, existing Industrial Users subject to such categorical Pretreatment Standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the Control Authority a report which contains the information listed in paragraph (b)(1)–(7) of this section. Where reports containing this information already have been submitted to the Director or Regional Administrator in compliance with the requirements of 40 CFR 128.140(b), the Industrial user will not be required to submit this information again. New sources shall be required to submit to the Control Authority a report which contains the information listed in paragraphs (b)(1)–(5) of this section:

(1) *Identifying information.* The User shall submit the name and address of the facility including the name of the operator and owners;

(2) *Permits.* The User shall submit a list of any environmental control permits held by or for the facility;

(3) *Description of operations.* The User shall submit a brief description of the nature, average rate of production,

and Standard Industrial Classification of the operation(s) carried out by such Industrial User. This description should include a schematic process diagram which indicates points of Discharge to the POTW from the regulated processes.

(4) *Flow measurement.* The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(i) regulated process streams; and

(ii) other streams as necessary to allow use of the combined wastestream formula of § 403.6(e). (See paragraph (b)(5)(v) of this section.)

The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(5) *Measurement of Pollutants.* (i) The user shall identify the Pretreatment Standards applicable to each regulated process;

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;

(iii) Where feasible, samples must be obtained through the flow-proportional composite sampling techniques specified in the applicable categorical Pretreatment Standard. Where composite sampling is not feasible, a grab sample is acceptable;

(iv) Where the flow of the stream being sampled is less than or equal to 950,000 liters/day (approximately 250,000 gpd), the User must take three samples within a two-week period. Where the flow of the stream being sampled is greater than 950,000 liters/day (approximately 250,000 gpd), the User must take six samples within a two-week period;

(v) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of § 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with § 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator;

(vii) The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(viii) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW;

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in subparagraph (k) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

(7) *Compliance Schedule.* If additional pretreatment and/or O and M will be required to meet the Pretreatment Standards; the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O and M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

(i) Where the Industrial User's categorical Pretreatment Standard has been modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) at the time the User submits the report required by paragraph (b) of this section, the information required by paragraphs (b)(6) and (7) of this section shall pertain to the modified limits.

(ii) If the categorical Pretreatment Standard is modified by a removal allowance (§ 403.7), the combined wastestream formula (§ 403.6(e)), and/or a Fundamentally Different Factors variance (§ 403.13) after the User submits the report required by paragraph (b) of this section, any necessary amendments to the information requested by paragraphs (b)(6) and (7) of this section shall be submitted by the User to the Control Authority within 60 days after the modified limit is approved.

(c) *Compliance Schedule for Meeting Categorical Pretreatment Standards.* The following conditions shall apply to the schedule required by paragraph (b)(7) of this section:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in paragraph (c)(1) of this section shall exceed 9 months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Control Authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than 9 months elapse between such progress reports to the Control Authority.

(d) *Report on compliance with categorical pretreatment standard deadline.* Within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report indicating the nature and concentration of all pollutants in the Discharge from the regulated process which are limited by Pretreatment Standards and Requirements and the average and maximum daily flow for these process

units in the Industrial User which are limited by such Pretreatment Standards and Requirements. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional O and M and/or pretreatment is necessary to bring the Industrial User into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by an authorized representative of the Industrial User, as defined in paragraph (k) of this section, and certified to by a qualified professional.

(e) *Periodic reports on continued compliance.* (1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. At the discretion of the Control Authority and in consideraton of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted.

(2) Where the Control Authority has imposed mass limitations on Industrial Users as provided for by § 403.6(d), the report required by paragraph (e)(1) of this section shall indicate the mass of pollutants regulated by Pretreatment Standards in the Discharge from the Industrial User.

(f) *Notice of slug loading.* The Industrial User shall notify the POTW immediately of any slug loading, as defined by § 403.5(b)(4), by the Industrial User.

(g) *Monitoring and analysis to demonstrate continued compliance.* The reports required in paragraphs (b)(5), (d), and (e) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. The frequency of monitoring shall be prescribed in the applicable Pretreatment Standard. All analyses shall be performed in accordance with procedures established by the Administrator pursuant to section 304(g) of the Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the Administrator.

(h) *Compliance schedule for POTW's.* The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW Pretreatment Program required by § 403.8.

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW Pretreatment Program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(2) No increment referred to in paragraph (h)(1) of this section shall exceed nine months;

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the Approval Authority including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the Approval Authority.

(i) *Initial POTW report on compliance with approved removal allowance.* A POTW which has received authorization to modify categorical Pretreatment Standards for pollutants removed by the POTW in accordance with the requirements of § 403.7 must submit to the Approval Authority within 60 days after the effective date of a Pretreatment Standard for which authorization to modify has been approved, a report which contains the information required by §§ 403.7(d)(2), 403.7(d)(5) and 403.7(d)(6). A minimum of one sample per month during the reporting period is required.

(j) *Periodic reports by POTW to demonstrate continued compliance with removal allowance.* The reports referred to in paragraph (i) of this section will be submitted to the Approval Authority at 6-month intervals beginning with the submission of the initial report referred to in paragraph (i) of this section unless required more frequently by the Approval Authority.

(k) *Signatory requirements for industrial user reports.* The reports required by paragraphs (b), (d), and (e), of this section must be signed by an authorized representative of the Industrial User. An authorized representative may be:

(1) A principal executive officer of at least the level of vice president, if the Industrial User submitting the reports required by paragraphs (b), (d) and (e) of this section is a corporation.

(2) A general partner or proprietor if the Industrial User submitting the report required by paragraphs (b), (d) and (e) of this section is a partnership or sole proprietorship respectively.

(3) A duly authorized representative of the individual designated in subparagraph (1) or (2) of this paragraph if such representative is responsible for the overall operation of the facility from which the Indirect Discharge originates.

(l) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraphs (h), (i) and (j) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW.

(m) *Provisions governing fraud and false statements.* The reports required by paragraphs (b), (d), (e), (h), (i) and (j) of this section shall be subject to the provisions of 18 U.S.C. section 1001 relating to fraud and false statements and the provisions of section 309(c)(2) of the Act governing false statements, representations or certifications in reports required under the Act.

(n) *Record-keeping requirements.*

(1) Any Industrial User and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

(i) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods use; and

(v) The results of such analyses.

(2) Any Industrial User or POTW subject to the reporting requirements established in this section shall be required to retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the Director and the Regional Administrator (and POTW in the case of an Industrial User). This period of retention shall be extended during the course of any unresolved litigation regarding the Industrial User or POTW or when requested by the Director or the Regional Administrator.

(3) Any POTW to which reports are submitted by an Industrial User pursuant to paragraphs (b), (d), and (e) of this section shall retain such reports for a minimum of 3 years and shall make such reports available for inspection and copying by the Director and the Regional Administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User or the operation of the POTW Pretreatment Program or when requested by the Director or the Regional Administrator.

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

(a) *Definition.* The term "Requester" means an Industrial User or a POTW or other interested person seeking a variance from the limits specified in a categorical Pretreatment Standard.

(b) *Purpose and scope.* In establishing categorical Pretreatment Standards for existing sources, the EPA will take into account all the information it can collect, develop and solicit regarding the factors relevant to pretreatment standards under section 307(b). In some cases, information which may affect these Pretreatment Standards will not be available or, for other reasons, will not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the limits in categorical Pretreatment Standards, making them either more or less stringent, as they apply to a certain Industrial User within an industrial category or subcategory. This will only be done if data specific to that Industrial User indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to an Industrial User are fundamentally different from the factors considered during development of a categorical Pretreatment Standard applicable to that User and further, that the existence of those factors justifies a different discharge limit from that specified in the applicable categorical Pretreatment Standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the EPA.

(c) *Criteria.*—(1) *General criteria.* A request for a variance based upon fundamentally different factors shall be approved only if:

(i) There is an applicable categorical Pretreatment Standard which specifically controls the pollutant for which alternative limits have been requested; and

(ii) Factors relating to the discharge controlled by the categorical Pretreatment Standard are fundamentally different from the factors considered by EPA in establishing the Standards; and

(iii) The request for a variance is made in accordance with the procedural requirements in paragraphs (g) and (h) of this section.

(2) *Criteria applicable to less stringent limits.* A variance request for the establishment of limits less stringent than required by the Standard shall be approved only if:

(i) The alternative limit requested is no less stringent than justified by the fundamental difference;

(ii) The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under § 403.5;

(iii) The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Pretreatment Standards; and

(iv) Compliance with the Standards (either by using the technologies upon which the Standards are based or by using other control alternatives) would result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(3) *Criteria applicable to more stringent limits.* A variance request for the establishment of limits more stringent than required by the Standards shall be approved only if:

(i) The alternative limit request is no more stringent than justified by the fundamental difference; and

(ii) Compliance with the alternative limit would not result in either:

(A) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the Standards; or

(B) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the Standards.

(d) *Factors considered fundamentally different.* Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the User's process wastewater;

(2) The volume of the User's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the User's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) *Factors which will not be considered fundamentally different.* A variance request or portion of such a request under this section may not be granted on any of the following grounds:

(1) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(2) The assertion that the Standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this section;

(3) The User's ability to pay for the required waste treatment; or

(4) The impact of a Discharge on the quality of the POTW's receiving waters.

(f) *State or local law.* Nothing in this section shall be construed to impair the right of any state or locality under section 510 of the Act to impose more stringent limitations than required by Federal law.

(g) *Application deadline.*

(1) Requests for a variance and supporting information must be submitted in writing to the Director or to the Enforcement Division Director, as appropriate.

(2) In order to be considered, request for variances must be submitted within

180 days after the effective date of the categorical Pretreatment Standard unless the User has requested a categorical determination pursuant to § 403.6(a).

(3) Where the User has requested a catergorical determination pursuant to § 403.6(a), the User may elect to await the results of the category determination before submitting a variance request under this section. Where the User so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination pursuant to § 403.6(a)(4).

(h) *Contents of submission.* Written Submissions for variance request, whether made to the Enforcement Division Director or to the Director must include:

(1) The name and address of the person making the request;

(2) Identification of the interest of the Requester which is affected by the categorical Pretreatment Standard for which the variance is requested;

(3) Identification of the POTW currently receiving the waste from the Industrial User for which alternative discharge limits are requested;

(4) Identification of the categorical Pretreatment Standards which are applicable to the Industrial User;

(5) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(6) The alternative discharge limits proposed by the Requester for each pollutant or pollutant parameter identified in item (5) of this paragraph;

(7) A description of the Industrial User's existing water pollution control facilities;

(8) A schematic flow representation of the Industrial User's water system including water supply, process wastewater systems, and points of Discharge; and

(9) A Statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the Pretreatment Standard.

(i) *Deficient requests.* The Enforcement Division Director or Director will only act on written requests for variances that contain all of the information required. Persons who have made incomplete Submissions will be notified by the Enforcement Division Director or Director that their requests are deficient and unless the time period is extended, will be given up to 30 days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the Enforcement Division Director or the Director, the request for a variance shall be denied.

(j) *Public notice.* Upon receipt of a complete request, the Director or Enforcement Division Director will provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(1) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

(i) The POTW into which the Industrial User requesting the variance discharges;

(ii) Adjoining States whose waters may be affected; and

(iii) Designated 208 planning agencies, Federal and State fish, shellfish and wildlife resource agencies; and to any other person or group who has requested individual notice, including those on appropriate mailing lists.

(2) The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(3) Following the comment period, the Director or Enforcement Division Director will make a determination on the request taking into consideration any comments received. Notice of this final decision shall be provided to the requestor (and the Industrial User for which the variance is requested if different), the POTW into which the Industrial User discharges and all persons who submitted comments on the request.

(k) *Review of requests by state.* (1) Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and Industrial User where they are not the same) and the POTW of the denial.

(2) Where the director finds that fundamentally different factors do exist, he shall forward the request, and a recommendation that the request be approved, to the Enforcement Division Director.

(l) *Review of requests by EPA.* (1) Where the Enforcement Division Director finds that fundamentally different factors do not exist, he shall deny the request for a variance and send a copy of his determination to the Director, to the POTW, and to the Requester (and to the Industrial User, where they are not the same).

(2) Where the Enforcement Division Director finds that fundamentally different factors do exist, and that a partial or full variance is justified, he will approve the variance. In approving the variance, the Enforcement Division Director will:

(i) Prepare recommended alternative discharge limits for the Industrial User either more or less stringent than those prescribed by the applicable categorical Pretreatment Standard to the extent warranted by the demonstrated fundamentally different factors;

(ii) Provide the following information in his written determination:

(A) the recommended alternative discharge limits for the Industrial User concerned;

(B) the rationale for the adjustment of the Pretreatment Standard (including the Enforcement Division Director's reasons for recommending that a fundamentally different factor variance be granted) and an explanation, of how the Enforcement Division Director's recommended alternative discharge limits were derived;

(C) the supporting evidence submitted to the Enforcement Division Director; and

(D) other information considered by the Enforcement Division Director in developing the recommended alternative discharge limits;

(iii) Notify the Director and the POTW of his or her determination; and

(iv) Send the information described in paragraphs (1)(2) (i) and (ii) above to the Requestor (and to the Industrial User where they are not the same).

(m) *Request for hearing.* (1) Within 30 days following the date of receipt of notice of the Enforcement Division Director's decision on a variance request, the Requester or any other interested person may submit a petition to the Regional Administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the Industrial User the person shall simultaneously serve a copy of the request on the Industrial User.

(2) If the Regional Administrator declines to hold a hearing and the Regional Administrator affirms the Enforcement Division Director's findings, the Requester may submit a petition for a hearing to the Administrator within 30 days of the Regional Administrator's decision.

§ 403.14 Confidentiality.

(a) *EPA authorities.* In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such

claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *Effluent data.* Information and data provided to the Control Authority pursuant to this part which is effluent data shall be available to the public without restriction.

(c) *State or POTW.* All other information which is submitted to the State or POTW shall be available to the public at least to the extent provided by 40 CFR § 2.302.

§ 403.15 Net/Gross calculation.

Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial Users' intake water in accordance with the provisions of paragraph (a)–(d) below:

(a) *Application deadline and contents.* Any Industrial User wishing to obtain a credit for intake pollutants must make application therefore within 60 days after the effective date of the applicable categorical Pretreatment Standard. Application shall be made to the appropriate Enforcement Division Director. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the intake water, if the User demonstrates that:

(1) Its intake water is drawn from the same body of water into which the discharge from its publicly owned treatment works is made;

(2) The pollutants present in the intake water will not be entirely removed by the treatment system operated by the User;

(3) The pollutants in the intake water do not vary chemically or biologically from the pollutants limited by the applicable Standards; and

(4) The User does not significantly increase concentrations of pollutants in the intake water, even if the total amount of pollutants remains the same.

(b) *Criteria.* Standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the Industrial User. Adjustments under this section shall be given only to the extent that pollutants in the intake water which are limited by the Standard are not removed by the treatment technology employed by the User.

(c) *Notice.* The User shall notify the Regional Enforcement Officer if there are any significant changes in the quantity of the pollutants in the intake water or in the level of treatment provided.

(d) *EPA decision.* The Enforcement Division Director shall require the User to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any adjustments. The Enforcement Division Director shall consider all timely applications for credits for intake pollutants plus any additional evidence that may have been submitted in response to the EPA's request. The Enforcement Division Director shall then make a written determination of the applicable credit(s), if any, state the reasons for its determination, state what additional monitoring is necessary, and send a copy of said determination to the applicant and the applicant's POTW. The decision of the Enforcement Division Director shall be final.

§ 403.16 Upset provision.

(a) *Definition.* For the purposes of this section, "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an upset.* An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

(c) *Conditions necessary for a demonstration of upset.* An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An Upset occurred and the Industrial User can identify the specific cause(s) of the Upset;

(2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

(3) The Industrial User has submitted the following information to the POTW and Control Authority within 24 hours of becoming aware of the Upset (if this information is provided orally, a written submission must be provided within five days):

(i) A description of the Indirect Discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(d) *Burden of proof.* In any enforcement proceeding the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.

(e) *Reviewability of agency consideration of claims of upset.* In the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that non-compliance was caused by an Upset. No determinations made in the course of the review constitute final Agency action subject to judicial review. Industrial Users will have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

(f) *User responsibility in case of upset.* The Industrial User shall control production or all Discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Appendix A.—United States Environmental Protection Agency

December 16, 1975.

Program Guidance Memorandum—61

Subject: Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges.

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546).

To: Regional Administrators, Regions I–X.

This memorandum summarizes the Agency's policy on the use of construction grants for treatment and control of combined sewer overflows and stormwater discharges during wet-weather conditions. The purpose is to assure that projects are funded only when careful planning has demonstrated they are cost-effective.

I. Combined Sewer Overflows

A. Background

The costs and benefits of control of various portions of pollution due to combined sewer overflows and by-passes vary greatly with the characteristics of the sewer and treatment system, the duration, intensity, frequency and areal extent of precipitation, the type and extent of development in the service area, and the characteristics, uses and water quality standards of the receiving waters. Decisions on grants for control of combined sewer overflows, therefore, must be made on a case-by-case basis after detailed planning at the local level.

Where detailed planning has been completed, treatment or control of pollution from wet-weather overflows and bypasses may be given priority for construction grant funds only after provision has been made for secondary treatment of dry-weather flows in the area. The detailed planning requirements and criteria for project approval follow.

B. Planning Requirements

Construction grants may be approved for control of pollution from combined sewer overflows only if planning for the project was thoroughly analyzed for the 20 year planning period:

1. Alternative control techniques which might be utilized to attain various levels of pollution control (related to alternative beneficial uses, if appropriate), including at least initial consideration of all the alternatives described in the section on combined sewer and stormwater control in "Alternative Waste Management Techniques and Best Practicable Waste Treatment" (Section C of Chapter III of the information proposed for comment in March 1974).

2. The costs of achieving the various levels of pollution control by each of the techniques appearing to be the most feasible and cost-effective after the preliminary analysis.

3. The benefits to the receiving waters of a range of levels of pollution control during wet-weather conditions. This analysis will normally be conducted as part of State water quality management planning, 208 areawide management planning, or other State, regional or local planning effort.

4. The costs and benefits of addition of advanced waste treatment processes to dry-weather flows in the area.

C. Criteria for Project Approval

The final alternative selected shall meet the following criteria:

1. The analysis required above has demonstrated that the level of pollution control provided will be necessary to protect a beneficial use of the receiving water even after technology based standards required by Section 301 of P.L. 92-500 are achieved by industrial point sources and at least secondary treatment is achieved for dry-weather municipal flows in the area.

2. Provision has already been made for funding of secondary treatment of dry-weather flows in the area.

3. The pollution control technique proposed for combined sewer overflow is a more cost-effective means of protecting the beneficial use of the receiving waters than other combined sewer pollution control techniques and the addition of treatment higher than secondary treatment for dry-weather municipal flows in the area.

4. The marginal costs are not substantial compared to marginal benefits.

Marginal costs and benefits for each alternative may be displayed graphically to assist with determining a project's acceptability under this criterion. Dollar costs should be compared with quantified pollution reduction and water quality improvements. A descriptive narrative should also be included analyzing monetary, social and environmental costs compared to benefits, particularly the significance of the beneficial uses to be protected by the project.

II. Stormwater Discharges

Approaches for reducing pollution from separate stormwater discharges are now in the early stages of development and evaluation. We anticipate, however, that in many cases the benefits obtained by construction of treatment works for this purpose will be small compared with the costs, and other techniques of control and prevention will be more cost-effective. The policy of the Agency is, therefore, that construction grants shall not be used for construction of treatment works to control pollution from separate discharges of stormwater except under unusual conditions where the project clearly has been demonstrated to meet the planning requirements and criteria described above for combined sewer overflows.

III. Multi-purpose Projects

Projects with multiple purposes, such as flood control and recreation in addition to pollution control, may be eligible for an amount not to exceed the cost of the most cost-effective single purpose pollution abatement system. Normally the Separable Costs-Remaining Benefits (SCRB) method should be used to allocate costs between pollution control and other purposes, although in unusual cases another method may be appropriate. For such cost allocation, the cost of the least cost pollution abatement alternative may be used as a substitute measure of the benefits for that purpose. The method is described in "Proposed Practices for Economic Analysis of River Basin Projects," GPO, Washington, D.C., 1958, and "Efficiency in Government through Systems Analysis," by Roland N. McKean, John Wiley & Sons, Inc., 1958.

Enlargement of or otherwise adding to combined sewer conveyance systems is one means of reducing or eliminating flooding caused by wet-weather conditions. These additions may be designed so as to produce some benefits in terms of reduced discharge of pollutants to surrounding waterways. The pollution control benefits of such flood control measures, however, are likely to be small compared with the costs, and the measures therefore would normally be ineligible for funding under the construction grants program.

All multi-purpose projects where less than 100% of the costs are eligible for construction grants under this policy shall contain a special grant condition precluding EPA funding of non-pollution control elements. This condition should, as a minimum, contain a provision similar to the following: "The grantee explicitly acknowledges and agrees that costs are allowable only to the extent they are incurred for the water pollution control elements of this project."

Additional special conditions should be included as appropriate to assure that the grantee clearly understands which elements of the project are eligible for construction grants under Public Law 92-500.

Appendix B—65 Toxic Pollutants

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds[1]
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride
Chlordane (technical mixture and metabolites)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloralkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
Chlorinated naphthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
Dichlorobenzidine
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene
2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoroanthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chloromethyl-chloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
Heptachlor and metabolites
Hexachlorobutadiene

[1] As used throughout this Appendix B the term "compounds" shall include organic and inorganic compounds.

Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrobenzene
Nitrophenols (Including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCBs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluroranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds

Appendix C—34 Industrial Categories

Adhesives and Sealants
Aluminum Forming
Auto and Other Laundries
Battery Manufacturing
Coal Mining
Coil Coating
Copper Forming
Electrical and Electronic Components
Electroplating
Explosives Manufacturing
Foundries
Gum and Wood Chemicals
Inorganic Chemicals Manufacturing
Iron and Steel Manufacturing
Leather Tanning and Finishing
Mechanical Products Manufacturing
Nonferrous Metals Manufacturing
Ore Mining
Organic Chemicals Manufacturing
Paint and Ink Formulation
Pesticides
Petroleum Refining
Pharmaceutical Preparations
Photographic Equipment and Supplies
Plastics Processing
Plastic and Synthetic Materials Manufacturing
Porcelain Enameling
Printing and Publishing
Pulp and Paper Mills
Rubber Processing
Soap and Detergent Manufacturing
Steam Electric Power Plants
Textile Mills
Timber Products Processing

Appendix D—Selected Industrial Subcategories Exempted From Regulation Pursuant of Paragraph 8 of the NRDC v. Costle Consent Decree

The following industrial subcategories have been excluded from further rulemaking pursuant to paragraph 8 of the *Natural Resources Defense Council* v. *Costle* Consent Decree for one or more of the following reasons: (1) the pollutants of concern are not detectable in the effluent from the Industrial User (paragraph 8(a)(iii)); (2) the pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragrpah 8(a)(iii)); (3) the pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph 8(a)(iii)); or (4) the wastestream contains only pollutants which are compatible with the POTW (paragraph 8(b)(i)). In some instances, different rationale were given for exclusion under paragraph 8. However, EPA has reviewed these subcategories and has determined that exclusion could have occurred due to one of the four reasons listed above.

This list includes all subcategories that have been excluded for the above-listed reasons as of [date of publication in the **Federal Register**]. This list will be updated periodically for the convenience of the reader.

Auto and Other Laundries Industry

- Carpet Cleaners
- Coin Operated Laundries
- Diaper Services
- Dry Cleaners
- Power Laundries

Battery Manufacturing Industry

- Carbon Zinc Air Cell Batteries
- Lithium Batteries
- Magnesium Carbon Batteries
- Magnesium Cell Batteries
- Miniature Alkaline Batteries
- Nickel Zinc Batteries

Electrical and Electronic Components

- Carbon and Graphite Products
- Fixed Capacitors
- Fluorescent Lamps
- Incandescent Lamps
- Magnetic Coatings
- Mica Paper

Electroplating

- Alkaline Cleaning
- Bright Dipping
- Chemical Machining
- Galvanizing
- Immersion Plating
- Iridite Dipping
- Pickling

Explosives Industry

- Military Explosive Manufacturing

Foundries Industry

- Nickel Casting
- Tin Casting
- Titanium Casting

Gum and Wood Chemicals

- Char and Charcoal Briquets
- Gum Resin, Turpentine and Essential Oils

Iron and Steel Industry

- Basic Oxygen Furnace (Semiwet)
- Beehive Coke Process
- Electric Arc Furnace (Semiwet)

Inorganic Chemicals Manufacturing Industry

- Aluminum Sulfate
- Ammonium Chloride
- Ammonium Hydroxide
- Barium Carbonate
- Borax
- Boric Acid
- Bromine
- Calcium Carbide
- Calcium Carbonate
- Calcium Chloride
- Calcium Hydroxide
- Calcium Oxide
- Carbon Dioxide
- Carbon Monoxide
- Chromic Acid
- Cuprous Oxide
- Ferric Chloride
- Ferrous Sulfate
- Fluorine
- Hydrogen
- Hydrochloric Acid
- Hydrogen Peroxide
- Iodine
- Lead Monoxide
- Lithium Carbonate
- Manganese Sulfate
- Nitric Acid
- Oxygen and Nitrogen
- Potassium Chloride
- Potassium Dichromate
- Potassium Iodide
- Potassium Metal
- Potassium Permanganate
- Potassium Sulfate
- Sodium Bicarbonate
- Sodium Carbonate
- Sodium Chloride
- Sodium Fluoride
- Sodium Hydrosulfide
- Sodium Metal
- Sodium Silicate
- Sodium Sulfite
- Sodium Thiosulfate
- Stannic Oxide
- Sulfur Dioxide
- Sulfuric Acid
- Zinc Oxide
- Zinc Sulfate

Leather Industries

- Gloves
- Luggage
- Shoes and Related Footwear
- Personal Goods

Non Ferrous Metals Industry

- Primary Arsenic
- Primary Antimony
- Secondary Babbitt
- Primary Barium
- Secondary Beryllium
- Primary Bismuth
- Primary Boron
- Secondary Boron
- Bauxite
- Secondary Cadmium
- Primary Calcium
- Primary Cesium
- Primary Chromium
- Primary Cobalt
- Secondary Cobalt
- Secondary Columbium
- Primary Gallium
- Primary Germanium
- Primary Gold
- Secondary Precious Metals
- Primary Hafnium

- Primary and Secondary Indium
- Primary Lithium
- Primary Manganese
- Primary Magnesium
- Secondary Magnesium
- Primary Mercury
- Secondary Mercury
- Primary Molybdenum
- Secondary Molybdenum
- Primary Nickel
- Secondary Nickel
- Secondary Plutonium
- Primary Potassium
- Primary Rare Earths
- Primary Rhenium
- Secondary Rhenium
- Primary Rubidium
- Primary Platinum Group
- Primary Silicon
- Primary Sodium
- Secondary Tantalum
- Primary Tin
- Secondary Tin
- Primary Titanium
- Secondary Titanium
- Secondary Tungsten
- Primary Uranium
- Secondary Uranium
- Secondary Zinc
- Primary Zirconium

Paint and Ink Industry

- Solvent Base Process
- Solvent Wash Process

Paving and Roofing Industry

- Asphalt Concrete
- Asphalt Emulsion
- Linoleum
- Printed Asphalt Felt
- Roofing

Pulp, Paper, Paperboard, and Converted Paper Industry

- Converted Paper Industry

Rubber Processing Industry

- Latex-Dipped, Latex-Extruded, and Latex Molded Goods
- Latex Foam
- Small-sized General Molded, Extruded and Fabricated Rubber Plants
- Medium-sized General Molded, Extruded and Fabricated Rubber Plants
- Large-sized General Molded, Extruded and Fabricated Rubber Plants
- Synthetic Crumb Rubber Production—Emulsion Polymerization
- Synthetic Crumb Rubber Production—Solution Polymerization
- Synthetic Latex Rubber Production
- Tire & Inner Tube Production

Textile Industry

- Apparel Manufacturing
- Cordage and Twine
- Low Water Use Processing (Greige Mills)
- Padding and Upholstery Filling

Timber Products Processing

- Barking Process
- Finishing Processes
- Hardboard—Dry Process
- Log Washing
- Particleboard
- Planing Mills
- Sawmills
- Veneer
- Wet Storage
- Wood Preserving (Inorganics) Process

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E)[AND 307(B)] OF THE ACT

2. 40 CFR Part 125 subpart D is amended by deleting "and 307(b)" from the title of the subpart.

3. 40 CFR § 125.30 is amended to read as follows:

§ 125.30 Purpose and scope.

(a) This subpart establishes the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under sections 301 and 304 of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This subpart applies to all national limits promulgated under sections 301 and 304 of the Act, except for those contained in 40 CFR Part 423 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b) and 304(g) of the Act.

* * * * *

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Part III

Environmental Protection Agency

Effluent Guidelines and Standards; Electroplating Point Source Category Pretreatment Standards for Existing Sources

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 1724-2]

40 CFR Part 413

Effluent Guidelines and Standards; Electroplating Point Source Category Pretreatment Standards for Existing Sources

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; amendements.

SUMMARY: On July 3, 1980, the Environmental Protection Agency published proposed amendments to and requested comments on a final rule (45 FR 45322 et seq.) which limits the concentration or mass of certain pollutants which may be introduced into publicly owned treatment works by operations in the Electroplating Point Source Category. These regulations were first promulgated in the **Federal Register** on September 7, 1979, and subsequently corrected by notices in the **Federal Register** dated October 1, 1979, March 25, 1980, and August 19, 1980.

After promulgation, petitions to review the final rule were filed by the National Association of Metal Finishers and the Institute of Interconnecting and Packaging Electronic Circuits in the Court of Appeals. On March 7, 1980, EPA entered into a Settlement Agreement with the petitioners in an effort to resolve the issues without further litigation. The Agreement provided that EPA would publish proposed amendments arising out of the settlement. It further provided that if the final amendments did not differ significantly from those proposed, the petitioners would dismiss their petitions for review.

The Agency has decided, after reviewing comments by industry and other interested parties, to promulgate the proposed rule of July 3, 1980 as the final rule without significant changes.

DATES: Effective Date: The regulations shall become effective March 16, 1981.

Compliance Date: The compliance date for non-integrated facilities shall be May 12, 1983. For integrated facilities, the compliance date shall be three years from the effective date of the combined wastestream formula, 40 CFR § 403.6(e).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Hund or Mr. John Newbrough, Effluent Guidelines Division, (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 426-2582.

SUPPLEMENTARY INFORMATION: On September 7, 1979, EPA published final regulations establishing categorical pretreatment standards covering all firms performing operations in the Electroplating Point Source Category that introduce effluent into publicly owned treatment works (POTWs). These operations include electroplating, anodizing, conversion coating, electroless plating, chemical etching and milling, and the manufacture of printed circuit boards. The plants covered by these regulations are found throughout the United States but are concentrated in heavily industrialized areas.

These standards contain specific numerical limitations based on an evaluation of available technologies in each industrial subcategory. The specific numerical limitations are determined separately for each subcategory, and are imposed on pollutants which may interfere with, pass through, or otherwise be incompatible with a publicly owned treatment works (POTW). For plants with a daily flow of 38,000 liters (10,000 gallons) per day or more, the pretreatment standards specifically limit indirect discharges of cyanide and the following metals: lead, cadmium, copper, nickel, chromium, zinc, and silver. Additionally, these regulations limit total metal discharge which is defined as the sum of the individual concentrations of copper, nickel, chromium and zinc. For plants with a daily process wastewater flow of less than 38,000 liters (10,000 gallons), these standards limit only lead, cadmium, and cyanide in order to limit the closure rate in the industry.

A. Background

Petitions to review the electroplating pretreatment standards published September 7, 1979, were filed in the Court of Appeals by the National Association of Metal Finishers (NAMF), the Institute for Interconnecting and Packaging Electronic Circuits (IIPEC), and Ford Motor Company (Ford). NAMF and IIPEC signed a settlement agreement with EPA that required EPA to propose certain amendments and to propose certain language to be included in the preamble to the electroplating regulation. The proposed amendments were published on July 3, 1980 (45 FR 45322). The agreement also provided that EPA would extend the compliance deadline if promulgation were substantially delayed beyond June 1, 1980, and that NAMF and IIPEC would not challenge the regulations if the final regulations and preamble "do not differ significantly from the proposed regulations and preamble." The proposed amendments have been promulgated as the final rule without significant change, and are discussed in section B below. The preamble discussion has been altered to give the Agency needed flexibility, but EPA believes that the practical effect of this preamble discussion is the same as that contemplated in the Settlement Agreement, and, therefore, is not a significant change. See section B below.

Ford did not sign the NAMF Settlement Agreement. In the Ford lawsuit, a joint motion by Ford and EPA was granted for an extension of the briefing schedule until § 403.6(e), the combined wastestream formula of the general pretreatment regulations, was promulgated. As part of the joint motion, EPA agreed to amend § 413.01 of the electroplating regulations to provide that they would not be effective as to integrated facilities until promulgation of the combined wastestream formula. This amendment was published on March 25, 1980 (45 FR 19245). EPA also agreed that the three year compliance period would run anew with respect to Ford's integrated facilities from the effective date of § 403.6(e). As discussed in section B below, portions of the amendment of § 413.01 have been retained in the final amendments, and the compliance date for integrated facilities has been set at 3 years from the effective date of § 403.6(e).

B. Changes resulting from today's amendments

Most of the amendments to the electroplating regulations arose from the NAMF Settlement Agreement. The preamble discussion of these amendments is preceded by the words "(Settlement Agreement)". Some amendments were required by the Ford Joint Motion and some were included for consistency or clarification. The changes are discussed in detail below.

1. *Cyanide Standards.* (Settlement Agreement). EPA has revised the applicable daily maximum limitation for total cyanide (CN,T) from .8 to 1.9 mg/l in subparts A, B, D, E, F, G, and H. This change is meant to allow for the special problems of cyanide removal for those who use significant quantities of both cyanide and steel in their plating operations. In such cases iron often enters the plating solution in dragout from the rinse following pickling and prior to plating. Steps can be taken to reduce iron contaminants in the plating solutions through better control of dragout from pre-plating rinsing and use of nonferrous tanks and anode baskets. However, in many cases the formation of iron complexes in the plating solution cannot be altogether eliminated. In these cases the iron and cyanide combine to form a stable iron complex which is not

destroyed, as is free cyanide, by alkaline chlorination treatment. Thus, there is a fundamental difference between platers treating free cyanide and iron cyanide complexes.

EPA took this problem into account in its regulation by including those who use significant quantities of steel and cyanide in the data used to establish the daily maximum limitation for cyanide. However, the Agency now believes that unless the total cyanide number is raised many platers who utilize significant amounts of cyanide and steel will not be able to achieve the standards through the use of best practicable technology. (The Agency also considered establishing a separate subcategory for these platers but decided that approach was impractical; the amounts of steel and cyanide used often fluctuate and there is no objectively quantifiable point at which complex cyanides become a special problem).

To establish a more appropriate daily maximum limit for cyanide, the Agency reviewed its data base to locate representative plants which use significant quantities of both iron and cyanide. The median of the total cyanide effluent for these plants was 0.38 mg per liter, with a daily maximum variability factor of 5.0. This results in the maximum daily limitation of 1.9 mg per liter. The equivalent daily maximums are expressed as mass based limits, 39 milligrams per square meter per operation (mg/op-m ^{2}).

2. *Four Day Average Standards* (Settlement Agreement). Pursuant to the Settlement Agreement, EPA has established daily maximum and 4-day average value limits. The change from 30 day average limits to 4 day average limits does not constitute a relaxation in the level of control technology required.

It is well established Agency policy to issue industrial effluent limitations with both daily maximum and 30 day averages (monthly averages). The 30 day average limits are used in part as a guide for designing the treatment system to remove pollutants to required levels. The 4 day average limits promulgated today are part of the comprehensive NAMF Settlement Agreement. However, it is unlikely the Agency will vary from its customary 30 day average approach in future pretreatment standards for this or other categories.

The frequency of self-monitoring is independent of whether or not the long term average limit is expressed as a 4 day average or a 30 day average. The minimum frequency of self-monitoring required of an industrial user will be established by a section in each categorical pretreatment standard. The self-monitoring section for electroplating will be proposed in the near future. The proposed self-monitoring section will also discuss how the self-monitoring data will be compared to the 4 day average standards to determine compliance.

3. *Revocation of Monitoring Requirements* (Settlement Agreement). EPA has revoked the electroplating compliance monitoring requirements previously contained in § 413.03 of the regulations. New monitoring requirements will be proposed shortly. They will be included in the electroplating standards, not in the general pretreatment regulations as the proposed amendments had indicated.

4. *Upsets.* EPA has revoked former § 413.04 on upsets. Upsets are now governed by § 403.16 of the General Pretreatment Regulations. Accordingly, a special provision in the Electroplating pretreatment standards was deemed unnecessary.

5. *Definition of Intergrated Facility.* On March 25, 1980 (45 FR 19245), the Agency published a correction to § 413.01 which had the effect of removing "integrated facilities" from regulation by the electroplating standards until the effective date of the combined wastestream formula, 40 CFR § 403.6(e). The correction also defined the term integrated facility as a facility "that performs electroplating as only one of several operations necessary for manufacture of a product at a single physical location and has significant quantities of process wastewater from non-electroplating manufacturing operations. In addition, to qualify as an 'integrated facility' one or more plant electroplating process wastewater lines must be combined prior to or at the point of treatment (or proposed treatment) with one or more plant sewers carrying process wastewater from non-electroplating manufacturing operations." In today's amendments, this definition has been moved from § 413.01 to § 413.02(h) with the general definitions.

6. *Standards for Integrated Facilities.* In place of the upset provision, EPA has added a new section § 413.04 on standards for integrated facilities. This section recognizes that § 403.6(e) of the General Pretreatment Regulations governs limitations on wastestreams that are combined prior to treatment. Section 403.6(e) would apply if an electroplating stream were combined with other regulated or unregulated wastestreams prior to treatment. The new § 413.04 also requires that 30-day average standards, rather than 4-day average standards, be used in calculating an alternative pretreatment standard for the combined wastestream if one of the non-electroplating streams is regulated by a 30-day average standard. In addition, if two electroplating streams regulated under different subcategories of this regulation are combined, the 4 day standards may be used to calculate the combined wastestream standard unless an additional wastestream subject to 30 day standards is combined.

The new § 413.04 includes a table which gives the 30 day average standards for the appropriate one day maximum and 4 day average standards. The 30 day average standard must be used in computing the pretreatment standard for the combined wastestream when one or more of the non-electroplating wastestreams is regulated by a 30 day average standard. This table was computed from the equation describing the statistical variability of the standards published in former § 413.03 on September 7, 1979. After proper derivation to solve for the 30 day average limit, the equation is as follows:

$$L_{30} = \frac{L_4 - 0.334\ (L_1)}{0.666}$$

Where:

L_{30} = standard not to be exceeded by the average of 30 consecutive days

L_4 = standard not to be exceeded by the average of 4 consecutive days

L_1 = Maximum for any one day

The purpose of this requirement is merely to establish consistency in the use of the combined wastestream formula.

Since the 30 day standards were previously published and the combined wastestream formula was carefully considered in the promulgation of the General Pretreatment Regulations, the Agency has promulgated this section in final form.

7. *Revocation of BPT Limitations for Direct Dischargers.* As part of these revisions, EPA has removed §§ 413.12, 413.22, 413.42, 413.52, and 413.62. These sections, containing best practicable technology (BPT) limitations for five electroplating subcategories for direct dischargers, were suspended indefinitely on December 3, 1976 (41 FR 53018). These regulations were suspended because EPA was then in the process of gathering and examining additional data. However, because the Agency expects to promulgate proposed BPT limitations in the next round of rulemaking, EPA has decided to revoke

these previously suspended standards. The next round of rulemaking will include electroplating in a broader category called Metal Finishing. (See discussion below.)

The sections removed today had previously been offered as guidance to permit writers in setting limitations on individual direct dischargers. Permit writers should now refer to the BPT-analog pretreatment standards amended today for guidance.

8. *Relationship Between These Proposed Standards and Best Available Technology Pretreatment Standards* (Settlement Agreement). This regualtion requires categorical pretreatment standards satisfying the requirement in the NRDC consent decree that standards analogous to best practicable control technology (BPT) be developed for existing sources in the electroplating point source category. (Paragraph 13, 8 ERC 2120, 2128 (June 8, 1976).)

The Agency is in the process of developing pretreatment standards analogous to the best available technology economically achievable (BAT) for electroplating. These standards are expected to be promulgated in 1981, and will be called "Metal Finishing" regulations. They will include the processes regulated by the electroplating standards and many other metal finishing processes. The metal finishing regulations will also contain BAT and BPT for direct dischargers, new source performance standards, and pretreatment standards for new sources.

Consistent with Agency policy, any future BAT-analog pretreatment standards will be based on treatment technology compatible with the model technology upon which these standards were based. These new regulations should not render obsolete the technology designed to meet the BPT analog regulations. At the same time, BAT-analog standards may require the installation of additional pretreatment technology.

EPA is sensitive to the fact that the job shop metal finishing segment may be vulnerable to adverse economic impacts as a result of pretreatment regulations. In the preamble to the September 7, 1979, standards, EPA estimated that 587 metal finishing job shops, employing 9,653 workers, may close as a result of these regulations.

As part of the NAMF settlement agreement, EPA stated in the July 3, 1980 proposed preamble that in light of the potentially severe economic impact of these regulations on the job shop segment of the industry, it would not "impose more stringent pretreatment standards for the job shop metal finishing segment in the next several years." It is still the Agency's view that it is unlikely that EPA will impose standards on job shops or printed circuit board manufacturers based on more advanced technology than that forming the basis for today's pretreatment standards. However, as work continues on the metal finishing regulations, if the Agency finds that the data base or methodology used in setting metal finishing limitations results in different standards than in electroplating, even though the limitations are based on the same technology as was used in electroplating, the Agency may have to reconcile the electroplating standards with the metal finishing standards. In addition, as part of the BAT analysis, EPA will consider the discharge of toxic organics by the industry. Preliminary investigations indicate that toxic organics may be controlled through best management practices with little economic impact on the industry. In considering any regulation of toxic organics, careful attention will be given to the economic impact on the industry.

9. *Compliance Deadlines* (Settlement Agreement). In accordance with the NAMF Settlement Agreement, EPA has extended the compliance date for non-integrated facilities subject to these standards to May 12, 1983. The extension is due to the delay beyond June 1, 1980 for promulgation of these final amendments.

EPA has extended the compliance date for integrated facilities to three years from the effective date of § 403.6(e) of the General Pretreatment Regulations. EPA agreed to this extension because the Agency believed that the combined wastestream formula, § 403.6(e), would have to be promulgated in final form before integrated facilities would understand their compliance obligations under the electroplating standards.

10. *Variances, Reporting Requirements, and Categorical Determinations.* For non-integrated facilities, reporting requirements and categorical determination requests under the General Pretreatment Regulations were triggered by the September 7, 1979 promulgation of the electroplating standards. Facilities that filed timely baseline monitoring reports as required by § 403.12 may revise their reports in light of the change in the cyanide limitation in today's amendments. Such revision is not mandatory.

For integrated facilities, reporting requirements and categorical determination requests are triggered by the effective date of the recent amendments to the General Pretreatment Regulations.

For both integrated and non-integrated facilities, the time for requesting variances for fundamentally different factors is triggered by the effective date of final amendments to § 403.13 of the General Pretreatment Regulations. Industrial Users will have 180 days from the effective date of amended § 403.13 (or, alternatively, 30 days from the Agency's decision on a categorical determination pursuant to § 403.6) to request an FDF variance under the provisions of § 403.13.

C. 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. On June 28, 1980, the Administrator reviewed these amendments and determined that they are a specialized regulation not subject to the procedural requirements of Executive Order 12044. For a complete discussion of the Administrator's initial determination regarding the electroplating regulations see 44 FR 52592 (Sept. 7, 1979).

D. Summary of Public Participation

Following the promulgation of the electroplating regulations several actions were brought in the United States Court of Appeals for the Third Circuit challenging various aspects of these regulations. Among these are *National Association of Metal Finishers* v. *EPA*, No. 75-2256 and *the Institute for Interconnecting and Packaging Electronic Circuits* v. *EPA*, No. 79-2443.

On March 7, 1980, EPA entered into an agreement with the above petitioners which seeks to settle the issues raised in the litigation. Under terms of the Settlement Agreement, the petitioners stipulated that if the final regulations do not differ significantly from the proposed regulations, the petitioners will dismiss their challenge to the electroplating pretreatment regulation.

On July 3, 1980, EPA published the proposed modifications arising out of the Settlement Agreement, and requested public comment. After considering these comments, EPA has decided to publish the proposed modifications, without significant change, as the final rule.

Comments on the proposed modifications were received from several industry trade associations, individual industries, and public sewering agencies.

The major comments and Agency responses are as follows:

(1) *Comment:* The amendment makes no allowance for delay in attaining

compliance past June 1, 1980, per the EPA/NAMF Settlement Agreement.

Response: Under the Settlement Agreement, the compliance date is to be extended by the period of time between June 1, 1980, and the actual date the amended rules are promulgated. The Agency has extended the compliance date of these regulations accordingly.

(2) *Comment:* The 1.9 mg/l standard for total cyanide is impossible to meet on a daily basis by job shops doing barrel plating on ferrous metal with cyanide plating baths. Iron cyanide and other cyanide complexes are not amenable to breakdown by oxidation methods. Therefore, the total cyanide standard should be eliminated from pretreatment standards.

Response: The amended standard of 1.9 mg/l was developed after reconsidering the problems of iron cyanide complexes (see background discussion above). Studies conducted by EPA indicate that alkaline chlorination technology will reduce total cyanide to 1.9 mg/l where iron cyanide complexes are present. In addition, other cyanide destruction technologies may be applied with equal success, although they are not the technological basis for these regulations. For example, the addition of ferrous sulfate to the precipitation-clarification system has been found to reduce total cyanide to less than 0.4 mg/l.

(3) *Comment:* Pretreatment regulations require indirect dischargers to install equipment to treat wastewater where the POTW is capable of treating it, thus rendering pretreatment an unnecessary expense.

Response: See the Responses to Comments 11 and 13 below.

(4) *Comment:* The less than 10,000 gal/day variance causes severe economic disparity, since it allows the under 10,000 gal/day discharger to escape the economic burden of installing and operating treatment facilities.

Response: This comment was addressed in the final pretreatment standards promulgated September 7, 1979 (44 FR 52603).

