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2-5-81
Vol. 46 No. 24
Pages 10895-11224

federal register

Thursday
February 5, 1981

Highlights

11126 **Hazardous Waste** EPA reproposes permitting standards applicable to owners and operators of land disposal facilities; comments by 7-6-81; comments on related documents by 5-6-81 (Part II of this issue)

11187 **Hazardous Materials** CPSC proposes to ban urea-formaldehyde foam insulation; comments by 4-6-81 (Part IV of this issue)

11046 **Earthquakes** Interior/GS evaluates prediction of major earthquake in Peru

11079 **Diving** DOT/CG seeks comments by 3-5-81, on proposed Code on Safety Measures for Diving Systems

10915 **Aviation Safety** FCC simplifies approval procedures for Amateur Radio station antenna structures

10973 **Grant Programs—Minority Business** Commerce/MBDA seeks applications by 3-13-81, for management and technical assistance project in North Carolina

10908 **Handicapped—Revenue Sharing** Treasury/RSO defers effective date of discrimination regulations until 3-30-81

CONTINUED INSIDE

Highlights

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

10907 **Estate and Gift Taxes** Treasury/IRS establishes new initial filing date for generation-skipping transfer tax and information returns

10908 **Military Personnel** DOD/Sec'y updates policies and procedures and provides guidance for voluntary pay allotments; effective 1-16-81

10912 **Government Procurement** IDCA/AID revises regulations; effective 1-7-81

10924 **Government Procurement** GSA solicits comments by 3-28-81, on proposed regulations regarding commerical automatic data processing and related services

11180 **Foreign Service** State/FSGB provides procedures for filing and handling of grievances and separation for cause cases; effective 2-15-81; comments by 3-9-81 (Part III of this issue)

10966 **Radio and Television** FCC terminates proceeding to permit stations to transmit audio tone codes for automatic identification of program material

10924 **Communications Common Carriers** FCC proposes policy and rules concerning rates and facilities authorizations for competitive services; comments by 3-2-81; reply comments by 4-6-81

11090 **Sunshine Act Meetings**

Separate Parts of This Issue

11126 **Part II, EPA**
11180 **Part III, State/FSGB**
11187 **Part IV, CPSC**
11213 **Part V, DOE/OHA**

Contents

Federal Register
Vol. 46, No. 24
Thursday, February 5, 1981

The President
EXECUTIVE ORDERS
10895, 10897 Iranian Government assets, transfer; corrections (EO 12278, 12279)

Executive Agencies

Agency for International Development
RULES
Procurement:
10912 Consulting services, use of diplomatic pouch facilities, organizational conflicts of interest, etc.

Agricultural Marketing Service
RULES
10899 Oranges, grapefruit, tangerines, and tangelos grown in Fla.
10900 Oranges (navel) grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation.

Army Department
See also Engineers Corps.
NOTICES
Meetings:
10974 Coastal Engineering Research Board

Civil Aeronautics Board
NOTICES
Hearings, etc.:
10970 Wien Air Alaska additional bush points proceeding
11090 Meetings; Sunshine Act

Coast Guard
RULES

Final rules; deferral of effective dates. See entry under Transportation Department.
NOTICES
11079 Diving systems; safety measures; proposed code; inquiry

Commerce Department
See also International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration.
NOTICES
Meetings:
10970 Minority Enterprise Development Advisory Committee

Commodity Credit Corporation
RULES
Loan and purchase programs:
10900 Peanuts

Commodity Futures Trading Commission
NOTICES
11090 Meetings; Sunshine Act

Consumer Product Safety Commission
PROPOSED RULES
11188 Urea-formaldehyde foam insulation; proposed ban; petition denial

Defense Department
See also Army Department; Engineers Corps.
RULES
Personnel:
10908 Voluntary military pay allotments
NOTICES
Meetings:
10975 Science Board task forces

Economic Regulatory Administration
NOTICES
Consent orders:
10976 Young Refining Corp.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
10977 Foster Wheeler Weirton, Inc.