(5) *Comment:* The proposed revision of the CN_T from 0.8 to 1.9 mg/l in subparts A, B, D, E, F, G, and H is a more realistic approach for those platers who utilize significant amounts of steel and cyanide. From data obtained in the field by our company, we find that in such plants a maximum of 1.9 mg/l CN_T is easily attained by good plant operation. Further mixing of process streams and the associated dissociation and dilution effects also indicate that the 1.0 mg/l four-day average value is a more attainable limit.

Response: As discussed previously, EPA's data indicates that platers that use significant amounts of steel and cyanide can attain the revised cyanide limitation. However, with respect to the reference to dilution and mixing effects, the General Pretreatment Regulations prohibit dilution as a substitute for treatment. (See 40 CFR 403.6(d).) Moreover, "mixing of process streams" may subject the industrial user to the requirements of the combined waste stream formula. (See 40 CFR 403.6(e).)

(6) *Comment:* Values for the maximum daily and four-day average are far more realistic than previous limits. However, although the four day limits are higher than the 30 day average they replace, they do not represent a relaxation of the standards since they are based upon the same formula from which the 30-day average values were calculated.

Response: The 4-day average numbers were not intended to be a relaxation of the prior 30 day average standards. The Agency is requiring 4-day averages as a result of the NAMF Settlement Agreement. For further discussion of this provision, see the discussion of 4 day average standards above.

(7) *Comment:* The proposed amendments remain silent regarding the disposition of small electroplaters discharging much less than 10,000 gal/day. EPA should reconsider the imposition of a practicable low end cut-off level, below which indirect dischargers would be exempt from categorical pretreatment standards.

Response: The regulations promulgated on September 7, 1979, provide that 10,000 gal/day is the flow cutoff distinguishing large and small indirect dischargers. With respect to facilities discharging much less than 10,000 gal/day, the Agency believes that the present regulations are achievable and necessary.

(8) *Comment:* Since the Settlement Agreement was signed, NAMF has continued to review the Agency's data base and methodology. NAMF continues to believe that the metal finishing regulations, even as proposed to be amended, are not economically achievable, that compliance is not feasible using the technology specified by EPA, and that the regulations are far more stringent than necessary to protect the environment.

Response: The Agency has adequately addressed in the September 7, 1979 regulations the economic impacts of the electroplating category regulations. (See 44 FR 52592–95.) There is also adequate technical support for the recommended treatment technologies. (See 44 FR 52596–601; Development Document for Existing Source Pretreatment Standards for the Electroplating Point Source Category.) The relaxation of total cyanide limitations contained in today's amendments provides a realistic standard that can be achieved by platers who use significant amounts of steel and cyanide.

(9) *Comment:* The cyanide limits are based on faulty data, an improper methodology and do not represent limits achievable for plating of steel in cyanide solutions.

Response: As discussed above, the cyanide limits have been revised to a level that is achievable for electoplaters subject to this regulation. For the Agency's methodology, see 44 FR 52607.

(10) *Comment:* The methodology employed by EPA is flawed and results in overly stringent limits. EPA has not used the raw data directly to calculate pretreatment limits. Instead, EPA has employed an elaborate statistical methodology to predict the concentrations that should be achieved by exemplary plants. In the previous sections we have shown that the raw data does not correspond with EPA's calculated limits—that is, a number of exemplary plants violate EPA's standards.

Response: A detailed summary of the methodology employed for setting pretreatment regulations is presented in Section XII of the Supplementary Information material preceding the September 7, 1979 rules and regulations. The Agency has found that the statistical approach utilized is the best method for taking into account the many variables that must be considered when setting pretreatment standards.

The data base used in developing these standards is not restricted to exemplary plant data. Data on 123 plants were collected but not all plants were used in the statistical analyses. Screening criteria applied to the data from 123 plants determined that only data from 67 plants were usable. The screening criteria excluded plants that were improperly designed or clearly improperly operated. Such plants do not represent the performance of best practicable technology and should not be considered in setting pretreatment standards. Also, plants with advanced treatment systems such as the Lancey treatment system were excluded from the data base. Removal from the data base resulted from excessively high TSS values, improper pH in the clarifier, and low pollutant values in the raw waste load. Certain other plants have subsequently been eliminated as a result of information provided by participants.

(11) *Comment:* The Clean Water Act, as envisioned by Congress, was "designed to ensure clean water." If a

POTW is meeting its NPDES permit limitations, then the water is sufficiently clean to obviate the need for Industrial Users to comply with pretreatment standards.

Response: A similar comment was addressed in the final regulations published September 7, 1979, 44 FR 52590, 52602. It is correct that Congress intended to clean up the Nation's waters through the Clean Water Act. However, Congress did not take the approach advocated by this commenter, *i.e.*, exemption of Industrial Users from pretreatment standards if the POTW does not violate its NPDES permit limitations. Instead, Congress enacted Section 307(b) requiring EPA to establish pretreatment standards for pollutants which pass through, interfere, or are otherwise incompatible with the POTW. Thus, Congress established limits at the individual Industrial User rather than at the POTW.

Moreover, pretreatment standards are based on the best available technology economically achievable; they are not based on effluent quality. (See sections 301(b)(2)(A)(ii) & 307; 3 A Legislative History of the Clean Water Act at 271.) To argue that the effluent quality achieved by a POTW satisfying its permit is adequate to obviate the need for pretreatment standards is to argue that pretreatment standards should be based on effluent quality rather than best available technology. This is not what Congress intended.

(12) *Comment:* Congress intended pretreatment standards to apply only to "the most significant pretreatment problems." (Legis. Hist. I at 800.)

Response: EPA is writing pretreatment standards for the industries most likely to contribute toxic pollutants: Indeed, the discharge of wastewater from electroplaters is one of "the most significant pretreatment problems." Electroplaters use large amounts of toxic heavy metals in the plating process as well as chelating agents such as cyanide to promote smooth plating of certain metals. Electroplating is one of the 34 categories listed in the *NRDC* v. *Costle* Consent Decree, 8 ERC 1220, as modified at 12 ERC 1833 (March 9, 1979).

Indeed, the Agency estimated in the preamble to the final regulation that compliance with the pretreatment standards for electroplating could eliminate 140 million pounds per year of toxic pollutants from entering the water or concentrating in POTW sludge. 44 FR 52591. The next largest contributor of toxic pollutants is the iron and steel industry at 11 million pounds per year. See also Responses to Comments at 44 FR at 52606.

(13) *Comment:* Congress intended that the combination of pretreatment and treatment by the POTW achieve at least the level of treatment which would be required of a direct discharger.

Response: This statement is correct and supports the approach taken by EPA in setting pretreatment standards for electroplaters. Two major themes run through the legislative history of pretreatment standards under the Clean Water Act: First, indirect dischargers must be subject to pretreatment standards equivalent to effluent limitations imposed on direct dischargers and second, despite the desire for parity between direct and indirect dischargers, indirect dischargers should not be required to install or perform treatment that would be redundant with the treatment performed by the POTW. To meet these two goals, EPA promulgates pretreatment standards analogous to its direct discharger standards. Pretreatment standards promulgated at the same time as "best available technology" (BAT) direct discharge limits are analogous to BAT. Pretreatment standards, like the electroplating standards which were proposed at the same time as standards for direct dischargers based on the best practicable control technology currently available (BPT), are analogous to BPT. EPA has also, however, established a procedure for achieving Congress' solution to the problem of redundant treatment: removal allowances. Section 403.7 of the General Pretreatment Regulation sets forth in detail the steps that the POTW and Industrial User must comply with in order to obtain a removal allowance. The removal allowance may be given by a POTW upon demonstration to the State or EPA that it is consistently removing the regulated pollutant. If such a demonstration is made, then the POTW may reduce the national categorical pretreatment standards applicable to its industrial users by an appropriate amount. However, the statute provides that these removal allowances are available at the option of the POTW. "[P]retreatment requirements * * * *may* be revised" by the POTW (§ 307(b)), and may *not* be given if the POTW's discharge violates "that effluent limitation or standard which would be applicable to such toxic pollutant" if discharged by a direct discharger, or if the discharge from the POTW prevents "sludge use or disposal by such works in accordance with section 405" of the Act. The Agency has fulfilled the delicate balancing required of it by Congress by establishing technology-based pretreatment standards and establishing the mechanism for obtaining removal allowances. By this means, the combination of pretreatment by the Industrial User and treatment by the POTW is at least equal to the level of treatment which would be required of a direct discharger.

(14) *Comment:* The electroplating pretreatment standards bear no relationship to treatment levels "shown to be adequate." The commenter argues that if the local POTW sets limitations for its Industrial Users, and those limitations are less stringent than those imposed by EPA, then EPA's limits must be too stringent.

Response: This comment is based on the false premise that pretreatment standards established by local government should form the basis for setting national categorical pretreatment standards. (See discussion of this issue at 44 FR 52602.) However, Congress requires EPA to establish technology-based standards that are equivalent to those established for direct dischargers. Accordingly, whether or not EPA's standards are reasonable does not depend upon a comparison of national pretreatment standards with local standards, but, instead, on a examination of the methodology used in establishing the standards.

(15) *Comment:* POTW's should be required to give removal allowances to Industrial Users, especially since some municipalities may not voluntarily seek removal allowances. Some municipalities say that it is too difficult to meet EPA's requirements for giving removal allowances, and, therefore they do not intend to apply for them.

Response: Two points should be made in response to this comment: First, EPA has revised the removal allowance procedures in amendments to the General Pretreatment Regulation to provide greater flexibility in obtaining removal allowances.

Second, removal allowances were intended to be given on a local basis. In discussing the removal allowance provision, then-Senator Muskie stated: "Where a local compliance program is approved, EPA and the permitting States may approve case-by-case modifications of the national pretreatment standards—or local credits—for documented pollutant removals attained by a publicly-owned treatment works. To receive a local credit, there must be a demonstration that the pollutant is degraded or treated; credits will not be given for dilution . . . National standards will not permit local credits for pollutants which are bioaccumulative or persistent toxics. Tying local credits to local compliance programs not only provides an incentive

for local participation, but more importantly, it provides assurance that the removal levels which justified the local credits will be maintained by a publicly-owned treatment works committed to operating a sound pretreatment program." (3 Legis. Hist. at 461–62; Senate Debate.) It is apparent from this discussion by the principal architect of the Clean Water Act that removal allowances were not intended to be required of every POTW, and, in fact, were to be limited to those POTWs that could demonstrate removal and were committed to operating a sound pretreatment program.

(16) *Comment:* The electroplating standards should contain a provision discussing removal allowances.

Response: The procedures for removal allowances are contained in Section 403.7 of the General Pretreatment Regulations. Those procedures apply to these standards.

(17) *Comment:* An analysis pursuant to Executive Order 12044 should have been done for electroplating. EPA's argument that the *NRDC* v. *Costle* Consent Decree imposed deadlines on the issuance of electroplating pretreatment standards is inaccurate.

Response: A full explanation of EPA's responsibilities under Executive Order 12044 was given in the September 7, 1979 publication of these final regulations. (See 44 FR 52592–95.) The *NRDC* v. *Costle* Consent Decree provided that EPA would promulgate pretreatment standards for the electroplating point source category by May 15, 1977. (*See* 8 ERC 2120, 2128.)

(18) *Comment:* Pretreatment results in no significant increment in pollution control.

Response: This comment was addressed in the preamble to the final regulations, published on September 7, 1979, 44 FR 52590, 52597–52601. See also *Fate of Priority Pollutants in Publicly Owned Treatment Works, Interim Report*, EPA 440/1–80/301 (October 1980); General Pretreatment Regulation, 40 CFR Part 403.

(19) *Comment:* The electroplating standards will have a severe economic impact on small electroplaters.

Response: This comment was considered and addressed in the final regulations published on September 7, 1979, 44 FR 52590, 52592–96, 52602, 52611–17.

(20) *Comment:* EPA overestimated the life of a treatment system, thus causing long-term treatment costs to be underestimated. EPA estimated a 20 year life for a treatment system, whereas NAMF believes that an 8–12 year life is more realistic.

Response: EPA's economic analysis is a short-run analysis based on amortization of investment over five years. Therefore, the estimate on the life of a treatment system is a moot point, for the analysis only considers the short-run time frame. The actual life of a treatment system beyond five years is not relevant to the analysis.

(21) *Comment:* There was no additional data collection for EPA's 1979 report to supplement the data in the 1977 report. Thus, the report is essentially the same.

Response: There was additional technical data collection following EPA's 1977 report. However, this technical data was not well-matched with the economic data. Therefore, it was not incorporated into the 1979 report. For this report the 1977 data was updated where possible by means of indices and inflators in order to reflect 1979 conditions.

(22) *Comment:* Operating and maintenance costs (O&M) as a percentage of capital costs are higher than the 12% that EPA originally projected. As supporting evidence, NAMF refers to a study done by EPA's research laboratory in Cincinnati.

Response: Although EPA has previously addressed this issue, the apparent discrepancy between the original EPA figures and the Cincinnati study has not been covered. However, this is easily answered. The Cincinnati study was not an empirically based analysis; rather it was simply a "mock-up" which used a different basis for the calculation of O&M as a percentage of capital costs. Therefore, procedures on data usage, data manipulation and consequently, results, would differ. For example, one obvious difference between the studies is that the Cincinnati study calculated depreciation of treatment equipment as a component of O&M, whereas EPA's original study did not. A simple difference in assumptions such as this one will cause O&M costs in the Cincinnati study to increase as a percentage of capital, relative to the same variable in EPA's study.

(23) *Comment:* These regulations are based on faulty data. One of the plants relied on by EPA submitted false data and recently pleaded guilty to falsification of reporting data. We request that EPA revise its calculations to eliminate the use of Plant No. 1108 in the data base for both treated effluent and variability factors. We also request reconsideration of these proposed amendments.

Response: EPA has analyzed the data submitted by Plant No. 1108 and has concluded that it is unnecessary to revise the treated effluent and variability factors. Plant No. 1108 is identical to Plant No. 14 in EPA's data base. The Agency has performed calculations excluding Plant Nos. 1108 and 14 from the data base to determine whether removal of these data would affect the final pretreatment standards. Our calculations, which have been included in the administrative record, indicate that there is no significant change in the pretreatment standards resulting from the removal of these data. Accordingly, EPA has determined not to eliminate these data from the data base nor to reconsider these amendments.

E. Effect of Reprinting Entire Text of Part 413.

Today's amendments revise part, but not all, of the existing 40 CFR Part 413 published on September 7, 1979. In the regulatory section of this notice, however, EPA has reprinted the entire Part 413 as it is revised by these amendments. Those portions of the September 7, 1979 regulations that are not substantively amended in today's **Federal Register** are only subject to judicial review in those petitions for review that were filed within 90 days of the issuance of the September 7, 1979 regulations.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

40 CFR Part 413 is revised by amending §§ 413.01, 413.02, 413.14, 413.24, 413.44, 413.54, 413.64, 413.74, 413.84, by removing §§ 413.03, 413.04, 413.05, 413.12, 413.22, 413.42, 413.52, 413.62, and part of § 413.01, and by adding § 413.02(h) and a new section 413.04. The revised Part 413 reads as follows:

PART 413—ELECTROPLATING POINT SOURCE CATEGORY

General Provisions

Sec.

413.01 Applicability.
413.02 General definitions.
413.03 [Reserved]
413.04 Integrated facilities.
413.05 [Reserved]

Subpart A—Electroplating of Common Metals Subcategory

413.10 Applicability: Description of the electroplating of common metals subcategory.
413.11 Specialized definitions.
413.12 [Reserved]
413.14 Pretreatment standards for existing sources.

Subpart B—Electroplating of Precious Metals Subcategory

413.20 Applicability: Description of the electroplating of precious metals subcategory.
413.21 Specialized definitions.
413.22 [Reserved]
413.24 Pretreatment standards for existing sources.

Subpart C—Electroplating of Specialty Metals Subcategory [Reserved]

Subpart D—Anodizing Subcategory

413.40 Applicability: Description of the anodizing subcategory.
413.41 Specialized definitions.
413.42 [Reserved]
413.44 Pretreatment standards for existing sources.

Subpart E—Coatings Subcategory

413.50 Applicability: Description of the coatings subcategory.
413.51 Specialized definitions.
413.52 [Reserved]
413.54 Pretreatment standards for existing sources.

Subpart F—Chemical Etching and Milling Subcategory

413.60 Applicability: Description of the chemical etching and milling subcategory.
413.61 Specialized definitions.
413.62 [Reserved]
413.64 Pretreatment standards for existing sources.

Subpart G—Electroless Plating Subcategory

413.70 Applicability: Description of the electroless plating subcategory.
413.71 Specialized definitions.
413.74 Pretreatment standards for existing sources.

Subpart H—Printed Circuit Board Subcategory

413.80 Applicability: Description of the printed circuit board subcategory.
413.81 Specialized definitions.
413.84 Pretreatment standards for existing sources.

Authority: Secs. 301, 304(g), 307, 308, 309, 402, 405, 501(a) of the Clean Water Act, as amended (33 U.S.C. §§ 1311, 1314(g), 1317, 1318, 1319, 1322, 1325, and 1341(a)).

General Provisions

§ 413.01 Applicability.

(a) This Part shall apply to electroplating operations in which metal is electroplated on any basis material and to related metal finishing operations as set forth in the various subparts, whether such operations are conducted in conjunction with electroplating, independently or part of some other operation. The compliance deadline for integrated facilities shall be 3 years from the effective date of 40 CFR 403.6(e). The compliance deadline for non-integrated facilities shall be May 12, 1983.

(b) Operations similar to electroplating which are specifically excepted from coverage of this Part include: (1) Electrowinning and electrorefining conducted as a part of nonferrous metal smelting and refining (40 CFR 421); (2) Metal surface preparation and conversion coating conducted as a part of coil coating (40 CFR 465); (3) Metal surface preparation and immersion plating or electroless plating conducted as a part of porcelain enameling (40 CFR 466); and (4) electrodeposition of active electrode materials, electroimpregnation, and electroforming conducted as a part of battery manufacturing (40 CFR 461).

(c) Metallic platemaking and gravure cylinder preparation conducted within printing and publishing facilities, and continuous strip electroplating conducted within iron and steel manufacturing facilities which introduce pollutants into a publicly owned treatment works are exempted from the pretreatment standards for existing sources set forth in this Part.

§ 413.02 General definitions.

In addition to the definitions set forth in 40 CFR 401 and the chemical analysis methods set forth in 40 CFR 136, both of which are incorporated herein by reference, the following definitions apply to this Part:

(a) The term "CN,A" shall mean cyanide amenable to chlorination as defined by 40 CFR 136.

(b) The term "CN,T" shall mean cyanide, total.

(c) The term "Cr,VI" shall mean hexavalent chromium.

(d) The term "electroplating process wastewater" shall mean process wastewater generated in operations which are subject to regulation under any of subparts A through H of this Part.

(e) The term "total metal" is defined as the sum of the concentration or mass of Copper (Cu), Nickel (Ni), Chromium (Cr) (total) and Zinc (Zn).

(f) The term "strong chelating agents" is defined as all compounds which, by virtue of their chemical structure and amount present, form soluble metal complexes which are not removed by subsequent metals control techniques such as pH adjustment followed by clarification or filtration.

(g) The term "control authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES State if it has an approved pretreatment program or EPA if the State does not have an approved program.

(h) The term "integrated facility" is defined as a facility that performs electroplating as only one of several operations necessary for manufacture of a product at a single physical location and has significant quantities of process wastewater from non-electroplating manufacturing operations. In addition, to qualify as an "integrated facility" one or more plant electroplating process wastewater lines must be combined prior to or at the point of treatment (or proposed treatment) with one or more plant sewers carrying process wastewater from non-electroplating manufacturing operations.

§ 413.03 [Reserved.]

§ 413.04 Standards for integrated facilities.

Pretreatment standards for integrated facilities shall be computed as required by § 403.6(e) of EPA's General Pretreatment Regulations. In cases where electroplating process wastewaters are combined with regulated wastewaters which have 30 days average standards, the corresponding 30 day average standard for the electroplating wastewaters must be used. The 30 day average shall be determined for pollutants in the relevant subcategory from the corresponding daily and 4 day average values listed in the table below.

If the maximum for any 1 day is	And the 4 day average is	Then the 30 day average is
0.6	0.4	0.3
1.2	.7	.5
1.9	1	.55
4.1	2.6	1.8
4.2	2.6	1.8
4.5	2.7	1.8
5.0	2.7	1.5
7.0	4	2.5
10.5	6.8	5
20.0	13.4	10
23	16	12
47	29	20
53	36	27
74	39	21
107	65	45
169	89	49
160	100	70
164	102	70
176	105	70
273	156	98
365	229	160
374	232	160
401	241	160
410	267	195
623	257	223
935	609	445

§ 413.05 [Reserved]

Subpart A—Electroplating of Common Metals Subcategory

§ 413.10 Applicability: Description of the electroplating of common metals subcategory.

The provisions of this subpart apply to dischargers of pollutants in process

wastewaters resulting from the process in which a ferrous or nonferrous basis material is electroplated with copper, nickel, chromium, zinc, tin, lead, cadmium, iron, aluminum, or any combination thereof.

§ 413.11 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq m" ["sq ft"] shall mean the area plated expressed in square meters [square feet].

(b) The term "operation" shall mean any step in the electroplating process in which a metal is electrodeposited on a basis material and which is followed by a rinse; this includes the related operations of alkaline cleaning, acid pickle, stripping, and coloring when each operation is followed by a rinse.

§ 413.12 [Reserved]

§ 413.14 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 40 CFR 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieved compliance with these standards.

(b) For a source discharging less than 38,000 liters (10,000 gal.) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart A.—*Common Metals Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	.6	.4
Cd	1.2	.7

(c) For plants discharging 38,000 liters (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart A.—*Common Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Cu	4.5	2.7

Subpart A.—*Common Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*—Continued

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	.6	.4
Cd	1.2	.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may be applied in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart A.—*Common Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-Operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart A.—*Common Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Pb	.6	.4
Cd	1.2	.7

Subpart A.—*Common Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*—Continued

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
TSS	20.0	13.4
pH	[1]	[1]

[1] Within the range 7.5 to 10.0.

Subpart B—Electroplating of Precious Metals Subcategory

§ 413.20 Applicability: Description of the electroplating of precious metals subcategory.

The provisions of this subpart apply to discharges of process wastewaters resulting from the process in which a ferrous or nonferrous basis material is plated with gold, silver, iridium, palladium, platinum, rhodium, rutheniun, or any combination of these.

§ 413.21 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq m" ("sq ft") shall mean the area plated expressed in square meters (square feet).

(b) The term "operation" shall mean any step in the electroplating process in which a metal is electrodeposited on a basis material and which is followed by a rinse: this includes the related operations of alkaline cleaning, acid pickle, stripping, and coloring when each operation is followed by a rinse.

§ 413.22 [Reserved]

§ 413.24 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart B.—*Precious Metals Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	.6	.4
Cd	1.2	.7

(c) For plants discharging 38,000 liters (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart B.—*Precious Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
Ag	1.2	0.7
CN, T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	.6	.4
Cd	1.2	.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart B.—*Precious Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-Operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
Ag	47	29
CN, T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart B.—*Precious Metals Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Pb	.6	.4
Cd	1.2	.7
TSS	20.0	13.4
pH	[1]	[1]

[1] Within the range 7.5 to 10.0.

Subpart C—Electroplating of Speciality Metals Subcategory [Reserved]

Subpart D—Anodizing Subcategory

§ 413.40 Applicability: Description of the anodizing subcategory.

The provisions of this subpart apply to discharges of process wastewater resulting from the anodizing of ferrous or nonferrous meterials.

§ 413.41 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq m" ("sq ft") shall mean the area plated expressed in square meters (square feet).

(b) The term "operation" shall mean any step in the anodizing process in which a metal is cleaned, anodized, or colored when each such step is followed by a rinse.

§ 413.42 [Reserved]

§ 413.44 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart D.—*Anodizing Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	0.6	0.4
Cd	1.2	0.7

(c) For plants discharging 38,000 liters (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart D.—*Anodizing Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	0.6	0.4
Cd	1.2	0.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart D.—*Anodizing Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority.

These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart D.—*Anodizing Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,T	1.9	1.0
Pb	0.6	0.4
Cd	1.2	0.7
TSS	20.0	13.4
pH	(1)	(1)

[1] Within the range 7.5 to 10.000

Subpart E—Coatings Subcategory

§ 413.50 Applicability: Description of the coatings subcategory.

The provisions of this subpart apply to discharges resulting from the chromating, phosphating or immersion plating on ferrous or nonferrous materials.

§ 413.51 Specialized definitions.

For the purpose of this subpart;

(a) The term "sq m" ("sq ft") shall mean the area processed expressed in square meters (square feet).

(b) The term "operation" shall mean any step in the coating process in which a basis material surface is acted upon by a process solution and which is followed by a rinse; plus the related operations of alkaline cleaning, acid pickle, and sealing, when each operation is followed by a rinse.

§ 413.52 [Reserved]

§ 413.54 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart E.—*Coatings Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	0.6	0.4
Cd	1.2	0.7

(c) For plants discharging 38,000 liters (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart E.—*Coatings Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	0.6	0.4
Cd	1.2	0.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart E.—*Coatings Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart E.—*Coatings Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Pb	0.6	0.4
Cd	1.2	0.7
TSS	20.0	13.4
pH	(1)	(1)

[1] Within the range 7.5 to 10.0

Subpart F—Chemical Etching and Milling Subcategory

§ 413.60 Applicability: Description of the chemical etching and milling subcategory.

The provisions of this subpart apply to discharges of process wastewaters resulting from the chemical milling or etching of ferrous or nonferrous materials.

§ 413.61 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq m" ("sq. ft.") shall mean the area exposed to process chemicals expressed in square meters (square feet).

(b) The term "operation" shall mean any step in the chemical milling or etching processes in which metal is chemically or electrochemically removed from the work piece and which is followed by a rinse; this includes related metal cleaning operations which preceded chemical milling or etching, when each operation is followed by a rinse.

§ 413.62 [Reserved]

§ 413.64 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No User introducing wastewater pollutants into publicly owned treatment

works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal.) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart F.—*Chemical Etching and Milling Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	0.6	0.4
Cd	1.2	0.7

(c) For plants discharging 38,000 liters (10,000 gal.) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart F.—*Chemicals Etching and Milling Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	0.6	0.4
Cd	1.2	0.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart F.—*Chemical Etching and Milling Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16

Subpart F.—*Chemical Etching and Milling Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*—Continued

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart F.—*Chemical Etching and Milling Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Pb	0.6	0.4
Cd	1.2	0.7
TSS	20.0	13.4
pH	(1)	(1)

[1] Within the range 7.5 to 10.0

Subpart G—Electroless Plating Subcategory

§ 413.70 Applicability: Description of the electroless plating subcategory.

The provisions of this subpart apply to discharges resulting from the electroless plating of a metallic layer on a metallic or nonmetallic substrate.

§ 413.71 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq m" ("sq. ft.") shall mean the area plated expressed in square meters (square feet).

(b) The term "electroless plating" shall mean the deposition of conductive material from an autocatalytic plating solution without application of electrical current.

(c) The term "operation" shall mean any step in the electroless plating process in which a metal is deposited on a basis material and which is followed by a rinse; this includes the related operations of alkaline cleaning, acid pickle, and stripping, when each operation is followed by a rinse.

§ 413.74 Pretreatment standards for existing sources.

Except as provided in 40 CFR § 403.7 and § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No User introducing wastewater pollutants into publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal.) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart G.—*Electroless Plating Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,A	5.0	2.7
Pb	0.6	0.4
Cd	1.2	0.7

(c) For plants discharging 38,000 l (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart G.—*Electroless Plating Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	0.6	0.4
Cd	1.2	0.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and

the publicly owned treatment works receiving such regulated wastes:

Subpart G.—*Electroless Plating Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,T	74	39
Cu	176	105
Ni	160	100
Cr	273	156
Zn	164	102
Pb	23	16
Cd	47	29
Total metals	410	267

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart G.—*Electroless Plating Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN,T	1.9	1.0
Pb	0.6	0.4
Cd	1.2	0.7
TSS	20.0	13.4
pH	(1)	(1)

[1] Within the range 7.5 to 10.00

Subpart H—Printed Circuit Board Subcategory

§ 413.80 Applicability: Description of the printed circuit board subcategory.

The provisions of this subpart apply to the manufacture of printed circuit boards, including all manufacturing operations required or used to convert an insulating substrate to a finished printed circuit board. The provisions set forth in other subparts of this category are not applicable to the manufacture of printed circuit boards.

§ 413.81 Specialized definitions.

For the purpose of this subpart:

(a) The term "sq ft" ("sq m") shall mean the area of the printed circuit board immersed in an aqueous process bath.

(b) The term "operation" shall mean any step in the printed circuit board manufacturing process in which the board is immersed in an aqueous process bath which is followed by a rinse.

§ 413.84 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

(a) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

(b) For a source discharging less than 38,000 liters (10,000 gal) per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart H.—*Printed Circuit Board Facilities Discharging Less Than 38,000 Liters Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, A	5.0	2.7
Pb	0.6	0.4
Cd	1.2	0.7

(c) For plants discharging 38,000 liters (10,000 gal) or more per calendar day of electroplating process wastewater the following limitations shall apply:

Subpart H.—*Printed Circuit Board Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Cu	4.5	2.7
Ni	4.1	2.6
Cr	7.0	4.0
Zn	4.2	2.6
Pb	0.6	0.4
Cd	1.2	0.7
Total metals	10.5	6.8

(d) Alternatively, the following mass-based standards are equivalent to and may apply in place of those limitations specified under paragraph (c) of this section upon prior agreement between a source subject to these standards and the publicly owned treatment works receiving such regulated wastes:

Subpart H.—*Printed Circuit Board Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/sq m-operation)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	169	89
Cu	401	241
Ni	365	229
Cr	623	357
Zn	374	232
Pb	53	36
Cd	107	65
Total metals	935	609

(e) For wastewater sources regulated under paragraph (c) of this section, the following optional control program may be elected by the source introducing treated process wastewater into a publicly owned treatment works with the concurrence of the control authority. These optional pollutant parameters are not eligible for allowance for removal achieved by the publicly owned treatment works under 40 CFR 403.7. In the absence of strong chelating agents, after reduction of hexavalent chromium wastes, and after neutralization using calcium oxide (or hydroxide) the following limitations shall apply:

Subpart H.—*Printed Circuit Board Facilities Discharging 38,000 Liters or More Per Day PSES Limitations (mg/l)*

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 4 consecutive monitoring days shall not exceed
CN, T	1.9	1.0
Pb	0.6	0.4
Cd	1.2	0.7
TSS	20.0	13.4
pH	(1)	(1)

[1] Within the range 7.5 to 10.0

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Part IV

Environmental Protection Agency

Electroplating Pretreatment Standards; Denial of Petition for Reconsideration

ENVIRONMENTAL PROTECTION AGENCY

[EN FRL 1671-4]

Electroplating Pretreatment Standards; Denial of Petition for Reconsideration

AGENCY: Environmental Protection Agency.

ACTION: Denial of petition for reconsideration.

SUMMARY: On May 15, 1980, Ford Motor Company (Ford) filed a petition under the Administrative Procedure Act, 5 U.S.C. 553(e). Ford requested that EPA reconsider the applicability of the Electroplating Pretreatment Standards for Existing Sources (40 CFR Part 413) to intergrated facilities with combined wastestreams. Ford specifically requested that EPA either a separate industrial category for automotive manufacturing or reopen the rulemaking for comment on the proper applicability of the electroplating standards in light of the Agency's combined wastestream formula contained in the General Pretreatment Regulations, 40 CFR 403.6(e). The Administrator has denied this Petition. The Administrator's Decision appears below.

FOR FURTHER INFORMATION CONTACT: Ellen Maldonado, Attorney, Water & Solid Waste Divison (A-131), Office of General Counsel, 401 M St. SW., Washington, D.C. 20460, (202) 472-7818.

SUPPLEMENTARY INFORMATION: EPA has established a public record for this decision which is available for inspection in the Public Information Reference Unit, EPA Library, Room M2404, 401 M St. SW., Washington, D.C. 20460.

This record includes the petition and comments submitted by Ford and EPA's analysis of the cost of wastestream segregation.

The Decision of the Administrator appearing below was sent to Ford. The Attachments referred to in the Decision have not been reproduced below. They are available for inspection in the Public Information Reference Unit.

Dated: January 13, 1981.

Douglas M. Costle,
Administrator.

Response to the Petition of Ford Motor Company for Reconsideration of the Electroplating Pretreatment Standards

Decision of the Administrator

I have been petitioned to reconsider the applicability of the Electroplating Pretreatment Standards for Existing Sources (40 CFR Part 413) to integrated facilities with combined wastestreams by either establishing a separate industrial category for automotive manufacturing or reopening the electroplating rulemaking for comment on the proper applicability of the electroplating standards in light of the Agency's combined wastestream formula (40 CFR 403.6(e)). The petition is denied.

I. Introduction

On May 15, 1980, Ford Motor Company (Ford) filed a Petition for Reconsideration of the Electroplating Pretreatment Standards on the grounds that EPA had not given sufficient consideration to how the electroplating standards would apply to facilities that combine electroplating wastestreams with other wastestreams. Ford argued that in order to give adequate consideration to this issue EPA should either create a separate pretreatment standard for the automotive industry, or reopen the electroplating rulemaking for comment on the proper applicability of the electroplating standards in light of the Agency's combined wastestream formula.

The Administrator has concluded that it is unnecessary to reconsider the electroplating regulation because the problem of how to apply categorical pretreatment standards, including the electroplating standards, to facilities with combined wastestreams has been fully considered and resolved by the revised combined wastestream formula in the General Pretreatment Regulations published elsewhere in today's **Federal Register.**

II. Background

The issue presented by Ford's petition arose from the proposal of a combined wastestream formula in proposed amendments to the General Pretreatment Regulation, 40 CFR Part 403, on October 29, 1979. (44 FR 62260.) The purpose of the formula was to provide a method for calculating pollutant limitations at industrial facilities where regulated process effluent is mixed with other wastestreams (either regulated or unregulated) prior to treatment. The formula proposed in October was originally included as part of the National Pretreatment Strategy which appeared as Appendix A to the June 26, 1978, General Pretreatment Regulation. The formula was moved from the Appendix to proposed § 403.6(e) of the regulation to formalize the resolution of this problem, and thereby, to eliminate uncertainty among POTWs, States, and affected industries, and to ensure consistent application nationwide.

A combined wastestream formula is primarily of importance to diversified multi-process industrial users of POTWs. These users, like Ford, frequently have a number of individual processes producing different wastestreams that are not regulated by a single categorical pretreatment standard or are not regulated at all. Many of these integrated facilities have combined process wastestreams and a number have already constructed combined waste treatment plants. These users often install a pretreatment system on the combined stream rather than install separate parallel systems on each individual stream. A combined wastestream formula permits a facility to mix wastestreams prior to treatment by providing it with alternative effluent limits for this combined discharge.

Ford, like some other industrial users, submitted extensive comments criticizing the combined wastestream formula proposed in October, 1979. In the General Pretreatment Regulation published today EPA has agreed with commenters that the proposed formula assumed that there was only one regulated process contributing to the mixed discharge. It also established a *de facto* zero discharge limit for the unregulated wastestreams being combined by not taking into account the presence of pollutants in those streams. As a result, Ford argued that the formula proposed by EPA would not permit combined treatment where process effluent was mixed with other wastewaters, because the combined stream limits were technologically unattainable in many instances.

Ford presented these criticisms in its comments on the proposed formula and in the comments attached to its petition for reconsideration.

EPA acknowledged the defects in its proposed formula and has published a final version which, as discussed more fully below, will permit combined treatment in most cases, although some restrictions are imposed on the combination of certain streams to protect against the dilution of wastewaters and combination of incompatible wastestreams. The Agency believes that this revised formula, which had not been finally determined at the time Ford's petition was filed, resolves the issues presented in Ford's petition for reconsideration of the electroplating pretreatment standards. For a response to Ford's technical argument see the preamble to the General Pretreatment Regulations published elsewhere in today's **Federal Register.**

III. The Final Combined Wastestream Formula

Ford's principal concern presented in its petition was that the combined wastestream formula, as proposed, would set limitations on combined streams that would be lower than the capability of treatment technology. By setting a new, stringent limit below treatability levels, Ford argued, EPA would in effect ban combined treatment. Integrated facilities already operating centralized treatment systems or using combined process sewers, might be obligated to segregate wastestreams in order to achieve pretreatment standards. If segregation of wastestreams were required, Ford argued, then EPA would have to include the cost of such stream segregation in its economic impact analysis for the electroplating standards. Accordingly , if EPA decided not to create a separate category for the automotive industry, then, Ford contended, EPA should at least reopen the electroplating rulemaking record for comment on the economic impact of the combined waste stream formula.

EPA believes that reopening the record is unnecessary because the final combined wastestream formula will make segregation of wastestreams unnecessary in most cases. The adopted formula sets the alternative concentration limit for each pollutant by mutiplying the categorical limit for a regulated stream by the flow of that stream and then adding the resultant products for all regulated wastestreams that are combined. This amount is then divided by the sum of the flow for each regulated streams. In statistical terms, a flow-weighted average of the categorical standards is taken over the regulated streams. If only regulated streams are being combined, this is all one would have to do to compute the alternate limit. However, if the user combines regulated with unregulated streams, to prevent inappropriate dilution, the resulting number is multiplied by a fraction the numerator of which is the total flow through the treatment system minus dilution streams such as noncontact cooling water. The denominator of this fraction is the total flow through the treatment facility. If the unregulated streams are not dilution streams as defined in the formula, the fraction become 1 and no further adjustment is made on the alternative limit. If an unregulated stream is a dilution stream, this fraction will adjust the alternative limit to account for the dilution that is taking place. Alternative mass-based limits may be calculated instead of concentration-based limits.

The effect of the formula can be summarized as follows: If two regulated streams are combined, the use of the formula will result in a new standard for the regulated pollutant somewhere in between the two categorical standards. If a regulated and an unregulated stream are combined, and the unregulated stream is not a "dilution stream," the pollutant standard for the combined stream will be the categorical standard for the pollutant in the regulated stream. If dilution streams such as non-contact cooling water are combined with regulated streams, the limitation for the combined stream becomes more stringent in order to avoid giving credit for dilution of the pollutants. Under this approach, segregation of waste streams will not be necessary unless dilution stream are combined with process streams prior to treatment, and the alternative pretreatment standard for the combined stream is below treatability levels. EPA expects that the number of plants required to segregate these streams will be relatively small because pretreatment facilities are unlikely to be sized to include treatment of dilution streams and because industrial users tend to take appropriate measures to reduce their discharges to the POTW in order to reduce user charges. According, it is unlikely that the problems presented by Ford in its petition will exist after using the new combined wastestream formula.

Nevertheless, in order to provide a complete response to Ford's petition, the Agency has considered Ford's request for either a separate category for the automotive industry or for a reopening of the record to consider the economic impact of the combined wastestream formula.

IV. Ford's Request for a Separate Category for the Automotive Industry

Ford's principal concern with respect to a separate automotive assembly category is that EPA regulate all operations at automotive plants under one pretreatment standard. The Agency believes that the combined wastestream formula has resolved the problem of providing uniform standards for automotive plants. If the plant combines wastestreams, it now has a method of computing an alternative limit so that, in most cases, the plant will not need to segregate treatment of each process stream. Moreover, the upcoming Metal Finishing regulations, which will establish BAT-level pretreatment standards, should be compatible with a combined treatment approach because they are likely to establish standards based on combined treatment of most wastestreams.

V. Ford's Request That the Agency Reopen the Electroplating Record for Comment in Light of the Combined Wastestream Formula

Ford's second request, in the alternative, is that the Agency reopen the electroplating record for comment in light of the combined wastestream formula. The principal reason for this request, as discussed in Ford's Comments, is to examine the economic impact that would result if integrated facilities were required to segregate regulated and unregulated process streams in order to comply with the pretreatment standards. As discussed previously, Ford argues that such segregation would be necessary under the October, 1979 proposed combined wastestream formula.

As discussed above, the final combined wastestream formula will, in most instances, obviate the need for segregation of process wastestreams. Thus, a reconsideration of economic impact is unnecessary. Nevertheless, EPA examined the data submitted by Ford in an effort to make a rough estimate of the economic impact that would result if all integrated facilities were required to segregate their wastestreams. Since the Agency believes that very few facilities will be forced to segregate, this estimate gives an exaggerated economic impact.

A detailed description of the approach taken in analyzing these costs is attached. (Attachment 1.) Our rough estimate indicates that 56 out of 4,700 plants might choose to divest their inhouse electroplating rather than segregate wastesteams. The analysis also indicates that only the very largest plants, i.e., those with flows greater than 500,000 gallons per day, would consider divestiture. As mentioned above, this estimate exaggerates the economic impact of wastestream segregation by assuming that all integrated facilities would segregate their wastestreams. Moreover, the cost per plant of wastestream segregation presented by Ford and used in EPA's analysis may also be too high. EPA's independent estimate of the cost per plant is less than one-fifth of the amount estimated by Ford. (See Attachment 2.)

This analysis leads EPA to conclude that the economic impact of stream segregation, even assuming that every integrated facility would be required to segregate, and the Ford's high costs per plant are correct, is not sufficently high to require a revised economic analysis or additional comment on this issue. This conclusion is strengthened by the existence of a combined wastestream formula that will make it unnecessary

for most plants to segregate their wastestreams.

In addition, a plant which must segregate its wastestreams, may be eligible for a fundamentally different factors (FDF) variance. The amended General Pretreatment Regulation published today provides that a variance may be given if data specific to an industrial user "indicate it presents factors fundamentally different from those considered by EPA in developing the limit at issue." 40 CFR § 403.13(b). The comment following § 403.13(d) notes that "[w]here an adjusted Pretreatment Standard has been calculated in accordance with § 403.6(e), the Industrial User may apply for a fundamentally different factors variance from this adjusted standard in accordance witht his section." Factors which may be considered fundamentally different include the nature or quality of pollutants contained in the raw waste load of the User's process wastewater; age, aize, land availability, and configuration as they relate to the User's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology; and cost of complaince with required control technology. Such plant-specific issues are appropriately resolved by a variance request.

VI. Conclusion

For the reasons stated above, the Petition of Ford Motor Co. is denied.

Dated: January 13, 1981.

Douglas M. Costle,

Administrator.

[FR Doc. 81-2118 Filed 1-27-81; 8:45 am]

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January 28,1981

Part V

Pension Benefit Guaranty Corporation

ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2608

Allocation of Assets in Non-Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation prescribes rules for allocating assets of a terminating pension plan among the six priority categories set forth in section 4044 of the Employee Retirement Income Security Act of 1974. The rules apply to all terminating non-multiemployer pension plans covered by Title IV of the Act. Heretofore, the allocation rules of the Pension Benefit Guaranty Corporation (the "PBGC"), which were set forth in its Interim Regulation on Allocation of Assets, applied only to terminating plans that did not receive a Notice of Sufficiency and that were, therefore, placed into trusteeship pursuant to Title IV of the Act. This regulation is needed to establish rules for allocating assets in terminating plans that close out under a Notice of Sufficiency pursuant to Subpart C of Part 2615 of this chapter. The regulation is further necessary to clarify when benefit amounts are determined and when those benefits are valued. The regulation is also needed to clarify general rules previously published as proposed and interim regulations. The effect of this regulation is to provide guidance to plan administrators in allocating the assets of terminating pension plans for purposes of demonstrating sufficiency under Part 2615 of this chapter, determining benefits payable under Title IV, and determining plan asset insufficiency under Part 2613 of this chapter. This regulation applies only to non-multiemployer plans because, under the Multiemployer Pension Plan Amendments Act of 1980, the allocation rules in section 4044 no longer apply to multiemployer plans.

EFFECTIVE DATE: March 1, 1981.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202-254-4895.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1975, the PBGC published in the **Federal Register**, 40 FR 51368, a proposed regulation governing allocation of assets in terminating plans subject to Title IV of the Employee Retirement Income Security Act of 1974. The proposed regulation did not differentiate between plans to which PBGC issues a Notice of Sufficiency and other terminating plans.

On November 3, 1976, the PBGC published in the **Federal Register**, 41 FR 48480, an interim regulation covering the allocation of assets in plans that do not receive a Notice of Sufficiency. Simultaneously, at 41 FR 48492, the PBGC published a supplemental notice of proposed rulemaking that superseded, in its entirety, the proposed regulation published on November 4, 1975. The supplemental notice was issued in order to differentiate between "sufficient plans" [1] and plans that do not receive a Notice of Sufficiency from the PBGC. The supplemental notice also established rules concerning ancillary benefits purchased by employee contributions and rules governing the establishment of subclasses.

The supplemental notice and the interim regulation, as published in 1976, are essentially the same except for (1) differences required because the supplemental notice covers all terminating plans, whereas the interim regulation covers only plans that have not received a Notice of Sufficiency, and (2) the inclusion in the supplemental notice of a section dealing with the establishment of subclasses.

The interim regulation was amended on January 13, 1977, 42 FR 2677, in order (1) to provide rules for the establishment of subclasses, (2) to identify more clearly priority category 5 benefits, and (3) to make technical changes in the priority category 2 provisions. The interim regulation was further amended on April 4, 1978, 43 FR 14010, along with corresponding changes in the Guaranteed Benefits regulation, 29 CFR, Part 2605, to provide allocation rules for the newly guaranteeable pre-retirement death benefit based on mandatory employee contributions and to clarify further the treatment of mandatory employee contributions. On August 2, 1977, the PBGC published a proposed amendment to the interim regulation, 42 FR 39120, to allow plans that merge to provide a special schedule for allocating assets if the merged plan later terminates.

Unless clearly stated otherwise, the rest of this preamble relates solely to the 1976 proposal, which will be referred to hereafter as the "supplemental notice."

General

Unlike the supplemental notice, which applied to all plans covered by Title IV, this final regulation applies only to non-multiemployer plans. This is because, under the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208 (1980), section 4044 is no longer applicable to multiemployer plans.

This final regulation for non-multiemployer plans basically tracks the supplemental notice but also includes rules similar to those in the interim regulation for priority category 2. This final regulation applies both to plans that close out under a Notice of Sufficiency pursuant to Subpart C of Part 2615 of this chapter and to plans that are placed into trusteeship pursuant to Title IV. Thus, this regulation supersedes the interim regulation, as amended. This regulation does not address the following:

(1) The allocation of assets when a merged plan terminates;

(2) The allocation of assets to benefits covered by insurance commitments, other than benefits payable by an insurer under irrevocable commitments; and

(3) The allocation of residual assets.