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES

International atomic energy agreements; civil uses; subsequent arrangements:
10975, 10976 European Atomic Energy Community (2 documents)
10975 Sweden and European Atomic Energy Community (2 documents)

Engineers Corps
PROPOSED RULES
Navigation regulations:
10923 Portsmouth Naval Shipyard, Kittery, Maine; restricted area

Environmental Protection Agency
RULES
Air programs:
10911 Regional consistency; correction
Air quality implementation plans; approval and promulgation; various States, etc.:
10910 Alaska; correction
Air quality implementation plans; preparation, adoption, and submittal:
10910 Ozone emission inventory requirements for 1982 plans; final guideline availability
Hazardous waste:
10911 RCRA personnel training and guidance on selected interim status requirements and closure, post-closure, and financial requirements; availability of draft manuals
Toxic substances:
10912 Polychlorinated byphenyls (PCBs), fully halogenated chlorofluoroalkanes, tetrachlorodibenso-p-dioxin, and asbestos; export notification procedures; correction

PROPOSED RULES
Hazardous waste:
11126 Land disposal facilities; owners and operators; and permit applications, informational and procedural requirements
NOTICES
Pesticides; experimental use permit applications:
11025 FMC Corp., et al.
11028 ICI Americas, Inc.
11028 ICI Americas, Inc., et al.
11025 Weyerhaeuser Co.
Pesticides; tolerances in animal feeds and human food:
11028 E.I. du Pont de Nemours & Co., Inc.
11029 Rhone-Poulenc Inc.
Toxic and hazardous substances control:
11026 Premanufacture notices receipts
Water pollution control; safe drinking water; public water systems designations:
11027 West Virginia

Environmental Quality Office, Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
11042 Foxfire, Ann Arbor, Mich., et al.

Federal Aviation Administration
RULES
Air carriers certification and operations:
10902 Large general aviation airplanes, safety requirements; effective date deferred; republication
10903 Large general aviation airplanes, safety requirements; effective date reestablished
10904 Control zones
10903 Transition areas
VOR Federal airways and restricted areas; correction (Editorial note: This document which appeared at 46 FR 9565 (1-29-81) was incorrectly carried in the table of contents under Airworthiness directives)

Federal Communications Commission
RULES
Radio services, special:
10915 Amateur radio service; antenna structures as possible air navigation hazard, approval procedures
Radio stations; table of assignments:
10916 Utah and Wyoming
PROPOSED RULES
Common carrier services:
10924 Deregulatory approaches and proposals; rates and facility authorization policies
Radio and television broadcasting:
10966 Aural transmissions for purpose of program identification; inclusion of coded information; termination of proceeding
Radio stations; table of assignments:
10963 Arizona
10968 South Carolina; withdrawn
NOTICES
11029 AM broadcast applications accepted for filing and notification of cut-off date
Hearings, etc.:
11030 Microband Corp. of America et al.
11030 RCA American Communications, Inc.

Federal Deposit Insurance Corporation
NOTICES
11090, 11091 Meetings; Sunshine Act (4 documents)

Federal Energy Regulatory Commission
NOTICES
Hearings; etc.:
10980 Alabama Power Co.
10980 Atlantic Power Development Corp.
10981 Banister Development Ltd.
10985 Bidwell, Floyd N.
10982 Brasfield Development Ltd.
10982 Cabot Oil & Gas Corp.
10983 Columbia Gas Transmission Corp.
10983 Continental Hydro Corp.
10984 Dam Two Development Ltd.
10980 Dienhart, Arthur V.
10986 Fluid Energy Systems, Inc.
10986 Maglathlin, Leon E., Jr.
10987-10989 Mitchell Energy Co., Inc. (4 documents)
10990 Mobil Oil Corp.
10990, 10991 Mobil Producing Texas & New Mexico Inc. (2 documents)
10991, 10992 Natural Gas Pipeline Co. of America (2 documents)
10992 Oklahoma Gas & Electric Co.
10992 Pennsylvania Power Co.
10992 San Bernardino Valley Municipal Water District
10993 Sequoia Energy Corp.
10994 Southeastern Power Administration
10996 Vermont Electric Power Co., Inc.
Natural gas companies:
10994 Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend
Natural Gas Policy Act of 1978:
10997, 11006 Jurisdictional agency determinations (2 documents)

Federal Highway Administration
RULES
Final rules; deferral of effective dates. See entry under Transportation Department.
NOTICES
Environmental statements; availability, etc.:
11084 Macomb County, Mich.; intent to prepare
11085 Marion County, Ala.; intent to prepare

Federal Maritime Commission
NOTICES
Complaints filed:
11037 Ingersoll-Rand Co.
11037 Rohm & Haas Co.
Rate increases, etc.; investigations and hearings, etc.:
11037 Sea-Land Service, Inc., et al.

Federal Reserve System
NOTICES
Applications, etc.:
11041 Bank of New York International Corp.
11041 Heritage Financial Corp.
11041 Lansing Bancshares, Inc.
11041 National Detroit Corp.
11042 Republic of Texas Corp.

Bank holding companies: proposed de nova nonbank activities:
11040 Worcester Bancorp, Inc., et al.

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
10921 Albertson's, Inc.

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
11089 Transamerica Insurance Co. of Michigan

Fish and Wildlife Service
NOTICES
11042, 11043 Endangered and threatened species permit applications (2 documents)
Environmental statements; availability, etc.:
11043 Northern San Pablo Bay, Calif., preservation and restoration of diked tidelands to wetlands for wintering waterfowl

Foreign Service Grievance Board
RULES
11180 Grievances and separation for cause cases; interim rule and request for comments

General Services Administration
PROPOSED RULES
Procurement:
10924 ADP services; government-wide procurement and contracting; contract and teleprocessing services programs and software conversion requirements

Geological Survey
NOTICES
Coal lease areas; maximum economic recovery and fair market value:
11047 Southern Appalachian Coal Region, Alabama Subregion; inquiry
11046 Earthquake Prediction Evaluation, National Council; statement; Peru
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
11046 Chevron U.S.A. Inc.
11046 Conoco Inc.

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
11021, 11023 Cases filed (2 documents)
11022 Decisions and orders
11213 Decisions and orders, proposed and interim
Remedial orders:
11025 Objections filed

Housing and Urban Development Department
See also Environmental Quality Office, Housing and Urban Development Department.
PROPOSED RULES
Low income housing:
10922 PHA-owned projects; modernization program; comprehensive improvement assistance program; transmittal of interim rule to Congress

Immigration and Naturalization Service
RULES
10901 Documentary requirements; immigrants and nonimmigrants, waivers, etc.; deferral of effective dates

Interior Department
See Geological Survey; Land Management Bureau; Fish and Wildlife Service.

Internal Revenue Service
RULES
Estate and gift taxes:
10907 Generation-skipping transfers; return requirements; initial filing date; temporary
PROPOSED RULES
Excise taxes:
10923 Special fuels; manufacturers and retailers; hearing

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
RULES
Countervailing duties:
10905 Float glass from Belgium
NOTICES
Antidumping:
10970 Clear plate and float glass from Japan
Committees; establishment, renewals, terminations, etc.:
10972 Exporters Textile Advisory Committee and Management-Labor Textile Advisory Committee
10973 President's Export Council, Export Administration Subcommittee
Countervailing duty petitions and preliminary determinations:
10972 Leather wearing apparel from Argentina

Interstate Commerce Commission
RULES
Accounts, uniform system:
10919 Railroads and motor carriers; capitalization of interest cost during construction
Tariffs and schedules:
10920 Motor carrier rate bureaus; policy statement; correction
NOTICES
11074 Long and short haul applications for relief
Motor carriers:
11051 Finance applications
11052-11060 Permanent authority applications (5 documents)

Justice Department
See also Immigration and Naturalization Service; Parole Commission.
NOTICES
Pollution control; consent judgments:
11074 Hooker Chemical & Plastics Corp., et al.

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
11048 Wyoming
Management framework plans, review and supplement, etc.:
11048 Idaho

Meetings:
11049 Carson City District Multiple Use Advisory Council
11049 Outer Continental Shelf National Advisory Board
Motor vehicles, off-road, etc.; area closures:
11047 California
Wilderness areas; characteristics, inventories, etc.:
11049, 11050 Utah (2 documents)

Minority Business Development Agency
NOTICES
10973 Financial assistance application announcements

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
10969 Theft protection, hydraulic brake systems, fields of direct view, occupant crash protection; and confidential business information; extension of time to file reconsideration petitions
10922 Radar devices, speed measuring; performance standards; extension of time
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
11085 Cronick, Marvin; Sheller-Globe Corp.; school bus seating and crash protection petitions denied
Motor vehicle safety standards; exemption petitions, etc.:
11086 American Mopeds Inc.; tire selection and rims for vehicles other than passenger cars
11086 Kawasaki Motors Corp., U.S.A.; vehicle identification number
11087 Vintage Reproductions Inc.; occupant protection in interior impact, head restraints, etc.