The allocation of residual assets is the subject of a proposed amendment to this part published on October 2, 1980, 45 FR 65259. A final amendment dealing with this matter will be completed shortly. The other two issues will be considered separately for inclusion in the regulation at a later date.

This final regulation on allocation of assets has been coordinated with the final regulations on the determination of plan sufficiency and the valuation of plan benefits, both of which are being published today. Basic to each is the concept that plans that close out under a Notice of Sufficiency must be treated in a different manner than plans that are placed into trusteeship. In the supplemental notice, the PBGC recognized that nontrusteed plans face a special problem in allocating plan assets because of the time delay between the date of plan termination and the date plan assets are finally liquidated and distributed. Therefore, the PBGC proposed that, while the amount of the benefit to which a participant is entitled would be determined as of the date of plan termination, the valuation of that benefit and the allocation of plan assets

[1] The use of the term "sufficient plans" is somewhat misleading since there are circumstances under which "sufficient plans" are not issued a Notice of Sufficiency but, instead, are placed into trusteeship. This could occur, for example, if a "sufficient plan" were abandoned by its sponsor-employer. It would be more precise to say that the supplemental notice differentiated between plans that close out pursuant to a Notice of Sufficiency and plans that are placed into trusteeship pursuant to Title IV.

in such plans would be made as of the date of distribution.[2] In trusteed plans, the determination of the benefit amount and both the valuation and allocation would continue to be done as of the date of plan termination. The PBGC received no comments on this aspect of the proposal. Therefore, the final regulation provides that assets shall be allocated as of the date of distribution in plans that close out under a Notice of Sufficiency and as of the date of plan termination in other plans.

This final regulation has been renumbered and restructured for clarification and to accommodate the future inclusion of other provisions. Subpart A contains general rules. Subpart B contains specific rules for allocating assets in priority categories 1 through 6. Subpart C, to be added later, will contain rules for allocating residual assets.

Definitions

The following definitions have been added to § 2608.2:

(1) "Expected retirement age" has been defined since that is a necessary factor in computing benefits when a plan permits early retirement.

(2) "Irrevocable commitment" has been defined because benefits covered by an irrevocable commitment are excluded from the allocation process. This is discussed more fully under the heading "General Rule and Violations" in this preamble.

In addition, the terms "Notice of Sufficiency", "plan administrator", "PBGC", and "Code" have been defined for the reader's convenience. The definitions of "normal retirement age", "plan assets", and "value of plan benefits" have been eliminated because, in the context used, they are self-explanatory.

The definition of "nonforfeitable benefit" has been revised to track the language in the definition added to section 4001 of the Act by the Multiemployer Pension Plan Amendments Act of 1980. The definition is essentially the same as the definition in the Guaranteed Benefits regulation, 29 CFR, Part 2605, except for the addition of language under which a benefit may be nonforfeitable if a participant is entitled to it under "requirements of the Act."

General Rule and Violations

The general rule, § 2608.3, has been revised in two ways. First, the revised language makes clear that the assets to be allocated are only those "available to pay for benefits under the plan" that become due after the date of plan termination. Assets that, under plan provisions, are to be used to satisfy benefits that are due and unpaid as of the date of plan termination and liabilities other than plan benefits are not assets "available to pay for benefits under the plan."

Second, the final regulation excludes from the allocation process benefits payable by an insurer under an irrevocable commitment. The value of an insurance company's irrevocable commitment to pay benefits to a named participant should not be included in plan assets because the commitment cannot be used to satisfy other plan obligations. Conversely, assets need not be allocated to cover those benefits already provided under an irrevocable commitment.

Objections to the "irrevocable commitment" rule have been raised on the grounds that it could result in an abuse of the termination insurance program. For example, the rule could permit payment of benefits in excess of the guaranteed benefit limits. It also could result in a misallocation to certain priority categories. In addition, highly paid participants could use the rule to circumvent the nondiscrimination provisions of section 401 of the Code. Because of this, the PBGC has given preliminary consideration to a requirement that all insurance or annuity contracts issued by insurance companies (existing as well as future) include provisions for cancellation of any annuity benefits purchased or otherwise provided, to the extent required to conform to section 4044. However, development of such a rule has not begun.

Therefore, to minimize the possibility of abuse, §2608.4 has been revised to make clear that distribution of plan assets contrary to section 4044 of the Act, in anticipation of plan termination, whether directly to a participant or through the purchase of an insurance contract, constitutes a violation of section 4044. In determining if a distribution has been made in anticipation of plan termination, the PBGC will consider all of the facts and circumstances including, but not limited to, (1) any change in funding or operating procedures, (2) past practice with regard to employee requests for forms of distribution, (3) whether the distribution is consistent with plan provisions, and (4) whether an annuity contract that provides for a cutback to Title IV guarantee levels could have been purchased from an insurance company.

Manner of Allocation

One comment objected to the provision in § 2608.4 of the supplemental notice (§ 2608.10 of the final regulation) that assets be allocated to all benefits, including nonbasic-type benefits, if any, in each priority category before any assets are allocated to the next lower priority category. It was suggested that the proposed treatment is unjustifiable since it allocates to nonguaranteed benefits assets that otherwise would be available to pay guaranteed benefits in a lower priority category. This could result, in turn, in greater employer liability and an indirect guarantee by the PBGC of benefits in excess of the guarantee limitations. The comment suggested that nonguaranteed benefits presently being assigned to priority category 3 be shifted to priority category 5.

The PBGC believes that this suggestion is contrary to the language of section 4044(a). The statutory language does not permit benefits to be shifted from one priority category to another by allocating assets first to all guaranteed benefits in all priority categories. Rather, PBGC believes the statute requires satisfaction of *all* benefits within a priority category before assets are allocated to the next lower priority category. Any other reading would controvert the statutory requirement that a specified "order" be followed in allocating the assets. For example, priority category 3 benefits could include nonbasic-type early retirement supplements that have been in pay status for more than three years when a plan terminates and basic-type benefits in excess of the guarantee limits. Under the statutory language, assets must be allocated to both types of benefits before allocation to the next lower priority category. Therefore, no change was made in the final rule in this respect.

A new provision, § 2608.10(c) *Valuing benefits*, was added to clarify the concept that benefits initially assigned to each priority category are computed by first determining all of a participant's benefit of the type assigned to that priority category, *e.g.*, basic-type or nonbasic-type. A participant's benefits of each type are then valued and reduced by the value of the same type of benefit properly assigned to a higher priority category. For example, in order to determine the priority category 4 benefit, a participant's total basic-type benefit that does not exceed the guarantee limits, other than the limits in sections 4022(b)(5) and 4022B(a),

[2] Similarly, plan obligations under section 4007 of Title IV and under Title I continue after the date of plan termination.

formerly sections 4022(b)(6) and 4022(b)(5), of the Act, is determined and then the amount of the participant's basic-type benefit previously assigned to priority categories 2 and 3, if any, is deducted. The same procedure is followed for nonbasic-type benefits.

In addition, a provision was added to make clear that a nonbasic-type benefit in priority category 2 does not reduce nonbasic-type benefits in lower priority categories. As explained hereafter under the heading "Priority Category 2", a participant's annuity and pre-retirement death benefit derived from mandatory employee contributions are basic-type benefits. The nonbasic portion in priority category 2 is a valuation surplus equal to the amount by which the value of the lump sum benefit elected in lieu of the basic-type benefits exceeds the value of the basic-type benefits. Thus, since this nonbasic-type benefit does not duplicate benefits in lower priority categories, it does not serve to reduce the value of benefits in lower priority categories.

A change has been made in the provision for allocation of assests to benefits within priority categories, § 2608.10(e). Specifically, the change deals with the provisions governing the allocation of assets to priority category 5 subcategories based on successive plan amendments when plan assets are not sufficient to pay all benefits assigned to that priority category. Under these circumstances, benefits are determined first according to plan provisions in effect five years before the date of plan termination, and then according to each successive amendment. The provisions of the supplemental notice (§ 2608.4(e)) assumed that each succeeding amendment would increase benefits. The final rule recognizes that this will not always be the case. Situations may arise where the amounts allocated on account of a benefit increase under an earlier amendment will have to be reduced because of a later amendment that decreases benefits. For example, if a plan were amended to reduce future benefit accruals or the Secretary of the Treasury approves other benefit reductions because of substantial business hardship, it is possible that amounts allocated to a benefit increase under an earlier amendment could, together with the assets allocated to the benefit assigned to priority categories 2 through 4, provide for a benefit that was larger than a participant's total benefit under the plan on the date of plan termination (or the date employment ceased, if applicable). Therefore, § 2608.10(e) states that, if an amendment reduces benefits, amounts previously allocated to priority category 5 in excess of the reduced benefit shall be reduced accordingly.

The only other changes that have been made in § 2608.10 are editorial in nature.

Priority Category 1

Changes in priority category 1 (§ 2608.11) have been made primarily for clarification. Rules for assigning benefits in plans that do not maintain separate accounts have been eliminated since experience has shown that separate accounts are normally kept for the portion of each participant's accrued benefit derived from voluntary employee contributions, as required by section 204(b)(2) of the Act and section 411(b)(2) of the Code. Terminating plans that have not maintained separate accounts, if any, will be handled on a case by case basis.

Priority Category 2

In addition to language simplification and format changes made for clarification, two basic changes have been made in priority category 2, § 2608.12. First, the manner in which the accrued benefit derived from mandatory employee contributions is computed has been changed. For plans that are subject to the minimum vesting standards of the Act when the plan terminates, the proposed rules based the computation on the participant's total mandatory contributions remaining in the plan, accumulated with interest and converted to an annuity form of benefit using factors established by the Internal Revenue Service (the "IRS"). In contrast, the interim regulation, as amended on April 4, 1978, provided that the accrued benefit derived from mandatory employee contributions would be computed using plan provisions and would be based on mandatory employee contributions without interest. The accrued benefit, however, could not be less than the minimum nonforfeitable benefit required under section 411(c) of the Code and section 204(c) of the Act. Upon review of the interim regulation, the PBGC decided that the accrued benefit derived from mandatory employee contributions should be determined by converting a participant's mandatory employee contributions, accumulated with interest, into an annuity benefit using the plan's interest rates and conversion factors. The limitation of the minimum nonforfeitable benefit requirement under section 411(c) of the Code and section 204(c) of the Act still applies.

In the absence of plan interest rates and factors, the IRS rates and factors in effect on the date of plan termination will be used. The IRS factors for converting mandatory employee contributions to an annuity form of benefit are set forth in Treasury Regulation § 1.411(c)-1 (26 U.S.C. § 411(c) (1976)) and Revenue Ruling 76-47, C.B. 1976-1, 109. The IRS-established interest rate is contained in Treasury Regulation § 1.411(c)-1.

The supplemental notice contained a different rule for plans that were not subject to the minimum vesting provisions in section 203 of the Act or section 411 of the Code on the date of plan termination. Since this final regulation applies only to plans that file a Notice of Intent to Terminate on or after February 27, 1981, and since all such plans are subject to the minimum vesting provisions, the alternative rule is not included in this final regulation.

The second change in the priority category 2 rules is the addition of rules governing the allocation of assets to a pre-retirement death benefit that returns mandatory employee contributions in the event of death before retirement, which was treated as a nonbasic-type benefit in the supplemental notice. The pre-retirement death benefit was recognized as a basic-type benefit in the April 4, 1978 amendment to the Guaranteed Benefits regulation. In addition, that amendment provided that a participant could elect to receive his or her mandatory employee contributions in a lump sum, in lieu of the annuity and death benefits derived from those contributions, if lump sum payments were consistent with the plan provisions. A simultaneous amendment to the interim regulation on allocation of assets provided rules reflecting the changed status of the pre-retirement death benefit and rules for election of the lump sum. These rules have been incorporated in the final regulation with one change.

The change relates to the determination of the total value of the benefits assigned to priority category 2. The effect of § 2608.7(b) of the interim regulation, was, in most cases, to provide that the assets allocated to priority category 2 for each participant would be equal to the total value of the participant's mandatory employee contributions with interest at the plan rate or the statutory rate, whichever was applicable, reduced by distributions made before the date of plan termination. The purpose of the rule in § 2608.7(b) was to assure that, if a participant elected to receive his or her contributions with interest in a lump sum, there would be enough assets allocated to priority category 2 to pay

that lump sum benefit. If, on the other hand, the participant elected to receive the annuity benefit and the death benefit derived from those contributions, there could be a surplus of funds in priority category 2 with respect to that participant. This is because, under § 2608.7(c), a participant's priority category 2 annuity benefit was based on mandatory employee contributions remaining in the plan, exclusive of interest. The combined values of the annuity benefit and the death benefit might be less than the contributions plus interest. In other words, the annuity and death benefits might cost less to provide than the total mandatory employee contributions plus interest.

The interim regulation stated that the annuity benefit and the pre-retirement death benefit in priority category 2 were basic-type benefits. It also provided that the excess, if any, of employee contributions plus interest over the value of the basic-type benefit was a nonbasic-type benefit. If a participant had a nonbasic-type benefit in priority category 2, that benefit was to be distribuuted to the participant on the date plan assets were distributed, and would be paid in addition to the annuity and death benefits.

The existence of this nonbasic-type benefit, which is, in fact, a "valuation surplus", could result in a duplication of benefit payments if a participant elects to receive the priority category 2 benefit as an annuity benefit plus the pre-retirement death benefit, rather than as a lump sum benefit. If a participant who has so elected dies after plan termination but before retirement, his or her beneficiary would receive the full amount of the mandatory employee contributions under the plan's death benefit provision, even though a portion of those mandatory employee contributions were previously paid out (when plan assets were distributed) as a nonbasic-type benefit. This is illustrated by the following example:

Assume that on the date of plan termination a participant's accumulated mandatory contributions in the plan are $4,000, the value of the annuity benefit derived from those contributions is $3,000, and the value of the pre-retirement death benefit that would return those $4,000 of contributions is $400. The accumulated contributions ($4,000) exceed the sum of the values of the annuity benefit ($3,000) and death benefit ($400) by $600. The $600 is a nonbasic-type priority category 2 benefit. If the participant elects a lump sum return of contributions, the participant would receive the $4,000. However, if the participant did not elect a lump sum benefit and died before reaching retirement age, but after the date of plan termination, his or her beneficiary would receive the $4,000 return of contributions in addition to the $600 nonbasic-type benefit already paid to the participant.

In order to avoid this potential duplication of benefits, under the final regulation each participant's benefit assigned to priority category 2 is determined by the form of distribution each participant elects. If a participant elects to receive an annuity benefit and the pre-retirement death benefit derived from his or her mandatory employee contributions, those benefits are assigned to priority category 2 for that participant. The annuity and pre-retirement death benefit are then valued by determining the cost of providing those benefits, at PBGC rates or those of an insurance company, whichever will be providing the benefit. The combined value of the annuity benefit and the pre-retirement death benefit is the participant's basic-type benefit in priority category 2. There is no nonbasic-type benefit in priority category 2 for a participant who elects to receive the annuity benefit and the pre-retirement death benefit. This is because the participant is receiving the full benefits derived from his or her total accumulated mandatory contributions even though those benefits can be purchased at a lower cost. Thus, under these rules, the potential duplication of benefit payments possible under the interim regulation is avoided.

If a participant elects, pursuant to plan provisions, to receive a lump sum benefit that returns his or her mandatory employee contributions in lieu of the annuity benefit and the death benefit derived from those contributions, the benefit assigned to priority category 2 is the lump sum benefit. The basic-type benefit of the participant is the sum of the values of the annuity benefit and the pre-retirement death benefit that would have been paid had the participant not elected the lump sum. The value of the nonbasic-type benefit is the excess, if any, of the accumulated mandatory employee contributions over the combined value of the annuity and death benefits. If the total amount of a participant's accumulated mandatory contributions is less than the combined value of the annuity and death benefits, the final regulation limits the lump sum benefit to the total amount of the accumulated mandatory employee contributions.

The computation and valuation of an annuity benefit and a pre-retirement death benefit is a necessary step in the allocation process, although a participant has elected a lump sum benefit, since the value of the participant's annuity benefit in priority category 2 must be known in order to determine the employer-derived portion of that participant's *total* annuity benefit, which portion is to be assigned to a lower priority category.

In addition to these two basic changes, the final regulation makes clear that the pre-retirement death benefit and the lump sum benefit may not be less than the minimum lump sum determined under rules established by the Internal Revenue Service under section 204(c) of the Act and section 411(c) of the Code and using the IRS rates and factors in effect on the date of plan termination. Those rules, which are set forth in Treasury Regulation § 1.411(c)–1, provide that the lump sum may be no less than the actuarial equivalent of the participant's minimum accrued benefit derived from mandatory employee contributions. Examples of methods for determining the actuarial equivalent, including an example of a reasonable approximation method, are found in Revenue Ruling 78–202, C.B. 1978–1, 124.

Priority Category 3

The changes in § 2608.13, priority category 3, are (1) format and language simplification and (2) clarification of the general rules contained in the supplemental notice. The new format more clearly shows that the determination of priority category 3 benefits is a two-step process. The first step is to determine if a participant or beneficiary is eligible for a priority category 3 benefit. The second step is the calculation of the benefit amount.

Other clarifying changes in the general rules are as follows:

(1) Sections 2608.13(b) (1) and (2) specify which plan provisions govern eligibility and benefit amounts. Two time periods must be considered. One is the 5-year period ending on the date of plan termination (hereafter referred to as the "5-year period"). The other is the 3-year period ending on the date of plan termination (hereafter referred to as the "3-year period"). Plan provisions in effect on the date benefits commenced are used for those participants who were in pay status before the beginning of the 3-year period, without regard to the 5-year period, but benefit increased before the beginning of the 5-year period will be given effect. For other participants, eligibility and benefit amounts are governed by the plan provisions in effect on the day before the beginning of the 3-year period.

(2) As discussed in the preamble to the interim regulation, benefits that

become payable solely because of a participant's death or disability within the three years immediately preceding the date of plan termination are not included in priority category 3. this is because the prerequisite condition that would make the participant or beneficiary eligible for the benefit, *i.e.* death or disablility of the participant, did not occur before the beginning of the 3-year period. A provision has, however, been included in the eligibility rules in § 2608.13(b)(1) to make clear that the beneficiary of a participant who was eligible for a priority category 3 benefit and who died within the 3-year period is included in priority category 3. Section 2608.13(b)(4) makes clear that the beneficary's annuity will be determined as if the participant had died on the day before the 3-year period began.

(3) The priority category 3 benefit limitation has been clarified. Specifically, for a participant whose priority category 3 benefit was in pay status before the beginning of the 3-year period, there is a two-step rule that limits the amount of the priority category 3 benefit. The first step is the basic rule that a priority category 3 benefit must be determined using the plan provisions in effect during the 5-year period that would provide the lowest benefit. The second step, for those in pay status, is to compare the lowest benefit so determined with the lowest annuity benefit the participant was entitled to receive at any time *during* the 3-year period. The lesser of the two benefits is the priority category 3 benefit for those in pay status. This rule, for example, would exclude, from priority category 3, a temporary benefit supplement that was in effect for a retiree during the 3rd, 4th, and 5th years preceding termination. Only the basic rule that a priority category 3 benefit is limited to the lowest benefit under plan provisions in effect during the 5-year period applies to participants who could have been, but were not, in pay status before the 3-year period.

(4) In determining the lowest amount payable under the plan provisions during the 5-year period, consideration was given to the proper treatment of amendments adopted before the 5-year period that provided for automatic benefit increases during the 5-year period. Since the amendment provisions were in place at the beginning of the 5-year period, the PBGC has decided that automatic benefit increases scheduled during the fourth and fifth years preceding plan termination should be included in determining the lowest benefit under the plan provisions. However, automatic increases in the benefit formula during the 3-year period preceding termination are not taken into consideration since priority category 3 benefit rights are fixed no later than the beginning of the 3-year period. Automatic benefit increases are to be disregarded to the extent that the increase is greater for active participants than for those in pay status or if the benefit increase is only for active participants. This is because, by definition, the lowest benefit provided by the plan during the 5-year period can be no greater than one based on the benefit formula applicable to participants in pay status. These rules are set forth in § 2608.13(b)(5) of the final regulation.

(5) In determining the amount of the priority category 3 benefit of a participant who is eligible for a priority category 3 benefit because he or she could have received a benefit before the beginning of the 3-year period, it is necessary to make an adjustment for any differences between the normal form of annuity in effect at the beginning of the 3-year period and the normal form at that point in the 5-year period when the lowest benefit was in effect. Therefore, if the annuity benefit forms are different, § 2608.13(b)(3) requires that the benefits be compared after the differing form is converted to the normal annuity form at the beginning of the 3-year period, using plan factors. In the absence of plan factors, PBGC's factors set forth in Part 2609 of this chapter shall be used.

(6) In determining the lowest amount payable under the plan provisions during the 5-year period, it was unclear under the supplemental notice whether a plan that is less than five years old on the date of plan termination could have a priority category 3 benefit. If a long established plan were amended during the 5-year period to increase benefits, that increase would not increase the priority category 3 benefit. PBGC believes that participants in a plan that is established within five years of the date of plan termination should not be treated in a different manner than participants in a plan amended to increase benefits during that 5-year period. Therefore, the final regulation provides in § 2608.13(b)(3) that, if a plan is less than five years old on the date of plan termination, the lowest benefit in effect during the 5-year period is zero and the plan, therefore, has no priority category 3 benefits.

(7) A new § 2608.13(b)(6) has been added to clarify that a plan or an amendment is considered to be "in effect", for purposes of determining priority category 3 benefits, on the later of the effective date or the adoption date of the plan or amendment.

The rules discussed in items (1) and (3) through (5) are illustrated by the following examples:

Example 1. A plan provides for an early retirement benefit for participants who are 55 years of age and have 20 years of service, which benefit is payable for 10 years certain and thereafter for life ("a 10 C&C annuity"). The amount of the benefit is $10 per month for each year of service. Benefits are reduced ½ of 1% for each month that the benefit commencement date precedes the normal retirement date, which is age 65. On the date of plan termination, participant A is 63 years old and has 25 years of service. Therefore, A could have retired before the beginning of the 3-year period ending on the date of plan termination. Participant A's priority category 3 benefit would be a 10 C&C annuity of $154 per month: ($10×22)×70%. Years of service are determined as of three years before the date of plan termination, and the early retirement reduction of 30% is based on commencement of the benefit as of that date.

If, however, four years before the date of plan termination, the benefit formula was $8 per month for each year of service and the plan was then amended to increase the benefit formula to $10 per month for each year of service, A's priority category 3 benefit would be limited by the dollar amount in the lowest benefit formula in effect during the 5-year period to $123.20 per month: ($8×22)×70%.

Example 2. Plan provisions that were in effect five years before the date of plan termination provide for a 10 C&C annuity benefit payable to a participant who has reached the normal retirement age of 65 with 10 years of service. The monthly normal retirement annuity was $300 at the beginning of the 5-year period ending on the date of plan termination. Under the plan, however, the benefit formula for both active and retired participants would increase midway through each succeeding plan year by $10.

On the date of plan termination, Participant R is age 68, had earned 15 years of service, and had been retired for three years. Participant E is age 56, has 34 years of service, and is still employed. Only Participant R is eligible for a priority category 3 benefit. Participant E has sufficient service but has not met the age requirement for retirement. Since E could not have retired three years before plan termination, E does not have a priority category 3 benefit.

Under the plan provisions, the lowest benefit formula in effect during the 5-year period contained an automatic increase. Participant R's priority category 3 benefit would be a monthly annuity of $320. Although the benefit level would have increased to $350 by the date of plan termination, only increases during the fourth and fifth years before plan termination are included in the computation of the lowest benefit.

Example 3. Continuing with the plan and participants in Example 2, four years before termination the plan was amended to provide that a participant with 30 years of service could retire and receive an immediate unreduced monthly annuity. The normal retirement benefit was increased to $400 a month for participants retiring at age 65 and for previously retired participants. The 30-and-out pensioners would receive $500 a month until age 65 and $400 a month thereafter. Both R and E are eligible for priority category 3 benefits. Although the amendment cannot be used to increase the amount of the priority category 3 benefit because it was not in effect before the 5-year period, it is used to determine eligibility for a priority category 3 benefit.

Participant R's priority category 3 benefit would be $320 per month, as determined in the preceding example.

While E's eligibility for a priority category 3 benefit is determined under the plan as amended four years before termination, the amount of E's priority category 3 benefit is not determined on the basis of the amended $500/$400 benefit level. Rather, it is determined on the basis of the lowest annuity benefit in effect during the 5-year period, or $320 a month commencing at age 65. Therefore, E's priority category 3 benefit is the actuarial equivalent at age 53 of a monthly annuity of $320 payable at age 65.

Assume that an annuity payable at age 53 would be 40% of the benefit payable at age 65 on the basis of plan factors. E's priority category 3 benefit, therefore, is $128 a month ($320 × 40% = $128).

Priority Categories 4 through 6

Changes in the rules for priority categories 4 through 6 (§§ 2608.14 through 2608.16) have been made for clarification only. There are no substantive changes from the supplemental notice.

Subclasses

One comment received concerning subclasses, § 2608.17, was that the establishment of subclasses within a category is complex, could lead to capricious results, and should not be permitted. The PBGC does not agree that subclasses should not be allowed. There are many plans, most notably plans that were collectively bargained, that, prior to the Act, provided for allocation to classes based on length of service or other factors. The fact that Congress recognized and approved of these provisions is shown by section 4044(b)(6) of the Act, which provides for voluntary establishment of subclasses, subject to whatever rules the PBGC prescribes by regulation. The supplemental notice provided that subclasses would be allowed based specifically on "greater length of service, older age or on disability (or any combination thereof)." This final regulation makes no change in this respect.

Another comment requested the specific inclusion of a subclass based on seniority of service, provided the allocation did not increase or decrease total assets allocated to guaranteed benefits in any priority category or violate the anti-discrimination provisions of section 401 of the Code. The comment pointed out that such provisions are often found in collectively bargained plans and suggested that these provisions correspond to a subclass based on length of service. Seniority rules, however, are not necessarily based on length of service. For example, there may be job line seniority, departmental seniority, or plant seniority, none of which necessarily reflects length of service. Therefore, the PBGC has not changed the regulation in this respect.

The supplemental notice included a provision, § 2608.12(a), that required a reallocation of assets whenever allocation on the basis of the established subclasses shifted assets from nonguaranteed benefits to guaranteed benefits, thereby decreasing potential employer liability. Reallocation was also required when the subclasses shifted assets from guaranteed benefits to nonguaranteed benefits. Either could occur in priority categories 3 and 4, both of which can include basic-type benefits that exceed the guarantee limits. The reallocation requirement, however, did not apply to a plan that, on September 2, 1974, provided for subclasses based on longer service, older age, or disability, or a combination thereof, and continued to so provide.

The final regulation includes similar provisions, in §§ 2608.17 (b) and (c). It also includes a new provision, in § 2608.17(c), under which plans that provided for subclasses on September 2, 1974, but subsequently were amended to eliminate or revise those subclasses, will have 180 days from the date this regulation is published in the Federal Register during which to adopt amendments re-establishing the same subclasses. Plans that do so will not be subject to the reallocation requirement.

This final regulation is effective on March 1, 1981, and applies to any non-multiemployer plan for which a Notice of Intent to Terminate is filed on or after that date.

In consideration of the foregoing, Part 2608 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby revised as follows:

1. Part 2608 is recodified to reflect the creation of subparts and the renumbering of sections as follows:

PART 2608—ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

Subpart A—General

Sec.
2608.1 Purpose and scope.
2608.2 Definitions.
2608.3 General rule.
2608.4 Violations.

Subpart B—Allocation of Assets to Benefit Categories

2608.10 Manner of allocation.
2608.11 Priority category 1 benefits.
2608.12 Priority category 2 benefits.
2608.13 Priority category 3 benefits.
2608.14 Priority category 4 benefits.
2608.15 Priority category 5 benefits.
2608.16 Priority category 6 benefits.
2608.17 Subclasses.

Authority: Sections 4002(b)(3), 4044, Pub. L. 93-406, 88 Stat. 1004, 1025 (29 U.S.C. 1302(b)(3), 1344 (1976)), as amended by sections 403(1), 402(a)(7), Pub. L. 96-364, 94 Stat. 1208 (1980).

Subpart A—General

§ 2608.1 Purpose and scope.

Section 4044, of the Employee Retirement Income Security Act of 1974, as amended, contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of the Act. This part interprets those rules and applies to any non-multiemployer plan for which a Notice of Intent to Terminate is filed on or after the effective date of this part.

§ 2608.2 Definitions.

For purposes of this part:

"Act" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.* (1976)), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208.

"Annuity" means a series of periodic payments to a participant or a surviving

beneficiary for a fixed or contingent period.

"Basic-type benefit" means a benefit that is guaranteed under the provisions of Part 2605 of this chapter, or would be if the guarantee limits in Part 2609 of this chapter did not apply.

"Code" means the Internal Revenue Code of 1954, as amended (26 U.S.C. §1 *et seq.* (1976)).

"Date of plan termination" means the date established under section 4048 of the Act.

"Expected retirement age" means the age determined in accordance with Subpart D of Part 2610 of this chapter when the participant has not elected, before the allocation date, an annuity starting date.

"Guaranteed benefit" means a benefit that is guaranteed under Part 2605 of this chapter.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named plan participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary. An irrevocable commitment is considered to be made on its effective date.

"Mandatory employee contributions" means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Nonbasic-type benefit" means any benefit provided by a plan other than a basic-type benefit.

"Nonforfeitable benefit" means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of the Act (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of the Act or the Code. Benefits that become nonforfeitable solely as a result of the termination of a plan will be considered forfeitable.

"Non-multiemployer plan" means a pension plan described in section 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated), or by more than one trade or business (whether or not incorporated), all of which are under common control within the meaning of Part 2612 of this chapter, or a plan maintained by more than one trade or business not under common control that is not a multiemployer plan as defined in section 4001(a)(3) of the Act.

"Notice of Sufficiency" means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of the Act and this part.

"PBGC"means the Pension Benefit Guaranty Corporation.

"Plan" means a defined benefit plan described in section 4021(a) of the Act.

"Plan administrator" means the plan administrator as defined in sections 4001 (a)(1) and 3(16) of the Act. For this purpose, the term "employer", as used in section 3(16)(B), is defined in section 3(5) of the Act.

"Priority categories" or "priority category" means the categories contained in sections 4044(a) (1) through (6) of the Act that establish the order in which plan assets are to be allocated.

"Voluntary employee contributions" means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

§ 2608.3 General rule.

(a) *Asset allocation.* Upon the termination of a non-multiemployer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this part. Plan assets available to pay for benefits include all plan assets (valued according to Part 2611 of this chapter) remaining after the subtraction of all liabilities, other liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 2608.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out pursuant to a Notice of Sufficiency under the provisions of Subpart C of Part 2615 of this chapter, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the date of plan termination.

§ 2608.4 Violations.

(a) *General.* A plan administrator violates the Act if plan assets are allocated upon termination in a manner other than that prescribed in section 4044 of the Act and this part, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution, transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;

(2) Past practice with regard to employee requests for forms of distribution;

(3) Whether the distribution is consistent with plan provisions; and

(4) Whether an annuity contract that provides for a cutback based on the guarantee limits in Part 2609 of this chapter could have been purchased from an insurance company.

Subpart B—Allocation of Assets to Benefit Categories

§ 2608.10 Manner of allocation.

(a) *General.* The plan administrator shall allocate plan assets available to pay for benefits under the plan using the rules and procedures set forth in paragraphs (b) through (f) of this section, or any other procedure that results in each participant (or beneficiary) receiving the same benefits he or she would receive if the procedures in paragraphs (b) through (f) were followed.

(b) *Assigning benefits.* The basic-type and nonbasic-type benefits payable with respect to each participant in a terminated plan shall be assigned to one or more priority categories in accordance with §§ 2608.11 through 2608.16. Benefits derived from voluntary employee contributions, which are assigned only to priority category 1, are treated, under section 204(c)(4) of the Act and section 411(d)(5) of the Code, as benefits under a separate plan. The amount of a benefit payable with respect to each participant shall be

determined as of the date of plan termination.

(c) *Valuing benefits.* The value of a participant's benefit or benefits assigned to each priority category shall be determined, as of the allocation date, in accordance with the provisions of Part 2610 of this chapter. The value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category. Except as provided in the next two sentences, the same procedure shall be followed for nonbasic-type benefits. The value of a participant's nonbasic-type benefits in priority categories 3, 5, and 6 shall not be reduced by the value of the participant's nonbasic-type benefit assigned to priority category 2. Benefits in priority category 1 shall neither be included in nor subtracted from lower priority categories. In no event shall a benefit assigned to a priority category be valued at less than zero.

(d) *Allocating assets to priority categories.* Plan assets available to pay for benefits under the plan shall be allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated. If the plan has assets remaining after satisfaction of all benefits in priority categories 1 through 6, those residual assets shall be allocated in accordance with section 4044(d) of the Act.

(e) *Allocating assets within priority categories.* Except for priority category 5, if the plan assets available for allocation to any priorty category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 2608.15 after reduction for the value benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the 5-year period immediately preceding the date of plan termination. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall then be allocated to the value of the benefit increase under the oldest amendment during the 5-year period immediately preceding the date of plan termination, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the 5-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

(f) *Applying assets to basic-type or nonbasic-type benefits within priority categories.* The assets allocated to participant's benefit or benefits within each priority category shall first be applied to pay for the participant's basic-type benefit or benefits assigned to that priority category. Any assets allocated on behalf of that participant remaining after satisfying the participant's basic-type benefit or benefits in that priority category shall then be applied to pay for the participant's nonbasic-type benefit or benefits assigned to that priority category. If the assets allocable to a participant's basic-type benefit or benefits in all priority categories are insufficient to pay for all of the participant's guaranteed benefits, the assets allocated to that participant's benefit in priority category 4 shall be applied, first, to the guaranteed portion of the participant's benefit in priority category 4. The remaining assets allocated to that participant's benefit in priority category 4, if any, shall be applied to the nonguaranteed portion of the participant's benefit.

(g) *Allocation to established subclasses.* Notwithstanding paragraphs (e) and (f) of this section, the assets of a plan that has established subclasses within any priority category may be allocated to the plan's subclasses in accordance with the rules set forth in § 2608.17.

§ 2608.11 Priority category 1 benefits.

(a) *Definition.* the benefits in priority category 1 are participants' accrued benefits derived from voluntary employee contributions.

(b) *Assigning benefits.* Absent an election described in the next sentence, the benefit assigned to priority category 1 with respect to each participant is the balance of the separate account maintained for the participant's voluntary contributions. If a participant has elected to receive an annuity in lieu of his or her account balance, the benefit assigned to priority category 1 with respect to that participant is the present value of that annuity.

§ 2608.12 Priority category 2 benefits.

(a) *Definition.* the benefits in priority category 2 are participants' accrued benefits derived from mandatory employee contributions, whether to be paid as an annuity benefit with a pre-retirement death benefit that returns mandatory employee contributions or, if a participant so elects under the terms of the plan and Part 2605 of this chapter, as a lump sum benefit. Benefits are primarily basic-type benefits although nonbasic-type benefits may also be included as follows:

(1) *Basic-type benefits.* The basic-type benefit in priority category 2 with respect to each participant is the sum of the values of the annuity benefit and the pre-retirement death benefit determined under the provisions of Paragraph (c)(1) of this section.

(2) *Non-basic-type benefits.* If a participant elects to receive a lump sum benefit and if the value of the lump sum benefit exceeds the value of the basic-type benefit determined with respect to the participant, the excess is a nonbasic-type benefit. There is no nonbasic-type benefit in priority category 2 for a participant who does not elect to receive a lump sum benefit.

(b) *Conversion of mandatory employee contributions to an annuity benefit.* Subject to the limitation set forth in Paragraph (b)(3) of this section, a participant's accumulated mandatory employee contributions shall be converted to an annuity form of benefit payable at the normal retirement age or, if the plan provides for early retirement, at the expected retirement age. The conversion shall be made using the interest rates and factors specified in Paragraph (b)(2) of this section. The form of the annuity benefit (*e.g.*, straight life annuity, joint and survivor annuity, cash refund annuity, etc.) is the form that the participant or beneficiary is entitled to on the date of plan termination. If the participant does not have a nonforfeitable right to a benefit,

other than the return of his or her mandatory contributions in a lump sum, the annuity form of benefit is the form the participant would be entitled to if the participant had a nonforfeitable right to an annuity benefit under the plan on the date of plan termination.

(1) *Accumulated mandatory employee contributions.* Subject to any addition for the cost of ancillary benefits plus interest, as provided in the following sentence, the amount of the accumulated mandatory employee contributions for each participant is the participant's total nonforfeitable mandatory employee contributions remaining in the plan on the date of plan termination plus interest, if any, under the plan provisions. Mandatory employee contributions, if any, used after the effective date of the minimum vesting standards in section 203 of the Act and section 411 of the Code for costs or to provide ancillary benefits such as life insurance or health insurance, plus interest under the plan provisions, shall be added to the contributions that remain in the plan to determine the accumulated mandatory employee contributions.

(2) *Interest rates and conversion factors.* The interest rates and conversion factors used in the administration of the plan shall be used to convert a participant's accumulated mandatory contributions to the annuity form of benefit. In the absence of plan rules and factors, the interest rates and conversion factors established by the Internal Revenue Service for allocation of accrued benefits between employer and employee contributions under the provisions of section 204(c) of the Act and section 411(c) of the Code shall be used.

(3) *Minimum accured benefit.* The annuity benefit derived from mandatory employee contributions may not be less than the minimum accured benefit under the provisions of section 204(c) of the Act and section 411(c) of the Code.

(c) *Assigning benefits.* If a participant or beneficiary elects to receive a lump sum benefit, his or her benefit shall be determined under paragraph (c)(2) of this section. Otherwise, the benefits with respect to a participant shall be determined under paragraph (c)(1) of this section.

(1) *Annuity benefit and pre-retirement death benefit.* The annuity benefit and the pre-retirement death benefit assigned to priority category 2 with respect to a participant are determined as follows:

(i) The annuity benefit is the benefit computed under Paragraph (b) of this section.

(ii) Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, the pre-retirement death benefit is the benefit under the plan that returns all or a portion of the participant's mandatory employee contributions upon the death of the participant before retirement. A benefit that became payable in a single installment (or substantially so) because the participant died before the date of plan termination is a liability of the plan within the meaning of § 2608.3(a) and should not be assigned to priority category 2. A benefit payable upon a participant's death that is included in the annuity form of the benefit derived from mandatory employee contributions (*e.g.*, the survivor's portion of a joint and survivor annuity or the cash refund portion of a cash refund annuity) is assigned to priority category 2 as part of the annuity benefit under Paragraph (c)(1)(i) of this section and is not assigned as a death benefit. The pre-retirement death benefit may not be less than the minimum lump sum required upon withdrawal of mandatory employee contributions by the Internal Revenue Service under section 204(c) of the Act and section 411(c) of the Code.

(2) *Lump sum benefit.* Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, if a participant elects to receive a lump sum benefit under the provisions of the plan, the amount of the benefit that is assigned to priority category 2 with respect to the participant, is—

(i) The combined value of the annuity benefit and the pre-retirement death benefit determined according to Paragraph (c)(1) (which constitutes the basic-type benefit) plus

(ii) The amount, if any, of the participant's accumulated mandatory employee contributions that exceeds the combined value of the annuity benefit and the pre-retirement death benefit (which constitutes the non-basic-type benefit), but not more than

(iii) The amount of the participant's accumulated mandatory contributions.

For purposes of this Paragraph (c)(2), accumulated mandatory contributions means the contributions with interest, if any, payable under plan provisions to the participant or beneficiary on termination of the plan or, in the absence of such provisions, the amount that is payable if the participant withdrew his or her contributions on the date of plan termination. The lump sum benefit may not be less than the minimum lump required upon withdrawal of mandatory employee contributions by the Internal Revenue Service under section 204(c) of the Act and section 411(c) of the Code.

§ 2608.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the date of plan termination, and those annuity benefits that would have been in pay status for participants who were eligible to receive annuity benefits before the beginning of the 3-year period ending on the date of plan termination. Benefits are primarily basic-type benefits, although non-basic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of Part 2605 of this chapter.

(b) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to a participant is the lowest annuity that was paid or payable under the rules in Paragraphs (b)(2) through (b)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the date of plan termination.

(ii) The participant was eligible for an annuity and his or her benefit could have been in pay status before the beginning of the 3-year period ending on the date of plan termination. Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in the next sentence, for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the date of plan termination, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit

commenced. Benefit increases that became effective before the beginning of the 5-year period ending on the date of plan termination, including automatic benefit increases after that date to the extent provided in Paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) For a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the date of plan termination but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the date of plan termination as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the date of plan terminations and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the date of plan termination.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the date of plan termination, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the date of plan termination. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under Paragraph (b)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in Part 2609 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the date of plan termination, computed in accordance with Paragraph (b)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the date of plan termination is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of the Act, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the date of plan termination, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective before the beginning of the 5-year period ending on the date of plan termination provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the date of plan termination determined under Paragraph (b)(3) of this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the following restrictions. Benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is "in effect" on the later of the date on which it is adopted or the date it becomes effective.

§ 2608.14 Priority category 4 benefits.

The benefits assigned to priority category 4 are participants' basic-type benefits that do not exceed the guarantee limits set forth in Part 2609 of this chapter, except as provided in the next sentence. The benefit assigned to priority category 4 with respect to a participant is not limited by the aggregate benefits limitations set forth in § 2609.3(b) for individuals who are participants in more than one plan or by the phase-in limitation applicable to substantial owners set forth in § 2609.7.

§ 2608.15 Priority category 5 benefits.

The benefits assigned to priority category 5 with respect to each participant are all of the participant's nonforfeitable benefits under the plan.

§ 2608.16 Priority category 6 benefits.

The benefits assigned to priority category 6 with respect to each participant are all of the participant's benefits under the plan, whether forfeitable or nonforfeitable.

§ 2608.17 Subclasses.

(a) *General rule.* A plan may establish one or more subclasses within any priority category, other than priority categories 1 and 2, which subclasses will govern the allocation of assets within that priority category. The subclasses may be based only on a participant's longer service, older age, or disability, or any combination thereof.

(b) *Limitation.* Except as provided in Paragraph (c) of this section, whenever the allocation within a priority category on the basis of the subclasses established by the plan increases or decreases the cumulative amount of assets that otherwise would be allocated to guaranteed benefits, the assets so shifted shall be reallocated to other participant's benefits within the priority category in accordance with the subclasses.

(c) *Exception for subclasses in effect on September 2, 1974.* A plan administrator may allocate assets to subclasses within any priority category, other than priority categories 1 and 2, without regard to the limitation in Paragraph (b) of this section if, on September 2, 1974, the plan provided for allocation of plan assets upon termination of the plan based on a participant's longer service, older age, or disability, or any combination thereof, and—

(1) Such provisions are still in effect; or

(2) The plan, if subsequently amended to modify or remove those subclasses, is re-amended to re-establish the same subclasses on or before July 28, 1981.

(d) *Discrimination under Internal Revenue Code.* Notwithstanding the provisions of Paragraphs (a) through (c) of this section, allocation of assets to subclasses established under this section is permitted only to the extent that the allocation does not result in discrimination prohibited under the Code and regulations thereunder.

Effective date. This regulation is effective on March 1, 1981.

Issued at Washington, D.C., this 19th day of January, 1981.

Ray Marshall,

Chairman, Board of Directors Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

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Part VI

Pension Benefit Guaranty Corporation

Valuation of Plan Benefits in Non-Multi-Employee Plans; Interim Rule With Requests for Comments

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Valuation of Plan Benefits in Non-Multi-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final Rule; Interim Rule with Request for Comments.

SUMMARY: This regulation sets forth the final and interim rules for valuing benefits in terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, *as amended by* the Multiemployer Pension Plan Amendments Act of 1980. This regulation is needed to enable plan administrators to value plan benefits upon the termination of a plan. This valuation is required so that the plan administrator can comply with the rules and procedures set forth in the Pension Benefit Guaranty Corporation's regulations on the Determination of Plan Sufficiency and Termination of Sufficient Plans and the Allocation of Assets (both of which are published in today's **Federal Register.**)

Heretofore, the Pension Benefit Guaranty Corporation's interim regulation on valuing plan benefits applied only to plans that did not receive a Notice of Sufficiency. That interim regulation is superseded by this regulation, and this regulation provides valuation rules both for plans that close out under a Notice of Sufficiency and for plans that do not.

This regulation is published as a final rule except for Subpart D, which is published in interim form with a request for public comments. Subpart D sets forth the method for calculating an expected retirement age in order to value early retirement benefits.

DATES: Final rule effective on March 1, 1981. Interim rule (Subpart D) effective March 1, 1981. Comments on the interim rule must be received on or before March 30, 1981.

ADDRESSES: Comments should be sent to: Office of the General Counsel, Pension Benefit Guaranty Corporation, Room 7200, 2020 K Street, N.W., Washington, D.C. 20006. Copies of written comments will be available for examination in: Pension Benefit Guaranty Corporation, Public Reference Room, Suite 7000, 2020 K Street, N.W., Washington, D.C., on weekdays between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; 202-254-3010.

SUPPLEMENTARY INFORMATION:

Overview

On December 12, 1975, the Pension Benefit Guaranty Corporation (PBGC) published a notice of proposed rulemaking (40 FR 57982), which contained proposed rules for valuing plan benefits in insufficient terminating pension plans, *i.e.*, plans whose assets are insufficient to pay all guaranteed benefits.

On November 3, 1976, the PBGC issued an interim regulation and a supplemental notice of proposed rulemaking dealing with the valuation of plan benefits (41 FR 48484 and 41 FR 48498). The interim regulation set forth the methods to be used to value plan benefits in insufficient plans that terminated before the proposed regulation was made final. The supplemental proposal contained the same valuation rules for insufficient plans, as well as rules for computing the value of benefits in sufficient terminating plans.

The PBGC is now issuing a final regulation which contains the rules for valuing benefits in both types of terminating pension plans that are not multiemployer plans. Because the Multiemployer Pension Plan Amendments Act of 1980 established a new insurance program for multiemployer plans, the scope of this regulation is restricted to non-multiemployer plans. Non-multiemployer plans are plans to which only one employer (as defined in section 4001(b) of ERISA) contributes and plans to which more than one employer contributes that are not multiemployer plans as defined in section 4001(a)(3) of ERISA. This regulation supersedes the interim regulation and applies to all non-multiemployer plans that submit a Notice of Intent to Terminate, or with respect to which a termination proceeding under section 4042 of ERISA is commenced, on or after the effective date of this regulation. Hereinafter, "plans" will refer only to non-multiemployer plans.