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
10974 Hochseefischeri Nordstern AG et al.
Marine mammals:
10974 Tuna and tuna products, yellowfin; taking of marine mammals incidental to commercial fishing operations; determination

National Transportation Safety Board
NOTICES
11075 Accident reports, safety recommendations, and responses, etc.; availability

Parole Commission
NOTICES
11091 Meetings; Sunshine Act

Research and Special Programs Administration, Transportation Department
RULES
Final rules; deferral of effective dates. See entry under Transportation Department.

Revenue Sharing Office
RULES
Fiscal assistance to State and local governments:
10908 Nondiscrimination for handicapped in federally assisted programs; deferral of effective date
NOTICES
Fiscal assistance to State, territorial and local governments:
11089 Entitlement funds, computation, adjustment, etc.

Securities and Exchange Commission
RULES
Organization, functions, and authority delegations:
10904 Corporation Finance Division, Director; accelerate termination of registration of securities of foreign issuers
NOTICES
Hearings, etc.:
11077 International Metals & Petroleum Corp.
Self-regulatory organizations; proposed rule changes:
11076 Chicago Board Options Exchange, Inc.
11077 National Association of Securities Dealers, Inc.

State Department
See also Foreign Service Grievance Board.
RULES
Visas:
10906 Nonimmigrant, issuance, facsimile signature of issuing officer and automated issuing system use; correction

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration, Transportation Department; Urban Mass Transportation Administration.
RULES
10906 Final rules; deferral of effective dates; republication
Organization, functions, and authority delegations:
10919 Research and Special Programs Administrator; Working Capital Fund at Transportation Systems Center; implement and authorize work

Treasury Department
See also Fiscal Service; Internal Revenue Service; Revenue Sharing Office.
NOTICES
11087 Consumer affairs program; U.S. savings bonds

Urban Mass Transportation Administration
RULES
Final rules; deferral of effective dates. See entry under Transportation Department.

MEETINGS ANNOUNCED IN THIS ISSUE

COMMERCE DEPARTMENT
10970 Minority Enterprise Development Advisory Committee, Washington, D.C., 2-17-81

CONSUMER PRODUCT SAFETY COMMISSION
11188 Urea-formaldehyde foam insulation, Washington, D.C., 3-20-81

DEFENSE DEPARTMENT
Army Department—
10974 Coastal Engineering Research Board, Galveston, Tex., 3–10 and 3–12–81
Office of the Secretary—
10975 Defense Science Board, Anti-Tactical Missiles Task Force, Arlington, Va., 2–24 and 2–25–81

INTERIOR DEPARTMENT
Land Management Bureau—
11049 Carson City District Multiple Use Advisory Council, Carson City, Nev., 3–13–81
11049 Outer Continental Shelf National Advisory Board, Pacific States Regional Technical Working Group Committee, Los Angeles, Calif., 3–13–81

RESCHEDULED MEETINGS

ENERGY DEPARTMENT
Federal Energy Regulatory Commission—
10991, 10992 Natural Gas Pipe Line Company of America, Washington, D.C., 2–3–81 changed to 2–24–81, 2–4–81 changed to 2–25–81

HEARING

TREASURY DEPARTMENT
Internal Revenue Service—
10923 Manufacturers' and retailers' excise taxes on special fuels, 4–8–81

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12278 (correction)..... 10895
12279 (correction)..... 10897

7 CFR

905..... 10899
907..... 10900
1421..... 10900

8 CFR

211..... 10901
214..... 10901

14 CFR

43 (2 documents)..... 10902, 10903
71 (2 documents)..... 10903, 10904
91 (2 documents)..... 10902, 10903
121 (2 documents)..... 10902, 10903
123 (2 documents)..... 10902, 10903
125 (2 documents)..... 10902, 10903
135 (2 documents)..... 10902, 10903
145 (2 documents)..... 10902, 10903

16 CFR

Proposed Rules:

13..... 10921
1306..... 11188

17 CFR

200..... 10904

19 CFR

355..... 10905

22 CFR

41..... 10906
901..... 11180
902..... 11181
903..... 11181
904..... 11182
905..... 11183
906..... 11184
907..... 11184
908..... 11184
909..... 11184

23 CFR

140..... 10906
450..... 10906
630..... 10906
655..... 10906
656..... 10906
765..... 10906

Proposed Rules:

1221..... 10922

24 CFR

Proposed Rules:

868..... 10922

26 CFR

26a..... 10907

Proposed Rules:

48..... 10923

31 CFR

51..... 10908

32 CFR

59..... 10908

33 CFR

117..... 10906
157..... 10906
161..... 10906
162..... 10906

Proposed Rules:

207..... 10923

40 CFR

51..... 10910
52..... 10910
56..... 10911
264..... 10911
265..... 10911
707..... 10912

Proposed Rules:

122..... 11126
260..... 11126
264..... 11126

41 CFR

7-4..... 10912
7-7..... 10912

Proposed Rules:

1-4..... 10924

47 CFR

17..... 10915
73..... 10916
97..... 10915

Proposed Rules:

Ch. I..... 10924
73 (3 documents)..... 10963-10968

49 CFR

1..... 10919
173..... 10906
179..... 10906
192..... 10906
195..... 10906
460..... 10906
613..... 10906
635..... 10906
639..... 10906
640..... 10906
642..... 10906
1201..... 10919
1206..... 10919
1207..... 10919
1331..... 10920

Proposed Rules:

512..... 10969
571..... 10969

Federal Register
Vol. 46, No. 24
Thursday, February 5, 1981

Presidential Documents

Title 3—

The President

Executive Order 12278 of January 19, 1981

Direction To Transfer Iranian Government Assets Overseas

Correction

Section 1–102 appearing on page 7917 in the **Federal Register** issue of January 23, 1981, was printed incorrectly. The paragraph should read:

1–102. Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after November 14, 1979, at 8:10 a.m. E.S.T. against Iranian funds, securities, or deposits referred to in section 1–101 is hereby licensed, authorized, directed, and compelled to cancel such set-off and to transfer all funds, securities, and deposits which have been subject to such set-off, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of section 1–101 of this Order.

Billing code 1505–01

Presidential Documents

Executive Order 12279 of January 19, 1981

Direction To Transfer Iranian Government Assets Held by Domestic Banks

Correction

The legal citations in the first paragraph appearing on page 7919 in the **Federal Register** of January 23, 1981, were printed incorrectly. The paragraph should read:

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency in Executive Order 12170, issued November 14, 1979, and in Executive Order 12211, issued April 17, 1980, in order to implement agreements with the Government of Iran, as reflected in Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran and in which Iran and the United States instruct and require that the assets described in this Order shall be transferred as set forth below by the holders of such assets, it is hereby ordered that as of the effective date of this Order:

Billing code 1505-01

Rules and Regulations

Federal Register
Vol. 46, No. 24
Thursday, February 5, 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

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 4, Amendment 7]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter requirement for Florida Honey tangerines for domestic and export shipment to 2 1/16 inches, down from 2 2/16 inches for domestic shipment and 2 2/16 inches for export shipment. This action recognizes demand conditions and the size composition of available supply in the interest of growers and consumers.

EFFECTIVE DATE: February 2, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Analysis relative to this final rule 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 1955 to implement Executive Order 12044, and has been classified "not significant." This regulation is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida Honey tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

The minimum size requirements, herein specified, for domestic and export shipments reflect the Department's appraisal of the need for the amendment of the current regulation to permit handling of smaller size fresh Florida Honey tangerines during the specified period based on the size composition of the crop and current and prospective demand conditions. The Citrus Administrative Committee, at an open meeting on January 27, 1981, reported there is good market demand for smaller sized Honey tangerines.

It is further found that there is insufficient time between the date when information became available upon which this amendment is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and this amendment relieves restrictions on the handling of Florida Honey tangerines. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

Accordingly, it is found that the provisions of § 905.304 (Orange, Grapefruit, Tangerine and Tangelo Regulation 4 (45 FR 67047; 76651; 79002; 80269; 81199; 83192; 46 FR 5859)) should be and are amended by revising Table I paragraph (a), applicable to domestic shipments, and Table II, paragraph (b), applicable to export shipments, to read as follows:

§ 905.304 Orange, grapefruit, tangerine, and tangelo regulation 4.

(a) * * *

Table I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 2 through Oct. 18, 1981	Florida No. 1	2 1/16

(b) * * *

Table II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Tangerines: Honey	Feb. 2 through Oct. 18, 1981	Florida No. 1	2 1/16

* * * * * * *

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

Dated: January 30, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-4310 Filed 2-4-81; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 508]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 6–12, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: February 6, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle 202–447–5975.

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

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on February 3, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is easy.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. Section 907.808 is added as follows:

§ 907.808 Navel Orange Regulation 508.