One comment the PBGC received on the proposed regulation expressed a concern about vagueness in the regulation which would prevent a plan administrator from being able to determine precisely the value of the plan benefits. One example cited in the comment was the requirement that, if PBGC was going to provide an early retirement benefit for a sufficient plan, the value for this benefit would have to be computed by PBGC. This would prevent the plan administrator from knowing the total value of benefits at the time the Notice of Intent to Terminate is submitted. This regulation provides an interim rule which is to be used to determine expected retirement ages which are used to calculate the value of early retirement benefits, so that the plan administrator can calculate this value without the assistance of PBGC. In addition, the entire regulation has been rewritten and restructured to provide clearer rules and methods of computation wherever possible.

The final rule is divided into four subparts. Subpart A describes the coverage of the regulation and contains the general definitions which are applicable to all covered terminating plans. Subpart B deals with plans which are closing out in the private sector, *e.g.*, by the purchase of annuities from an insurance company, after receiving a Notice of Sufficiency from BPGC pursuant to the new plan sufficiency regulation. (These plans are designated as "non-trusteed plans.") Subpart C contains rules for valuing benefits in plans which are closing out after being placed into trusteeship by PBGC. (These plans are designated as "Trusteed plans".) Finally, Subpart D, an interim rule, sets forth the method for determining the expected retirement age used to value early retirement benefits for trusteed plans and, in certain cases, for non-trusteed plans.

This regulation contains some new terminology. Under the interim regulation and the proposed regulation, plans were categorized as either "sufficient" or "insufficient". Under this regulation, they are described as either "non-trusteed" or "trusteed". The reason for this change is the new procedure for identifying and closing out "sufficient" plans set forth in PBGC's regulation on the Determination of Plan Sufficiency and Termination of Sufficient Plans, being published today (the "Sufficiency regulation"). This terminology has no relation to whether the plan was funded through a trust fund (commonly called a "trusteed" plan), or through an insurance contract (an "insured" plan).

Under the Sufficiency regulation, at the early stages of the case-processing procedure, the PBGC will be able to classify some plans as either sufficient or clearly insufficient. However, most plans will not fall into either category.

Plans which are initially determined to be sufficient will be issued a Notice of Sufficiency and will then close out by distributing their assets in accordance with Subpart C of the Sufficiency

regulation. They will not be placed into trusteeship. Plans which are initially determined to be clearly insufficient will be issued a Notice of Inability to Determine Sufficiency and placed into trusteeship by PBGC.

Plan administrators of all other plans will be required to demonstrate sufficiency by obtaining a qualifying bid from a private insurer which provides for all plan benefits through priority category 4 to be paid as annuities, except for certain early retirement benefits, if any, which are to be provided by PBGC. Those early retirement benefits are to be valued under § 2610.46. If benefits are to be provided by a method other than by purchasing an annuity for an insurer, *e.g.*, a lump sum, distribution or payments from a wasting trust, the value of those benefits will be determined as though they were distributed in a lump sum on the proposed date of distribution. The valuation rules in Subpart C of this regulation may be used as guidance in estimating the value of any lump sum benefits to be submitted with a Notice of Intent to Terminate.

Those plans that demonstrate they have adequate assets to provide all benefits in priority categories 1 through at least 4 as of the proposed date of distribution, will be issued a Notice of Sufficiency and will then close out by purchasing annuities pursuant to the bid or distributing the assets. If PBGC determines that plan assets are not adequate to provide all the benefits in priority categories 1 through 4 as of the proposed date of distribution, the plan will be issued a Notice of Inability to Determine Sufficiency and placed into trusteeship by PBGC.

Situations may arise, however, where a plan that has received a Notice of Sufficiency is unable to provide all the benefits in priority categories 1 through 4 on the distribution date because, for example, of a decrease in the value of plan assets. In this event, PBGC will withdraw the Notice of Sufficiency and place the plan into trusteeship. The plan will then be a trusteed plan and the benefits valued under Subpart C.

Given this procedure and the situations that can arise in the termination process, it is not possible to cast rules in terms of "sufficient" or "insufficient" plans. For this reason, this regulation refers to terminating plans as either "non-trusteed" or "trusteed" plans. Non-trusteed plans are those that close out in the private sector, and trusteed plans are those that do not. As can be seen from the foregoing description of that rule, the valuation date for plans that are closing out in the private sector, *i.e.*, non-trusteed plans, is the date of distribution. For trusteed plans the valuation date continues to be the date of plan termination.

Subpart A—General

Section 2610.2 sets forth the general definitions which are used in the other three subparts. These definitions have not been substantially changed from those which were contained in the proposed and interim regulations. One new term, non-multiemployer plan, is defined, as described above.

Subpart B—Non-Trusteed Plans

General

Subpart B contains the valuation rules for plan administrators to use to value benefits in non-trusteed plans. In general, these are the rules that were set forth in the supplemental proposal, although some of the rule have been expanded and clarified to provide better guidance. This subpart provides valuation rules for benefits payable as annuities, lump sums payable in lieu of annuities, the withdrawal of employee contributions and other lump sum benefits. In addition, this subpart prescribes the form of annuity to be valued.

Annuities

Under the Sufficiency regulation, the plan administrator of a non-trusteed plan must obtain a qualifying bid from an insurer for providing all benefits to be paid as annuities. Section 2610.23 of the final regulation provides that the value of a benefit to be paid as an annuity, including a disability benefit, is the cost of that annuity under the qualifying bid obtained from an insurer. Since an insurer is going to assume the responsibility for making benefit payments, the PBGC believes it is appropriate to use the price charged by the insurer as the value of the benefit.

Section 2610.24 prescribes the form of annuity that is to be valued when there are optional annuity forms under the plan or when a participant or beneficiary dies between the date of termination and the date of distribution. In general, the form to be valued is (1) the normal form payable under the plan, (2) an optional form for which the participant has made a valid election under the terms of the plan pursuant to § 2615.4(c), or (3) the form being paid to a participant in pay status.

The regulation also contains special rules for valuing early retirement annuities. When the annuity starting date is known before the distribution date (either because the participant has already started receiving benefit payments or has already selected a retirement date), there should be no special problem in obtaining a bid from an insurer to provide the benefits, and thus the normal rule in § 2610.23 applies (§ 2610.25(a)). However, when the annuity starting date is not known, there may be problems that make it impossible or inappropriate to value the benefits by this method.

Subpart D of Part 2615 provides that, if the plan administrator cannot obtain a qualifying bid which includes all the early retirement benefits under the plan for which the annuity starting date is unknown and which reasonably reflects the probability of retirement at different dates between the earliest date the participant is eligible to start receiving benefits and his or her normal retirement date, then the plan administrator may arrange for PBGC to provide these benefits. In this event, the plan administrator shall value all the early retirement benefits for which the starting date is unknown under §2610.23(b), using the early retirement valuation rule in § 2610.46 of Subpart C and the rules for determining the expected retirement age in Subpart D. All early retirement benefits for which the annuity starting date is known shall be valued under the qualifying bid (§ 2610.25(a)). If the plan administrator does not have PBGC provide the early retirement benefits for which the annuity starting date is unknown, then these benefits will be valued under the qualifying bid (§ 2610.25(b)(2)). Although this rule permits the plan administrator to value certain benefits under a bid that does not reasonably reflect probable retirement dates, the PBGC does not wish to preclude a plan administrator from taking such a bid if doing so would result in a lower overall cost to the plan than if PBGC provided the early retirement benefits.

Lump Sum Benefits Payable in Lieu of Annuities

Under certain circumstances set out in the Sufficiency regulation (§2615.4(b)) and in this regulation (§ 2610.26), an annuity benefit may be paid as a single lump sum or in another form, such as payment from a wasting trust, rather than as an annuity. This may occur, for example, when the present value of a participant's benefit is $1,750 or less, when the plan allows an annuity to be paid as a lump sum and the participant has chosen the lump sum option, or when the participant chooses to have his or her benefit paid from a wasting trust. Section 2610.26 of this regulation provides that the value of a lump sum or other benefit paid in lieu of an annuity is equal to the present value of the normal annuity form payable under the plan at

normal retirement age. The normal annuity form is the form payable absent an election by the participant. The present value is determined using reasonable actuarial assumptions. If the PBGC determines that the assumptions used are not reasonable, the PBGC may re-value the benefit (§ 2610.26(b)). Section 2610.26(b) also contains a list of interest assumptions that the PBGC would normally consider reasonable. There is no listing of acceptable mortality assumptions, however, because of the current uncertainty as to the legality under Title VII of the Civil Rights Act of 1964 of a plan sponsor using sex-based mortality tables.

Under the proposed regulation, the value of a lump sum payable in lieu of an annuity was determined as of the date of plan termination and interest was not credited from the date of termination to the date of distribution. One comment stated that this was unfair since interest was taken into account in valuing an annuity benefit to be purchased at the date of distribution. The final regulation corrects this disparity by providing that benefits payable as lump sums are valued as of the date of distribution, the same as annuities.

Under the proposed rule, the amount of a lump sum payable in lieu of an annuity could not be less than the present value of the annuity calculated using PBGC's interest and mortality assumptions. Further, the interest rate was also limited and could not be less than the interest rate prescribed under § 204(c) of ERISA. The PBGC feels that these minimums are no longer necessary because, as previously mentioned, the final regulation provides that PBGC reserves the right to review the reasonableness of the actuarial assumptions used and to re-value any benefits that it determines were valued using unreasonable assumptions.

Withdrawal of Employee Contributions

Some plans allow the withdrawal of mandatory employee contributions as a single installment in lieu of the benefits derived from those contributions. These lump sum amounts are valued in accordance with § 2610.27. Their value is the amount of the employee contributions at the date of plan termination, including interest to that date payable at the greater of the rate provided under the plan, if any, or the rate required under § 204(c) of ERISA or § 411(c) of the Internal Revenue Code. In addition, interest (at a reasonable rate) is to be credited from the date of plan termination to the date of distribution. If payments, which were derived, at least in part, from mandatory employee contributions, have been made to the participant between the date of plan termination and the date of distribution, the amount of the lump sum as of the date of distribution is adjusted by subtracting the amount of those payments that is attributable to mandatory employee contributions, and interest thereon.

Other Lump Sum Benefits

If a participant or beneficiary is entitled under the plan to a lump sum benefit (§ 2610.28) that is not a benefit payable in lieu of an annuity or a benefit that returns employee contributions, but is a benefit such as a one-payment severance benefit or funeral payment, the value of the benefit is either (1) the value under the qualifying bid, or (2) if the value of the benefit is to be paid at the date of distribution, the present value of the benefit determined using reasonable actuarial assumptions. The actuarial assumptions are subject to review and adjustment by PBGC.

Subpart C—Trusteed Plans

General

Subpart C sets out the rules for valuing guaranteed benefits in plans which have been or will be placed into trusteeship by PBGC. As explained above, this may include plans that originally received a Notice of Sufficiency but were subsequently unable to provide all benefits payable under the Notice of Sufficiency on the proposed date of distribution. Because PBGC must calculate employer liability with respect to such plans and because ERISA requires that "the current value of the plan's benfits guaranteed under this title [Title IV] as of the date of termination" be used to calculate employer liability (section 4062(b)(1)(A) of ERISA), guaranteed benefits under trusteed plans are valued as of the date of plan termination. Benefits are valued by using PBGC interest rates and factors and mortality tables in effect on the date of plan termination. These rates and tables are contained in Appendices A and B to this part.

Subpart C sets forth specific actuarial formulas the plan administrator may use to determine the current (present) value of different benefits. The different benefits are divided into five categories—immediate annuities, deferred annuities, early retirement benefits, death benefits, and withdrawal of employee contributions—and are addressed in §§ 2610.44–2610.48 respectively. Section 2610.42 describes and defines the actuarial symbols and commutation symbols used in the actuarial formulas. Finally, § 2610.43 provided that benefits are valued using the PBGC interest and mortality rates in effect on the date of plan termination. This section also provides that the plan administrator may value benefits by using any other formula or approximation that is at least as accurate as the corresponding formula or approximation set forth in this regulation.

Immediate Annuities

Section 2610.44 contains the equations for valuing various forms of annuities that are payable immediately as of the date of plan termination. These equations are substantially the same as those in the interim regulation, however two equations have been eliminated and several have been added. The equations for a life annuity payable annually and an annuity certain payable annually are eliminated because they are the same as the equations for such annuities payable periodically with a period of 1 (§ 2610.44(c) and (d)).

Three new forms of annuities are added as follows:

(1) Annuity certain and joint thereafter, § 2610.44(j), is an annuity payable with respect to more than one person, and payments cease at the later of (a) the death of the participant or the beneficiary, or (b) the passage of a specified period of time.

(2) Annuity certain and joint and survivor (joint basis) thereafter, § 2610.44(k), is similar to the annuity described in (1) above, except that the payments continue to either survivor in an equal or reduced amount.

(3) Annuity certain and joint and survivor (contingent basis) thereafter, § 2610.44(1), is similar to the annuity described in (1) above, except that it is payable in the original amount until the later of (a) the death of the participant, or (b) the passage of a specified period of time, and, if the beneficiary survives the participant, payments continue to the beneficiary at an equal or reduced amount until his or her death.

The cash refund annuity and installment refund annuity have been moved from the death benefit section to the immediate annuity section, § 2610.44, because they are immediate annuities although they also have a death benefit feature. The cash refund annuity is re-named a single life cash refund annuity and is set forth in § 2610.44(m). The installment refund annuity is set forth in § 2610.44(n).

In general, all immediate annuities which are not being received as disability benefits will be valued using the mortality rates for healthy lives given in Tables I and II of Appendix A. Disability benefits which are not being

received in connection with Social Security disability benefits will be valued using the mortality rates for disabled lives given in Tables III and IV of Appendix A. Disability benefits which do depend on the receipt of Social Security disability benefits will be valued using the mortality rates for disabled lives given in Tables V and VI of Appendix A. The specific mortality tables and interest rates used are those in effect on the valuation date.

Deferred Annuities

Section 2610.45 sets forth the rules for valuing the various forms of annuities described in § 2610.44 when the benefit is not in pay status or immediately payable as of the date of plan termination, but rather payment is deferred to a future date. This future date can be either (1) the normal retirement date, (2) a known early retirement date (if the participant is entitled to receive an early retirement benefit and has selected an early retirement date) or (3) an expected retirement date determined under Subpart D (if the early retirement date has not been selected).

As in the proposed and interim regulations, the formula given in § 2610.45(b) for valuing deferred annuities involving life contingencies of more than one person makes several simplifying assumptions in order to reduce the administrative burden of collecting additional data at termination. First, the formula considers the mortality of only the participant between the date of plan termination and date of retirement. Second, the formula assumes that the participant is married to the same spouse on the date payments commence as on the date of plan termination. Thus, the simplified formula does not take into account the possibility that in a given case there will be no spouse or a different spouse at the date payments commence because of divorce, death, and/or re-marriage. PBGC expects that, in general, the use of this simplified formula will not have a significant impact on the total value of plan benefits; in any event, the administrative savings justify any resultant inaccuracy in the overall value of plan benefits.

Early Retirement Benefits

The procedure for valuing early retirement benefits (§ 2610.46) has been substantially recast and simplified from that contained in the interim regulation. Specifically, the equation for calculating the age at which a participant could be expected to retire has been dropped. Instead, the PBGC itself has developed tables of expected retirement ages. The procedure for using these tables, which are set forth in Appendix C to this part, is contained in Subpart D.

After the expected retirement age is determined under Subpart D, the benefit is valued according to § 2610.46. Under this section, if a participant's expected retirement age or known early retirement age is the same as the participant's age at the valuation date, then the early retirement benefit is valued as an immediate annuity. If the expected retirement age or known early retirement age is greater than the participant's age at the valuation date, then the early retirement benefit is valued as a deferred annuity.

Section 2610.46 is also used to value early retirement benefits under non-trusteed plans if the early retirement benefits are being provided by PBGC pursuant to the rules set forth in the Sufficiency regulation. The valuation rules in this case are the same as for trusteed plans, except that the participant's expected retirement age is compared to his or her age at the date of distribution of plan assets (rather than at the date of plan termination) to determine whether the benefit is to be valued as an immediate or deferred annuity. The value is determined using the interest rates and tables in effect on the date of distribution. If the interest rates for the proposed date of distribution are not known when the plan administrator submits this information to PBGC, the plan administrator may estimate these values using the PBGC interest rates then in effect.

Death Benefits

The rules for valuing death benefits (§ 2610.47) are similar to those in the interim regulation, except for a change in one formula and the addition of new formula.

A change has been made in the formula for valuing a post-retirement death benefit payable as term insurance decreasing periodically, § 2610.47(e). The change is needed because the previous formula did not reduce the death benefit by the first month's benefit payment. This has been taken into account in the changed formula.

The new formula, § 2610.47(f), is used to value a pre-retirement death benefit payable as term insurance which increases at a specific rate of interest per year, *e.g.*, a pre-retirement death benefit that returns employee contributions plus a specified rate of interest up to the date of death.

Withdrawal of Employee Contributions

Section 2610.48 sets forth the rules for valuing mandatory employee contributions which are withdrawn in a lump sum. The value as of the date of plan termination is the amount of contributions made, plus interest to that date at the greater of the interest rate provided by the plan, or the interest rate required by § 204(c) of the Act or § 411(c) of the Internal Revenue Code.

Subpart D—Expected Retirement Age

Background

When a participant has the right to retire early under the terms of a pension plan, but has not yet selected a retirement date or begun receiving benefits, it is more difficult to value his or her benefit. This is because the early retirement benefit may be subsidized, *i.e.*, the benefit payable to a participant retiring prior to his or her normal retirement date may not be sufficiently reduced to compensate for the anticipated longer payment period. Because of this, it is necessary to know the age at which the participant will actually retire in order to value the benefit accurately.

The PBGC has, therefore, developed a method for valuing deferred early retirement benefits based on an "expected retirement age" (XRA), which is an intermediate age between the normal retirement age and the earliest possible retirement age for a particular plan participant. The XRA reflects the probability of retirement at various ages based on plan benefit levels, conditions under which benefits can commence and the circumstances surrounding the plan termination. The expected retirement age is determined under Subpart D of this regulation.

This subpart is issued in interim form because rules for determining the XRA are needed immediately so that plan administrators may complete processing terminating plans. However, because these rules are substantially different from the early retirement rules in the proposed regulation, the PBGC invites the public to comment on the procedures set forth in Subpart D. After the comments are reviewed, PBGC will promulgate final rules for determining expected retirement ages.

Overview of Procedure for Determining XRA

In developing this procedure for determining an expected retirement age, the PBGC found that the data available on the subject of the election of early retirement benefits by participants in terminating plans is inadequate to develop a statistically accurate procedure for determining an expected retirement age. Therefore, the PBGC has developed a procedure based on

estimated probabilities that is intended to produce early retirement costs for an entire plan that are intermediate between the extremes that would be obtained if it were assumed either that all participants retire at their normal retirement age or that all participants retire at the earliest retirement age possible. The procedure has been designed to simplify the calculation of the expected retirement age.

Subpart D contains three tables of XRA's that reflect low, medium, and high probabilities of retirement at various ages, based on the amount of the participant's benefits (Appendix D to this part, Tables II–A (Low), II–B (Medium) and II–C (High)). In creating the tables, PBGC assumed that a participant will not choose to retire unless he or she has sufficient income to meet his or her minimum needs. That is, the assumption is that, all other things being equal, the greater the anticipated pension, the greater the likelihood that the participant will choose to leave employment, and thus the lower the XRA.

A participant will be assumed to have a high probability of early retirement if the participant's benefit alone will provide adequate retirement income. The participant's probability of early retirement will be assumed to be in the medium category if the benefit is such that, only in combination with a hypothetical average Social Security benefit, will it provide an adequate retirement income. The probability of early retirement will be assumed to be in the low category if the guaranteed benefit falls below the dollar minimum for the medium category and thus the participant will not have income adequate to meet his or her needs.

The Selection of Retirement Rate Category Table in Appendix D is used to determine the retirement probability category. This table will be updated annually by PBGC to reflect changes in the cost of living, etc. (The use of this table is discussed in greater detail in the next section of this preamble.)

The age of a participant and the adequacy of retirement income may not be the only factors pertinent to the decision to retire and therefore to the determination of a reasonable XRA. The provisions of the plan itself and the circumstances surrounding the plan termination are also pertinent. Accordingly, this regulation contains three different rules for determining the XRA, the applicability of which depends on the plan provisions or the circumstances surrounding the plan termination. In general, whenever the plan termination is the result of a facility closing, the XRA is determined under § 2610.65. In all other cases, the determination of the XRA is dependent on plan provisions.

Section 2610.63 applies when the terms of the plan require a participant to cease employment to receive a benefit. Some examples of this are when the plan forbids drawing benefits while employed by a successor employer or by another employer in the same industry. This may also occur when the participant continues to work for the original employer. In this case, the PBGC assumes that the participant is currently employed and must leave employment in order to begin receiving pension benefits from the plan. PBGC further assumes that in these circumstances the decision to retire would be based primarily on the adequacy of retirement income. Section 2610.63 therefore provides that the participant's XRA will be determined under the applicable retirement rate table (low, medium, or high), as determined by the Selection of Retiremenet Rate Category Table. (Tables I–79, I–80, and I–81 for plans with a valuation date in 1979, 1980 and 1981, respectively, are included in Appendix D to this part. New Tables will be added annually).

Section § 2610.64 covers those plans which do not prohibit a participant from receiving retirement benefits while employed. In this situation, the PBGC assumes that participants are more likely to elect to receive their retirement benefits early, because the pension benefit does not need to be adquate by itself or even with Social Security to provide for the participant's needs. This is because the participant can receive his or her benefit while still employed; the pension need not be the primary source of income.

When the pension is not necessarily the primary source of income, the fact that electing to receive the benefit early will usually result in the benefit being reduced is not as likely to dissuade the participant from taking the benefit early. On the other hand, in situations covered under § 2610.63, when participants must stop working to receive their benefits, the reduction in pension benefits caused by receiving them prior to normal retirement age is much more likely (depending on the amount of the benefit) to discourage participants from electing early retirement.

Given these considerations, for plan terminations covered under § 2610.64, the XRAs of all participants are determined by using the "high" retirement rate category, regardless of the amount of their benefits. Therefore, the plan administrator simply uses Table II–C to determine the XRA; there is no need to use the Selection of Retirement Rate Category Table.

As noted above, § 2610.65 covers the situation where the employer has completely ceased operations at one or more facilities, or is in the process of completely ceasing operations at one or more facilities, and the participant was employed at the closed facility on the valuation date or his or her employment at the closed facility was terminated within one year prior to the evaluation date. (This section applies if an employer has only one facility, and it is closed or closing.) Under these circumstances, it is likely that early retirement benefits will be taken at the earliest age possible, since individuals have been put out of work by the cessation of operations and will be in need of income. Section 2610.65 provides that the XRA of a participant under these circumstances is the earliest retirement age permitted under the plan. Thus, in this case the plan administrator need not use any of the tables in Appendix D to determine the XRA.

For a participant who worked at a facility which did not close, or if he or she terminated employment more than one year before plan termination, § 2610.63 or § 2610.64, as applicable, will be used to determine his or her XRA.

Use of the Retirement Tables

As discussed above, for plan terminations covered under § 2610.63, *i.e.*, terminations where the participant may not draw pension benefits from the plan unless he or she leaves employment, it is necessary to determine which retirement rate table (low, medium or high) applies, based on the participant's benefit at normal retirement age. The Selection of Retirement Rate Category Table Appendix D to this part is used for this purpose.

To determine the applicable retirement rate table under the Selection of Retirement Rate Category Table, the plan administrator compares the participant's benefit in the normal form or a validily elected optional form payable at normal retirement age (NRA) to the dollar figures listed under each retirement category rate (low, medium, and high) for the calendar year in which the participant will reach NRA. The participant is categorized according to the position in the table of his or her benefit.

For trusteed plans, the guaranteed benefit which will actually be paid to the participant, rather than the vested accrued benefit, is used for this procedure because in trusteed plans, participants will recieve their guaranteed benefit, which may be less

than their vested accrued benefit. For those few non-trusteed plans that will be using these rules because PBGC will be providing the early retirement benefits, the vested accrued benefit rather than the guaranteed benefit is used to determine the retirement rate category.

The procedure for determining the retirement rate category uses the benefit at normal retirement age rather than at early retirement age (or any other pre-normal retirement age) for the sake of simplicity. Additionally, because the dollar cut-offs for the three categories are set far apart, and because the actuarial reductions used by most plans to adjust the benefit at normal retirement age to a benefit amount at an earlier age are comparable to the inflation projections used to determine the dollar figures for each year in the Selection of Retirement Rate Category Table, it is unlikely that using the benefit payable at early retirement age rather than at a normal retirement age would result in participants falling into different retirement probability categories.

Selection of Retirement Rate Category Table I–79 will apply to plans which have a valuation date in 1979, Table I–80 to those in 1980 and I–81 to those in 1981. A revised table will be issued for each year and will apply to plans with a valuation date in that year.

The following example shows how this procedure works: Assume that a plan terminates in 1981, that a participant who is eligible to receive an early retirement benefit has a guaranteed benefit payable at normal reitrement age of $350 per month, and that he or she will reach normal retirement age in 1990. Table I–81 shows the monthly income figures for the three retirement rate categories for 1990: (1) low—less than $428; (2) medium—between $428 and $1,288; and (3) high—more than $1,288. Therefore, adequate retirement income at NRA for this participant is assumed to be more than $1,288 per month. If the participant's guaranteed benefit were greater than this amount, he or she would fall within the "high" retirement rate category. The $428 per month figure of the $428 to $1,288 range in the "medium" category is the lowest plan benefit that is assumed to provide the participant with an adequate retirement income in combination with the hypothetical average Social Security benefit available at NRA. The participant's $350 per month guaranteed benefit is below this amount. Therefore, the participant falls into the "low" probability category, and his XRA is determined by using Table II–A.

Once the applicable retirement rate category is determined, the XRA of a participant is found from Table II–A, II–B or II–C, as appropriate. The plan administrator shall determine the XRA by using the participant's normal retirement age and the earliest age at which he or she could take early retirement at the valuation date. This latter age is the later of—

(1) the participant's age at the valuation date, or

(2) the earliest age at which the participant can retire under the terms of the plan.

The normal retirement age is defined for purposes of this subpart as the earliest age at which an unreduced benefit is available under the plan. The XRA determined under this subpart is then used to value the early retirement benefit in accordance with § 2610.46.

Appendixes

Appendix A to this part provides tables of a_x's for healthy and disabled lives. In addition, the PBGC has caluclated mortality tables of l_x's to four decimal places based on a radix of 10,000 lives, and these are included in Appendix C to this part. Further, instructions are given so that the plan administrator may construct mortality tables of l_x's. The plan administrator may use any other set of l_x's he or she chooses, as long as the set chosen is at least as accurate as the one set forth in the Appendix. The tables of l_x's for healthy lives and for disabled lives not receiving Socical Security disability benefits both start with 10,000 lives at age 15. Thus the l_x's for disabled lives are not set back three years from the healthy lives as are corresponding q_x's.

Appendix B to this part provides the interest rates which have been used for dates of termination since September 2, 1974. Tables issued while the interim rule was in effect correspond to the sections listed in the interim regulation on the Valuation of Plan Benefits, while the tables issued after this rule becomes final will correspond to the sections listed in this final regulation. If this rule becomes effective at a time other than when new interest rates and factors become effective, the interest rates, which refer to specific sections (benefits) in the interim regulation, will apply to the corresponding sections of this final rule for the same benefits.

Appendix D to this part provides the tables necessary to determine the expected retirement age. Included are Tables I–79, I–80 and I–81 for plans with a valuation date in 1979, 1980 and 1981, respectively and Tables II–A, II–B, and II–C which are used for all valuation dates. Examples of calculations of the expected retirement age are given in Appendix E to this part.

In consideration of the foregoing, Part 2610, Chapter XXVI of Title 29, Code of Federal Regulations, is revised to read as follows:

PART 2610—VALUATION OF BENEFITS

Subpart A—General

Sec.

2610.1 Purpose and scope.
2610.2 Definitions.
2610.3 General valuation rules.

Subpart B—Non-Trusteed Plans

2610.21 Purpose and scope.
2610.22 Definitions.
2610.23 Valuation of annuity benefits.
2610.24 Form of annuity to be valued.
2610.25 Early retirement benefits.
2610.26 Lump sums and other alternative forms of distribution in lieu of annuities.
2610.27 Withdrawal of employee contributions.
2610.28 Other lump sum benefits.

Subpart C—Trusteed Plans

2610.41 Purpose and scope.
2610.42 Mathematical symbols and terms.
2610.43 General.
2610.44 Immediate annuities.
2610.45 Deferred annuities.
2610.46 Early retirement benefits.
2610.47 Death benefits.
2610.48 Withdrawal of employee contributions.

Subpart D—Expected Retirement Age

2610.61 Purpose and scope.
2610.62 Definitions.
2610.63 XRA when a participant must retire to receive a benefit.
2610.64 XRA when a participant need not retire to receive a benefit.
2610.65 Special rule for facility closing.
Appendix A—Construction of Mortality Tables.
Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities.
Appendix C—Mortality Rate Table.
Appendix D—Tables Used To Determine Expected Retirement Age.
Appendix E—Examples of XRA Calculations.

Authority: Secs. 4002(b)(3), 4041, 4044, and 4062(b)(1)(A), 29 U.S.C. §§ 1302, 1341, 1344, and 1362, Pub. L. 93–406, 88 Stat. 1004, 1020, 1025–27, 1029, (1974), as amended by Secs. 403(1), 403(d) and 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (1980).

Subpart A—General

§ 2610.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish the method of determining the value of plan benefits under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security

Act of 1974, as amended. This valuation is needed for both plans trusteed under Title IV and plans which are not trusteed. For the former, the value of plan benefits is needed to allocate plan assets in accordance with Part 2608 of this chapter and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with Part 2608 and to distribute the assets in accordance with Part 2615.

(b) *Scope.* This part applies to all non-multiemployer pension plans covered by Title IV of the Act which submit a Notice of Intent to Terminate, or for which PBGC commences an action to terminate the plan under § 4042 of the Act, on or after March 1, 1981. Subpart A sets forth the general provisions of this regulation and applies to all such plans. Subpart B prescribes the valuation rules for plans that receive a Notice of Sufficiency from PBGC and are not placed into trusteeship by PBGC. Subpart C prescribes the valuation rules for plans that receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and are placed into trusteeship by PBGC. Subpart D sets forth as an interim rule the method for determining expected retirement ages in order to value early retirement benefits under Subpart C. In addition, Subpart D applies to non-trusteed plans when the PBGC is providing the early retirement benefits for such plans in accordance with Part 2615 of this chapter.

§ 2610.2 Definitions.

For the purposes of this part (unless otherwise required by the context):

"Act" means the Employee Retirement Income Security Act of 1974, *as amended by* the Multiemployer Pension Plan Amendments Act of 1980.

"Age" means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the "insurance age."

"Annuity" means a series of periodic payments made at equal intervals of time, a specified number of times per year, to a plan participant or surviving beneficiary for a fixed or contingent period.

"Closed group" means a hypothetical number of people whose number is decreased only by their hypothetical death, and is never increased.

"Code" means the Internal Revenue Code of 1954, as amended.

"Date of distribution" means the date on which the plan administrator will distribute the plan assets to plan participants in a non-trusteed plan.

"Date of termination" means the date of plan termination established under § 4048 of the Act.

"Death benefit" means a benefit payable as a result of the death of a participant.

"Deferment period" means with respect to a particular participant, the number of years between the age of the participant as of the valuation date and the age of the participant as of the date benefit payments begin or are assumed to begin.

"Deferred annuity" means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

"Early retirement benefit" means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

"Immediate annuity" means an annuity for which payments start on or before the valuation date.

"Non-multiemployer plan" means a pension plan described in section 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated), or by more than one trade or business (whether or not incorporated), all of which are under common control within the meaning of Part 2612 of this chapter, or a plan maintained by more than one trade or business not under common control that is not a multiemployer plan as defined in section 4001(a)(3) of the Act.

"Non-trusteed plan" means a non-multiemployer plan which receives a Notice of Sufficiency from PBGC and is able to close out by purchasing annuities in the private sector in accordance with Part 2615 of this chapter.

"Normal retirement age" means the age specified in the plan as the normal retirement age. This age shall not exceed the later of age 65 or the age attained after 10 years of participation in the plan. If no normal retirement age is specified in the plan, it is age 65.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Trusteed plan" means a non-multiemployer plan which has been placed into trusteeship by PBGC.

"Valuation date" means (1) for non-trusteed plans, the date of distribution and (2) for trusteed plans, the date of termination.

§ 2610.3 General valuation rules.

(a) *Non-trusteed plans.* Plan administrators of non-trusteed plans shall value plan benefits in accordance with Subpart B of this part, except for any early retirement benefits to be provided by PBGC, which shall be valued in accordance with § 2610.46 of Subpart C. If a plan with respect to which PBGC has issued a Notice of Sufficiency is unable to satisfy all benefits assigned to priorities categories 1 through 4 on the date of distribution, the PBGC will place it into trusteeship and the plan administrator shall re-value the benefits in accordance with Subpart C of this part.

(b) *Trusteed plans.* Plan administrators of trusteed plans shall value plan benefits in accordance with Subpart C of this part.

Subpart B—Non-Trusteed Plans

§ 2610.21 Purpose and scope.

This subpart sets forth the rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets after receiving to a Notice of Sufficiency issued pursuant to Part 2615 of this chapter.

§ 2610.22 Definitions.

For the purposes of this subpart:

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a state or the District of Columbia.

"Lump sum payable in lieu of an annuity" means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

"Other lump sum benefit" means a benefit in priority category 5 or 6, determined under Part 2608 of this chapter ("Allocation of Assets"), that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severence pay benefit, a death benefit or other single installment benefit.

"Qualifying bid" means a bid obtained from an insurer in accordance with § 2615.14(b) of Part 2615 of this chapter.

§ 2610.23 Valuation of annuity benefits.

The value of a benefit which is to be paid as an annuity, except for any early retirement benefit to be provided by PBGC, is the cost of purchasing the annuity on the date of distribution from an insurer under the qualifying bid.

§ 2610.24 Form of annuity to be valued.

(a) When both the participant and beneficiary are alive on the date of

distribution, the form of annuity to be valued is—

(1) for a participant or beneficiary already receiving a monthly benefit, that form which is being received, or

(2) for a participant or beneficiary not receiving a monthly benefit, the normal annuity form payable under the plan or the optional form for which the participant has made a valid election pursuant to § 2615.4(c) of Part 2615 of this chapter.

(b) When the participant dies after the date of plan termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (1) or (2) below:

(1) For a participant who was entitled to a deferred annuity—

(i) if the form was a single or joint life annuity, no benefit shall be valued; or

(ii) if the participant had made a valid election of a lump sum benefit before he or she died, the form to be valued is the lump sum.

(2) For a participant who was eligible for immediate retirement, and for a participant who was in pay status at the date of termination—

(i) the form was a single life annuity, no benefit shall be valued;

(ii) if the form was an n year certain and life thereafter annuity, the form to be valued is an n year certain annuity;

(iii) if the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the beneficiary, unless the beneficiary has also died, in which case no benefit shall be valued;

(iv) if the form was a n year certain and joint and survivor thereafter annuity, the form to be valued is an n year certain and continuous annuity payable to the beneficiary, unless the beneficiary has also died, in which case the form to be valued is an n year certain annuity;

(v) if the form was a cash refund annuity, the form to be valued is the remaining lump sum death benefit; or

(vi) if the participant had elected a lump sum benefit before he or she died, the form to be valued is the lump sum.

(c) When the participant is still living and the named beneficiary or spouse dies after the date of termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (1) or (2) below:

(1) For a participant entitled to a deferred annuity—

(i) if the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) if the form was an n year certain and joint and survivor thereafter annuity, the form to be valued is an n year certain and continuous annuity payable to the participant.

(2) For a participant eligible for immediate retirement and for a participant in pay status at the date of termination—

(i) if the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) if the form was an n year certain and joint survivor thereafter annuity, the form to be valued is an n year certain and continuous annuity payable to the participant.

§ 2610.25 Early retirement benefits.

(a) *Participants with a known retirement date.* The value of an early retirement benefit for a participant whose retirement date is known (*i.e.*, who has retired or has selected a retirement date) before the date of distribution is the cost of the benefit under the qualifying bid.

(b) *Participants with an unknown retirement date.* The value of an early retirement benefit for a participant whose retirement date is not known before the date of distribution is determined under either paragraph (b)(1) or (2) of this section, as appropriate.

(1) If, with respect to *all* such early retirement benefits payable under the plan, the qualifying bid for the plan reasonably takes into account the probability that participants may retire at a date between the earliest date early retirements benefits may be received and the normal retirement date, when the value of each early retirement benefit is its cost under the qualifying bid.

(2) If the plan administrator is unable to obtain a qualifying bid described in paragraph (b)(1), then the plan administrator may arrange PBGC to become responsible for the payment of such benefits in accordance with Subpart D of Part 2615 of this chapter. If the plan administrator so arranges, he or she will calculate the value of all such early retirement benefits in accordance with § 2610.46(c). (In this event, the PBGC will provide these benefits as set forth in Part 2615 of this chapter.) If the plan administrator does not so arrange, then the value of each early retirement benefit is its cost under the qualifying bid.

§ 2610.26 Lump sums and other alternative forms of distribution in lieu of annuities.

(a) *Applicability.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if—

(1) The monthly amount of the benefit is less than the smallest monthly benefit amount normally provided by an insurer;

(2) The present value of the benefit determined under this paragraph, is $1,750 or less; or

(3) The plan provides for an alternative form of distribution, and the plan administrator submits a statement to the PBGC in which he or she certifies that—

(i) the participant elected, in writing, the alternative form of distribution;

(ii) The participant was informed, in writing, before he or she made the election, of the estimated amounts of the annuity and of the alternative form to which he or she is entitled with reference to any risks attendant to the alternative form; and

(iii) The participant was notified, in writing, before he or she made the election, that his or her election would not be given effect unless the plan should close out under a Notice of Sufficiency and that PBGC does not guarantee the benefit payable in the alternative form.

(b) *Valuation.*

(1) The value of the lump sum or other alternative form of distribution payable under this section is the present value of the normal form of benefit provided by the plan payable at normal retirement age, determined as of the date of distribution using reasonable actuarial assumptions as to interest and mortality.

(2) If the participant dies before the date of distribution, but had elected a lump sum benefit, the present value shall be determined as if the participant were alive on the date of distribution.

(c) *Actuarial assumptions.*

(1) The plan administrator shall specify the actuarial assumptions used to determine the value calculated under paragraph (b) of this section when the plan administrator submits the benefit valuation data to the PBGC pursuant to § 2615.12 of Part 2615 of this chapter. The same actuarial assumptions shall be used for all such calculations. The PBGC reserves the right to review the actuarial assumptions used and to re-value the benefits determined by the plan administrator if the actuarial assumptions are found to be unreasonable.

(2) The following interest assumptions are among those that will normally be considered reasonable.

(i) The rate by the plan for determining lump sum amounts prior to the date of termination. This rate may appear in the plan documents or may be inferred from recent plan practice.

(ii) The rate used by the insurer in the qualifying bid under which the plan

administrator will purchase annuities not being paid as a lump sum. (In the event the insurer does not provide the specific rate used, the rate may be estimated.)

(iii) The interest rate used for the minimum funding standard account pursuant to § 302 of the Act and § 412(b) of the Internal Revenue Code.

(iv) The PBGC interest rate for immediate annuities in effect on the valuation date set forth in Appendix B to this part.

§ 2610.27 Withdrawal of employee contributions.

(a) If a participant has not started to receive monthly benefit payments on the date of distribution, the value of the lump sum which returns mandatory employee contributions is equal to the total amount of contributions made by the participant, plus interest that is payable to the participant under the terms of the plan, plus interest on that total amount from the date of termination to the date of distribution. The rate of interest credited on employee contributions up to the date of termination shall be the greater of the interest rate provided under the terms of the plan or the interest rate required under § 204(c) of the Act or § 411(c) of the Code.

(b) If a participant has started to receive monthly benefit payments on the date of distribution, part of which are attributable to his or her contributions, the value of the lump sum which returns employee contributions is equal to the excess of the amount described in paragraph (b)(1) of this section over the amount computed in paragraph (b)(2) of this section.

(1) The amount of accumulated mandatory employee contributions remaining in the plan as of the date of termination plus interest from the date of termination to the date of distribution.

(2) The excess of benefit payments made from the plan between date of plan termination and the date of distribution, over the amount of payments that would have been made if the employee contributions had been paid as a lump sum on the date of plan termination, with interest accumulated on the excess from the date of payment to the date of distribution.

(c) *Interest assumptions.* The interest rate used under this section to credit interest between the date of termination to the date of distribution shall be a reasonable rate and shall be the same for both paragraphs (a) and (b).

§ 2610.28 Other lump sum benefits.

The value of a lump sum benefit which is not covered under § 2610.26 or § 2610.27 is equal to—

(a) the value under the qualifying bid, if an insurer provides the benefit; or

(b) the present value of the benefit as of the date of distribution, determined using reasonable actuarial assumptions, if the benefit is to be distributed other than by the purchase of the benefit from an insurer. The PBGC reserves the right to review the actuarial assumptions as to reasonableness and re-value the benefit if the actuarial assumptions are unreasonable.

Subpart C—Trusteed Plans

§ 2610.41 Purpose and scope.

This subpart sets forth the rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that has been or will be placed into trusteeship by PBGC.

§ 2610.42 Mathematical symbols and terms.

(a) *Fundamental symbols.* The following fundamental symbols represent the basic actuarial concepts used in computing the present value of a benefit:

- x represents the insurance age of a participant.
- q_x represents the probability that an individual whose present age is x will not survive to attain age $x + 1$.
- l_x represents the number of people within a closed group expected to survive to age x and is calculated to four decimal places.
- ω represents the first age for which $l_x = 0$. Since the values of l_x are carried to four decimal places, ω is the first age for which l_x is less than .00005.
- i represents an effective annual interest rate which is the amount of money that one invested at the beginning of a year will earn during the year, where interest is paid at the end of the year.
- m represents the number of times per year payments of benefits are made. It also represents the number of times per year the amount of a death benefit decreases.
- n represents a period of time consisting of n years.
- p represents the percentage of a benefit which continues to be paid to a survivor under a joint and survivor annuity.

(b) *Derived symbols.* The following derived symbols and commutation functions are representations of actuarial computations in a condensed form and are used to facilitate the expression of actuarial equations:

- v is the present value of one dollar payable one year from today, and is computed by the equation $v = \frac{1}{1+i}$.
- d_x is equal to the number of people within a closed group alive at age x, that is, l_x, who are not expected to attain the age of $x+1$, and is computed by the following equation, rounded to four decimal places $d_x = q_x \cdot l_x$.
- l_{x+1} is equal to the number of people within a closed group expected to be alive at age $x+1$, and is computed by the equation $l_{x+1} = l_x - d_{x\odot 1}$.
- D_x is equal to the quantity $v^x \cdot l_x$.
- N_x is equal to the sum of all D_y's for all ages y equal to or greater than x, to the last age when a person in a closed group is expected to be alive, and is computed by the equation $N_x = D_x + D_{x+1} + D_{x+2} + \cdots + D_{\omega-2} + D_{\omega-1}$.
- $N_x^{(m)}$ is a modification of N_x used in situations where annuity payments are made in equal amounts m times a year, and is computed by the equation $N_x^{(m)} = N_x - \frac{m-1}{2m} \cdot D_x$.
- C_x is equal to the quantity $v^{x+1} \cdot d_x$.
- M_x is equal to the sum of all C_y's for all ages y equal to or greater than x, to the last age when a person in a closed group is expected to be alive, and is computed by the equation $M_x = C_x + C_{x+1} + C_{x+2} + \cdots + C_{\omega-1}$.
- R_x is equal to the sum of all M_y's for all ages y equal to or greater than x, to the last age when a person in a closed group is expected to be alive, and is computed by the equation $R_x = M_x + M_{x+1} + M_{x+2} + \cdots + M_{\omega-1}$.
- C_x is a modification of C_x used in situations where death benefits are payable upon death, (rather than at the end of the year of death), and is computed by the equation $C_x = (1+i) \cdot C_x$. M_x is a modification of M_x used in situations where death benefits are payable upon death, (rather than at the end of the year of death) and is computed by the equation $M_x = (1+i) \cdot M_x$. R_x is a modification of R_x used in situations where death benefits are payable upon death, (rather than at the end of the year of death), and is computed by the equation $R_x = (1+i) \cdot R_{x\odot 1}$.
- $D_{x:y}$ is a modificaition of D_x used in situations where the status of another life limits annuity payments, and is computed by the equation $D_{x:y} = \frac{(1+i)^{\frac{1}{2}(x+y)} D_x \cdot D_y}{10{,}000}$.

$N_{x,y}$ is equal to the sum of all $D_{w,z}$'s for all pairs of ages of the form $w=x+t$, $z=y+t$, where t is a non-negative integer, and is computed by the equation $N_{x,y}=D_{x,y}+DG2_{x+1,y+1}+DG2_{x+2,y+2}+\ldots$.

$N_{x,y}^{(m)}$ is a modification of $N_{x,y}$ used in situations where annuity payments are made in equal amounts m times per year, and is computed by the equation

$$N_{x:y}^{(m)} = N_{x:y} - \frac{m-1}{2m} \cdot D_{x:y} .$$

(c) *Acturial notation.* The following actuarial notations are used in this subpart:

a represents the present value of an annuity of one dollar per annum.

A represents the present value of a death benefit which provides for the payment of one dollar at the end of the year in which death occurs.

DA represents the present value of a death benefit which provides payments of uniformly decreasing amounts over a specified period of time with no payments if death occurs after the expiration of the period.

. is a notation which, when placed over a symbol representing the value of an annuity, indicates that payments are to be made at the beginning of the payment period, for example $\ddot{a}_x$.

$\overline{\ }$ is a notation which, when placed over a symbol representing a period of time, indicates that an annuity or death benefit payment will not be made beyond that period of time.

: is a notation which separates two symbols in a suffixed subscript representing the status of two periods of life or time, when two such periods are utilized in the context of an actuarial symbol. For example, $a_{x:\overline{n}|}$ indicates that the annuity is payable until the expiration of a life aged x, or a term certain of n years, whichever is earlier.

- is a notation which, when placed over a symbol indicating the value of a death benefit, indicates that the benefit is payable immediately upon death. When placed over two symbols in a suffixed subscript representing the existence of a life or a period of time, it indicates that benefit payments continue during the existence of either. For example, $\bar{A}_{x:\overline{n}|}$ represents the present value of a benefit payable immediately upon death, and $\bar{a}_{x:\overline{n}|}$ represents an annuity payable until the later of the end of a life age x or the passage of n years.

| is a notation which, when placed over a symbol in a suffixed subscript indicating the existence of a life or a period of time, indicates that expiration of such life or period of time causes payments to commence, if such expiration occurs before the expiration of the other period represented in the subscript. For example, $A^{1}_{x:\overline{n}|}$ indicates that payment is made only if the death of the individual, age x, occurs before the expiration of n years.

§ 2610.43 General.

(a) *Valuation.* The plan administrator shall determine the present value of all plan benefits by using the applicable formulas in this subpart, or any other formulas or approximations that are at least as accurate as the formulas and approximations set forth in this subpart, along with PBGC interest and mortality rates in effect at the valuation date.

(b) *Form of benefit to be valued.* The form of benefit to be valued is the normal form payable under the plan, the form for which a participant or beneficiary had made a valid election under the terms of the plan prior to the date of termination, or the form which a participant is receiving.

(c) *Valuation of annuities payable for periods other than whole numbers of years.* For an annuity payable for a period other than a whole numbers of years, the plan administrator shall value the annuity by using a method that is at least as accurate as a linear interpolation.

§ 2610.44 Immediate annuities.

(a) *General.* The plan administrator shall determine the value of an immediate annuity, which is not being received as a disability benefit, by using the appropriate formula from Paragraphs (c)-(o) of this section along with the interest rate for immediate annuities, as set forth in Appendix B to this part, and mortality rates for healthy lives, as set forth in Tables I and II of Appendix A to this part, in effect on the valuation date. All the forms of benefits in this section are assumed to be paid at the beginning of the appropriate period.

(b) *Disability benefits.* (1) The plan administrator shall determine the value of a disability benefit which is not being received or which is not eligible to be received in connection with Social Security disability benefits in accordance with Paragraph (a) of this section, except that the mortality rates for disabled lives not receiving Social Security disability benefits, as set forth is Tables III and IV of Appendix A to this part, in effect on the valuation date shall be used.

(2) The plan administrator shall determine the value of a disability benefit which depends on the receipt of or eligibility for Social Security disability benefits in accordance with Paragraph (a) of this section, except that the mortality rates for disabled lives receiving Social Security disability benefits, as set forth in Tables V and VI of Appendix A, in effect on the valuation date shall be used.

(c) *Life annuity payable periodically.* A life annuity payable periodically is an annuity for the life of the participant. The plan administrator shall compute the value of this annuity by using the following actuarial equation:

$$\ddot{a}_x^{(m)} = \frac{N_x^{(m)}}{D_x} .$$

(d) *Annuity certain payable periodically.* An annuity certain payable periodically is an annuity for a fixed period of time. The plan administrator shall compute the value of this annuity by using the following actuarial equation:

$$\ddot{a}_{\overline{n}|}^{(m)} = \frac{1-v^n}{m(1-v^{1/m})} .$$

(e) *Annuity certain and continuous.* An annuity certain and continuous is an annuity which ceases upon the later of 1) the death of the participant, or 2) the passage of a specified period of time. The plan administrator shall compute the value of this annuity by using the following actuarial equation:

$$\ddot{a}_{x:\overline{n}|}^{(m)} = \ddot{a}_{\overline{n}|}^{(m)} + \frac{N_{x+n}^{(m)}}{D_x} .$$

(f) *Temporary life annuity.* A temporary life annuity is an annuity which ceases upon the earlier of 1) the death of the participant, or 2) the passage of a specified period of time. The plan administrator shall compute the value of this annuity by using the following actuarial equation:

$$\ddot{a}_{x:\overline{n}|}^{(m)} = \frac{N_x^{(m)} - N_{x+n}^{(m)}}{D_x} .$$

(g) *Joint annuity.* A joint annuity is an annuity payable with respect to more than one person, that is payable only as long as both the participant and the beneficiary are alive. The plan administrator shall compute the value of this annuity by using the following actuarial equation:

$$\ddot{a}^{(m)}_{x:y} = \frac{N^{(m)}_{x:y}}{D_{x:y}} .$$

(h) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) is an annuity payable with respect to more than one person, that is payable for as long as both the participant and beneficiary are alive, and upon the death of either, payments continue in an equal or reduced amount for the life of the survivor. The plan administrator shall compute the value of this annuity by using the following actuarial expression:

$$p\left(\ddot{a}^{(m)}_{x} + \ddot{a}^{(m)}_{y}\right) + (1-2p)\,\ddot{a}^{(m)}_{x:y} .$$

(i) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) is an annuity payable with respect to more than one person, that is payable to the participant for life, and, upon his or her death, is payable to his or her beneficiary for life in an equal or reduced amount. The plan administrator shall compute the value of this annuity by using the following actuarial expression:

$$\ddot{a}^{(m)}_{x} + p\left(\ddot{a}^{(m)}_{y} - \ddot{a}^{(m)}_{x:y}\right) .$$

(j) *Annuity certain and joint thereafter.* An annuity certain and joint thereafter is an annuity payable with respect to more than one person, that is payable until the later of (1) the death of either the participant or the beneficiary, or (2) the passage of a specified period of time. The plan administrator shall compute the value of this annuity by using the following actuarial expression:

$$\ddot{a}^{(m)}_{\overline{n}|} + \frac{N^{(m)}_{x+n:y+n}}{D_{x:y}} .$$

(k) *Annuity certain and joint and survivor (joint basis) thereafter.* An annuity certain and joint and survivor (joint basis) thereafter is an annuity payable with respect to more than one person, that is payable in a certain amount until the later of (1) the death of either the participant or beneficiary, or (2) the passage of a specified period of time, and payments continue in an equal or reduced amount for the life of the survivor. The plan administrator shall compute the value of this annuity using the following actuarial expression:

$$\ddot{a}^{(m)}_{\overline{n}|} + p\left(\frac{N^{(m)}_{x+n}}{D_x} + \frac{N^{(m)}_{y+n}}{D_y}\right) + (1-2p)\,\frac{N^{(m)}_{x+n:y+n}}{D_{x:y}} .$$

(l) *Annuity certain and joint and survivor (contingent basis) thereafter.* An annuity certain and joint and survivor (contingent basis) thereafter is an annuity that is payable in a certain amount until the later of (1) the death of the participant, or (2) the passage of a specified period of time, and payments continue in an equal or reduced amount for the life of the beneficiary. The plan administrator shall compute the value of this annuity using the following actuarial expression:

$$\ddot{a}^{(m)}_{\overline{n}|} + \frac{N^{(m)}_{x+n}}{D_x} + p\left(\frac{N^{(m)}_{y+n}}{D_y} - \frac{N_{x+n:y+n}}{D_{x:y}}\right) .$$

(m) *Single life cash refund annuity.* A cash refund annuity is an annuity under which if the participant dies after retirement and prior to the time when he or she has received annuity payments equal to a fixed sum (usually the amount of his or her mandatory employee contributions, with or without interest), then the balance of the fixed sum is paid as a lump-sum death benefit. The plan administrator shall determine the value of a cash refund annuity by adding the values of—

(1) a life annuity payable periodically, valued in accordance with § 2610.44(c), and

(2) a death benefit in the form of decreasing term insurance decreasing periodically, valued in accordance with § 2610.47(e).

(n) *Installment refund annuity.* An installment refund annuity is an annuity under which if the participant dies after retirement and prior to the time he or she has received annuity payments equal to a fixed amount (usually the amount of his or her mandatory employee contributions, with or without interest), then the balance is paid as a death benefit in periodic installments, each (except possibly the last) equal in amount to the participant's annuity payments. The plan administrator shall compute the value of an installment refund annuity by valuing it as an annuity certain and continuous in accordance with §2610.44(e). The period certain is determined by dividing the fixed amount by the amount of the periodic annuity payment.

§ 2610.45 Deferred annuities.

(a) *Definitions.* For the purposes of this section:

"x" represents the age of the participant at the valuation date.

"y" represents the age of the participant at the date at which annuity payments are expected to begin. This is the normal retirement date or, if the participant is entitled to an early retirement benefit, the date chosen by the participant, or, if no date has been chosen, the expected retirement age determined under Subpart D.

"n" represents the period of deferment, that is, the quantity y-x.

"G_x" represents the present value of the deferred annuity as of the valuation date.

"G_y" represents the present value of the deferred annuity on the date

payments are expected to begin, computed as an immediate annuity as of that date. If payments are expected to begin before the normal retirement date, the amount of the monthly annuity benefit may be reduced according to the plan provisions.

"R(x,y)" represents a factor used to adjust the value of G_y for anticipated mortality experience and interest experience during the period of deferment.

"k_1", "k_2", "k_3", "n_1", and "n_2" represent quantities used to compute the factor R(x,y) pursuant to Paragraph (b) of this section. The values for k_1, k_2, k_3, n_1, and n_2 are set forth in Appendix B to this part.

(b) *Valuation.* The plan administrator shall determine the value of a deferred annuity by first determining the value of the annuity as of the date of payments are expected to begin, using the interest and mortality rates in effect on the valuation date, and then adjusting that value to reflect the period of deferment. This is expressed by the equation $G_x = R(x,y)\, G_y$, with G_y and R(x,y) determined in accordance with Paragraphs (1) and (2) of this section.

(1) G_y is determined as an immediate annuity as of the date payments are to begin, using the appropriate formula set forth in § 2610.44 and the interest and mortality rates in effect on the valuation date.

(2) R(x,y) is computed by using the k's and n's in Appendix B, Table III, in effect on the valuation date, and the l_y and l_x for the participant only, whether the annuity is payable to the participant alone or to the participant and a beneficiary. R(x,y) is computed under paragraph (i), (ii) or (iii) below, as appropriate.

(i) If n is less than or equal to n_1, ($n \le n_1$), then

$$R(x,y) = \frac{l_y}{l_x} \cdot K_1^{-n} .$$

(ii) If n is greater than n_1 and less than or equal to n_1+n_2, ($n_1 < n \le n_1+n_{2G1}$), then

$$R(x,y) = \frac{l_y}{l_x} \cdot K_1^{-n_1} \cdot K_2^{-(n-n_1)} .$$

(iii) If n is greater than n_1+n_2, ($n_1+n_2 < n$), then

$$R(x,y) = \frac{l_y}{l_x} \cdot K_1^{-n_1} \cdot K_2^{-n_2} \cdot K_3^{-(n-n_1-n_2)} .$$

§ 2610.46 Early retirement benefits.

(a) *Definitions.* For the purposes of this section—

"Annuity starting date" means the date a participant has selected to begin receiving his or her benefit, where the selection was validly made according to the terms of the plan before the valuation date; and

"Expected retirement age" means the age determined in accordance with Subpart D of this part, when a participant eligible to receive an early retirement benefit has not validly selected an annuity starting date prior to the valuation date.

(b) *Valuation in trusteed plans.* An early retirement benefit is valued as an immediate annuity in accordance with § 2610.44 if the participant's expected retirement age determined under Subpart D of this part or his or her age at the annuity starting date, whichever is appropriate, is the same as his or her age at the date of termination. An early retirement benefit is valued as a deferred annuity in accordance with § 2610.45, if the participant's expected retirement age determined under Subpart D of this part or his or her age at the annuity starting date, whichever is appropriate, is greater than his or her age at the date of termination.

(c) *Valuation in non-trusteed plans.* An early retirement benefit that is to be provided by an insurer pursuant to a qualifying bid, is valued in accordance with § 2610.25(a). An early retirement benefit that is to be provided by PBGC in accordance with Part 2615 is valued as an immediate annuity in accordance with § 2610.44, if the participant's expected retirement age determined under Subpart D of this part is the same as his or her age at the date of distribution, or as a deferred annuity in accordance with § 2610.45, if the participant's expected retirement age determined under Subpart D of this part is greater than his or her age at the date of distribution.

§ 2610.47 Death benefits.

(a) The plan administrator shall determine the value of a death benefit by using the appropriate formula from Paragraphs (b)–(f) of this section.

(b) *Death benefit in the form of whole life insurance.* A death benefit in the form of whole life insurance is a benefit which is payable at death, whenever death occurs. The plan administrator shall compute the value of this benefit by using the following actuarial equation:

$$\bar{A}_x = \frac{\bar{M}_x}{D_x} .$$

(c) *Death benefit in the form of term insurance.* A death benefit in the form of term insurance is a benefit which is payable at death, if death occurs within a stated period of time. The plan administrator shall compute the value of this benefit by using the following actuarial equation:

$$\bar{A}^{\,1}_{x:\overline{n}|} = \frac{\bar{M}_x - \bar{M}_{x+n}}{D_x} .$$

(d) *Death benefit in the form of term insurance decreasing annually.* A death benefit in the form of term insurance decreasing annually is a benefit which is payable at death, if death occurs within a stated period of time, and in an initial amount of n, if death occurs at the beginning of the covered period, which amount decreases each year during the covered period. The plan administrator shall compute the value of this benefit using the following actuarial equation:

$$(D\bar{A})^{1}_{x:\overline{n}|} = \frac{nM_x - R_{x+1} + R_{x+n+1}}{D_x} .$$

(e) *Death benefit in the form of term insurance decreasing periodically.* A death benefit in the form of term insurance decreasing periodically is a benefit in an initial amount of $n-1/m$,

which is payable at death, if death occurs within a stated period of time. This amount decreases by 1/m, m times each year during the covered period.

$$(D^{(m)}\bar{A})^{1}_{x:\overline{n-1/m|}} = \frac{n\bar{M}_x - \bar{R}_{x+1} + \bar{R}_{x+n+1} - \frac{m+1}{2m}(M_x - M_{x+n})}{D_x}.$$

(f) *Death benefit in the form of geometrically increasing term insurance.* A death benefit in the form of geometrically increasing term insurance is generally a pre-retirement death benefit in an initial amount of 1 which is payable in a lump sum at death, if death occurs within a stated period of time. This amount accrues interest at a rate of j% per annum, to the end of the covered period. The plan administrator shall compute the value of this benefit by using the formula in Paragraph (d) of this section with an interest rate of (i–j%) per annum, where i is the interest rate for death benefits in effect on the date of plan termination as set forth in Appendix B, Table II, of this part, and j is the interest rate specified in the plan, or if the death benefit returns mandatory employee contributions, j is the greater of the interest rate specified in the plan or the interest rate required by § 204(c) of the Act or § 411(c) of the Code.

§ 2610.48 Withdrawal of employee contributions.

The value of a lump sum benefit that returns mandatory employee contributions in lieu of an annuity benefit and, if any, pre-retirement death benefit is the amount of mandatory employee contributions as of the date of termination plus interest to that date at a rate equal to the greater of the interest rate payable under the plan, if any, or the interest rate required under § 204(c) of the Act or § 411(c) of the Code.

Subpart D—Expected Retirement Age

§ 2610.61 Purpose and scope.

This subpart sets forth the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for plan participants entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trusteed plans which have such early retirement benefits and to non-trusteed plans for which the PBGC will provide the early retirement benefit according to Subpart D of Part 2615. The plan administrator shall determine an XRA under § 2610.63, § 2610.64 or § 2610.65, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date.

§ 2610.62 Definitions.

For the purposes of this subpart, the following definitions apply:

"Earliest retirement age at valuation date" means the later of (a) a participant's age on his or her birthday nearest to the valuation date, or (b) the earliest age at which the participant can retire under the terms of the plan.

"Expected retirement age" ("XRA") means the age at which a participant is expected to begin receiving benefits. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

"Monthly benefit" means—

(a) for trusteed plans, the guaranteed benefit payable by PBGC; or

(b) for non-trusteed plans, the vested accrued benefit payable under the plan.

"Normal retirement age" ("NRA") means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

§ 2610.63 XRA when a participant must retire to receive a benefit.

(a) *Applicability.* Except as provided in § 2610.65, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice require a participant to retire from his or her job to begin receiving his or her early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant who is entitled to an early retirement benefit—

(1) the amount of the participant's guaranteed monthly benefit payable at normal retirement age in the normal form payable under the terms of the plan or in the form validly elected by the participant before the date of termination;

(2) the calendar year in which the participant reaches normal retirement age ("NRA");

(3) the participant's NRA; and

(4) the participant's earliest retirement age at valuation date.

(c) *Procedure.* (1) The plan administrator shall determine whether a participant is in the high, medium or low retirement rate category using the applicable Selection of Retirement Rate Category Table in Appendix C, by using the participant's benefit determined under Paragraph (b)(1) of this section, and the year in which the participant reaches NRA.

(2) Based on the retirement rate category determined under paragraph (c)(1), the plan administrator shall determine the XRA from Table II–A, II–B or II–C, as appropriate, by using the participant's NRA and earliest retirement age at valuation date.

§ 2610.64 XRA when a participant need not retire to receive a benefit.

(a) *Applicability.* Except as provided in § 2610.65, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice do not require a participant to retire from his or her job to begin receiving his or her early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant—

(1) the participant's NRA; and

(2) the participant's earliest retirement age at valuation date.

(c) *Procedure.* Participants in this case are always assigned to the high retirement rate category and therefore the plan administrator shall use Table II–C of Appendix C to determine the XRA. The plan administrator shall determine the XRA from Table II–C by using the participant's NRA and earliest retirement age at valuation date.

§ 2610.65 Special rule for facility closing.

(a) *Applicability.* The plan administrator shall determine the XRA under this section, rather than § 2610.63 or § 2610.64, when both the conditions set forth in paragraphs (a) (1) and (2) of this section exist.

(1) The facility at which the participant is or was employed permanently closed within one year before the valuation date, or is in the

process of being permanently closed on the valuation date.

(2) The participant left employment at the facility less than one year before the valuation date or was still employed at the facility on the valuation date.

(b) *XRA.* The XRA is equal to the earliest retirement age at valuation date.

Appendix A.—Construction of Mortality Tables

The plan administrator shall construct mortality tables of l_x's for a closed group of at least 10,000 lives using the q_x's contained in the tables in Appendix A and the following procedure.

(1) $l_{15} = 10,000$.

(2) Compute l_{16} from the equation $l_{16} = l_{15} - d_{15}$ where $d_{15} = l_{15} \cdot q_{15}$.

(3) Compute l_{17} from the equation $l_{17} = l_{16} - d_{16}$.

(4) This process is continued until the first age x when $l_x = 0$. That is, until the age is reached when no person will be alive. l_x will equal zero for all ages equal to and beyond.

The PBGC has calculated mortality tables based on 10,000 lives. They are set forth in Appendix C to this part.

Table I.—*Mortality Rates for Healthy Male Participants*

[For plans that terminate on or after Sept., 2, 1974]

Age	q_x
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.001437
16	0.001414
17	0.001385
18	0.001351
19	0.001311
20	0.001267
21	0.001219
22	0.001167
23	0.001149
24	0.001129
25	0.001107
26	0.001083
27	0.001058
28	0.001083
29	0.001111
30	0.001141
31	0.001173
32	0.001208
33	0.001297
34	0.001398
35	0.001513
36	0.001643
37	0.001792
38	0.001948
39	0.002125
40	0.002327
41	0.002556
42	0.002818
43	0.003095
44	0.003410
45	0.003769
46	0.004180
47	0.004635
48	0.005103
49	0.005616
50	0.006196
51	0.006853
52	0.007543
53	0.008278
54	0.009033
55	0.009875
56	0.010814
57	0.011863
58	0.012952
59	0.014162
60	0.015509
61	0.017010
62	0.018685
63	0.020517
64	0.022562
65	0.024847
66	0.027232
67	0.029634
68	0.032073
69	0.034743
70	0.037667
71	0.040871
72	0.044504
73	0.048504
74	0.052913
75	0.057775
76	0.063142
77	0.068628
78	0.074648
79	0.081256
80	0.088518
81	0.096218
82	0.104310
83	0.112816
84	0.122079
85	0.132174
86	0.143179
87	0.155147
88	0.168208
89	0.182461
90	0.198030
91	0.215035
92	0.232983
93	0.252545
94	0.273878
95	0.297152
96	0.322553
97	0.349505
98	0.378365
99	0.410875
100	0.445768
101	0.483830
102	0.524301
103	0.568365
104	0.616382
105	0.668696
106	0.725745
107	0.786495
108	0.852659
109	0.924666
110	1.000000

Table II.—*Mortality Rates for Healthy Female Participants*

[For plans that terminate on or after Sept. 2, 1974]

Age	q_x
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.001437
21	0.001414
22	0.001385
23	0.001351
24	0.001311
25	0.001267
26	0.001219
27	0.001167
28	0.001149
29	0.001129
30	0.001107
31	0.001083
32	0.001058
33	0.001083
34	0.001111
35	0.001141
36	0.001173
37	0.001208
38	0.001297
39	0.001398
40	0.001513
41	0.001643
42	0.001792
43	0.001948
44	0.002125
45	0.002327
46	0.002556
47	0.002818
48	0.003095
49	0.003410
50	0.003769
51	0.004180
52	0.004635
53	0.005103
54	0.005616
55	0.006196
56	0.006853
57	0.007543
58	0.008278
59	0.009033
60	0.009875
61	0.010814
62	0.011863
63	0.012952
64	0.014162
65	0.015509
66	0.017010
67	0.018685
68	0.020517
69	0.022562
70	0.024847
71	0.027232
72	0.029634
73	0.032073
74	0.034743
75	0.037667
76	0.040871
77	0.044504
78	0.048504
79	0.052913
80	0.05775
81	0.063142
82	0.068628
83	0.074648
84	0.081256
85	0.088518
86	0.096218
87	0.104310
88	0.112816
89	0.122079
90	0.132174
91	0.143179
92	0.155147
93	0.168208
94	0.182461
95	0.198030
96	0.215035
97	0.232983
98	0.252545
99	0.273878
100	0.297152
101	0.322553
102	0.349505
103	0.378365
104	0.410875
105	0.445768
106	0.483830
107	0.524301
108	0.568365
109	0.161382
110	1.000000

Table III.—*Mortality Rates for Disabled Male Participants*

[For plans that terminate on or after Sept. 2, 1974]

Age	q_x
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.001351
16	0.001311
17	0.001267
18	0.001219
19	0.001167
20	0.001149
21	0.001129
22	0.001107

Table III.—*Mortality Rates for Disabled Male Participants*—Continued

[For plans that terminate on or after Sept. 2, 1974]

Age	q_x
23	0.001083
24	0.001058
25	0.001083
26	0.001111
27	0.001141
28	0.001173
29	0.001208
30	0.001297
31	0.001398
32	0.001513
33	0.001643
34	0.001792
35	0.001948
36	0.002125
37	0.002327
38	0.002556
39	0.002818
40	0.003095
41	0.003410
42	0.003769
43	0.004180
44	0.004635
45	0.005103
46	0.005616
47	0.006196
48	0.006853
49	0.007543
50	0.008278
51	0.009033
52	0.009875
53	0.010814
54	0.011863
55	0.012952
56	0.014162
57	0.015509
58	0.017010
59	0.018685
60	0.020517
61	0.022562
62	0.024847
63	0.027232
64	0.029634
65	0.032073
66	0.034743
67	0.037667
68	0.040871
69	0.044504
70	0.048504
71	0.052913
72	0.057775
73	0.063142
74	0.068628
75	0.074648
76	0.081256
77	0.088518
78	0.096218
79	0.104310
80	0.112816
81	0.122079
82	0.132174
83	0.143179
84	0.155147
85	0.168208
86	0.182461
87	0.196030
88	0.215035
89	0.232983
90	0.252545
91	0.273878
92	0.297152
93	0.322553
94	0.349505
95	0.378865
96	0.410875
97	0.445768
98	0.483830
99	0.524301
100	0.568365
101	0.616382
102	0.668696
103	0.725745
104	0.786495
105	0.852659
106	0.924668
107	1.000000

Table IV.—*Mortality Rates for Disabled Female Participants*

[For plans that terminate on or after Sept. 2, 1974]

Age	q_x
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.001351
21	0.001311
22	0.001267
23	0.001219
24	0.001167
25	0.001149
26	0.001129
27	0.001107
28	0.001083
29	0.001058
30	0.001083
31	0.001111
32	0.001141
33	0.001173
34	0.001208
35	0.001297
36	0.001398
37	0.001513
38	0.001643
39	0.001792
40	0.001948
41	0.002125
42	0.002327
43	0.002556
44	0.002818
45	0.003095
46	0.003410
47	0.003769
48	0.004180
49	0.004635
50	0.005103
51	0.005616
52	0.006196
53	0.006853
54	0.007543
55	0.008278
56	0.009033
57	0.009875
58	0.010814
59	0.011863
60	0.012952
61	0.1014162
62	0.1015509
63	0.1017010
64	0.1018685
65	0.1020517
66	0.1022562
67	0.1024847
68	0.1027232
69	0.1029634
70	0.1032073
71	0.1034743
72	0.1037667
73	0.1040871
74	0.1044504
75	0.1048504
76	0.1052913
77	0.1057775
78	0.1063142
79	0.1068628
80	0.1074648
81	0.1081256
82	0.1088518
83	0.1096219
84	0.1104310
85	0.112816
86	0.122079
87	0.132174
88	0.143179
89	0.155147
90	0.168208
91	0.182461
92	0.198030
93	0.215035
94	0.232983
95	0.252545
96	0.273878
97	0.297152
98	0.322553
99	0.349505
100	0.378865

Table IV.—*Mortality Rates for Disabled Female Participants*—Continued

[For plans that terminate on or after Sept. 2, 1974]

Age	q_x
101	0.410875
102	0.445768
103	0.483830
104	0.524301
105	0.568365
106	0.616382
107	0.668696
108	0.725745
109	0.786495
110	1.000000

Table V.—*Mortality Rates for Disabled Male Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Sept. 4, 1974 and before Dec. 1, 1980]

Age	q_x
11	0.0000
12	0.0000
13	0.0000
14	0.0000
15	0.0000
16	0.0000
17	0.0000
18	0.0000
19	0.0000
20	0.0510
21	0.0510
22	0.0510
23	0.0510
24	0.0510
25	0.0510
26	0.0514
27	0.0518
28	0.0510
29	0.0502
30	0.0495
31	0.0488
32	0.0482
33	0.0476
34	0.0473
35	0.0470
36	0.0469
37	0.0469
38	0.0471
39	0.0473
40	0.0476
41	0.0482
42	0.0488
43	0.0495
44	0.0504
45	0.0514
46	0.0525
47	0.0537
48	0.0550
49	0.0567
50	0.0580
51	0.0595
52	0.0612
53	0.0623
54	0.0645
55	0.0662
56	0.0679
57	0.0695
58	0.0712
59	0.0729
60	0.0746
61	0.0763
62	0.0780
63	0.0797
64	0.0813
65	0.0822
66	0.0829
67	0.0841
68	0.0851
69	0.0859
70	0.0873
71	0.0889
72	0.0907
73	0.0921
74	0.0933
75	0.0947
76	0.0967
77	0.0982
78	0.0991

Table V.—*Mortality Rates for Disabled Male Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Sept. 4, 1974 and before Dec. 1, 1980]

Age	q_x
79	0.1043
80	0.1128
81	0.1221
82	0.1322
83	0.1432
84	0.1551
85	0.1682
86	0.1825
87	0.1980
88	0.2150
89	0.2330
90	0.2525
91	0.2739
92	0.2972
93	0.3226
94	0.3495
95	0.3789
96	0.4109
97	0.4458
98	0.4838
99	0.5243
100	0.5684
101	0.6164
102	0.6687
103	0.7257
104	0.7865
105	0.8527
106	0.9247
107	1.0000

Table VI.—*Mortality Rates for Disabled Female Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Sept. 4, 1974 and before Dec. 1, 1980]

Age	q_x
11	0.0000
12	0.0000
13	0.0000
14	0.0000
15	0.0000
16	0.0000
17	0.0000
18	0.0000
19	0.0000
20	0.0426
21	0.0426
22	0.0426
23	0.0426
24	0.0426
25	0.0426
26	0.0427
27	0.0428
28	0.0430
29	0.0430
30	0.0432
31	0.0425
32	0.0419
33	0.0413
34	0.0409
35	0.0405
36	0.0402
37	0.0400
38	0.0399
39	0.0397
40	0.0396
41	0.0394
42	0.0393
43	0.0392
44	0.0392
45	0.0392
46	0.0392
47	0.0394
48	0.0396
49	0.0398
50	0.0401
51	0.0403
52	0.0407
53	0.0410
54	0.0413
55	0.0417
56	0.0420

Table VI.—*Mortality Rates for Disabled Female Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Sept. 4, 1974 and before Dec. 1, 1980]

Age	q_x
57	0.0424
58	0.0429
59	0.0435
60	0.0442
61	0.0449
62	0.0456
63	0.0465
64	0.0473
65	0.0484
66	0.0497
67	0.0508
68	0.0522
69	0.0530
70	0.0536
71	0.0538
72	0.0547
73	0.0552
74	0.0561
75	0.0567
76	0.0577
77	0.0590
78	0.0631
79	0.0686
80	0.0746
81	0.0813
82	0.0885
83	0.0962
84	0.1043
85	0.1128
86	0.1221
87	0.1322
88	0.1432
89	0.1551
90	0.1682
91	0.1825
92	0.1980
93	0.2150
94	0.2330
95	0.2525
96	0.2739
97	0.2972
98	0.3226
99	0.3495
100	0.3789
101	0.4109
102	0.4458
103	0.4838
104	0.5243
105	0.5684
106	0.6164
107	0.6687
108	0.7257
109	0.7865
110	0.0000

Table Va.—]*Mortality Rates for Disabled Male Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Dec. 1, 1980]

Age	q_x
11	.0000
12	.0000
13	.0000
14	.0000
15	.0000
16	.0000
17	.0000
18	.0000
19	.0000
20	.0483
21	.0483
22	.0483
23	.0483
24	.0483
25	.0483
26	.0461
27	.0436
28	.0411
29	.0386
30	.0362
31	.0339
32	.0320

Table Va.—]*Mortality Rates for Disabled Male Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age	q_x
33	.0302
34	.0288
35	.0278
36	.0272
37	.0271
38	.0273
39	.0276
40	.0282
41	.0288
42	.0297
43	.0305
44	.0314
45	.0322
46	.0330
47	.0340
48	.0353
49	.0367
50	.0383
51	.0401
52	.0420
53	.0439
54	.0460
55	.0482
56	.0506
57	.0531
58	.0555
59	.0581
60	.0603
61	.0624
62	.0643
63	.0657
64	.0668
65	.0678
66	.0687
67	.0697
68	.0709
69	.0723
70	.0739
71	.0757
72	.0776
73	.0796
74	.0818
75	.0842
76	.0869
77	.0908
78	.0962
79	.1043
80	.1128
81	.1221
82	.1322
83	.1432
84	.1551
85	.1682
86	.1825
87	.1980
88	.2150
89	.2330
90	.2525
91	.2739
92	.2972
93	.3226
94	.3495
95	.3789
96	.4109
97	.4458
98	.4838
99	.5243
100	.5684
101	6164
102	6687
103	7257
104	7865
105	8527
106	9247
107	1 0000

Table VIa.—]*Mortality Rates for Disabled Female Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Dec. 1, 1980]

Age	q_x
11	.0000
12	.0000

Table VIa.—*Mortality Rates for Disabled Female Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age	q_x
13	.0000
14	.0000
15	.0000
16	.0000
17	.0000
18	.0000
19	.0000
20	.0263
21	.0263
22	.0263
23	.0263
24	.0263
25	.0263
26	.0257
27	.0253
28	.0247
29	.0242
30	.0237
31	.0232
32	.0227
33	.0222
34	.0218
35	.0214
36	.0212
37	.0210
38	.0208
39	.0208
40	.0209
41	.0210
42	.0213
43	.0216
44	.0219
45	.0224
46	.0229
47	.0235
48	.0242
49	.0249
50	.0257
51	.0264
52	.0272
53	.0281
54	.0288
55	.0295
56	.0301
57	.0307
58	.0315
59	.0323
60	.0331
61	.0339
62	.0347
63	.0355
64	.0362
65	.0370
66	.0378
67	.0386
68	.0394
69	.0402
70	.0411
71	.0421
72	.0433
73	.0447
74	.0465
75	.0492
76	.0529
77	.0578
78	.0631
79	.0686
80	.0746
81	.0813
82	.0885
83	.0962
84	.1043
85	.1128
86	.1221
87	.1322
88	.1432
89	.1551
90	.1682
91	.1825
92	.1980
93	.2150
94	.2330
95	.2525
96	.2739
97	.2972
98	.3226
99	.3495
100	.3789
101	.4109

Table VIa.—*Mortality Rates for Disabled Female Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age	q_x
102	.4458
103	.4838
104	.5243
105	.5684
106	.6164
107	.6687
108	.7257
109	.7865
110	1.000

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

The interest rates and quantities for Sections I through XXIII are to be used in conjunction with the Interim Regulation on Valuation of Plan Benefits for plans that terminate after September 2, 1974 and before the effective date of the final regulation on the Valuation of Plan Benefits. The interest rates and factors for Sections XXIV et seq. are to be used with the final regulation on Valuation of Plan Benefits for plans that terminate on or after the effective date of the final regulation.

I. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after September 2, 1974 and on or before September 30, 1975:*

Table I.—*Interest rates for valuing immediate annuities.* An interest rate of 8 percent shall be used to value immediate annuities, to compute the quality "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0575$
(3) $k_3 = 1.0425$
(4) $n_1 = 7$
(5) $n_2 = 8$

II. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after October 1, 1975 and on or before December 31, 1975:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¾ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0575$
(3) $k_3 = 1.0425$
(4) $n_1 = 7$
(5) $n_2 = 7$

III. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after January 1, 1976 and on or before February 29, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 8 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0525$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 10$

IV. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after March 1, 1976 and on or before May 31, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.07$
(2) $k_2 = 1.05$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 10$

V. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after June 1, 1976 and on or before August 31, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0675$

(2) $k_2=1.0475$
(3) $k_3=1.035$
(4) $n_1=7$
(5) $n_2=10$

VI.—*The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after September 1, 1976 and on or before November 30, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.06$
(2) $k_2=1.0475$
(3) $k_3=1.035$
(4) $n_1=8$
(5) $n_2=10$

VII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after December 1, 1976 but before March 1, 1977:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0625$
(2) $k_2=1.0475$
(3) $k_3=1.0375$
(4) $n_1=7$
(5) $n_2=10$

VIII. *The following interest rates and quantities used to value deferred annuities shall be effective for plans that terminate on or after March 1, 1977, but before June 1, 1977:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantites used for valuing deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.06$
(2) $k_2=1.0475$
(3) $k_3=1.035$
(4) $n_1=8$
(5) $n_2=10$

IX. *The following interest rates and quantities used to value deferred annuities shall be effective for plans that terminate on or after June 1, 1977, but before December 1, 1977:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 6¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8

Table III.—*Interest rates and quantitites used for valuing deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0625$
(2) $k_2=1.045$
(3) $k_3=1.0375$
(4) $n_1=8$
(5) $n_2=10$

X. *The following interest rates and quantities used to value deferred annuities shall be effective for plans that terminate on or after December 1, 1977, but before March 1, 1978:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 6¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used for valuing deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0625$
(2) $k_2=1.045$
(3) $k_3=1.0375$
(4) $n_1=8$
(5) $n_2=10$

XI. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after March 1, 1978, but before June 1, 1978.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0625$
(2) $k_2=1.0475$
(3) $k_3=1.0375$
(4) $n_1=7$
(5) $n_2=10$

XII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after June 1, 1978, but before September 1, 1978.*

I. *Interest rate for valuing immediate annuities.* An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0675$
(2) $k_2=1.0475$
(3) $k_3=1.035$
(4) $n_1=7$
(5) $n_2=10$

XIII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after September 1, 1978, but before March 1, 1979.*

I. *Interest rate for valuing immediate annuities.*—An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*—An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*—The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0675$.
(2) $k_2=1.0475$.
(3) $k_3=1.035$.
(4) $n_1=7$.
(5) $n_2=10$.

XIV. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after March 1, 1979, but before June 1, 1979.*

I. *Interest rates for valuing immediate annuities.*

An interest rate of 7½ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1=1.0675$
(2) $k_2=1.055$
(3) $k_3=1.04$
(4) $n_1=7$
(5) $n_2=8$

XV. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after June 1, 1979, but before September 1, 1979.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 7½ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0675$
(2) $k_2 = 1.055$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XVI. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after September 1, 1979, but before December 1, 1979.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 7¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.07$
(2) $k_2 = 1.0575$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XVII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after December 1, 1979, but before March 1, 1980.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 8½ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0775$.
(2) $k_2 = 1.065$.
(3) $k_3 = 1.04$.
(4) $n_1 = 7$.
(5) $n_2 = 8$.

XVIII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after March 1, 1980, but before June 1, 1980.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 8¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.08$
(2) $k_2 = 1.0675$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XIX. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after June 1, 1980, but before September 1, 1980.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 8¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.08$
(2) $k_2 = 1.0675$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XX. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after September 1, 1980, but before December 1, 1980.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 9 percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0825$
(2) $k_2 = 1.07$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XXI. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after December 1, 1980 and before January 1, 1981.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 9¼ percent shall be used to value immediate annuities to compute the quantity "G_y" in § 2610.6 and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.085$
(2) $k_2 = 1.0725$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XXII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after January 1, 1981 and before February 1, 1981.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 9½ percent shall be used to value immediate annuities, to compute the quantity "G_y" in § 2610.6 and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0875$
(2) $k_2 = 1.075$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

XXIII. *The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after February 1, 1981.*

I. *Interest rate for valuing immediate annuities.*

An interest rate of 9¾ percent shall be used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a cash refund annuity.

II. *Interest rate for valuing death benefits.*

An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity.

III. *Interest rates and quantities used for valuing deferred annuities.*

The following factors shall be used to value deferred annuities:

(1) $k_1 = 1.09$
(2) $k_2 = 1.0775$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 8$

Appendix C—Mortality Rate Tables

The following tables of l_x's are based on 10,000 lives. These tables correspond to the mortality rates, q_x's given in Appendix A.

Table I.—*Mortality Table for Healthy Male Participants*

[For plans that terminate on or after Sept. 2, 1974]

Age x	l_x
15	10,000.0000
16	9,985.6300
17	9,971.5103
18	9,957.6998
19	9,944.2469
20	9,931.2100
21	9,918.6272
22	9,906.5364
23	9,894.9755
24	9,883.6062
25	9,872.4476
26	9,861.5188
27	9,850.8388
28	9,840.4166
29	9,829.7594
30	9,818.8385
31	9,807.6352
32	9,796.1308
33	9,784.2971
34	9,771.6069
35	9,757.9462
36	9,743.1824
37	9,727.1744
38	9,709.7433
39	9,690.8287
40	9,670.2357
41	9,647.7331
42	9,623.0735
43	9,595.9557
44	9,566.2562
45	9,533.6353
46	9,497.7030
47	9,458.0026
48	9,414.1648
49	9,366.1243
50	9,313.5241
51	9,255.8175
52	9,192.3874
53	9,123.0492
54	9,047.5286
55	8,965.8023
56	8,877.2650
57	8,781.2663
58	8,677.0941
59	8,564.7084
60	8,443.4150
61	8,312.4661
62	8,171.0711
63	8,018.3946
64	7,853.8812
65	7,676.6619
66	7,485.9394
67	7,282.0823
68	7,066.2851
69	6,839.6481
70	6,602.0182
71	6,353.3400
72	6,093.6726
73	5,822.4798
74	5,540.0662
75	5,246.9247
76	4,943.7836
77	4,631.6232
78	4,313.7642
79	3,991.7503
80	3,667.3966
81	3,342.7660
82	3,021.1317
83	2,705.9975
84	2,400.7177
85	2,107.6405
86	1,829.0652
87	1,567.1815
88	1,324.0380
89	1,101.3242
90	900.3755
91	722.0741
92	566.8029
93	434.7475
94	324.9542
95	235.9564
96	165.8415
97	112.3488
98	73.0823
99	45.3940
100	26.7427
101	14.8217
102	7.6505
103	3.6393
104	1.5708
105	0.6026
106	0.1996
107	0.0547
108	0.0117
109	0.0017
110	0.0001

Table II.—*Mortality Table for Healthy Female Participants*

[For plans that terminate on or after Sept. 2, 1974]

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,965.8300
22	9,971.5103
23	9,957.6998
24	9,944.2469
25	9,931.2100
26	9,918.6272
27	9,906.5364
28	9,894.9755
29	9,883.6062
30	9,872.4476
31	9,861.5188
32	9,850.8388
33	9,840.4166
34	9,829.7594
35	9,818.8385
36	9,807.6352
37	9,796.1308
38	9,784.2971
39	9,771.6069
40	9,757.9462
41	9,743.1824
42	9,727.1744
43	9,709.7433
44	9,690.8287
45	9,670.2357
46	9,647.7331
47	9,623.0735
48	9,595.9557
49	9,566.2562
50	9,533.6353
51	9,497.7030
52	9,458.0026
53	9,414.1648
54	9,366.1243
55	9,313.5241
56	9,255.8175
57	9,192.3874
58	9,123.0492
59	9,047.5286
60	8,965.8023
61	8,877.2650
62	8,781.2663
63	8,677.0941
64	8,564.7084
65	8,443.4150
66	8,312.4661
67	8,171.0711
68	8,018.3946
69	7,853.8812
70	7,676.6819
71	7,485.9394
72	7,282.0823
73	7,066.2851
74	6,839.6481
75	6,602.0182
76	6,353.3400
77	6,093.6726
78	5,822.4798
79	5,540.0662
80	5,246.9247
81	4,943.7836
82	4,631.6232
83	4,313.7642
84	3,991.7503
85	3,667.3966
86	3,342.7660
87	3,021.1317
88	2,705.9975
89	2,400.7177
90	2,107.6405
91	1,829.0652
92	1,567.1815
93	1,324.0380
94	1,101.3242
95	900.3755
96	722.0741
97	566.8029
98	434.7475
99	324.9542
100	235.9564
101	165.8415
102	112.3488
103	73.0823
104	45.3940
105	26.7427
106	14.8217
107	7.6505
108	3.6393
109	1.5708
110	0.6026

Table III.—*Mortality Table for Disabled Male Participants not Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after September 2, 1974]

Age x	l_x
15	10,000.0000
16	9,986.4900
17	9,973.3977
18	9,960.7614
19	9,948.6192
20	9,937.0092
21	9,925.5916
22	9,914.3856
23	9,903.4104
24	9,892.6850
25	9,882.2185
26	9,871.5161
27	9,860.5488
28	9,849.2979
29	9,837.7447
30	9,825.8607
31	9,813.1166
32	9,799.3979
33	9,784.5714
34	9,768.4953
35	9,750.9902
36	9,731.9953
37	9,711.3148
38	9,688.7166
39	9,663.9522
40	9,636.7192
41	9,606.8936
42	9,574.1341
43	9,538.0492
44	9,498.1802
45	9,454.1561
46	9,405.9115
47	9,353.0879
48	9,295.1362
49	9,231.4366
50	9,161.8039
51	9,085.9625
52	9,003.8890
53	8,914.9756
54	8,818.5691
55	8,713.9544
56	8,601.0913
57	8,479.2826
58	8,347.7774
59	8,205.7817
60	8,052.4567
61	7,887.2444
62	7,709.2924
63	7,517.7396
64	7,313.0165
65	7,096.3026
66	6,868.7029
67	6,630.0636
68	6,380.3290
69	6,119.5586
70	5,847.2138
71	5,563.6005

Table III.—*Mortality Table for Disabled Male Participants not Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after September 2, 1974]

Age x	l_x
72	5,269.2137
73	4,964.7849
74	4,651.2985
75	4,332.0892
76	4,008.7074
77	3,682.9759
78	3,356.9662
79	3,033.9656
80	2,717.4926
81	2,410.9160
82	2,116.5938
83	1,836.8351
84	1,573.8389
85	1,329.6625
86	1,106.0026
87	904.2003
88	725.1415
89	569.2107
90	436.5943
91	326.3346
92	236.9587
93	166.5459
94	112.6260
95	73.3927
96	45.5868
97	26.8563
98	14.8846
99	7.6830
100	3.6548
101	1.5775
102	0.6052
103	0.2005
104	0.0550
105	0.0117
106	0.0017
107	0.0001

Table IV.—*Mortality Table for Disabled Female Participants not Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Sept. 2, 1974]

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,986.4900
22	9,973.3977
23	9,960.7614
24	9,948.6192
25	9,937.0092
26	9,925.5916
27	9,914.3856
28	9,903.4104
29	9,892.6850
30	9,882.2185
31	9,871.5161
32	9,860.5488
33	9,849.2979
34	9,837.7447
35	9,825.8607
36	9,813.1166
37	9,799.3979
38	9,784.5714
39	9,768.4953
40	9,750.9902
41	9,731.9953
42	9,711.3148
43	9,688.7166
44	9,663.9522
45	9,636.7192
46	9,606.8936
47	9,574.1341
48	9,538.0492
49	9,498.1802
50	9,454.1561
51	9,405.9115
52	9,353.0879
53	9,295.1362
54	9,231.4366
55	9,161.8039

Table IV.—*Mortality Table for Disabled Female Participants not Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Sept. 2, 1974]

Age x	l_x
56	9,085.9625
57	9,003.8890
58	8,914.9758
59	8,818.5691
60	8,713.9544
61	8,601.0913
62	8,479.2826
63	8,347.7774
64	8,205.7817
65	8,052.4567
66	7,887.2444
67	7,709.2924
68	7,517.7396
69	7,313.0165
70	7,096.3026
71	6,868.7029
72	6,630.0636
73	6,380.3290
74	6,119.5586
75	5,847.2138
76	5,563.6005
77	5,269.2137
78	4,964.7849
79	4,651.2985
80	4,332.0892
81	4,008.7074
82	3,682.9759
83	3,356.9662
84	3,033.9656
85	2,717.4926
86	2,410.9160
87	2,116.5938
88	1,836.8351
89	1,573.8389
90	1,329.6625
91	1,106.0026
92	904.2003
93	725.1415
94	569.2107
95	436.5943
96	326.3346
97	236.9587
98	166.5459
99	112.6260
100	73.3927
101	45.5868
102	26.8563
103	14.8846
104	7.6830
105	3.6548
106	1.5775
107	0.6052
108	0.2005
109	0.0550
110	0.0117

Table V.—*Mortality Table for Disabled Male Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Sept. 2, 1974 and before Dec. 1, 1980]

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,490.0000
22	9,006.0100
23	8,546.7035
24	8,110.8216
25	7,697.1697
26	7,304.6140
27	6,929.1568
28	6,570.2265
29	6,235.1449
30	5,922.1406
31	5,628.9946

Table V.—*Mortality Table for Disabled Male Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Sept. 2, 1974 and before Dec. 1, 1980]

Age x	l_x
32	5,354.2997
33	5,096.2225
34	4,853.6423
35	4,624.0650
36	4,406.7339
37	4,200.0581
38	4,003.0754
39	3,814.5305
40	3,634.1032
41	3,461.1199
42	3,294.2939
43	3,133.5324
44	2,978.4225
45	2,828.3100
46	2,682.9349
47	2,542.0808
48	2,405.5711
49	2,273.2647
50	2,144.3706
51	2,019.9971
52	1,899.8073
53	1,783.5391
54	1,672.4246
55	1,564.5532
56	1,460.9798
57	1,361.7793
58	1,267.1356
59	1,176.9155
60	1,091.1184
61	1,009.7210
62	932.6793
63	859.9303
64	791.3939
65	727.0536
66	667.2898
67	611.9715
68	560.5047
69	512.8058
70	468.7558
71	427.8334
72	389.7990
73	354.4442
74	321.7599
75	291.7760
76	264.1448
77	238.6020
78	215.1713
79	193.8478
80	173.6295
81	154.0441
82	135.2353
83	117.3572
84	100.5516
85	84.9560
86	70.6664
87	57.7696
88	46.3314
89	36.3701
90	27.8959
91	20.8522
92	15.1406
93	10.6410
94	7.2082
95	4.6889
96	2.9123
97	1.7156
98	.9508
99	.4908
100	.2335
101	.1008
102	.0387
103	.0128
104	.0035
105	.0007
106	.0001
107	.0000

Table Va.—*Mortality Table for Disabled Male Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Dec. 1, 1980]

Age x	l_x
15	10000.0000
16	10000.0000

Table Va.—*Mortality Table for Disabled Male Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age x	l_x
17	10000.0000
18	10000.0000
19	10000.0000
20	10000.0000
21	9517.0000
22	9057.3289
23	8619.8599
24	8203.5207
25	7807.2906
26	7430.1985
27	7087.6663
28	6778.6441
29	6500.0418
30	6249.1402
31	6022.9213
32	5818.7443
33	5632.5445
34	5462.4416
35	5305.1233
36	5157.6409
37	5017.3531
38	4881.3828
39	4748.1210
40	4617.0729
41	4486.8714
42	4357.6495
43	4228.2274
44	4099.2664
45	3970.5495
46	3842.6978
47	3715.8867
48	3589.5485
49	3462.8375
50	3335.7513
51	3207.9920
52	3079.3516
53	2950.0168
54	2820.5130
55	2690.7694
56	2561.0743
57	2431.4839
58	2302.3721
59	2174.5905
60	2048.2468
61	1924.7375
62	1804.6339
63	1688.5959
64	1577.6552
65	1472.2678
66	1372.4480
67	1278.1609
68	1189.0731
69	1104.7678
70	1024.8931
71	949.1535
72	877.3025
73	809.2239
74	744.6096
75	683.8842
76	626.3012
77	571.8756
78	519.9493
79	469.9302
80	420.9165
81	373.4371
82	327.8404
83	284.4999
84	243.7595
85	205.9524
86	171.3112
87	140.0469
88	112.3176
89	88.1693
90	67.6259
91	50.5503
92	36.7046
93	25.7960
94	17.4742
95	11.3670
96	7.0600
97	4.1591
98	2.3050
99	1.1898
100	.5660
101	.2443
102	.0937
103	.0310
104	.0085
105	.0018

Table Va.—*Mortality Table for Disabled Male Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age x	l_x
106	.0003

Table VI.—*Mortality Table for Disabled Female Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Sept. 2, 1974, and before Dec. 1, 1980]

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,574.0000
22	9,166.1476
23	8,775.6697
24	8,401.8262
25	8,043.9084
26	7,701.2379
27	7,372.3950
28	7,056.8565
29	6,753.4117
30	6,463.0150
31	6,183.8128
32	5,921.0008
33	5,672.9109
34	5,438.6197
35	5,216.1802
36	5,004.9249
37	4,803.7269
38	4,611.5778
39	4,427.5758
40	4,251.8010
41	4,083.4297
42	3,922.5426
43	3,768.3867
44	3,620.6659
45	3,478.7358
46	3,342.3694
47	3,211.3485
48	3,084.8214
49	2,962.6625
50	2,844.7485
51	2,730.6741
52	2,620.6279
53	2,513.9683
54	2,410.8956
55	2,311.3256
56	2,214.9433
57	2,121.9157
58	2,031.9465
59	1,944.7760
60	1,860.1782
61	1,777.9583
62	1,698.1260
63	1,620.6934
64	1,545.3312
65	1,472.2370
66	1,400.9807
67	1,331.3520
68	1,263.7193
69	1,197.7532
70	1,134.2723
71	1,073.4753
72	1,015.7223
73	960.1623
74	907.1613
75	856.2696
76	807.7191
77	761.1137
78	716.2080
79	671.0153
80	624.9837
81	578.3599
82	531.3392
83	484.3157
84	437.7245
85	392.0698
86	347.8443
87	305.3725
88	265.0023
89	227.0540

Table VI.—*Mortality Table for Disabled Female Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Sept. 2, 1974, and before Dec. 1, 1980]

Age x	l_x
90	191.8379
91	159.5706
92	130.4491
93	104.6202
94	82.1269
95	62.9913
96	47.0860
97	34.1891
98	24.0281
99	16.2766
100	10.5879
101	6.5761
102	3,9740
103	2,1470
104	1.1083
105	.5272
106	.2275
107	.0873
108	.0289
109	.0079
110	.0017

Table VIa.—*Mortality Table for Disabled Female Participants Receiving Social Security Disability Benefit Payments*

[For plans that terminate on or after Dec. 1, 1980]

Age x	l_x
15	10000.0000
16	10000.0000
17	10000.0000
18	10000.0000
19	10000.0000
20	10000.0000
21	9737.0000
22	9480.9169
23	9231.5688
24	8988.7785
25	8752.3737
26	8522.1862
27	8303.1660
28	8093.0959
29	7893.1965
30	7702.1811
31	7519.6394
32	7345.1838
33	7178.4481
34	7019.0866
35	6866.0705
36	6719.1366
37	6576.6909
38	6438.5804
39	6304.6579
40	6173.5210
41	6044.4944
42	5917.5600
43	5791.5160
44	5666.4193
45	5542.3247
46	5418.1766
47	5294.1004
48	5169.6890
49	5044.5825
50	4918.9724
51	4792.5548
52	4666.0314
53	4539.1153
54	4411.5662
55	4284.5131
56	4158.1200
57	4032.9605
58	3909.1487
59	3786.0105
60	3663.7223
61	3542.4531
62	3422.3640
63	3303.6079
64	3186.3289
65	3070.9847
66	2957.3583
67	2845.5701
68	2735.7311
69	2627.9433

Table VIa.—*Mortality Table for Disabled Female Participants Receiving Social Security Disability Benefit Payments*—Continued

[For plans that terminate on or after Dec. 1, 1980]

Age x	l_x
70	2522.3000
71	2418.6335
72	2316.8090
73	2216.4912
74	2117.4140
75	2018.9543
76	1919.6217
77	1818.0737
78	1712.9891
79	1604.6995
80	1494.8034
81	1383.2910
82	1270.8295
83	1158.3611
84	1046.9267
85	937.7323
86	831.9561
87	730.3742
88	633.8188
89	543.0559
90	458.8279
91	381.6531
92	312.0014
93	250.2251
94	196.4267
95	150.6593
96	112.6178
97	81.7718
98	57.4692
99	38.9297
100	25.3237
101	15.7286
102	9.2657
103	5.1351
104	2.6507
105	1.2609
106	.5442
107	.2088
108	.0692
109	.0190
110	.0041

Appendix D—Tables Used To Determine Expected Retirement Age

Table I-79.—*Selection of Retirement Rate Category (for Plans With a Valuation Date After Dec. 31, 1978, and Before Jan. 1, 1980)*

Participant reaches NRA in year	Participant's retirement rate category is			
	Low (table II-A)	Medium (table II-B)		High (table II-C)
	If monthly benefit at NRA is			
	Less than	From	To	Greater than
1980	$181	$181	$772	$772
1981	186	186	826	826
1982	191	191	875	875
1983	197	197	919	919
1984	203	203	965	965
1985	209	209	1,013	1,013
1986	215	215	1,064	1,064
1987 and later	225	225	1,117	1,117

Table I-80.—*Selection of Retirement Rate Category (for Plans With a Valuation Date After Dec. 31, 1979, and Before Jan. 1, 1981)*

Participant reaches NRA in year	Participant's retirement rate category is			
	Low (table II-A)	Medium (table II-B)		High (table II-C)
	If monthly benefit at NRA is			
	Less than	From	To	Greater than
1981	$210	$210	$884	$884
1982	232	232	978	978
1983	254	254	1,070	1,070
1984	275	275	1,156	1,156
1985 or later	294	294	1,239	1,239

Table I-81.—*Selection of Retirement Rate Category (for Plans With a Valuation Date After Dec. 31, 1980, and Before Jan. 1, 1982).*

Participant reaches NRA in year	Participant's retirement rate category is			
	Low (table II-A)	Medium (table II-B)		High (table II-C)
	If monthly benefit of NRA is			
	Less than	From	To	Greater than
1982	$236	$236	$995	$995
1983	259	259	1,094	1,094
1984	283	283	1,192	1,192
1985	305	305	1,288	1,288

Table I-81.—*Selection of Retirement Rate Category (for Plans With a Valuation Date After Dec. 31, 1980, and Before Jan. 1, 1982).—Continued*

Participant reaches NRA in year	Participant's retirement rate category is					
	Low (table II-A)		Medium (table II-B)		High (table II-C)	
	If monthly benefit of NRA is					
	Less than		From	To	Greater than	
1986		327	327	1,288		1,288
1987		350	350	1,288		1,288
1988		374	374	1,288		1,288
1989		400	400	1,288		1,288
1990		428	428	1,288		1,288
1991 or later		458	458	1,288		1,288

Table II-A.—*Expected Retirement Ages for Individuals in the Low Category*

Participant's[1]	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	53	53	53	54	54	54	54	54	54	54	54
43	53	54	54	54	55	55	55	55	55	55	55
44	54	54	55	55	55	55	55	56	56	56	56
45	54	55	55	56	56	56	56	56	56	56	56
46	55	55	56	56	56	57	57	57	57	57	57
47	56	56	56	57	57	57	57	57	57	57	57
48	56	57	57	57	58	58	58	58	58	58	58
49	56	57	58	58	58	58	59	59	59	59	59
50	57	57	58	58	59	59	59	59	59	59	59
51	57	58	58	59	59	60	60	60	60	60	60
52	58	58	59	59	60	60	60	60	60	60	60
53	58	59	59	60	60	61	61	61	61	61	61
54	58	59	60	60	61	61	61	61	61	61	61
55	59	59	60	61	61	61	62	62	62	62	62
56	59	60	60	61	61	62	62	62	62	62	62
57	59	60	61	61	62	62	62	62	62	62	62
58	59	60	61	61	62	62	63	63	63	63	63
59	59	60	61	62	62	63	63	63	63	63	63
60	60	60	61	62	62	63	63	63	63	63	63
61		61	61	62	63	63	63	63	64	64	64
62			62	62	63	63	63	64	64	64	64
63				63	63	64	64	65	65	65	65
64					64	64	65	65	65	65	65
65						65	65	65	65	65	65
66							66	66	66	66	66
67								67	67	67	67
68									68	68	68
69										69	69
70											70

[1] Participant's earliest retirement age at valuation date.

Table II-B.—*Expected Retirement Ages for Individuals in the Medium Category*

Participant's[1]	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	49	49	49	49	49	49	49	49	49	49	49
43	50	50	50	50	50	50	50	50	50	50	50
44	50	51	51	51	51	51	51	51	51	51	51
45	51	51	52	52	52	52	52	52	52	52	52
46	52	52	52	53	53	53	53	53	53	53	53
47	53	53	53	53	53	54	54	54	54	54	54
48	54	54	54	54	54	54	54	54	54	54	54
49	54	55	55	55	55	55	55	55	55	55	55
50	55	55	56	56	56	56	56	56	56	56	56
51	56	56	56	57	57	57	57	57	57	57	57
52	56	57	57	57	57	58	58	58	58	58	58
53	57	57	58	58	58	58	58	58	58	58	58

Table II-B.—*Expected Retirement Ages for Individuals in the Medium Category—Continued*

Participant's[1]	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
54	57	58	58	59	59	59	59	59	59	59	59
55	58	58	59	59	59	60	60	60	60	60	60
56	58	59	59	60	60	60	60	60	60	60	60
57	59	59	60	60	61	61	61	61	61	61	61
58	59	60	60	61	61	61	61	61	61	61	61
59	59	60	61	61	62	62	62	62	62	62	62
60	60	60	61	62	62	62	62	62	62	62	62
61		61	61	62	62	63	63	63	63	63	63
62			62	62	62	63	63	63	63	63	63
63				63	63	64	64	64	64	64	64
64					64	64	64	64	64	64	64
65						65	65	65	65	65	65
66							66	66	66	66	66
67								67	67	67	67
68									68	68	68
69										69	69
70											70

[1] Participant's earliest retirement age at valuation date.

Table II-C.—*Expected Retirement Ages for Individuals in the High Category*

Participant's[1]	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	46	46	46	46	46	47	47	47	47	47	47
43	47	47	47	47	47	47	47	47	47	47	47
44	48	48	48	48	48	48	48	48	48	48	48
45	49	49	49	49	49	49	49	49	49	49	49
46	50	50	50	50	50	50	50	50	50	50	50
47	51	51	51	51	51	51	51	51	51	51	51
48	52	52	52	52	52	52	52	52	52	52	52
49	53	53	53	53	53	53	53	53	35	53	53
50	54	54	54	54	54	54	54	54	54	54	54
51	54	55	55	55	55	55	55	55	55	55	55
52	55	55	56	56	56	56	56	56	56	56	56
53	56	56	56	57	57	57	57	57	57	57	57
54	57	57	57	57	57	58	58	58	58	58	58
55	57	58	58	58	58	58	58	58	58	58	58
56	58	58	59	59	59	59	59	59	59	59	59
57	58	59	59	60	60	60	60	60	60	60	60
58	59	59	60	60	60	60	61	61	61	61	61
59	59	60	60	61	61	61	61	61	61	61	61
60	60	60	61	61	61	62	62	62	62	62	62
61		61	61	62	62	62	62	62	62	62	62
62			62	62	62	62	62	62	62	62	62
63				63	63	63	64	64	64	64	64
64					64	64	64	64	64	64	64
65						65	65	65	65	65	65
66							66	66	66	66	66
67								67	67	67	67
68									68	68	68
69										69	69
70											70

[1] Participant's earliest retirement age at valuation date.

Appendix E—Examples of XRA Calculations

The following examples illustrate the procedures under Subpart D used to determine the expected retirement age. These examples use the tables in Appendix C to this part.

Example 1—A plan participant, Q, is employed by a business which terminates its pension plan on September 1, 1980, and the plan is trusteed by PBGC. The business continues under the original employer and Q is still employed by the business. Q is fully vested when the plan terminates and is entitled to receive a guaranteed benefit from the plan of $350 per month at age 65, the normal retirement age. The normal form of benefit is a 10 year certain and continuous annuity. Q is age 56 at the date of plan termination. The plan requires a participant to be age 55 and have 10 years of service to be eligible to receive his or her benefit early. Since Q has 10 years of service, Q will be eligible for early retirement at age 55.

Since Q continues to be employed by the employer who was the plan sponsor, normal plan practice requires Q to leave employment in order to receive a benefit. Therefore, the procedure in § 2610.63 is used to determine the XRA.

The information needed to proceed under § 2610.63 is—

(1) The amount of the guaranteed monthly benefit—$350;

(2) The calendar year in which Q reaches NRA—1989;

(3) Q's NRA—65; and

(4) Q's earliest retirement age at valuation date—56.

Using Table I–80 of Appendix C and items (1) and (2), we find that Q falls into the "medium" retirement rate category. This means that Table II–B is used to find Q's XRA. Entering Table II–B and using items (3) and (4), reading horizontally across from age 56 (the earliest retirement age at valuation date) and vertically down from age 65 (the normal retirement age), the table indicates that Q's XRA is 60.

Q's benefit is then valued by using § 2610.46(b)(2) to determine the present value of $350, reduced by the plan's early retirement reduction factors to age 60, payable as a 10 year certain and continuous annuity deferred to age 60.

Example 2—The XYZ corporation has one pension plan covering two divisions, A and B. XYZ terminates the pension plan on December 1, 1980, and PBGC places the plan into trusteeship. Division A is closed on the date of plan termination, which is the valuation date, and Division B is sold to a new owner. The plan contains no provisions which prevent a participant from receiving a benefit while employed by a successor employer.

Participant S, age 60 at the termination date, left employment with Division A of XYZ in 1976. S is entitled to a guaranteed benefit of $100 per month, payable as a joint and survivor annuity at his normal retirement age, age 65. The plan provides that early retirement can be taken at age 55.

Participant T, age 55 at the date of termination, is employed by the new owner of Division B, and has a guaranteed benefit of $75 per month payable as a 10 year certain and continuous annuity at age 65 (a form for which T made a valid election prior to the date of plan termination).

For participant S, although the facility in which he was employed shut down, he left employment more than one year before the termination of the plan, so the special rule for facility closing in § 2610.65 is not used. Since the plan contains no provision which would require a participant to leave his or her current employment to receive a benefit, the procedure in § 2610.64 is used to determine the XRA.

The information needed for § 2610.64 is—

(1) S's NRA—65; and

(2) S's earliest retirement age at valuation date—60.

Under § 2610.64, the "high" retirement rate table, Table II–C, is always used. Reading horizontally across from age 60 (the earliest retirement at valuation date) and vertically down from age 65, (the normal retirement age), the table indicates that S's XRA is 62. Under § 2610.46(b)(2) S's $100 benefit is reduced by the plan's early retirement reduction factors to age 62 and valued as a joint and survivor annuity deferred to age 62.

Since participant T was never employed at the facility that was closed, the special rule of § 2610.65 would not apply. Since the plan does not require T to leave her current employment to receive a benefit, the procedure in § 2610.64 is used to determine the XRA.

The information needed for § 2610.64 is—

(1) T's NRA—65; and

(2) T's earliest retirement age at valuation date—55. Using the "high" retirement rate table, Table II–C, T's XRA is 58.

Under § 2610.46(b)(2), T's $75 benefit is reduced by the plan's early retirement reduction factors to age 58 and is valued as an 10 year certain and continuous annuity deferred to age 58.

Example 3—R is a plan participant in a pension plan established by ABC Company and is an employee of ABC until December 31, 1980. On that day the company closes, R's employment ceases, and the plan terminates. R is age 45 at the date of termination and has a guaranteed benefit of $100 per month joint and survivor annuity payable at age 65, his normal retirement age. Under the terms of the plan, R is eligible to receive an early retirement benefit at age 55. The plan is trusteed by PBGC.

Since the business closed within one year of the valuation date (the date of plan termination), and R was an active employee on the valuation date, the procedure in § 2610.65 is used to determine the XRA.

R's earliest retirement age at valuation date is 55 and therefore his XRA is 55. Under § 2610.46(b)(2) R's $100 benefit is reduced by the plan's early retirement reduction factors to age 55 and is valued as a joint and survivor annuity deferred to age 55.

Example 4—A plan participant, P, is employed by a business which was sold to a new owner. The plan terminated on the date of sale, October 30, 1980, as a sufficient plan (*i.e.* a non-trusteed plan). The plan provides that benefits may not be received while a participant is employed by a successor employer.

The plan administrator anticipates distributing benefits on December 15, 1980 and has not been able to obtain an insurer's bid which reasonably takes into account the probability that a participant eligible for early retirement will retire at some age between the earliest retirement age possible and the normal retirement age. The plan administrator has requested that PBGC provide the early retirement benefits, as provided for under the Sufficiency regulation (Part 2615 of this chapter).

P is age 62 at the proposed date of distribution and is eligible for an immediate early retirement benefit, but has not chosen a retirement starting date. His accrued vested benefit at the normal retirement age of 65 is $250 per month payable as a joint and survivor annuity.

Since the plan does not allow benefits to be received while a participant is employed by a successor employer, the procedure in § 2610.63 is applicable. The data needed under the section is—

(1) P's monthly benefit at NRA—$250;

(2) The calendar year in which P reaches NRA—1983;

(3) P's NRA—65; and

(4) P's earliest retirement age at valuation date—62.

Using Table I–80 and items (1) and (2), P falls into the "low" retirement rate category. Therefore, Table II–A is used.

Entering Table II–A and using items (3) and (4), we find that P's XRA is 63. Under § 2610.46(c)(3) P's $250 benefit is reduced by the plan's early retirement reduction factors to age 63 and is valued as a joint and survivor annuity deferred to age 63. This benefit will be provided by PBGC.

Effective date: March 1, 1981.

Issued at Washington, D.C., on this 19th day of January 1981.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

[FR Doc. 81-2903 Filed 1-27-81; 8:45 am]

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Part VII

Pension Benefit Guaranty Corporation

Employer Liability for Single Employer Plan Terminations; Rules Pertaining to Withdrawals From and Terminations of Plans to Which More Than One Employer Contributes Other Than Multiemployer Plans

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2613

Employer Liability for Single Employer Plan Terminations; Rules Pertaining to Withdrawals From and Terminations of Plans to Which More Than One Employer Contributes Other Than Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation prescribes the rules for the determination and payment of employer liability under Sections 4062 and 4067 of the Employee Retirement Income Security Act of 1974, as amended. In addition, portions of this regulation are also applicable to the determination and payment of liability under Sections 4063 and 4064, which pertain to plans to which more than one employer contributes other than multiemployer plans.

Section 4062 imposes liability on an employer who maintains a single employer defined benefit pension plan that terminates without sufficient assets to pay the benefits guaranteed by the Pension Benefit Guaranty Corporation. The liability is equal to the amount by which the value of the plan's guaranteed benefits exceed plan assets at the date of plan termination, not to exceed 30% of the employer's net worth. This regulation sets forth the method by which PBGC will determine an employer's net worth and the rules for payment of the employer's liability, including provisions for deferred payment of the liability. The effect of this regulation is to provide needed guidance with respect to the calculation and payment of an employer's statutory liability.

EFFECTIVE DATE: This part is effective March 1, 1981. The effective date of all record-keeping and reporting requirements of this regulation is stayed beyond the March 1, 1981 effective date of this regulation unless, prior to such date, PBGC receives approval of the Office of Management and Budget, as required under 44 USC, Chapter 35. Upon receipt of OMB approval, PBGC will publish announcement of that approval, or of any modifications to meet OMB requirements, and these record-keeping and reporting requirements will become effective on the later of March 1, 1981 or the publication of such announcement.

FOR FURTHER INFORMATION CONTACT: David Weingarten, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, (202) 254–3010.

SUPPLEMENTARY INFORMATION: On May 23, 1980, the Pension Benefit Guaranty Corporation ("PBGC") published a proposed regulation on Employer Liability for a Single Employer Plan Termination (45 FR 34899). A number of comments were received on the proposal. These comments have been reviewed by PBGC, and PBGC has decided to make several of the changes recommended. In addition, PBGC has made a few changes in the regulation to eliminate ambiguities it found in the proposal. Finally, PBGC has added provisions, consistent with several of the public comments, addressing two issues that were purposely left open in the proposal, *i.e.* rules dealing with improper transfers of employer assets and with the treatment of personal assets in partnerships and sole proprietorships. A full discussion of the comments received and the changes made in the final regulation follows.

Purpose and Scope

The proposed regulation was unclear as to which plans will be subject to this regulation, and several of the comments received reflected this uncertainty. To correct this problem, § 2613.1 has been revised to provide in paragraph (b) that this regulation will apply to any terminating single employer plan for which either 1) a Notice of Intent to Terminate is filed or 2) an action is commenced by PBGC under Section 4042 of ERISA to terminate the plan, on or after the effective date of the regulation. This regulation will be effective 30 days after publication in the **Federal Register**. Thus, the regulation will not apply to plan terminations that have been initiated, as described in the preceding sentence, before its effective date.

This rule should alleviate the concern expressed in several comments that an employer who sponsors a plan that is in the process of being terminated when the regulation is issued, suddenly might find itself being assessed interest on its liability. The payment and interest rules for such plans are set forth in a notice PBGC is publishing today in the **Federal Register**. Under the notice, employer liability for a plan for which the termination notice is filed before the effective date of this regulation and with respect to which PBGC has not issued a request letter for the liability, is due on the later of 1) 30 days after publication of this regulation or 2) the date of plan termination. If employer liability is not paid by the due date, interest will be imposed from the day after the due date, just as with plans covered by this regulation.

Another change has been made in § 2613.1 to reflect the recent enactment of the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"). As explained in the preamble to the proposed regulation, certain provisions of this regulation will apply to cases arising under Sections 4063 and 4064 of ERISA, which deal with plans to which more than one employer contributes. Specifically these provisions are those which implement the statutory rules common both to the cases under Sections 4063 and 4064, and to cases under Section 4062, and they include, for example: § 2613.4, Determination of Net Worth; § 2613.7(c), establishing the interest rate for late payment of the liability; and § 2613.8, Deferred Payment of Employer Liability. Specific time limits within the regulation generally would not be applicable to cases arising under Sections 4063 and 4064.

Because the MPPAA creates a new pension plan insurance system for multiemployer plans, Sections 4063 and 4064 of ERISA no longer apply to mulitemployer plans covered under the MPPAA. Accordingly, § 2613.1 has been revised to state that Sections 4063 and 4064 and the provisions of this regulation that apply to cases arising under those sections apply only to plans to which more than one employer contributes other than multiemployer plans as defined in Section 4001(a)(3) of ERISA, as amended by Section 402(a)(1) of the MPPAA.

With regard to the applicability of this regulation, one more change made by the MPPAA must be noted. Section 402(a)(1) of the MPPAA adds a new section 4001(c)(2) to ERISA containing a definition of "single-employer plan" (emphasis added.) This term is defined as "any plan which is not a multiemployer plan." Thus, this new term "single-employer plan" includes both plans to which only one employer (as defined in ERISA Section 4001(b)) contributes and plans to which more than one employer contributes that are not multiemployer plans. While Section 4062, as amended, applies to both types of plans, for the purposes of this regulation it is necessary to distinguish between the two.

This distinction is necessary because Section 4062 sets forth the entire rule for the computation of liability with respect to a plan to which only one employer contributes, but for other non-multiemployer plans, it only contains part of the liability formula. That is, for plans to which more than one employer contributes, after determining the

Section 4062 liability, that liability must be allocated to the affected employers pursuant to Section 4063 (in the case of a substantial employer withdrawal) or Section 4064 (in the case of a plan termination). While this regulation fully deals with Section 4062, it does not deal with the liability computations under Sections 4063 and 4064. For this reason, this regulation does not use the new statutory term "single-employer plan". Rather, it continues the use of the terms "single employer plan", defined in § 2613.2 as a plan to which one employer contributes, and "plan to which more than one employer contributes".

The final point with regard to the applicability of this regulation involves the special transition rule in MPPAA Section 402(a)(1) for plans that were not "multiemployer plans" under the original definition in Section 4001(a)(3) of ERISA but which will be under the new definition. The rule provides that for such plans, the new definition does not apply until the first day of the first plan year beginning after enactment of the MPPAA. Thus, a plan which will be changing from non-multiemployer plan status to multiemployer plan status as a result of the changed definition, will not be a multiemployer plan under the MPPAA and will therefore continue to be subject to Sections 4063 and 4064 until the beginning of its first plan year commencing on or after September 26, 1980.

Definitions

In general, employer liability is equal to the lesser of the plan asset insufficiency or 30% of the employer's net worth. One comment questioned whether there would be any liability if a plan were sufficient at PBGC's rates but insufficient at the rates charged by private insurers. For a trusteed plan, benefits are valued at PBGC's rates in order to determine whether there is a plan asset insufficiency and thus employer liability. It is possible for a trusteed plan to be "sufficient" at PBGC's rates although it would be insufficient at the rates charged by private insurers.

It is also possible for a plan to be able to close out in the private market, although it would not be "sufficient" at PBGC's rates. The definition of "plan asset insufficiency" in § 2613.2 has been modified to reflect the fact that a Notice of Sufficiency may be issued in such circumstances, in accordance with PBGC's final regulation on determining plan sufficiency being issued today. Section 2613.2 states that there is no plan asset insufficiency for a plan that closes out under a Notice of Sufficiency.

Minor changes have been made in the definitions of "net worth" and "net worth record date" to conform with language changes made in § 2613.4, Determination of Net Worth. The purpose of these changes is to clarify that the determination of net worth is not made at the discretion of PBGC. This issue is discussed in greater detail under the section in this preamble on Determination of Net Worth.

Finally, the definition of "plan year" has been deleted because that term is not used in this regulation.

Amount of Employer Liability

A number of comments objected to the rule in § 2613.3(b) that an employer must assert the net worth limitation within 30 days after the establishment of the date of plan termination. These comments pointed out that this deadline might occur before the plan or the PBGC has calculated a final figure for the plan asset insufficiency ("PAI") and that, in general, 30 days was an inadequate amount of time for the employer to be able to determine whether to assert the net worth limitation.

While it is true that this time limit might expire before the employer has a precise figure for the PAI, it does not follow that the 30-day time limit should be extended. First of all, it is important to note that under the PBGC's new system of issuing the interest rates used to value plan benefits on a prospective basis, the employer normally will have available all the information needed to calculate PAI prior to submission of the Notice of Intent to Terminate. Moreover, the employer does not need to know the exact PAI in order to decide whether to assert the limitation. The employer can make a reasonable judgment whether its net worth will limit its liability by using estimates of PAI and net worth. Contrary to the assertion made in one comment, PBGC does not believe that having to use estimated figures for this purpose will result in numerous frivolous assertions of the net worth limitation.

Finally, it must be kept in mind that the 30-day period for asserting the net worth limitation runs from the date of *establishment* of the date of termination, and not from the termination date itself. To emphasize this point, a sentence has been added to § 2613.3(b) stating when the termination date is "established." It provides that the termination date is established either upon the execution of the trusteeship agreement or upon the issuance of a court order terminating a plan. This typically will not occur until some weeks after PBGC has received a Notice of Intent to Terminate a plan. (In the past, trusteeship agreements generally have not been entered into in fewer than 90 days after receipt by PBGC of the Notice of Intent to Terminate.)

Another comment contended that there is no statutory basis for requiring an employer to assert and demonstrate the net worth limitation; that "(t)he 30% limit is absolute in the statute." The PBGC agrees with the general proposition that the 30 percent limit is a statutory requirement which we cannot abrogate. This is neither the intent nor the effect of the regulation, and § 2613.3 has been revised slightly to clarify this.

Under the revised § 2613.3(a), employer liability is equal to the lesser of the plan asset insufficiency, or 30% of the employer's net worth as determined under this part. However, as provided in paragraph (c) of that section, if the employer fails to assert that its net worth is limiting and to demonstrate the net worth limitation, PBGC will compute the liability without regard to the net worth of the employer.

This scheme is an operational rule designed to alleviate a problem that in the past has impeded PBGC's ability to process employer liability cases. The PBGC is unable to determine net worth without the employer first providing PBGC with the financial and other business information necessary to make that determination. Under the rule, when an employer does not furnish the requisite information in a timely fashion, the PBGC may continue to process the case by computing the liability on the basis of the information it has, *i.e.* the plan asset insufficiency. This rule does not create any presumptions with respect to the net worth limitation, nor does it change the statutorily-imposed burdens of production and/or proof.

Moreover, PBGC finds that this rule is consistent with the regulatory scheme envisioned by the Congress. If an employer could, by withholding information, frustrate PBGC's ability to calculate net worth and thereby prevent PBGC from assessing employer liability, there would seem to be little sense in Congress' having given PBGC an automatic lien for the liability under Section 4068. That is, the lien provision clearly contemplates that PBGC can assert employer liability without first having to go to court.

Finally, where an employer has failed to assert or demonstrate the limitation and therefore PBGC has computed the liability based on the PAI, the employer is still free to raise the net worth issue in an administrative appeal. As provided in § 2613.9(a), PBGC's assessment of employer liability is subject to appeal under PBGC's regulation on administrative review of agency action

(29 CFR, Part 2618), except under the limited circumstances described in § 2613.9(c). The fact that the employer failed to pursue the net worth issue originally would not bar the employer from raising this issue on appeal. If at that time the employer demonstrated the limitation, PBGC would then compute the net worth and the assessment of liability would be modified accordingly.

Determination of Net Worth

Several comments objected to the definition of net worth and the method of determining it, as set forth in the proposed regulation at § 2613.4. Many of these objections reflect a misunderstanding of the intent of the rules. Accordingly, several changes have been made in § 2613.4 to clarify these rules.

PBGC agrees with the comments that stated that Section 4062 of ERISA does not give PBGC "unfettered discretion in arriving at an employer's net worth." Rather, the statute gives PBGC discretion to determine the "basis [that] best reflects . . . the current status of the employer's operations and prospects" (Section 4062(c)); or as stated in one of the comments, "PBGC has been entrusted with the selection of the basis that best reflects net worth." The language in paragraphs (a) and (c) of § 2613.4 has been modified slightly to reflect this statutory prescription more clearly. In exercising its discretion, PBGC has determined that the basis that best reflects net worth is the "fair market value." For the reasons stated in the preamble to the proposed regulation, PBGC finds that fair market value is a better measure of "the current status of the employer's operations and prospects" than is book value. This determination is set forth in § 2613.4(a).

The factors listed in § 2613.4(c) do not constitute, either singly or in the aggregate, the PBGC's definition of net worth. Rather, since factors (1) through (8), singly or in combination, are indicative of fair market value in many situations, PBGC will consider them, to the extent relevant to an employer or any part of its operations, in arriving at the fair market value of that employer. Factor (9) reflects the fact that fair market value may not be determinable in every case simply by application of the other factors. In such a case, PBGC will state the basis for its fair market value determination. (See discussion of factor (9) below.)

Several comments dealt with particular factors listed in § 2613.4(c). While it is true, as suggested by one of the comments, that the value of the employer's common stock often provides an accurate measure of the employer's net worth or fair market value, this cannot be the only measure of net worth. This is true for two reasons. First, the universe of employers for whom PBGC must determine a net worth includes many employers that are not corporations with publicly-traded stock; a significant number of the employers who terminate insufficient plans are closely-held corporations. Second, for the vast majority of the other employers on whom PBGC must perform a valuation, the common stock is either thinly-traded or is a speculative issue. In either case, the value of the stock is seldom indicative of the true value of the employer.

Another comment stated that § 2613.4(c)(8) should be modified to provide that this factor (the equity assumed in a plan of reorganization in a Chapter 11 Bankruptcy Code preceeding) will be applicable only when the plan of reorganization has been approved prior to the date of plan termination. The comment reasons that prior to approval of a plan of reorganization, the employer would typically have a negative net worth; that its positive net worth after approval of the plan results from the creditors' subrogation of their debt; and that to allow PBGC to use this positive net worth when it arises after the date of termination gives the PBGC an unfair advantage over other creditors.

PBGC does not agree with the assertion implicit in the comment that for net worth valuation purposes, the employer must be considered to have a negative net worth before the plan is approved. PBGC takes the position that in cases where the plan of reorganization is not approved until after the date of termination, there may nevertheless be a positive net worth as of the date of termination if, on that date, the employer could be viewed as a going concern. When this is the case, the valuation process involves placing a value on those portions of the business expected to continue as a going concern and adjusting that value for such factors as gains or losses to be incurred in the disposition of other operations, bankruptcy expenses, the difficulty in getting credit, and the uncertainties of operating in Chapter 11, including possible rejection of the plan of reorganization.

Under this view, then, whether approval of the plan of reorganization occurs before or after the date of termination, or, indeed, whether there is even a plan in existence before that date, is irrelevant to the issue of whether PBGC may use the reorganization as a factor in determining the fair market value of the employer. The timing of the approval of the plan of reorganization is only important insofar as it bears on the probative value of this factor; if the plan has been approved prior to the termination date, the value of the employer can be ascertained more precisely. When a plan of reorganization has not yet been developed, PBGC would look to the other factors and make appropriate adjustments to reflect that the employer has at least begun the reorganization process.

Finally, it should be noted that PBGC does not agree with the assertion in the comment that an employer may have a negative net worth for purposes of net worth valuation/employer liability. An employer, whether a single trade or business or a controlled group of trades or businesses, may have a net worth of zero, but not a negative net worth. In the case of a controlled group of trades or businesses, the negative value of one of the businesses does not normally decrease the value of the other businesses. Rather, in such a case, the net worth of the first would be valued at zero in order to determine the net worth of the controlled group.

Another comment on the factors in § 2613.4(c) objected that the last factor—"any other factor relevant in determining the employer's net worth"—is open-ended and stated that it "should be limited by an objective standard". PBGC believes that this standard must be left broad because of the great variety of circumstances presented by the different cases PBGC faces. Moreover, the relevancy standard is a common one, which the judiciary is accustomed to applying. Thus, in a very real sense, it limits the facts that may be considered by PBGC in determining an employer's net worth.

A final comment suggested that the effect of inflation on net worth should be included in the list of valuation factors. PBGC does not believe it is necessary to list this factor separately, because it is reflected implicitly in the enumerated factors, particularly in paragraph (c)(4)—price/earnings ratios and prices of stocks of similar trades or businesses.

In the preamble to the proposed regulation, PBGC requested the public's views on whether and under what circumstances it should include the personal assets and liabilites of general partners or sole proprietors in determining the net worth of a partnership or sole proprietorship. (It is clear, as was noted in the preamble, that PBGC can look to such assets to satisfy the liability once it has been assessed.) All the comments received on this point were in agreement that PBGC should

look to personal assets only when there has been an attempt to disguise business assets as personal assets or when assets have been siphoned out of the business in an attempt to avoid employer liability. Accordingly, the comments suggested that this issue be dealt with under the provision of the regulation or improper transfers (§ 2613.4(d) of the final regulation). The PBGC has adopted these comments.

The final regulation contains a new paragraph (b) in § 2613.4 specifically addressing the treatment of personal assets and liabilities in the valuation of partnerships and sole proprietorships. (Of course, the general valuation rule in paragraph (a) and the factors in paragraph (c) of § 2613.4 apply to the valuation of these business entities, as well as to the valuation of corporate entities.) Section 2613.4(b) provides that the net worth of a partnership or sole proprietorship does not include personal assets or liabilities, except for assets found to have been improperly transferred from the business, pursuant to § 2613.4(d). Further, it defines "personal assets" as assets that are not used in the business or that do not produce income to the business. In this connection, it should be noted that although a partner or sole proprietor may own assets that are not included in the valuation of a particular trade or business under this test, those assets may themselves constitute a trade or business. In that event, if the common-control tests under Internal Revenue Code Section 414(c) and the regulations thereunder are met, the second trade or business would be included in the determination of the employer's net worth.

One of the comments addressing this issue suggested that "to protect the confidentiality of personal financial information, information with respect to [personal] assets should not generally be required to be filed with PBGC." PBGC finds merit in the commenter's concern for confidentiality, but the suggested approach would unduly—and unnecessarily—weaken administration of PBGC's net worth valuation function. PBGC recognizes its obligation to protect confidential financial information and has taken steps to guard against the improper disclosure of any such information in its possession. But if it did not receive information covering personal assets, PBGC often would not be able to tell whether such assets should be included in the net worth valuation under the rules discussed above. Therefore, PBGC reserves the right to require the submission of information dealing with personal assets pursuant to § 2613.6(b) of the regulation. (In some situations, such information may be included in the net worth information required to be submitted in all cases under § 2613.6(a).)

Improper Transfers

In the preamble to the proposed regulation, the PBGC also specifically requested public comment on how it should implement its authority to include in the net worth of an employer the value of any assets transferred by the employer that the PBGC determines to have been improperly transferred under the circumstances (ERISA Section 4062(c)(2)). Few comments were received on this issue. However, the comments received were in agreement that some definition is needed of what constitutes an improper transfer. Further, the comments noted that because of the difficulty in foreseeing all the kinds of transactions that might occur, such definition must necessarily be broad. One of the comments also suggested requiring submission of various data on asset transfers so that PBGC could check for improper transfers.

PBGC has reviewed this issue carefully in an attempt to develop a regulatory scheme that will serve to protect the insurance system from abuse and will also be fair and equitable. PBGC has endeavored to develop an approach that will enable it to detect the existence of improper transfers without having to conduct time-consuming and expensive investigations in every case, but which will not create burdensome reporting requirements for employers. To this end, the final rule incorporates the suggestions contained in one of the comments with respect to the types of transfers that will constitute an "improper transfer" under the regulation, but rejects that comment's suggestions with respect to additional reporting requirements. Instead, the PBGC has followed one of the other comments, which suggested that the employer financial statements required to be submitted as part of the net worth information should be adequate in most cases to alert PBGC to the existence of any improper transfers.

Specifically, § 2613.4(d) of the regulation provides that the employer's net worth will include the value of any assets transferred by the employer if the PBGC determines that the assets were improperly transferred for the purpose, as inferred from all the facts and circumstances of the case, and with the effect of avoiding or limiting the employer's liability. While it is not possible to specifically enumerate all the possible types of "improper transfers", § 2613.4(d) does provide that "assets improperly transferred include . . . assets . . . transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer." The word "transfer" covers transactions of any kind, including sales, pledges, leases, gifts, and dividends.

This rule does not require specific proof that transfers were made for the purpose of avoiding employer liability. Obviously, such proof would be difficult, if not impossible, to find in many cases. Rather, the proscribed purpose may be inferred from the facts and circumstances of the case. For example, an employer may be systematically transferring assets out of of its business for the benefit of the individuals controlling the employer and to the detriment of all the employer's creditors. The fact that the employer was attempting to remove assets from the claims of its creditors would normally cause the transfers to fall within the "purpose . . . of avoiding" language of § 2613.4(d), despite absence of evidence that the employer acted with specific intent to avoid its statutory liability to PBGC. To come within this provision, the transfers must, in fact, lessen the employer's liability; if the transfers do not decrease the employer's liability, the PBGC is not concerned with them.

Of course, many legitimate business transactions may have the effect of decreasing the net worth of the business. The PBGC does not intend to reach these transactions; PBGC will not second-guess the wisdom of a business transaction that turns out poorly for the employer. Thus, § 2613.4(d) is limited to "improper transfers" and includes within that term transfers of assets for less than fair consideration and unusual (for the particular employer) gifts, capital distributions, and stock redemptions. Again, the PBGC's concern is with attempts to siphon assets from a business to the benefit of the individuals controlling the business and/or to the detriment of PBGC.

One of the comments suggested that "PBGC specifically incorporate the standards used under the Bankruptcy Act . . . as the standard to be used to determine whether a transfer is improper." PBGC has not adopted this suggestion because the Bankruptcy Act standards for fraudulent transfers would be too limited to prevent abuse of the plan termination insurance system. For example, a key element in many of the Bankruptcy Act standards is that the debtor is or will become insolvent. This standard is not germane to the purposes

of the improper transfer provision under ERISA, because an employer could greatly reduce its net worth, thereby avoiding a large portion of its liability to PBGC, without becoming "insolvent" as defined under the Bankruptcy Act.

As noted above, the regulation does not require the submission of any data specifically pertaining to the issue of improper transfers. The PBGC will examine the employer financial statements and other net worth information submitted under § 2613.6(a) for evidence of any improper transfers. In appropriate cases (for instance, where financial statements reveal the possibility of improper transfers), the PBGC may require the submission of additional information pursuant to § 2613.6(b).

Net Worth Record Date and Submission of Net Worth Information

Section 2613.5 of the regulation provides that the net worth record date (the date as of which net worth is determined) will normally be the date of plan termination established under Section 4048 of ERISA, unless the PBGC establishes an earlier net worth record date. (Although PBGC retains authority to establish an earlier net worth record date at any point in a termination proceeding, the agency will usually review the information submitted pursuant to § 2613.6(a) before taking such action.) Two comments suggested that the regulation should contain standards for PBGC's exercise of this authority to set an earlier date. The PBGC agrees with these comments. Accordingly, § 2613.5(b) has been revised to provide that PBGC will exercise this authority only "to prevent undue loss to or abuse of the plan termination insurance system." The PBGC expects that it will exercise its authority under this provision very rarely.

Similar comments were also made with respect to the time limit for submitting the net worth information and the PBGC's authority to shorten that time limit. Under § 2613.6(a), the net worth information listed in that paragraph must be submitted within 120 days after the establishment of the date of termination, but PBGC reserves the right to require the information to be submitted earlier. The comments suggested that the regulation provide standards for when PBGC would exercise this authority. The PBGC agrees and has adopted the standard set forth in one of the comments: PBGC will require earlier submission of the net worth information "when it believes its ability to obtain information or payment of the employer liability is in jeopardy" (§ 2613.6(a)).

One of the comments also objected that the 120-day period would be too short in many cases and that provision should be made for extending that period. PBGC disagrees. The 120 days runs from the date of *establishment* of the plan termination date, not, as the comment states, from the date of termination. As explained earlier in this preamble, it will normally be some weeks after receipt of the Notice of Intent to Terminate before the plan termination date is established under ERISA Section 4048. Thus, the employer will usually have 160–180 days, or more, after submitting the termination notice to submit the net worth information. PBGC believes this time is adequate.

The same comment also objected to the fact that the PBGC might exercise its authority to set an earlier net worth record date after the submission of the net worth information, and that this might necessitate the submission of more data. The comment suggested that the regulation provide that the net worth information need not be submitted until the net worth record date is established. The PBGC is unable to agree with this suggestion.

As noted above, the general rule is that the net worth record date is the date of plan termination. This rule will usually apply; in the great majority of cases to date, the PBGC has not set an earlier date. However, in those cases where the PBGC will exercise this authority, it will usually be the net worth information that will indicate the need to set an earlier date. Until it receives the net worth information, PBGC typically would have no information indicating a potential abuse of the insurance system and thus a need to establish an earlier net worth record date. Accordingly, PBGC must reserve its authority to establish an earlier date at any time during a termination proceeding.

One comment was received that dealt with the specific items of information required to be submitted under § 2613.6(a). That comment stated that many employers will not have all of the items of information, *e.g.* business plans and projected earnings, and yet the regulation requires their submission. PBGC recognizes that some employers may not have all of the information listed in § 2613.6(a). Nevertheless, PBGC needs such information as business plans and projected earnings in order to determine the net worth of the employer. Moreover, PBGC does not believe that it will be very difficult for an employer to create this information, with one exception. Accordingly, the regulation has not been changed in this respect, except for a slight revision to item 2 to indicate that an employer need not create annual reports if none exist.

Interest on Employer Liability

The PBGC has made several changes in § 2613.7 and § 2613.8 to clarify the manner in which it will assess interest on unpaid employer liability. The proposed regulation did not specifically provide that the interest would be compounded, nor did it specify how interest would be compounded when deferred payment agreements are entered into under § 2613.8. The final regulation explicitly states in § 2613.7(a) that interest will be compounded annually, except when the liability is paid pursuant to deferred payment terms granted under § 2613.8. In that event, new § 2613.8(d) provides that interest will be compounded annually until a deferred payment agreement is entered into; thereafter, interest will be compounded periodically with the frequency of the payments under the agreement.

A number of public comments were received dealing with the interest provision. One comment made the general argument that employer liability should not be due on the date of plan termination. This comment stated that this rule would be likely to encourage non-compliance with the termination procedures, including late reporting of plan terminations.

PBGC does not find this argument persuasive. First, it is PBGC's position that the statute itself provides that the liability arises on the date of plan termination. Section 4068(b) of ERISA states that PBGC's lien for unpaid employer liability "arises on the date of termination of a plan." It follows from this that the liability itself arises on that date. Thus, PBGC is not at liberty to choose a later due date, even if that were desirable. Second, PBGC does not see how this rule will lead to late reporting of plan terminations. Delayed reporting generally will result in a later date of termination being established pursuant to ERISA Section 4048 and thus potentially increased employer liability.

Another comment suggested that there may be cases where the plan termination is unexpected, and therefore the employer would be unable to calculate the plan asset insufficiency and pay its liability by the date of termination. Accordingly, this comment suggested that § 2613.7 provide that interest will not accrue "if there is reasonable cause for an employer failing to pay its full liability on or before the date of plan termination."

PBGC disagrees with the assumption underlying this comment. A pension plan termination is not (or should not be) a wholly "unexpected" event. Terminating a plan is a business decision of some significance. While the final decision may, in fact, be made relatively suddenly, in all but the most unusual circumstances, an employer would have given preliminary consideration to this action.

Even if an employer were caught unprepared by a termination, there would not be "reasonable cause" not to pay employer liability on the plan termination date. As discussed earlier in this preamble, this regulation does not require that the employer make a precise computation of the plan asset insufficiency prior to the date of plan termination. As a practical matter, all that is needed is an estimate of PAI. Such an estimate will be possible from the information that is required to be submitted as part of the Notice of Intent to Terminate. Under the termination notice regulation (Part 2604 of this chapter), the plan administrator is required to submit the most recent plan actuarial and financial statements and to give estimated assets and benefit values as of the date of termination. Thus, the employer must have this information in order to begin the termination process.

Finally, if an employer fails to pay by the statutorily-mandated due date, for lack of information or any other reason, the amount due remains at its disposal rather than with the PBGC. Imposition of interest is appropriate in these circumstances, and failure to impose it would encourage dilatory conduct.

Another comment stated that by charging the Internal Revenue Service interest rate (currently 12%), PBGC was "guranteeing an actuarial gain to itself on amounts of employer liability unpaid." A second comment suggested that the interest rate should be the rate used by PBGC for valuing plan benefits. PBGC disagrees. As another comment recognized, the purposes of the interest charge is not just to make PBGC whole, but, more importantly, to discourage employers from using PBGC as a source of financing. Charging the interest rate that is used to value immediate annuities would not accomplish this goal.

This last comment went on to suggest that, given PBGC's purposes, PBGC should charge a rate of interest that is based even more currently on the prevailing money market than is the IRC Section 6621 rate, which changes only every two years. Specifically, the comment recommended that PBGC change the rate annually. While there is merit to this suggestion, PBGC has determined that administrative considerations argue against making this change.

Under § 2613.7(c), the interest rate is a variable rate and will change whenever the IRS rate changes. The new rate will apply to all debts for employer liability then outstanding, including employer liability being paid to PBGC in installments under deferred payment arrangements. (The PBGC notes in this connection that when the interest rate changes, the interest charged for the payment period in which the change occurs will be a weighted average of the old and new rates.) This will necessitate re-computation of the outstanding obligations and, consequently, changes in the repayment schedules or amounts. Having to make these adjustments on an annual basis would be very burdensome for PBGC. For this reason, PBGC has decided it is preferable to use the IRS rate.

Another comment raised questions concerning the provision in § 2613.7(b) that PBGC will refund overpayments of employer liability with interest at the IRS rate. That comment stated that this provision fails to consider the IRS anti-reversion and exclusive benefit rules relating to emplyer contributions. PBGC believes this concern is unwarranted because employer liability payments are not considered to be employer contributions. They are treated as contributions only for purposes of deductibility under section 404 of the Internal Revenue Code, ERISA Section 4401(a). Thus, the aforementioned IRS rules do not bar PBGC from refunding overpayments of employer liability.

This same comment also questioned when PBGC will make the refunds. The regulation does not specify when refunds will be made, because this may vary from case to case. The date of the refund will depend on, among other things, when PBGC makes its determination of liability and whether the determination is appealed. It is PBGC policy that refunds will be made promptly, normally no later than 20 working days (1) after a decision on appeal of the liability determination or, (2) if no appeal is filed, after the time to appeal has expired. Interest on refunds will be compounded annually.

Deferred Payment of Liability

One comment objected to the dual standards for the granting of deferred payment terms, *viz.* that PBGC will allow deferred payment only when necessary to avoid the imposition of severe hardship on the employer and only when there is a reasonable possibility that PBGC will be repaid. The comment argued that these two standards are inconsistent and their use "could have the effect of prohibiting use of deferred payment terms in almost all instances."

PBGC does not agree with this view, although it is obviously true that the impact of this provision will depend on how PBGC applies the standards to specific cases. PBGC does not intend to apply them in such a way as "(to prohibit) deferred payment terms in almost all instances." PBGC recognizes the hardship that payment of employer liability may pose for some employers, and it will do its best to alleviate that hardship in a manner consistent with the statutory requirements relating to imposition and payment of the liability, and with its statutory duty to collect claims due it so as to maintain premiums at the lowest possible level. In general, these standards will enable PBGC to grant payment terms to avoid the most common hardship faced by employers in these cases, current illiquidity.

Notification of and Lien for Liability

PBGC has made several changes in § 2613.9, which deals with the notice to the employer of its liability and the PBGC's statutory lien for unpaid liability. Section 2613.9(a) has been changed slightly to make clear that all employers who have liability to PBGC will receive a written determination of their liability, even if they have already paid it.

Section 2613.9(c) has been modified, in response to a comment, to state the circumstances under which PBGC will issue a demand letter for the liability without first issuing a notification of the liability pursuant to § 2613.9(a). The regulation provides, as suggested by the comment, that PBGC will take this action only when it believes that its ability to assert or obtain payment of the liability is in jeopardy.

In addition, a new sentence has been added to § 2613.9(c) clarifying that when PBGC issues a demand letter under this paragraph, there is no right to appeal the assessment of liability under PBGC's administrative review regulation (Part 2618 of this chapter). This is a continuation of PBGC's current practice. This rule is needed because the circumstance that would lead to PBGC's issuing a demand letter under this paragraph are likely to require immediate action by PBGC to enforce its assessment of liability, which action could not be taken if PBGC first had to process an appeal. One example of this would be a case where the statute of limitations in ERISA Section 4068(d)(2)

on bringing a court action to collect employer liability is about to expire.

In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulation, is amended by adding a new Part 2613 to read as follows:

PART 2613—EMPLOYER LIABILITY FOR A SINGLE EMPLOYER PLAN TERMINATION

Sec.
2613.1 Purpose and scope.
2613.2 Definitions.
2613.3 Amount and imposition of employer liability.
2613.4 Determination of net worth.
2613.5 Net worth record date.
2613.6 Submission of net worth information.
2613.7 Interest on employer liability and refunds of overpayments.
2613.8 Deferred payment of employer liability.
2613.9 Notification of and lien for employer liability.
2613.10 Filing of documents.
2613.11 Computation of time.

Authority: 29 U.S.C. §§ 1302, 1362, 1363, 1364, 1367, and 1368, Sections 4002(b)(3), 4062, 4063, 4064, 4067, and 4068, Pub. L. 93-406, 88 Stat. 1004, 1029, 1030, 1031, 1032 (1974), as amended by Pub. L. 96-364, 94 Stat. 1302, 1301 (1980).

§ 2613.1 Purpose and scope.

(a) *Purpose.* Section 4062 of the Act imposes liability on an employer for the termination of an insufficient (*i.e.* lacking sufficient assets to pay guaranteed benefits) pension plan to which only one employer contributes, a single employer plan. Section 4063 of the Act, in conjunction with Section 4062, imposes a conditional liability for the withdrawal of a substantial employer from an insufficient pension plan to which more than one employer contributes, other than a multiemployer plan as defined in Section 4001(a)(3). Section 4064, in conjunction with Section 4062, imposes termination liability on all employers who contributed within 5 years prior to plan termination to an insufficient plan to which more than one employer contributes, other than a multiemployer plan as defined in Section 4001(a)(3).[1] Under both Section 4063 and Section 4064, liability is determined by first calculating what the liability would be under Section 4062 if that section were applicable to the plan in question, and then prorating or allocating that liability among the affected employers. Section 4067 of the Act authorizes PBGC to grant deferred payment terms to employers liable under Sections 4062, 4063, or 4064, and Section 4068 gives the PBGC a lien on the employer's assets in the event of non-payment of the liability imposed by Section 4062, Section 4063 or Section 4064. The purpose of this part is to set forth the rules for determining and paying employer liability under Section 4062. This part also provides guidance, to the extent appropriate, for the determination of employer liability under Sections 4063 and 4064. In addition, this part contains rules relating to deferred payments of employer liability under Section 4067 and to the PBGC's lien under Section 4068, with respect to liability arising under Sections 4062, 4063 and 4064.

(b) *Scope.* This part applies with respect to any single employer plan, as defined in this part, for which either a Notice of Intent to Terminate the plan is filed, or an action to terminate the plan under Section 4042 of the Act is commenced by PBGC, after the effective date of this part. This part also applies, to the extent described in Paragraph (a) of this section, with respect to the withdrawal of a substantial employer from or the termination of a plan to which more than one employer contributes, other than a multiemployer plan as defined in Section 4001(a)(3) of the Act, occurring on or after the effective date of this part.

§ 2613.2 Definitions.

The words and phrases below shall have the following meaning unless otherwise required by the context:

"Act" is the Employee Retirement Income Security Act of 1974, (29 U.S.C. § 1001 *et seq.* (1976)), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208.

"Date of plan termination" is the date established under § 4048 of the Act.

"Employer" is the trade or business (whether or not incorporated) maintaining the plan and all trades or businesses (whether or not incorporated) under common control with such trade or business within the meaning of Part 2612 of this chapter.

"Net worth" is the fair market value of an employer determined in accordance with this part.

"Net worth record date" is the date as of which the net worth of an employer is determined.

"Plan asset insufficiency" is the amount, calculated as of the date of plan termination, by which the value of a plan's benefits guaranteed by the PBGC under Section 4022 of the Act exceeds the value of the plan's assets allocable to such benefits under Section 4044 of the Act. A plan that closes out under a Notice of Sufficiency from the PBGC does not have a plan asset insufficiency for the purposes of this part.

"PBGC" is the Pension Benefit Guaranty Corporation.

"Single employer plan" is a defined benefit pension plan described in § 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated) or by more than one trade or business (whether or not incorporated) all of which are under common control within the meaning of Part 2612 of this chapter.

"Title IV" is Title IV of the Act.

§ 2613.3 Amount and imposition of employer liability.

(a) *Amount of employer liability.* An employer who maintains a terminating single employer plan is liable to the PBGC as of the date of plan termination in an amount equal to the lesser of the plan asset insufficiency, or 30 percent of the employer's net worth determined in accordance with this part.

(b) *Notice of net worth limitation.* An employer who believes that 30 percent of its net worth is less than the plan asset insufficiency shall so notify the PBGC in writing within 30 days after the establishment of the date of plan termination. The date of plan termination is established either upon the execution by all signatories of a trusteeship agreement or upon the issuance of a court order decreeing a plan terminated.

(c) *Imposition of liability.* Upon receipt of a notice of net worth limitation filed in accordance with Paragraph (b) of this section and an employer's demonstration of its net worth filed in accordance with § 2613.6(a)(1), the PBGC shall calculate the employer's liability under this part in accordance with Paragraph (a) of this section. If an employer fails to submit a timely notice in accordance with Paragraph (b) of this section, or to demonstrate that its liability is limited by its net worth in accordance with § 2613.6(a)(1), the PBGC shall calculate the liability under this part without regard to the net worth of the employer. The PBGC shall notify the employer of its liability in accordance with § 2613.9.

§2613.4 Determination of net worth.

(a) *General rule.* An employer's net worth is equal to the fair market value of the employer determined as of the net worth record date established pursuant to § 2613.5, and includes those assets that PBGC determines pursuant to Paragraph (d) of this section to have been improperly transferred. The determination of fair market value shall

[1] The liabilities under Sections 4063 and 4064 are related. Under Section 4063, if the plan does not terminate within 5 years after the withdrawal of the employer, the withdrawal liability is abated.

be based on the factors set forth in Paragraph (c) of this section.

(b) *Partnerships and sole proprietorships.* In the case of an employer that is a partnership or sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for those assets included pursuant to Paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* An employer's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the employer's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the employer made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the employer, made on or about the net worth record date.

(3) If stock in the employer is publicly-traded, the price of such stock on or about the net record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The employer's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the employer's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the employer's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of an employer in a proceeding under Chapter 11 of the Bankruptcy Code of 1978 (or under Chapter XI of the prior Bankruptcy Act).

(9) Any other factor relevant in determining the employer's net worth.

(d) *Improper transfers.* An employer's net worth shall include the value of any assets transferred by the employer which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding or limiting employer liability under this part. Assets "improperly transferred" include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word "transfer" includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 2613.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to Paragraph (b) of this section, the net worth record date is, for all purposes under this part, the date of plan termination established pursuant to Section 4048 of the Act.

(b) *Establishment of an earlier net worth record date.* Notwithstanding Paragraph (a) of this section, the PBGC may, in order to prevent undue loss to or abuse of the plan termination insurance system, establish an earlier date as the net worth record date in a particular case, but in no event may that date be more than 120 days prior to the date of plan termination. PBGC may exercise its authority under this paragraph at any time during a termination proceeding.

(c) *Notification to the employer.* Whenever the PBGC does establish an earlier net worth record date, it shall immediately give the employer written notification of that fact. The written notice may also include a request for more information pursuant to § 2613.6(b).

§ 2613.6 Submission of net worth information.

(a) *General.* An employer who has notified the PBGC pursuant to § 2613.3(b) that 30 percent of its net worth is less than the plan asset insufficiency shall submit the following information to the PBGC within 120 days after the establishment of the date of plan termination. The PBGC reserves the right in any case when it believes that its ability to obtain information or payment of the employer's liability is in jeopardy to require the submission of the information within a shorter period.

(1) The employer's estimate, made in accordance with § 2613.4, of its net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the employer's audited (or if not available, unaudited) financial statements for the five (5) full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position, and be accompanied by the annual reports if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of employer assets or at least 5 percent of employer stock or partnership interest, made on or about the net worth record date.

(4) A statement of the employer's current financial condition and business history.

(5) A statement of the employer's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisals of the employer's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a proceeding under Chapter 11 of the Bankruptcy Code of 1978 (or under Chapter XI of the prior Bankruptcy Act) involving the employer and occurring within five (5) calendar years prior to or any time after the net worth record date.

(b) *Additional information.* Whenever the PBGC establishes a net worth record date earlier than the date of plan termination and the employer has already submitted the information specified in Paragraph (a) of this section, the PBGC may require the employer to submit additional information like that described in Paragraph (a), as of a date closer to the net worth record date than the information already submitted pursuant to Paragraph (a). In addition, the PBGC may require the submission by the employer of any other information the PBGC determines it needs to calculate the employer's net worth.

(c) *Incomplete submissions.* If an employer does not submit all of the information required or requested under this section (other than that required by Paragraph (a)(1) of this section), the PBGC may determine the employer's net worth on the basis of the information that was submitted, as well as any other pertinent information the PBGC may have. In general, when the information submitted is as of a date further removed from the net worth record date, it will be given less probative value by PBGC than would be given to information as of a date nearer to the net worth record date. As provided in § 2613.3(c), if the employer fails to submit the information required by Paragraph (a)(1) of this section, the PBGC shall compute the employer liability under this part without regard to the employer's net worth.

§ 2613.7 Interest on employer liability and refunds of overpayments.

(a) *Interest on employer liability.* If an employer fails to pay its full liability under this part on or before the date of plan termination, and whether or not the PBGC has granted the employer

deferred payment terms pursuant to § 2613.8, interest on the unpaid portion of the liability will accrue at the rate set forth in Paragraph (c) of this section from the date of plan termination until the liability is paid in full. Except as provided in § 2613.8, relating to deferred payment terms for payment of employer liability, interest shall be compounded annually. When the employer pays its liability in more than one payment, each payment shall be applied first to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds of employer liability.* If an employer pays the PBGC an amount that exceeds the employer's full liability under this part (including any interest owed pursuant to Paragraph (a) of this section), the PBGC shall refund the excess amount of the employer, with interest on that amount at the rate set forth in Paragraph (c) of this section. Interest on the overpayment will accrue from the later of the date of the overpayment or 10 days prior to the date of plan termination, until the date of the refund and shall be compounded annually.

(c) *Interest rate.* The interest rate on employer liability and refunds of employer liability shall be at the annual rate prescribed in Section 6621(a) of the Internal Revenue Code of 1954, as amended. The interest rate under this part shall be a variable rate, changing whenever the interest rate under Section 6621 of the Code changes.

§ 2613.8 Deferred payment of employer liability.

(a) *General.* PBGC may, in its discretion and at the request of an employer, grant deferred payment terms for employer liability. PBGC will grant deferred payment terms only when necessary to avoid the imposition of a severe hardship on the employer, and only when there is a reasonable possibility that the employer will be able to meet the deferred payment terms and pay the entire liability.

(b) *Request for deferred payment terms.* An employer may request deferred payment terms at any time. The request shall be in writing and include the information specified in § 2613.6(a) unless that information has already been submitted to the PBGC.

(c) *Criteria.* PBGC shall examine the following factors in determining what, if any, deferred payment terms it will grant an employer:

(1) The ratio of employer liability to the employer's net worth.

(2) The employer's overall financial condition, including—

(i) the amounts and terms of the employer's existing debts;

(ii) the amount and availability of the employer's liquid assets;

(iii) the employer's current and past cash flow; and

(iv) the employer's projected cash flow, including a projection of the impact on the employer's operations that would be caused by the immediate full payment of employer liability.

(3) The availability of credit to the employer from private sector sources.

(d) *Compounding of interest during period of deferred payment.* Prior to the granting of deferred payment terms, interest on unpaid employer liability shall be compounded in accordance with § 2613.7(a). When a deferred payment agreement is entered into, interest shall be compounded thereafter periodically with the frequency of the payments required under the agreement.

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may, in its discretion, require that an employer provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 2613.9 Notification of and lien for employer liability.

(a) *Notification of liability.* Except as provided in Paragraph (c) of this section, when the PBGC has determined the amount of an employer's liability under this part and whether or not the liability has already been paid, PBGC shall notify the employer in writing of the amount of the liability. If the full liability has not yet been paid, the notification will include a request for payment of the full liability. In all cases, the notification will include a statement of the employer's right to appeal the assessment of liability pursuant to Part 2618 of this chapter.

(b) *Demand for liability.* If the employer fails to pay its full liability and no appeal is filed or an appeal is filed and the decision on the appeal finds liability, the PBGC will issue a demand letter for the liability—

(1) if no appeal is filed, upon the expiration of time to file an appeal under Part 2618; or

(2) if an appeal is filed, upon issuance of a decision on the appeal finding that there is liability under this part.

(c) *Special rule.* Notwithstanding paragraphs (a) and (b) of this section, the PBGC may, in any case in which it believes that its ability to assert or obtain payment of an employer's liability is in jeopardy, issue a demand letter for an employer's liability under this part immediately upon determining the liability, without first issuing a notification of liability pursuant to Paragraph (a) of this section. When the PBGC issues a demand letter under this paragraph, there is no right to appeal of the assessment of liability pursuant to Part 2618 of this chapter.

(d) *Lien.* If the employer fails or refuses to pay the full amount of its liability within the time specified in the demand letter, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the date of plan termination, on all of the property and rights to property belonging to the employer.

§ 2613.1 Filing of documents.

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—.

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraph (a) (1) and (2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of employer liability shall be clearly designated as such and include the name of the plan, and shall be sent to the Division of the Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006. Any document required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Office of Program Operations, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to Part 2618 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 2613.11 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday. For the purpose of computing interest accrued, a Saturday, Sunday or Federal holiday

referred to in the previous sentence shall be included.

Issued in Washington, D.C. this 19th day of January, 1981.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

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Part VIII

Pension Benefit Guaranty Corporation

Determinations of Plan Sufficiency and Termination of Sufficient Plans

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2615

Determination of Plan Sufficiency and Termination of Sufficient Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final Rule.

SUMMARY: This regulation prescribes the conditions under which the Pension Benefit Guaranty Corporation (the "PBGC") will issue a Notice of Sufficiency to the plan administrator of a terminating plan and the rules for winding up the affairs of the plan. Section 4041 of the Employee Retirement Income Security Act of 1974 (*as amended by* the Multiemployer Pension Plan Amendments Act of 1980) (the "Act") provides that if a terminating single employer pension plan has sufficient assets to pay certain pension benefits, the PBGC will issue a Notice of Sufficiency to the plan administrator. Section 4041 of the Act further provides that a plan administrator who receives a Notice of Sufficiency may proceed with the termination of the plan in a manner consistent with Subtitle C of Title IV of the Act. This regulation is necessary because the Act does not establish procedures either for determining whether a plan is sufficient or for winding up the affairs of the plan. The intended effect of this regulation is to provide procedures for the orderly and efficient termination of sufficient plans, and to ensure that generally a participant or beneficiary with a benefit payable as an annuity under a terminating plan will receive his or her benefit in the annuity form specified in the plan through a funding medium that will assure timely and uninterrupted payment.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Joan Segal, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, N.W., Washington, D.C. 20006, (202) 254-3010.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1976, the PBGC published in the **Federal Register** a proposed regulation on "Determination of Plan Sufficiency and Termination of Sufficient Plans" (41 FR 48504). The proposed regulation set forth a procedure for determining whether the assets held under a terminating plan, if allocated in accordance with section 4044 of the Act, are sufficient to discharge when due all obligations of the plan with respect to basic benefits. The proposal also set forth a procedure for winding up the affairs of a sufficient plan.

On January 9, 1978, the PBGC published as a final rule that portion of the proposal dealing with the conditions under which the PBGC will provide the early retirement benefit of a participant in a sufficient plan who had not retired before the plan terminated (43 FR 1334). The reason for making the early retirement rule final at that time was that a number of plan administrators who had received a Notice of Sufficiency were unable or unwilling to close out the plan either because they could not obtain bids for the early retirement benefits, or the bids they obtained were unreasonable. Accordingly, the PBGC issued the final rule on early retirement benefits and continued its review of the remainder of the proposed regulation.

The PBGC has completed that review which included careful consideration of the numerous comments on the proposal received from the public. The final regulation set forth in this document differs substantively from the proposal in several respects; many of those changes have been made in response to the comments. Additionally, some non-substantive changes have been made that the PBGC believes simplify and generally clarify the regulation. Although no changes have been made in the substance of the early retirement regulation, the final regulation as published on January 9, 1978 is being revised by this document for the purposes of simplifying the early retirement rule and of incorporating in one instrument all rules on Determination of Plan Sufficiency and Termination of Sufficient Plans.

In the discussion that follows, references are to sections in the final regulation unless otherwise stated.

Overview of the Regulation

In order to make the regulation as clear as possible and to accommodate substantive changes from the proposal, the PBGC has restructured the final regulation. Unlike the proposal, the final regulation is divided into four subparts. Subpart A contains the general provisions of the regulation, including rules for determining whether a plan administrator must follow the procedure set forth in Subpart B for demonstrating sufficiency. Subpart A provides, as a general rule, that upon receipt of a Notice of Intent to Terminate a pension plan, the PBGC will determine, on the basis of all the facts and circumstances of the case, whether the plan is clearly insufficient. If the plan is clearly insufficient, the PBGC will issue a Notice of Inability to Determine Sufficiency to the plan administrator and proceed to place the plan into trusteeship. If the plan is not clearly insufficient, the plan administrator is required to follow the procedure for demonstrating sufficiency set forth in Subpart B of the regulation.

Subpart B prescribes the procedure for demonstrating whether a plan will be sufficient on the date the plan's assets are distributed. Basically, a plan administrator must demonstrate whether the value of the assets expected to be available for allocation on the intended date of distribution equals or exceeds the estimated liability of the plan for benefits in priority categories 1 through 4 as of that date. In order to determine the value of annuity benefits, the plan administrator is required to obtain a bid from an insurer to provide those benefits. A plan administrator who successfully completes the procedure prescribed by Subpart B will be issued a Notice of Sufficiency, and will then close out the plan in accordance with Subpart C. A plan administrator who is unable to demonstrate sufficiency will be issued a Notice of Inability to Determine Sufficiency, and the PBGC will proceed to place the plan into trusteeship.

Subpart C of the regulation sets forth the procedure for closing out a plan that a plan administrator must follow upon receipt of a Notice of Sufficiency. Within 90 days after the date of the Notice, the plan administrator must distribute the plan assets, purchasing from an insurer a contract or contracts to provide annuity benefits. If the plan administrator finds that plan assets are not adequate to provide all benefits in priority categories 1 through 4, he or she may take no further action to close out the plan and must notify the PBGC immediately. Upon receipt of the notice, the PBGC will revoke the Notice of Sufficiency and put the plan into trusteeship.

Subpart D prescribes the conditions under which the plan administrator of a terminating plan that is closing out under a Notice of Sufficiency may arrange for the PBGC to become responsible for the payment of early retirement benefits.

Subpart A—General Provisions

Purpose and Scope

Proposed § 2615.1(b) described the scope of the regulation. The PBGC has changed this provision to make clear that the regulation does not apply to multiemployer pension plans. This

change was made in light of the recent enactment of the Multiemployer Pension Plan Amendments Act of 1980, which so altered the nature and consequences of plan termination for multiemployer plans that the rules set forth in this regulation are inappropriate to multiemployer plan terminations.

Determination Upon Receipt of Notice of Intent To Terminate

Proposed §§ 2615.4 and 2615.5 described the circumstances under which the PBGC would issue a Notice of Inability to Determine Sufficiency or a Notice of Sufficiency to the plan administrator of a terminating plan. In the interest of simplicity, the PBGC has rewritten and restructured the relevant provisions.

Section 2615.3(a) provides, as a general rule, that upon receipt of a Notice of Intent to Terminate a plan, the PBGC will determine, on the basis of all the facts and circumstances of the case, whether the plan is clearly insufficient. If the PBGC determines that the plan is clearly insufficient, the PBGC will issue a Notice of Inability to Determine Sufficiency to the plan administrator (§ 2615.3(a)(1)). The plan will then be placed in trusteeship, and PBGC will assume the obligation of paying guaranteed benefits under the plan in accordance with Title IV of the Act.

If the plan is not clearly insufficient, the PBGC will direct the plan administrator to follow the procedure set forth in Subpart B of the regulation for demonstrating whether the plan will be sufficient (§ 2615.3(a)(2)).

Proposed § 2615.4(b) provided that the plan administrator of a clearly insufficient plan could within 20 days after receiving the Notice of Inability to Determine Sufficiency, notify the PBGC of his or her intention to challenge the PBGC's determination by following the procedure for demonstrating sufficiency set forth in proposed § 2615.5(d). The PBGC has eliminated this provision in the final regulation. In determining whether a plan is clearly insufficient, the PBGC will take into account all of the relevant facts and circumstances of the case, including market conditions and the cost of purchasing annuities from an insurer. The PBGC believes that this broad approach will ensure that the PBGC will not determine that a plan is clearly insufficient unless it is certain that the plan will not be able to provide the necessary benefits. To permit a plan administrator to attempt to demonstrate sufficiency where it is clear that the attempt will fail would result in unnecessary delay and would expose the PBGC to the risk of absorbing post-termination decreases in the value of plan assets.

Like the proposal, the final regulation sets forth a special rule applicable to plans that have no participants entitled to receive benefits in priority categories 1 through 4 (proposed § 2615.5(b); final § 2615.3(b)). When the PBGC receives a Notice of Intent to Terminate such a plan, the PBGC will not require the plan administrator to follow the procedure set forth in Subpart B of the regulation for demonstrating whether the plan will be sufficient. Rather, the PBGC will issue a Notice of Sufficiency to the plan administrator directing the plan administrator to distribute assets and wind up the affairs of the plan in accordance with Subpart C of the regulation.

Proposed § 2615.5 (c) provided that the PBGC would, without requiring the plan administrator to follow the procedure for demonstrating sufficiency, issue a Notice of Sufficiency to the plan administrator of a plan that, as of the date of plan termination, had already purchased from an insurer all benefits in priority categories 1 through 4. The PBGC has examined this provision and concluded that it is unnecessary. If, as of the date of plan termination, a plan has provided all benefits in priority categories 1 through 4, the plan has no participants entitled to receive benefits in categories 1 through 4. Thus, the special rule set forth in § 2615.3(b) of the regulation is applicable to plans described in proposed § 2615.5(c).

In connection with this issue, it is important to note that the purchase of an annuity contract in contemplation of termination is considered to be an allocation of plan assets upon termination and is subject to the allocation rules set forth in section 4044 of the Act.

The Alternatives

The proposed regulation set forth for consideration and public comment two alternative methods for processing plans that are not clearly insufficient (proposed § 2615.5(d)). Alternative I provided that a plan administrator was not required to attempt to demonstrate sufficiency. Rather, the plan administrator had the option of following the procedure for demonstrating sufficiency or of permitting the PBGC to take the plan into trusteeship. Under Alternative II, the plan administrator was required to follow the procedure for demonstrating sufficiency. A plan administrator who succeeded in demonstrating sufficiency was required to close out the plan in the private sector by purchasing contracts from an insurer to provide annuity benefits.

Most of the comments on the proposal addressed the issue of which alternative should be adopted. The comments that favored Alternative I stressed as its significant positive aspects the flexibility given the plan administrator, the reduction in the plan administrator's burden, and the possibility that the choice available under Alternative I might, particularly, in the case of small plans, result in increased benefit payments to participants. Additionally, one comment opposing Alternative II stated that it "appears to give the insurance industry an unreasonable advantage in the area of terminated plans."

Many of the comments that favored Alternative II stated that the private sector has served the pension community effectively, that under Alternative I the PBGC would compete with that sector, and that such competition would be unfair and would drive insurers out of the terminating plan market. One of the main arguments advanced in support of Alternative II was that Alternative I would expand the PBGC's role beyond the scope envisioned by the Act since the PBGC would be acting as an insurer of sufficient plans.

The PBGC gave careful consideration to the comments for and against each alternative and has decided to adopt Alternative II. The PBGC believes that, as a general rule, it should become involved with plans that can be closed out in the private sector only to the extent necessary to ensure that such plans are terminated in accordance with Title IV of the Act.

The PBGC notes that insurance companies compete with each other in the variety of annuity products offered, in the price of these products, and in the quality of their service. This competition has generally benefited plan participants. The PBGC's entry into the insurance market could adversely affect the market and ultimately be detrimental to participants of terminated plans.

A few comments, however, objected to Alternative II on the ground that it "provides no incentive for seeking competitive bidding." The comments were particularly concerned that a plan administrator might not seek a better bid after obtaining a bid so high that although the plan could afford to pay all benefits in priority categories 1 through 4 using that bid, the plan would have no remaining assets to provide benefits in priority categories 5 or 6. In response, the PBGC points out that plan administrators have a fiduciary

obligation to act in the best interests of all plan participants. The PBGC believes that this obligation would, in the situation described above, compel a plan administrator to seek better bids if he or she had reason to think that they were available. Moreover, the PBGC reserves the right to request bids from an insurer or insurers on behalf of any plan (§ 2615.14(b)).

Although the PBGC is convinced that adoption of Alternative II will generally work to the advantage of all parties involved in plan terminations, the PBGC is somewhat concerned about Alternative II as applied to certain small pension plans. If experience under this regulation indicates that plan administrators of small pension plans are not able to obtain annuities at reasonable cost, the PBGC may consider providing a special procedure to help small plans do so. The PBGC is interested in learning of any difficulties administrators of small plans have in closing out their plans under this regulation.

The Annuity Requirement

Basic to the proposed regulation was the requirement that a participant with a benefit payable as an annuity under a terminating plan receive that benefit in annuity form, unless the participant elected another form of distribution provided by the plan (proposed § 2615.3).

Of the 18 comments received, only one disagreed with the requirement that annuity benefits be provided in annuity form, stating that "[t]he failure of the statute to specifically impose such a requirement indicates that Congress had no intention to alter the common and longstanding practice of allowing lump sum distributions upon termination of a plan." The PBGC has reviewed the annuity requirement in light of the above comment and believes that the requirement is necessary to implement Title IV of the Act. A major purpose of Title IV is "to provide for the timely and uninterrupted payment of pension benefits . . ." (Section 4002(a)(2) of the Act.) A pension is a retirement annuity. It would be inconsistent with the Act for the PBGC to grant a plan administrator the discretion to deprive a participant entitled to a retirement annuity of that annuity. Moreover, the PBGC notes that the annuity requirement does not preclude lump sum payments. The proposal provided that, notwithstanding the annuity requirement, a participant could elect to receive his or her benefit in an alternative form provided by the plan; the final regulation contains this and two additional exceptions to the annuity requirement (§ 2615.4(b)) (see discussion below).

To ensure the timely and uninterrupted payment of benefits required to be provided in annuity form, the proposal required that the benefits be provided by the PBGC or purchased from an insurance carrier (proposed § 2615.3(a)). A few comments questioned this rule and suggested that continuation of the plan's trust and periodic payment of benefits from the trust might, in some circumstances, be more advantageous to participants.

In response, the PBGC notes that continuation of the trust of a terminated plan could result in a violation of the allocation rules set forth in section 4044 of the Act. Those rules establish six categories of plan benefits and require that assets be allocated to benefits in the higher priority categories before the assests are allocated to benefits in lower priority categories. If a plan's trust were continued, older participants with benefits in priority category 5 that were funded on the allocation date might retire and begin receiving their benefits before all benefits in higher categories payable to younger participants has been paid. If the trust should then suffer losses, there might not be sufficient assets to pay the benefits in the higher priority categories. Thus, since the continuation of the trust of a terminated plan would not ensure payment of benefits in the manner required by section 4044 of the Act, the PBGC will not permit the annuity requirement to be satisfied by continuation of the trust.

As noted above, however, the requirement that benefits payable as annuities be provided in annuity form, either by the PBGC or through the purchase of annuity contracts from an insurer, does not preclude a participant from electing another form of distribution provided by the plan. Examples of such alternative forms of distribution are a single installment payment, transfer of the value of the benefit to an individual account plan, or continued participation by the participant in a trust after the date of plan termination. Thus, continuation of the trust is permissible, but only in the limited circumstances where the plan provides for such an option and the participant has elected that option. In connection with this issue, it should be noted that a trust will not continue to be tax-exempt unless it maintains its qualified status under section 401 of the Internal Revenue Code of 1954, as amended.

Two comments that addressed the requirement that annuity contracts be purchased from an insurer were concerned about the possibility that the insurer might become insolvent. Specifically, the comments expressed uncertainty as to whether the PBGC would provide benefits to participants or beneficiaries of a terminated plan that closed out under a Notice of Sufficiency if the insurance company from which annuity contracts had been purchased should prove to be unable to meet its obligations. The PBGC does not believe that the concern expressed by the comments is warranted.

Under the regulation, an "insurer" is "a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia" (§ 2615.2). Such companies are subject to strict statutory requirements and administrative supervision. In fact, the reason insurance companies are so extensively regulated is to ensure that their obligations can be satisfied. However, in the unlikely event that an insurance company should fail and its obligations cannot be satisfied (*e.g.*, through a reinsurance system), the PBGC would provide the necessary benefits.

Finally, the PBGC emphasizes that, except with respect to early retirement benefits, the annuity requirement can be satisfied only by the purchase of annuity contracts from an insurer. The PBGC will, however, provide for the payment of an early retirement annuity benefit if the conditions of Subpart D of the regulation are met. To avoid any misunderstanding regarding this matter, the final regulation states that "any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form, either through the purchase from an insurer of a contract to provide the annuity or by the PBGC under Subpart D of this part." (§ 2615.4(a)).

Exceptions to the Annuity Requirement

One comment stated that the annuity requirement appears to be inconsistent with § 2605.8(b) of the PBGC's Guaranteed Benefits regulation (Part 2605 of this chapter). Section 2605.8(a) provides, *inter alia*, that the PBGC will not guarantee or pay a benefit payable in a single installment, but will instead guarantee and pay the equivalent benefit payable in periodic installments. Section 2605.8(b) provides that there are three situations where Paragraph (a) of that section does not operate to preclude single installment payments. Only two of the situations are relevent to plans that close out under a Notice of Sufficiency. First, if the value of a guaranteed benefit is $1,750 or less, the benefit may be paid in a single installment. To conform to this rule, § 2615.4(b)(2) of this regulation permits a

plan administrator to cash out a participant or beneficiary whose annuity is worth less than $1,750. Second, § 2605.8(b) of the Guaranteed Benefits regulation provides that a participant of a plan that is closing out under a Notice of Sufficiency may receive his or her benefit in a single installment if the plan so provides. The final regulation, like the proposal, recognizes this exception to the annuity requirement (§ 2615.4(b)(3)).

The final regulation contains one other exception to the annuity requirement. A benefit that is payable as an annuity under the provisions of a plan may nevertheless be paid in a single installment if the monthly amount of the benefit is less than the amount normally provided by an insurer. Thus, if the value of a benefit payable as an annuity is greater than $1,750, but the plan administrator is unable to purchase a contract to provide the annuity because the monthly amount of the benefit is less than that normally provided by an insurer, the benefit may be paid in a single installment (§ 2615.4(b)(1)).

Participant Elections

As noted above, the proposed regulation provided that, notwithstanding the annuity requirement, "a participant with a benefit payable as an annuity under the plan may elect to receive his or her benefit in an alternative form provided by the plan" (proposed § 2615.3(b)). Proposed § 2615.5(d)(2) required that the plan administrator provide participants with certain information respecting the right of election before any election is made.

The PBGC has restructured and made some changes in these provisions. A new § 2615.4(b)(3) provides that, notwithstanding the annuity requirement, a benefit that is payable as an annuity need not be provided in annuity form if the plan provides for an alternative form of distribution and the plan administrator submits a statement to the PBGC certifying that the participant elected, in writing, the alternative form of distribution. The plan administrator's statement must also certify that the participant was notified, in writing, before he or she made the election, that the election would not be given effect unless the plan should close out under a Notice of Sufficiency, and that the PBGC does not guarantee the benefit payable in the alternative form. Like the proposal, the final regulation requires the plan administrator to inform the plan participant of any risks attendant to a non-annuity form of distribution. For example, if an alternative form of distribution provided by a plan is continued participation in a trust after plan termination, the plan administrator must inform the participant that the trust could suffer losses and be unable to provide the benefit to which the participant was entitled at termination.

Unlike the proposal, the final regulation also requires the plan administrator to certify that the participant was informed, in writing, before making the election, of the estimated amounts of the annuity and of the alternative form of distribution. The PBGC believes that this requirement is necessary in order to ensure that participants will have enough information to make a reasoned election.

The PBGC will not issue a Notice of Sufficiency with respect to a plan that is going to provide benefits in a non-annuity form unless it receives the certified statement described above (§ 2615.12(a)).

A number of comments addressed the issue of participant elections of non-annuity benefit forms. One comment suggested that the regulation "permit the plan administrator to impose a reasonable time limit by which elections must be made in order that the plan may then proceed within the time frame imposed by the regulation." In response, the PBGC notes that the regulation does not prohibit a plan administrator from requiring that participants make their elections within a certain period of time. In fact, as the comment indicated, a plan administrator will probably find it useful to set a time limit on participant elections, so that the plan administrator can proceed within the time frame established by the regulation. The PBGC does not believe, however, that it is necessary for this regulation expressly to authorize plan administrators to do this.

Another comment noted that some pension plans provide that a participant's election of a form of distribution other than an annuity is subject to the approval of the plan administrator or trustee. The comment was concerned about the possible effect of the proposal on such plan provisions. It was not the PBGC's intention to alter participant election provisions such as those described by the comment, and the language of the participant election provision of the final regulation has been changed from that of the proposal to remove any ambiguity that might have existed on this point (§ 2615.4(b)(3)).

Required Form of Annuity

The proposal stated that "the form of annuity that must be provided is an optional form of annuity contained in the plan elected by the participant before the date of plan termination, or if no optional form has been elected, the form that would be paid upon retirement" (proposed § 2615.3(a)). One comment suggested that this provision may be "unduly restrictive" in requiring that an election of an optional form of annuity be made prior to plan termination. The comment notes that insurance companies "offer annuities which allow the annuitant to defer until the date of annuitization the form of annuity pursuant to which his benefits will be paid." The PBGC believes that the flexibility recommended by the comment would be to the advantage of plan participants and has changed the final regulation.

Section 2615.4(c) of the final regulation provides that the plan administrator may honor a post-termination election of an optional annuity form payable under the plan, if the value of the annuity in the optional form in no greater than the value of the annuity in the form to which the participant was entitled on the date of termination. The plan administrator may wish to consult with the Internal Revenue Service as to whether elections under this provision are consistent with Internal Revenue Service rules in a particular case.

Section 2615.4(c) further provides that the plan administrator may purchase an annuity which permits the participant to elect to receive his or her benefit in a form that is provided by the plan or that provides for a series of periodic payments for the life of the participant or beneficiary, if the right of election does not increase the cost of the annuity.

Subpart B—Procedure for Demonstrating Whether a Plan Will Be Sufficient

Basic Test

Proposed § 2615.5(d) prescribed the method for demonstrating sufficiency, and this method has been retained in the final regulation (§ 2615.12). The basic test is whether the assets expected to be available for allocation on the date of distribution exceed the estimated liability of the plan for benefits in priority categories 1 through 4 as of the date of distribution. Section 2615.12 provides that the plan administrator must submit to the PBGC the valuation of plan assets and benefits, made in accordance with §§ 2615.13 and 2615.14. The valuation date prescribed by

§§ 2615.13 and 2615.14 is the date the plan administrator proposes to distribute the assets of the plan. Section 2615.12(a) provides that the proposed date of distribution may be no earlier than 30 days after the date the PBGC receives the valuation information. On the basis of the valuations, the PBGC will issue the plan a Notice of Sufficiency or a Notice of Inability to Determine Sufficiency.

Time Limits

Section 2515.5(d)(1) of the proposed regulation provided that the procedure for demonstrating sufficiency "shall be completed within ninety (90) days of the proposed date of termination, unless upon the written request of the plan administrator, the PBGC shall grant an extension of time for completing the procedure." The PBGC reviewed this provision in light of its experience in processing cases since the issuance of the proposal and concluded that the time limit prescribed by the proposal might not be realistic. Accordingly, the final regulation provides that a plan administrator must complete the procedure for demonstrating whether the plan will be sufficient no later than 120 days after the date he or she is notified that the plan is not clearly insufficient (§ 2615.12(c)).

The PBGC believes that under the final regulation plan administrators will generally have ample time to complete the procedure. However, the PBGC may, upon good cause shown, grant an extension of time if a request for an extension is made before the expiration of the 120-day period. A request for an extension must be in writing and state why additional time is needed and the amount of additional time requested (§ 2615.6).

Certifications

The proposal provided that the PBGC would not issue a Notice of Sufficiency unless an enrolled actuary certified: (1) that the value of plan assets expected to be available for allocation on the date of distribution equalled or exceeded the estimated value of plan benefits in priority categories 1 through 4 as of that date; and (2) that the benefits payable under the plan were properly computed and their values properly determined (proposed §§ 2615.5 (d)(3) and (5)). Proposed § 2615.5 (d)(3) did, however, provide that the PBGC could waive the requirement of the enrolled actuary's certification.§

One comment suggested that routine waivers be granted in specified cases (*e.g.*, in the case of certain small pension plans). The PBGC has reviewed this issue in light of the comment and in light of the fact that the PBGC requires the plan administrator of a terminating plan to submit to the PBGC all pertinent plan data. As a result of this review, the PBGC has decided to eliminate the requirement for an actuary's certification. The PBGC believes that, while the requirement would be useful, it is not absolutely necessary in view of the requirement that the pertinent data be submitted to the PBGC. Additionally, the cost of obtaining an enrolled actuary's certification might be unduly burdensome for some plans.

While the final regulation does not require an enrolled actuary's certification, it does, unlike the proposal, require that the plan administrator certify that all information submitted pursuant to the procedure for demonstrating whether the plan will be sufficient is true and correct to the best of [the plan administrator's] knowledge and belief" (§ 2615.12(d)).

Expedited Processing

The PBGC recognizes that there undoubtedly will be cases where a plan administrator knows, before submitting a Notice of Intent to Terminate a plan to th PBGC, that he or she will be required to follow the procedures set forth in Subpart B for demonstrating sufficiency. In such cases, a plan administrator may wish to expedite the termination process. In fact, one comment suggested that the regulation include a special procedure for "expeditious processing" of certain plans. The PBGC believes that the suggestion is a good one and, accordingly, has provided that a plan administrator may, at the same time he or she submits the Notice of Intent to Terminate, submit all information required by Subpart B of the regulation to demonstate whether or not the plan will be sufficient (§ 2615.12(e)).

Value of Plan Assets

The proposal provided that, for the purpose of applying the "sufficiency test" described above, the value of plan assets expected to be available for allocation on the date of distribution was the value of plan assets as of the date of plan termination, reduced by all liabilities, expenses, fees and other costs incurred after, or unpaid as of, the date of termination (proposed § 2615.5(d)(3)). One comment objected to the fact that under proposed § 2615.5(d)(3), interest earned by plan assets subsequent to the date of plan termination and prior to the date of distribution could not be taken into account in determining whether a plan will receive a Notice of Sufficiency. The comment stated that "[f]ailure to take interest earnings into account could result in plans being considered insufficient even though they actually hold assets capable of providing all benefits in categories (1) through (4)." The PBGC has reviewed this issue in light of the comment and has changed the final regulation.

A new § 2615.13(a) provides that, for the purpose of demonstrating whether a plan will be sufficient, the plan administrator shall estimate the value of the plan's assets as of the date he or she proposes to distribute the assets. The estimate shall be based on the most recent financial statements, accounting reports and other relevant records of the plan's financial condition. If, however, the PBGC determines that the estimate is based on inadequate or outdated information, the PBGC may require that the plan administrator obtain a current valuation. Section 2615.13(a) further provides that the "estimate shall include an adjustment for changes in the value of the assets expected to occur prior to the date the plan administrator proposes to distribute the assets." However, to help ensure that an adjustment for projected earnings is not unrealistically optimistic, the regulation also provides that such an adjustment may not be based on a rate of return that is higher than the PBGC's interest rate for valuing immediate annuities set forth in Appendix B of Part 2610 of this chapter.

The PBGC has made two other changes in the rules govening the method of valuing a plan's assets for the purpose of applying the sufficiency test. First, § 2615.5(d)(3) of the proposal provided that "a legally binding and enforceable promise by an employer made before the date of plan termination to pay, on the date of distribution, any sum necessary to make the plan sufficient will be considered a plan asset if the PBGC determines that the fair market value of the employer's promise is adequate to render the plan sufficient." Under the final regulation, the PBGC will not determine the fair market value of an employer's promise. Rather, the PBGC will consider the amount described in an employer's commitment to be a plan asset for the purpose of determining whether to issue a Notice of Sufficiency, unless it appears that the employer is financially unable to satisfy its commitment (§ 2615.13(b)).

Second, the PBGC has included in an appendix to the final regulation the prescribed form for an employer's commitment to make a plan sufficient. Any employer who wishes to make such a commitment must complete and sign a copy of the form agreement and submit it to the PBGC prior to the date of

termination proposed in the Notice of Intent to Terminate the plan.

Value of Plan Benefits

The PBGC has also made a few changes in the rules prescribing the method of valuing a plan's benefits for purposes of applying the sufficiency test. For purposes of applying the test, the value of a benefit that must be provided in annuity form is the cost of buying that benefit from an insurer. Accordingly, the proposal required that a plan administrator make a "reasonable effort . . . to obtain a qualifying bid from one or more insurers on all annuity benefits" that must be provided in annuity form (proposed § 2615.5(d)(3)).

One comment was concerned about the vagueness of the requirement that a plan administrator make a "reasonable effort" to obtain bids. The PBGC shares this concern and has changed the regulation to eliminate the vagueness. The final regulation provides that a plan administrator must obtain a qualifying bid from an insurer and makes it clear that, under the regulation, the plan administrator need obtain only one bid unless he or she is unable to demonstrate that the plan will be sufficient using that bid. If the plan administrator is unable to demonstrate sufficiency using the bid obtained, he or she must attempt to obtain a bid under which the plan will be sufficient (§ 2615.14(b)(2)). However, in no event is the plan administrator required to obtain more than two additional bids. In connection with this rule, the PBGC notes again that plan administrators have a fiduciary obligation to act in the best interests of participants. The PBGC believes that this obligation would, in some circumstances, require a plan administrator to "shop" for favorable bids.

The proposal provided that a qualifying bid is one that, *inter alia*, "[i]s exercisable for a period of at least thirty (30) days after notice of the bid is given to the PBGC" (proposed § 2615.5(d)(3)). The purpose of this provision was to minimize the possibility that a bid would expire before the plan administrator could exercise it. One comment expressed doubts, however, that the provision would adequately accomplish its intended purpose. The PBGC believes that the concern expressed by the comment is valid and, in response, the PBGC has changed the final regulation. Section 2615.14(b)(1) provides that in order for a bid to be "qualifying" it must be exercisable "for a period of time that includes the date on which the plan administrator proposes to distribute the assets."

The proposal also stated that a qualifying bid could "not include the cost of providing any additional benefits not found in the priority categories contained in Part 2608 of this chapter." (Proposed § 2615.5(d)(3)). The PBGC reviewed this provision and has decided that it was misleading, and accordingly, it has been deleted. The regulation requires that, to determine the value of benefits in priority categories 1 through 4 that must be provided in annuity form, the plan administrator shall obtain a bid to provide those benefits. The value of those benefits is their cost under the bid. If the bid covers additional benefits, only that portion of the bid applicable to the benefits in priority categories 1 through 4 is necessary for the valuation.

In connection with the issue of bids, one comment stated that in order to be able to offer more favorable rates, insurers should not be required "to assume the expense of making the basic calculation necessary to determine the benefits to be insured . . . ." The same comment further stated that "it is important that these calculations be made by one person so that all insurance company bids will be on the same set of benefits and, thus, comparable." Another comment suggested that it would expedite the termination process if the PBGC required that insurers submitting bids "make their bids on each plan in the form of purchase rates per $1.00 of annuity . . . ." The PBGC believes that these suggestions have merit. In fact, the PBGC stated in the preamble to the proposal that in many cases it would be desirable for bids to "contain unit rates for purchasing each dollar of annuity." The PBGC also believes, however, that implementation of these suggestions is beyond the scope of this regulation. In drafting this regulation, the PBGC has tried, to the extent possible consistent with its statutory obligations, to limit its involvement with the workings of the private market. The PBGC does not believe that it is necessary to include specific provisions in the regulation to ensure that plan administrators and insurance companies will conduct business as efficiently as possible.

Finally, the method prescribed by the final regulation for valuing non-annuity benefits for the purpose of applying the sufficiency test differs somewhat from that set forth in the proposal. The changes were made in view of changes being made in the Valuation of Plan Benefits regulation, (Part 2610 of this chapter) and in an effort to make the termination process easier. A new § 2615.14(d) provides that the value of non-annuity benefits shall be determined in accordance with Subpart B of the Valuation of Plan Benefits regulation as of the date the plan administrator proposes to distribute the assets. The plan administrator may estimate this value on the basis of the latest actuarial report. If, however, the PBGC determines that the estimate is based upon inadequate or outdated information, the PBGC may require that the plan administrator obtain a current valuation.

Subpart C—Procedure for Closing Out the Plan

Inability to Provide Benefits

The proposal provided that "[i]f at any time after issuance of a Notice of Sufficiency the plan administrator discovers that the plan assets available for allocation are insufficient to provide all benefits in priority categories 1 through 4, the plan administrator shall immediately notify the PBGC." (Proposed § 2615.6(d)). Section 2615.22(a) of the final regulation includes this provision and, in addition, provides that upon discovering that the plan's assets are insufficient to provide the necessary benefits, the plan administrator shall take no further action to close out the plan. Section 2615.22(a) also provides that when the PBGC receives the notification referred to above, it shall revoke the Notice of Sufficiency and proceed to place the plan into trusteeship.

In such a case, the employer liability provisions of section 4062 of the Act apply. For the purpose of calculating employer liability under section 4062 of the Act, plan assets and benefits will be valued as of the date of plan termination. The amount promised in an employer's commitment to make the plan sufficient as provided by § 2615.13(b) of the regulation will not be considered a plan asset for the purpose of determining liability under section 4062. (§ 2615.22(b)).

In connection with the issue of employer liability, the PBGC points out that if, on the date of plan termination, the employer was a member of a group of trades or businesses under common control as described in Part 2612 of this chapter, all members of the controlled group are jointly and severally liable under section 4062 of the Act.

Submission of Distribution Information to PBGC

Section 2615.7 of the proposal required that, subsequent to the distribution of plan assets, the plan administrator submit a certified statement to the PBGC containing certain information regarding each participant or beneficiary to whom

distribution was made. The post-distribution reporting requirement set forth in the final regulation differs somewhat from that of the proposal. The provision has been renumbered § 2615.23 and, in addition to the information required by the proposal, it requires that the plan administrator inform the PBGC of the place or places where plan records will be held, and of the name of the insurer from which annuity contracts were purchased and the policy number(s). Additionally, the plan administrator is required to certify that plan assets were allocated and distributed in accordance with Part 2608 of this chapter.

One comment suggested that the post-distribution reporting required by the regulation be "coordinated" with the reporting requirements of section 1031 of the Act, pertaining to annual registration with the Secretary of Labor. The PBGC has considered the suggestion, and, because of differences respecting the timing of the reports required by the two sections and the information involved, has decided against adopting it.

Discussion of Miscellaneous Comments Received

Several provisions of the proposed regulation made reference to § 2610.3(c) of the proposed Valuation of Plan Benefits regulation, which was published in the **Federal Register** on November 3, 1976 (41 FR 48498). Proposed § 2610.3(c) set forth rules for computing the value of benefits for purposes of demonstrating sufficiency. The PBGC received a number of comments on the proposed Sufficiency regulation that were critical of proposed § 2610.3(c). These comments will be addressed in the preamble to the final Valuation of Plan Benefits regulation.

One comment suggested that the PBGC publish guidelines for the purpose of informing a plan administrator whether, and to what extent, "a terminating plan's regular periodic pension payments may be continued to participants previously in receipt thereof and participants becoming eligible therefor during the various periods of time involved in the plan termination process." The PBGC does not believe this is necessary because a plan administrator who submits a Notice of Intent to Terminate a plan to the PBGC is not without guidance respecting the payment of benefits prior to the date of distribution. After the PBGC receives a Notice of Intent to Terminate, it routinely informs the plan administrator of his or her obligations respecting the payment of benefits before final distribution of plan assets.

In consideration of the foregoing, Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended by revising Part 2615 to read as follows:

PART 2615—DETERMINATION OF PLAN SUFFICIENCY AND TERMINATION OF SUFFICIENT PLANS

Subpart A—General Provisions

Sec.

2615.1 Purpose and scope
2615.2 Definitions.
2615.3 Determination upon receipt of Notice of Intent to Terminate.
2615.4 Requirement for annuities.
2615.5 Submission of documents.
2615.6 Extension of time.

Subpart B—Procedure for Demonstrating Whether a Plan Will Be Sufficient

2615.11 Purpose and scope.
2615.12 Demonstration of sufficiency.
2615.13 Value of plan assets.
2615.14 Value of plan benefits.

Subpart C—Procedure for Closing Out the Plan

2615.20 Purpose and scope.
2615.21 Distribution of plan assets.
2615.22 Inability to provide benefits.
2615.23 Submission of distribution information to PBGC.

Subpart D—Early Retirement Benefits Provided by PBGC

2615.30 Purpose and scope.
2615.31 Conditions for payment of early retirement benefits by PBGC.
2615.32 Obtaining the benefit from PBGC.
Appendix—Agreement for employer's commitment to make a plan sufficient.

Authority: Secs. 4002(b)(3), 4041 and 4044, 29 U.S.C. §§ 1302, 1341 and 1344, Pub. L. 93-406, 88 Stat. 1004, 1020-1021, 1025-27 (1974), as amended by Secs. 403(1), 403(d) and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, 1299 (1980)

Subpart A—General Provisions

§ 2615.1 Purpose and scope.

(a) *Purpose.* The purpose of this regulation is to prescribe the rules for determining whether a terminated pension plan is sufficient and the manner of proceeding with the termination of a sufficient plan.

(b) *Scope.* This part applies to non-multiemployer plans for which a Notice of Intent to Terminate is filed on or after the effective date of this part.

§ 2615.2 Definitions.

"Act" means the Employees Retirement Income Security Act of 1974, *as amended by* the Multiemployer Pension Plan Amendments Act of 1980.

"Date of termination" means the date of plan termination established under section 4048 of the Act.

"Early retirement" means retirement before the normal retirement age specified in the plan.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

"Non-multiemployer plan" means a pension plan described in section 4021(a) of the Act that is maintained by one trade or business (whether or not incorporated), or by more than one trade or business (whether or not incorporated), all of which are under common control within the meaning of Part 2612 of this chapter, or a plan maintained by more than one trade or business not under common control that is not a multiemployer plan as defined in section 4001(a)(3) of the Act.

"Notice of Inability to Determine Sufficiency" means a notice issued by the PBGC that it has determined that it is unable to issue a Notice of Sufficiency.

"Notice of Intent to Terminate" means a notice filed with the PBGC pursuant to section 4041(a) of the Act and Part 2604 of this chapter.

"Notice of Sufficiency" means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of the Act and Part 2608 of this chapter.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Priority category" or "priority categories" means the category or categories set forth in § 4044(a) of the Act.

"Sufficient plan" means a plan which has no participants entitled to receive benefits in priority categories 1 through 4, or a plan whose assets are adequate on the date they are distributed—

(a) To purchase from an insurer those benefits in priority categories 1 through 4 that are required by § 2615.4(a) to be paid as annuities (other than early retirement benefits to be provided by the PBGC under Subpart D of this part);

(b) To purchase from the PBGC those early retirement benefits in priority categories 1 through 4 that are to be provided by the PBGC under Subpart D of this part; and

(c) To pay all other benefits in priority categories 1 through 4 in single installments.

§ 2615.3 Determination upon receipt of Notice of Intent to Terminate.

(a) *General rule.* Except as provided in Paragraph (b) of this section, upon receipt of a Notice of Intent to Terminate a plan, the PBGC shall determine, on the basis of all the facts

and circumstances of the case, whether the plan is clearly insufficient.

(1) If the PBGC determines that the plan is clearly insufficient, the PBGC will issue a Notice of Inability to Determine Sufficiency to plan administrator and proceed to place the plan into trusteeship in accordance with section 4042 of the At.

(2) If the PBGC determines that the plan is not clearly insufficient, the PBGC shall inform that plan administrator that he or she must follow the procedure set forth in Subpart B of this part for demonstrating whether the plan will be sufficient.

(b) *Special rule.* The PBGC will, without first requiring the plan administrator to demonstrate sufficiency under Subpart B or this part, issue a Notice of Sufficiency to the plan administrator, directing the plan administrator to close out the plan in accordance with Subpart C of this part, if the plan has no participants entitled to receive benefits in priority categories 1 through 4.

§ 2615.4 Requirement for annuities.

(a) *General rule.* Except as provided in Paragaraph (b) of this section, when a plan is closed out under Subpart C of this part, any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form either through the purchase from an insurer of of a contract to provide the annuity or by the PBGC under Subpart D of this part.

(b) *Exceptions.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form as required by Paragraph (a) of this section, if—

(1) The monthly amount of the benefit is less that the smallest monthly benefit amount normally provided by an insurer;

(2) The present value of the benefit, determined in accordance with § 2610.26 of this part, is $1,750 or less; or

(3) The plan provides for an alternative form of distribution, and the plan administrator submits a writtern statement to the PBGC in which he or she certifies that—

(i) The participant elected, in writing, the alternative form of distribution;

(ii) The participant was informed, in writing, before he or she made the election, of the estimated amounts of the annuity and of the alternative form of distribution, with reference to any risks attendant to the alternative form; and

(iii) The participant was notified, in writing, before he or she made the election, that his or her election would not be given effect unless the plan should close out under a Notice of Sufficiency, and that the PBGC does not guarantee the benefit payable in the alternative form.

(c) *Required form of annuity.* The annuity required by Paragraph (a) of this section must be purchased in the form that would be paid under the plan upon retirement, unless before the date of termination, the participant or beneficiary elected an optional form of annuity payable under the plan; if such an election was made, the annunity must be provided in the optional form elected. This paragraph shall not preclude the plan administrator from—

(1) Honoring a participant's post-termination election of an optional annuity form payable under the plan, if the value of the annuity in the optional form is no greater that the value of the annuity in the form to which the participant was entitled on the date of plan termination; or

(2) Purchasing an annuity which permits the participant or beneficiary to elect to receive his or her benefit in a form that—

(i) Is provided by the plan; or

(ii) Provides for a series of periodic payments for the life of the participant or beneficiary, if the right of election does not increase the cost of the annuity.

§ 2615.3 Submission of documents.

Any document or information required to be submitted to the PBGC under this part is considered submitted on the date of the United States postmark stamped on the cover in which the document or information is mailed, provided that—

(a) The postmark was made by the United States Postal Service; and

(b) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraphs (a) and (b) are not met, the document is considered submitted on the date it is received by the PBGC. Documents received after regular business hours are considered submitted on the next regular business day.

§ 2615.6 Extension of time.

When a document or information is required under this part to be submitted within a prescribed period of time, or when action is required to be taken within a prescribed period of time, an extension of time will be granted only upon good cause shown and only when the request for an extension is made before the expiration of the time prescribed. The request for an extension shall be in writing and state why additional time is needed and the amount of additional time requested.

Subpart B—Procedure for Demonstrating Whether a Plan Will be Sufficient

§ 2615.11 Purpose and scope.

This subpart sets forth the procedure for demonstrating whether a plan will be sufficient. Any plan administrator who is notified, pursuant to § 2615.3(a)(2), that the plan for which he or she filed a Notice of Intent to Terminate is not clearly insufficient shall follow this procedure.

§ 2615.12 Demonstration of sufficiency.

(a) *General.* Within the time limits prescribed by Paragraph (c) of this section, the plan administrator shall submit to the PBGC the asset valuation data required by § 2615.13(a), the benefit valuation data required § 2615.14(a), and, if applicable, the certified statement required by § 2615.4(b)(3). The plan administrator shall also identify the date on which he or she proposes to distribute the assets of the plan. This date may be no earlier than 30 days after the date the PBGC receives the information required by this paragraph.

(b) *Notice of Sufficiency; Notice of Inability to Determine Sufficiency.* If the information submitted pursuant to Paragraph (a) of this section demonstrates that the value of plan assets equals or exceeds the value of plan benefits in priority categories 1 through 4, the PBGC will issue a Notice of Sufficiency directing the plan administrator to close out the plan in accordance with Subpart C of this part. When the value of plan assets is less than the value of plan benefits in priority categories 1 through 4, the PBGC will issue a Notice of Inability to Determine Sufficiency and proceed to place the plan into trusteeship in accordance with section 4042 of the Act.

(c) *Time limit.* The plan administrator shall submit the information required by Paragraph (a) of this section no later than 120 days after the date he or she is notified pursuant to § 2615.3(a)(2) that the plan is not clearly insufficient.

(d) *Plan administrator's certification.* The plan administrator shall certify that all information submitted pursuant to Paragraph (a) of this section is true and correct to the best of his or her knowledge and belief.

(e) *Special rule for expedited processing.* A plan administrator may submit to the PBGC all information required by this section at the same time that he or she submits the Notice of Intent to Terminate.

§ 2615.13 Value of plan assets.

(a) *General.* The plan administrator shall value plan assets in accordance

with this paragraph and shall submit to the PBGC the valuation and data supporting that valuation. The plan administrator shall estimate the value of plan assets as of the date he or she proposes to distribute the assets, using the valuation methods set forth in Part 2611 of this chapter. The estimate shall be based on the most recent financial statements, accounting reports and other relevant records of the plan's financial condition. If the PBGC determines that the estimate is based on inadequate or outdated information, the PBGC may require the plan adminstrator to obtain a current valuation. The estimate shall include an adjustment for changes in the value of the assets expected to occur prior to the date the plan administrator proposes to distribute the assets. This adjustment shall include reduction by the amount (estimated, when necessary) of all expenses, fees, and other liabilities (including benefit payments due before the date the plan administrator proposes to distribute the assets) that the plan has incurred or will incur prior to the proposed date of distribution. An adjustment for projected earnings may not be based on a rate of return that is higher than the interest rate for valuing PBGC's immediate annuities in effect on the date of termination set forth in Appendix B of Part 2610 of this chapter.

(b) *Commitment to make the plan sufficient.* Where an employer makes, and submits to the PBGC before the date of plan termination, a commitment, in the form prescribed in the appendix to this part, to pay on the date prescribed for distribution of plan assets any sum necessary to make the plan sufficient, such sum will be considered a plan asset for the sole purpose of determining whether to issue a Notice of Sufficiency, unless it appears that the employer will not be able to satisfy its commitment.

§ 2615.14 Value of plan benefits.

(a) *General.* The plan administrator shall determine the value of plan benefits through at least priority category 4 in accordance with Paragraphs (b), (c), and (d) of this section, and shall submit to the PBGC the valuation and data supporting that valuation, including a statement of the actuarial assumptions used to value any benefits that are not required by § 2615.4(a) to be provided in annuity form.

(b) *Benefits required to be provided in annuity form.*

(1) The plan administrator shall obtain a qualifying bid from an insurer to provide benefits that are required by § 2615.4(a) to be provided in annuity form. A qualifying bid is one that—

(i) May be exercised for a period of time that includes the date on which the plan administrator proposes to distribute the assets of the plan; and

(ii) Is for single premium nonparticipating annuities that are non-surrenderable.

(2) The plan administrator is not required to obtain a qualifying bid from more than one insurer unless he or she is unable to demonstrate that the plan will be sufficient using that bid. If the plan administrator is unable to demonstrate sufficiency using the bid obtained, he or she must attempt to obtain a qualifying bid under which the plan will be sufficient. However, in no event is the plan administrator required to obtain more than two additional qualifying bids.

(3) The PBGC may, in any case, request a bid from an insurer or insurers on behalf of a plan

(4) The value of the benefits, except for those early retirement benefits that are to be provided by the PBGC pursuant to Subpart D of this part, is the cost of providing the benefits under the qualifying bid, if only one qualifying bid was obtained. If more than one qualifying bid was obtained, the value of the benefits is the cost of providing the benefits under the lowest qualifying bid, except that the plan administrator may use a qualifying bid that is not the lowest bid if he or she demonstrates to the PBGC that use of that bid will not adversely affect plan participants.

(c) *Early retirement benefits to be provided by the PBGC.* The value of early retirement benefits that are to be provided by the PBGC pursuant to Subpart D of this part shall be determined in accordance with § 2610.25(b)(2) of this chapter, as of the date the plan administrator proposes to distribute the assets.

(d) *Benefits that are not required to be provided in annuity form.* The value of benefits that are not required by § 2615.4(a) to be provided in annuity form shall be determined in accordance with § 2610.26 of this chapter as of the date the plan administrator proposes to distribute the assets. The plan administrator may estimate this value on the basis of the latest actuarial report, but if the PBGC determines that the estimate is based upon inadequate or outdated information, the PBGC may require that the plan administrator obtain a current valuation.

Subpart C—Procedure for Closing Out the Plan

§ 2615.20 Purpose and scope.

This subpart prescribes the procedure for closing out a plan with respect to which a Notice of Sufficiency has been issued.

§ 2615.21 Distribution of plan assets.

Within 90 days after the date of the Notice of Sufficiency, the plan administrator shall allocate and distribute plan assets in accordance with Part 2608 of this chapter by—

(a) Purchasing from an insurer contracts to provide benefits required by § 2615.4(a) to be provided in annuity form;

(b) Paying to the PBGC assets equal to the value of any early retirement benefits that the PBGC is to provide under Subpart D of this part; and

(c) Providing all benefits that are not required by § 2615.4(a) to be provided in annuity form.

§2615.22 Inability to provide benefits.

(a) *Revocation of Notice of Sufficiency.* If at any time after issuance of the Notice of Sufficiency, the plan administrator discovers that the plan assets are insufficient to provide all benefits in priority categories 1 through 4, the plan administrator shall take no further action to close out the plan and shall immediately notify the PBGC. Upon receipt of the notice, the PBGC shall revoke the Notice of Sufficiency and proceed to place the plan into trusteeship.

(b) *Employer liability.* For the purpose of calculating employer liability under section 4062 of the Act after revocation of the Notice of Sufficiency, plan assets and benefits will be valued as of the date of plan termination. The amount promised in an employer's commitment to make the plan sufficient as provided by § 2615.13(b) shall not be considered a plan asset for the purpose of determining liability under section 4062 of the Act.

§ 2615.23 Submission of distribution information to PBGC.

(a) Within 60 days after the plan administrator has completed the distribution of assets, he or she shall submit to the PBGC a statement which shall contain the following information:

(1) For each participant or beneficiary to whom distribution was made—

(i) Name;

(ii) Address;

(iii) Telephone number;

(iv) Sex;

(v) Date of birth;

(vi) Social security number;

(vii) The amount of the benefit provided and, unless previously submitted, the basis for computing the amount;

(viii) The cost of providing the benefit; and

(ix) The form in which the benefit was provided;

(2) If annuity contracts were purchased from an insurer, the name of the insurer and the policy number(s); and

(3) The place or places where plan records will by held.

(b) The statement shall also include a certification that—

(1) Plan assets were allocated and distributed in accordance with Part 2608 of this chapter; and

(2) All information provided pursuant to this section is true and correct to the best of the plan administrator's knowledge and belief.

Subpart D—Early Retirement Benefits Provided by PBGC

§ 2615.30 Purpose and scope.

The purpose of this subpart is to prescribe the conditions under which the plan administrator of a terminating plan may arrange for the PBGC to become responsible for the payment of early retirement benefits. The PBGC will provide benefits under this subpart for a plan that closes out under Subpart C of this part, to the extent that plan assets have been allocated to the benefit under section 4044 of the Act.

§ 2615.31 Conditions for payment of early retirement benefits by PBGC.

The PBGC will provide early retirement benefits required by § 2615.4(a) to be provided in annuity form for all participants who have a nonforfeitable right to an early retirement benefit before the date of plan termination, and who have not retired and have not selected a retirement date before the date plan assets are distributed, if the plan administrator is unable to obtain a bid that, with respect to all such benefits, reasonably takes into account the probability that participants may retire at a date between the earliest date early retirement benefits may be received and the normal retirement date.

§ 2615.32 Obtaining the benefit from PBGC.

The PBGC will provide benefits to which this subpart applies if the plan administrator of a terminating plan notifies the PBGC that the conditions of § 2615.31 exist and pays the PBGC the value of the benefits computed, as of the date of distribution, by the PBGC pursuant to Part 2610 of this chapter. The PBGC may require such proof as it considers necessary that the conditions set forth in § 2615.31 exist. The plan administrator shall furnish any information requested by the PBGC in order for it to calculate and pay early retirement benefits pursuant to this subpart.

Effective date. This part is effective March 1, 1981. The effective date of all record-keeping and reporting requirements of this regulation is stayed beyond the March 1, 1981, effective date of this regulation unless, prior to such date, PBGC receives approval of the Office of Management and Budget, as required under 44 USC, Chapter 35. Upon receipt of OMB approval, PBGC will publish announcement of that approval, or of any modifications to meet OMB requirements, and these record-keeping and reporting requirements will become effective on the later of March 1, 1981 or the publication of such announcement.

Issued at Washington, D.C., this 19th day of January, 1981.

Ray Marshall,

Chairman, Board of Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors approving this regulation and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

Appendix—Agreement for Employer's Commitment To Make Plan Sufficient

This agreement, by and between the Pension Benefit Guaranty Corporation (the "PBGC") and _____ (the "Employer"), shall be effective as of the last date executed.

Whereas, the PBGC is a wholly owned government corporation created by the Empolyee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (1976) (amended by Pub. L. No. 96-364 (1980)) (the "Act").

Whereas, the Employer is a corporation organized under the laws of the State of _____; and

Whereas, effective on or about _____, 19—, the Employer adopted a retirement plan for certain of its employees, which plan is known as _____ (the "Plan"); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of the Act, 29 U.S.C. § 1301 *et seq.*; and

Whereas, the Plan adminstrator has filed or intends to file a Notice of Intent to Terminate the Plan, pursuant to Section 4041(a) of the Act, 29 U.S.C. § 13419(a); and

Whereas, the Employer wishes the Plan to be sufficient for purposes of Title IV of the Act, 29 U.S.C. § 1301 *et seq.*; and

Whereas, as of the date the Employer signs this Agreement, the Employer is not a debtor in a bankruptcy or other insolvency proceeding, and the Employer does not anticipate that it will become a debtor in such a proceeding.

Now Therefore, in consideration of the mutual covenants, promises and agreements contained herein, the parties hereto agree as follows:

1. The Employer promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all benefits described in Section 4044(a)(1)–(4) of the Act, 29 U.S.C. § 1344(a)(1)–(4).

2. For the sole purpose of determining whether to issue a Notice of Sufficiency to the Plan administrator pursuant to Section 4041 (b) of the Act, 29 U.S.C. § 1341(b), the PBGC shall deem an amount equal to the amount described in paragraph 1 to be a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with Section 4044 of the Act, 29 U.S.C. § 1344.

3. In the event that the Plan administrator receives a Notice of Sufficiency from the PBGC and does not distribute the assets of the Plan within the period of time prescribed by the PBGC, the PBGC will no longer deem the amount described in paragraph 1 to have been a Plan asset, and the PBGC may revoke the Notice of Sufficiency and proceed to place the Plan into trusteeship in accordance with Section 4042 of the Act, 29 U.S.C. § 1342.

4. In the event of PBGC trusteeship, the Employer shall pay to the PBGC an amount equal to the excess of—

(a) The current value, on the date the PBGC becomes trustee, of the Plan's benefits described in paragraph 1, over

(b) The current value of the Plan's assets allocable to such benefits on the date the PBGC becomes trustee.

even if such amount shall exceed 30% of the Employer's net worth; in addition, the Employer shall pay to the PBGC the reasonable costs (including attorneys' fees) of collecting this amount, together with interest from the date of PBGC trusteeship, at the rate in effect under Section 6621 of the Internal Revenue Code, 26 U.S.C. § 6621.

The values referred to in subparagraphs (a) and (b) shall be determined in accordance with the applicable PBGC regulations and procedures in effect on the date of PBGC trusteeship.

5. The Employer shall not contest any action by the PBGC or its representative(s) to compel the Employer to pay the amount described in paragraph 4 on the ground that such amount was beyond the contemplation of the parties.

6. This Agreement shall in no way relieve the Employer of its obligations—

(a) To pay contributions under the Plan, and

(b) In the event of PBGC trusteeship, to pay any amount due to the PBGC under Section 4062 of the Act, 29 U.S.C. § 1362 (although any such payment shall reduce, by an equivalent amount, the Employer's liability to the PBGC under paragraph 4 of this Agreement).

Date:———————
By: ———————
Employer ———————
Date:———————
By: ———————
Pension Benefit Guaranty Corp., 2020 K Street, NW., Washington, D.C. 20006

[Knowingly and willfully making false, ficitious or fraudulent statements to PBGC is punishable under 18 U.S.C. § 1001.]

[FR Doc. 81-2985 Filed 1-27-81; 8:45 am]
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federal register

Wednesday
January 28, 1981

Part IX

Pension Benefit Guaranty Corporation

Payment of Employer Liability for Plan Terminations Initiated Before March 1, 1981

PENSION BENEFIT GUARANTY CORPORATION

Payment of Employer Liability for Plan Terminations Initiated Before March 1, 1981

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notification of change in procedure for payment of employer liability.

SUMMARY: This notice provides guidelines for the payment of employer liability imposed by Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, and for the assessment of interest on unpaid employer liability with respect to pension plans for which the plan termination was initiated prior to the effective date of the Pension Benefit Guaranty Corporation's regulation on employer liability. Because of the uncertainty that existed prior to the issuance of the employer liability regulation as to the rules and procedures for calculating and paying the liability, PBGC has often foregone collection of interest on unpaid liability from the statutory due date of the liability, *i.e.* the date of plan termination. With today's publication of the employer liability regulation, all plan sponsors now have adequate guidance to pay their liability. Accordingly, this notice advises sponsors of plans for which the termination is or has been initiated prior to the effective date of the regulation, that they must pay their liability by the later of: 1) March 1, 1981 or 2) the date of plan termination. Interest shall accure on any unpaid liability from the day after the due date.

EFFECTIVE DATE: March 1, 1981.

FOR FURTHER INFORMATION CONTACT: David Weingarten, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-3010.

SUPPLEMENTARY INFORMATION: On May 23, 1980, the Pension Benefit Guaranty Corporation ("PBGC") published a proposed regulation on employer liability for a plan termination (45 FR 34899). Today, PBGC is publishing a final regulation on this subject. The final rule is applicable to terminating plans for which either (1) a Notice of Intent to Terminate is filed or (2) an action is commenced by PBGC under § 4042 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to terminate the plan, on or after the effective date of the regulation, March 1, 1981. Thus, the regulation will not apply to plan terminations that have been initiated, as described in the preceding sentence, before its effective date. This notice provides guidelines for payment of employer liability and the imposition of interest on unpaid liability for certain of those plans whose termination is or has been initiated before the effective date of the regulation.

Section 4068 of ERISA imposes interest from the date of plan termination on unpaid employer liability. However, as explained in the preamble to the proposed regulations, because of the uncertainty that existed prior to today's publication of the final regulation with respect to the calculation and payment of employer liability, PBGC has often foregone collection of interest from the date of termination. Rather, PBGC typically has only collected interest for the period of time after it has given the plan sponsor specific advice in writing as to the amount of its liability and the rules for payment thereof. (Plan sponsors who have received such letters from PBGC are required to pay their liability in accordance therewith. This notice does not affect those employers.)

There are a number of plans where termination has already been initiated for which the plan sponsor has not yet received a letter from PBGC setting forth the employer's liability and the rules for payment of it. However, today's publication of the employer liability regulation, coupled with PBGC's regulations on the valuation of plan assets, the allocation of assets and the valuation of plan benefits (including the interest rates issued thereunder) give those employers the guidance they need to calculate and pay their liability. Accordingly, there is no longer justification for PBGC to forego the collection of interest on unpaid employer liability with respect to these plans.

Therefore, PBGC hereby advises sponsors of terminating plans who have not received liability letters from PBGC that their employer liability due under Section 4062 of ERISA should be paid on or before March 1, 1981. However, if the plan termination date is after that date, the liability is due on or before the date of termination. Payments should be sent to Division of the Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. Payments should be identified as payments of employer liability and indicate the name of the plan.

If the full liability is not paid by the date specified in the preceding paragraph, interest on the unpaid portion at the rate set forth in Section 6621 of the Internal Revenue Code of 1954, as amended, will accrue from the day following that date. This is a variable interest rate and will change whenever the rate under Section 6621 changes. The rate is currently 12% per annum. Interest will normally be compounded annually. If an employer obtains deferred payment terms from PBGC, interest will be compounded periodically with the frequency of the payments.

When PBGC has completed its calculation of an employer's liability under Section 4062 of ERISA, it will issue a letter setting forth the employer's liability. This determination is subject to appeal in accordance with PBGC's regulation on administrative appeals, 29 CFR Part 2618. If it is finally determined that an employer's liability is less than the amount paid by the employer, PBGC will refund such overpayment with interest computed in accordance with the rules set forth above from the later of the date of overpayment or 10 days prior to the date of plan termination.

(Sections 4002(b)(3), 4062 and 4068, 29 U.S.C. §§ 1302, 1362 and 1368, Pub. L. 93-406, 88 Stat. 1004, 1029 and 1032 (1974), as amended by Pub. L. 96-364, 94 Stat. 1301 and 1302 (1980))

Issued in Washington, D.C. this 19th day of January, 1981.

Ray Marshall,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors approving this Notice and authorizing its Chairman to issue same.

Henry Rose,

Secretary, Pension Benefit Guaranty Corporation.

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federal register

Wednesday
January 28, 1981

Part X

Office of Management and Budget

Cost Principles for State and Local Governments

OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Final policy.

SUMMARY: This notice advises that Federal Management Circular 74–4 (Revised), dated July 18, 1974, is reissued under its original designation of Office of Management and Budget Circular No. A–87. No substantive changes are made in the Circular. The Circular is set forth below in its entirety.

EFFECTIVE DATE: The revision was effective January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Deputy Chief, Financial Management Branch, Budget Review Division, 6002 New Executive Office Building, Washington, D.C. 20503, 202/395–4773.

TO OBTAIN SINGLE COPIES OF THE CIRCULAR, CONTACT: Document Distribution Center, Office of Administration, G–236 New Executive Office Building, Washington, D.C. 20503.

TO OBTAIN MULTIPLE COPIES, CONTACT: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Daniel F. Mann,

Budget and Management Officer.

January 15, 1981.

To: The Heads of Executive Departments and Establishments.

Subject: Cost principles for State and local governments.

1. *Purpose.* This Circular establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments.

2. *Supersession.* This Circular supersedes Federal Management Circular 74–4 as revised. The Circular is reissued under its original designation of OMB Circular A–87.

3. *Summary of changes.* No substantive changes are made in the Circular.

4. *Policy intent.* This Circular provides principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the Federal Government. The principles are for determining costs only and are not intended to identify the circumstances nor to dictate the extent of Federal and State or local participation in the financing of a particular project. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

5. Applicability and scope.

a. The provisions of this Circular apply to all Federal agencies responsible for administering programs that involve grants and contracts with State, local, and federally-recognized Indian tribal governments.

b. Its provisions do not apply to grants and contracts with:

(1) Publicly-financed educational institutions subject to Office of Management and Budget Circular A–21, and

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

Any other exceptions will be approved by the Office of Management and Budget in particular cases where adequate justification is presented.

6. *Attachments.* The principles and related policy guides are set forth in the attachments, which are:

Attachment A—Principles for determining costs applicable to grants and contracts with State, local, and federally-recognized Indian tribal governments.

Attachment B—Standards for selected items of cost.

7. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 202–395–4773.

James T. McIntyre, Jr.

Director.

[Circular No. A–87]

Attachment A—Principles for Determining Costs Applicable to Grants and Contracts With State, Local, and Federally Recognized Indian Tribal Governments

TABLE OF CONTENTS

A. *Purpose and scope*
1. Objectives
2. Policy guides
3. Application
B. *Definitions*
1. Approval or authorization of the grantor Federal agency
2. Cost allocation plan
3. Cost
4. Cost objective
5. Federal agency
6. Federally-recognized Indian tribal governments
7. Grant
8. Grant program
9. Grantee
10. Local unit
11. Other State or local agencies
12. Services
13. Supporting services
C. *Basic guidelines*
1. Factors affecting allowability of costs
2. Allocable costs
3. Applicable credits
D. *Composition of cost*
1. Total cost
2. Classification of costs
E. *Direct costs*
1. General
2. Application
F. *Indirect costs*
1. General
2. Grantee departmental indirect costs
3. Limitation on indirect costs
G. *Cost incurred by agencies other than the grantee*
1. General
2. Alternative methods of determining indirect cost
H. *Cost incurred by grantee department for others*
1. General
J. *Cost allocation plan*
1. General
2. Requirements
3. Instructions for preparation of cost allocation plans
4. Negotiation and approval of indirect cost proposals for States
5. Negotiation and approval of indirect cost proposals for local governments
6. Negotiation and approval of indirect cost proposals for federally-recognized Indian tribal governments
7. Resolution of problems

A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally-assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management

techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State, local, and federally recognized Indian tribal governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly-financed educational institutions subject to Office of Management and Budget Circular A-21, and (b) publicly-owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

B. *Definitions.*

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State, local, or federally-recognized Indian tribal governments.

6. *Federally-recognized Indian tribal governments* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

7. *Grant* means an agreement between the Federal Government and a State, local, or federally-recognized Indian tribal government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Circular as applicable to grants in general also apply to any federally-sponsored cost reimbursement-type of agreement performed by a State, local, or federally-recognized Indian tribal government.

8. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

9. *Grantee* means the department or agency of State, local, or federally recognized Indian tribal government which is responsible for administration of the grant.

10. *Local unit* means any political subdivision of government below the State level.

11. *Other State or local agencies* means department or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

12. *Services,* as used herein, means goods and facilities, as well as services.

13. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and inlcude procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.*

1. *Factors affecting allowability of costs.* To allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*

a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Circular may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section J.

3. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances, recoveries or indeminties on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirments under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow:

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a

particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Circular. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Circular, the amount not recoverable as indirect costs under a grant not be shifted to another federally-sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (Section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

This responsibility applies to both central support services at the State, local, and Indian tribal level and indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*

a. The Department of Health and Human Services, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single cognizant Federal agency will have responsibility similar to that set forth in a. above, for the negotiation, approval, and audit of the indirect cost proposal. A current list of agency assignments is maintained by the Office of Management and Budget.

c. Questions concerning the cost allocation plans approved under a. and b. above, should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is maintained by the the Office of Management and Budget.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Negotiation and approval of indirect cost proposals for federally recognized Indian tribal governments.* The Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

7. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4 and 5 above, the Office of Management and Budget will lend assistance as required.

[Circular No. A-87]

Attachment B—Standards for Selected Items of Costs

Table of Contents

A. *Purpose and applicability*
1. Objective
2. Application
B. *Allowable costs*
1. Accounting
2. Advertising
3. Advisory councils
4. Audit service
5. Bonding
6. Budgeting
7. Building lease management
8. Central stores
9. Communications
10. Compensation for personal services
11. Depreciation and use allowances
12. Disbursing service
13. Employee fringe benefits
14. Employee morale, health and welfare costs
15. Exhibits
16. Legal expenses
17. Maintenance and repair
18. Materials and supplies
19. Memberships, subscriptions and professional activites
20. Motor pools
21. Payroll preparation
22. Personnel administration
23. Printing and reproduction
24. Procurement service
25. Taxes
26. Training and education
27. Transportation
28. Travel
C. *Costs allowable with approval of grantor agency*
1. Automatic data processing
2. Building space and related facilities
3. Capital expenditures
4. Insurance and indemnification
5. Management studies
6. Preagreement costs
7. Professional services
8. Proposal costs
D. *Unallowable costs*
1. Bad debts
2. Contingencies
3. Contributions and donations
4. Entertainment
5. Fines and penalties
6. Governor's expenses
7. Interest and other financial costs
8. Legislative expenses
9. Underrecovery of costs under grant agreements

A. *Purpose and applicability.*

1. *Objective.* This Attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Attachment A of this Circular.

B. *Allowable costs.*

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or Indian tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. solicitation of bids for the procurement of goods and services required.

c. disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*

a. *General.* Compensation for personal services includes all remuneration, paid currently or accured, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (Section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered; (2) follows an appointment made in accordance with State, local, or Indian tribal government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State, local, or Indian tribal government. In cases where the kinds of employees required for the federally-assisted activities are not found in the other activities of the State, local, or Indian tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the State, local, or Indian tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant propgrams or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally-sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usuable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided prusuant to an approved leave system; and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State, local or Indian tribal policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State, local or Indian tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to

carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*

a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program; (2) the expenditure is for agency membership; (3) the cost of the membership is reasonably related to the value of the services or benefits received; and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations are not is unallowable except when less-than-first-class air accommodations reasonably available. Notwithstanding the provisions of paragraphs D.6. and 8., travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the Federal Government.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and just allowances on publicly-owned buildings.* The costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Captial expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold; (b) no longer available for use in a federally-sponsored program; or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as

Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

4. *Insurance and indemnification.*

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification.* Includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Costs of professional services rendered by individuals or organizations not a part of the grantee department are allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

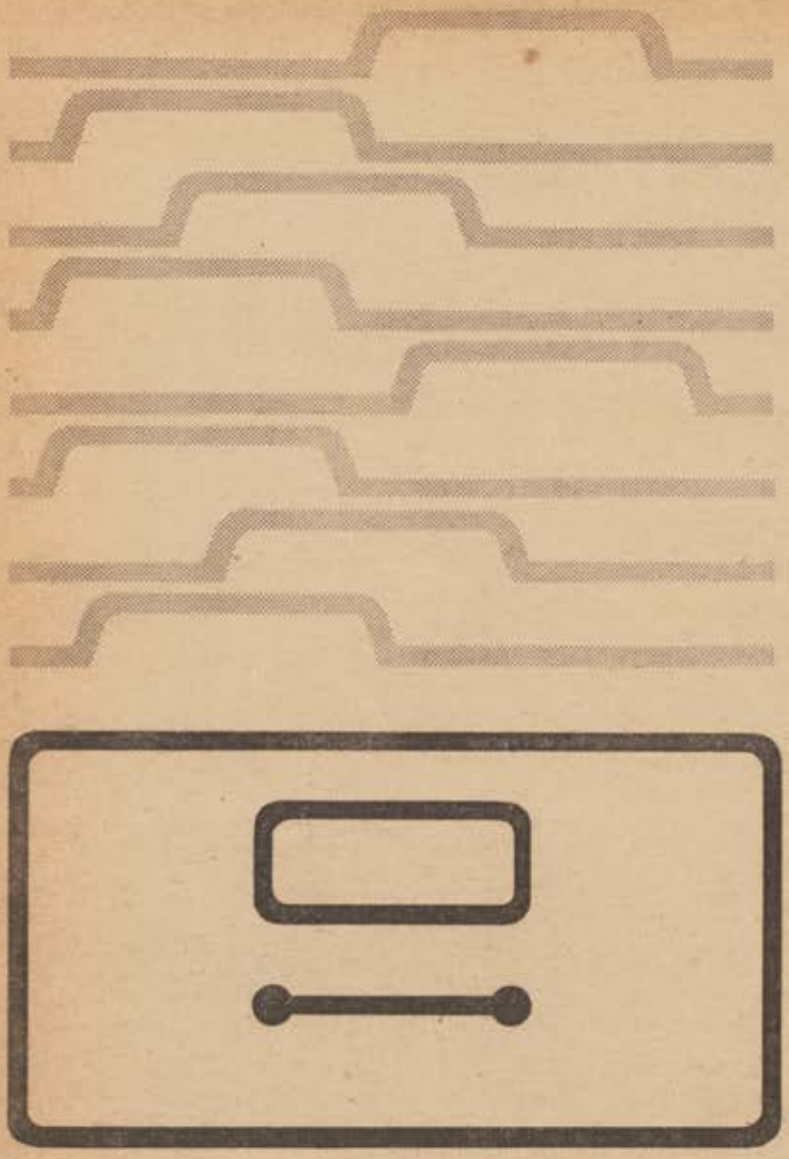
6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State, or the chief executive of a political subdivision, are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be determined by the Federal cognizant agency and the Indian government representative on a reasonable basis.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph C.2.a of this Attachment.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

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Revised as of January 1,1980

This useful reference tool, compiled from agency regulations and U.S. Statutes, is designed to assist industry and the public with their Federal record-keeping obligations.

The various digests in the "Guide" tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

In addition, the "Guide" contains the names, addresses, and phone numbers of contact persons within each agency who can answer substantive questions about the requirements.

Each digest also carries a reference to the full text of the basis law or regulation providing for such retention.

The booklet's index lists for ready reference the categories of persons, groups, and products affected by Federal record retention requirements.

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