(a) The quantities of navel oranges grown in Arizona and California which may be handled during the period February 6, 1981, through February 12, 1981, are established as follows:

(1) District 1: 1,080,000 cartons.

(2) District 2: 96,000 cartons;

(3) District 3: Unlimited cartons;

(4) District 4: 24,000 cartons;

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

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

Dated: February 4, 1981.

D. S. Kuryloski,

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

[FR Doc. 81-4480 Filed 2-4-81; 12:02 pm]

BILLING CODE 3410-02-M

COMMODITY CREDIT CORPORATION

7 CFR Part 1421

1980 Crop Farm Stored Peanut Loan and Purchase Program

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to set forth for 1980 crop farm stored peanuts (1) the loan and purchase availability dates for quota peanuts, (2) loan availability dates for additional peanuts, (3) the maturity dates, (4) loan and purchase rates on peanuts, and (5) location adjustments. This rule is needed in order to provide price support on 1980 crop farm stored peanuts.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, Washington, D.C. 20013, (202) 447–6733. A final impact statement has been prepared and is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044 and has been classified "not significant". A final rule on the 1980 peanut loan and purchase program was published in the **Federal Register** on February 21, 1980. (45 FR 11462) establishing the national average support level for 1980 crop quota peanuts at $455 per ton.

Section 403 of the Agricultural Adjustment Act of 1949, as amended, provides that appropriate adjustments may be made in the level at which peanuts will be supported based on type and other factors.

On April 28, 1980, a notice of proposed rulemaking was published in the **Federal Register** (45 FR 28148). This notice announced that the Commodity Credit Corporation ("CCC") was preparing to make determinations and issue regulations for 1980-crop peanuts and to adjust loan and purchase rates for differences in type and other factors, and invited the public to submit written comments.

Twenty-one comments were received in response to the April 28 Notice of Proposed Rulemaking: 1 from a manufacturer, 4 from grower groups, 2 from general farm organizations, 3 from sheller associations, 3 from shellers, 3 from State governmental agencies, 2 from State Extension Services, and 1 from an individual. Of the commentators responding, 13 recommended adoption of the loan rates and price differentials as proposed with Virginia type Sound Mature Kernels (SMK) priced 2 percent above Runner type SMK and Spanish type SMK priced one-half percent above Runner SMK. Seven respondents indicated that the present differentials have overpriced Spanish peanuts in comparison with Runner peanuts and recommended pricing Runner type SMK and Spanish type SMK the same, and pricing Virginia type SMK 3.9 cents above Runner type SMK and Spanish type SMK.

After considering the comments received, it has been determined that the method of calculating price support rates by type proposed in the **Federal Register** as to warehouse storage loans on April 28, 1980, should be adopted for farm stored peanuts so that all producers will be treated fairly. The basic rates applicable to warehouse storage loans shall also be applicable for farm stored loans.

In compliance with Secretary's Memoradum No. 1955 and "Improving USDA Regulations" (43 FR 50988), initiation of review of these regulations contained in 7 CFR 1421.291–.294 for need, currency, clarity and effectiveness will be made within the next five years. The title and number of the federal

assistance program that this final rule applies to is: Commodity Loans and Purchases (D, E); 10.051 as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95, was not used to assure that units of local government are informed of this action.

Final Rule

The regulations in 7 CFR 1421.291 through 1421.294 and the title of the subpart are revised to read as follows, effective for the 1980 crop of farm stored peanuts. The material previously appearing in this subpart remains in full force and effect as to the 1979 crop year.

Subpart—1980 Crop Farm Stored Peanut Loan and Purchase Program

Sec.
1421.291 Purpose.
1421.292 Availability.
1421.293 Maturity of loans.
1421.294 Loan and purchase rates.

Authority: Secs. 4, and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 108, 401, 403, and 405, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445, 1421).

Subpart—1980 Crop Farm Stored Peanut Loan and Purchase Program

§ 1421.291 Purpose.

The provisions of this Subpart, together with the applicable provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops of Grain and Similarly Handled Commodities (44 FR 2353 and 3451) and the provisions of the 1978 and Subsequent Crops Peanut Farm Stored Loan and Purchase Supplement, as amended (hereinafter referred to as "the continuing supplement"), which contains regulations of a general nature with respect to loan and purchase operations, apply to loans and purchases for the 1980 crop of farm stored peanuts.

§ 1421.292 Availability.

(a) *Loans.* Requests for loans must be submitted by producers to the appropriate county ASCS office on 1980 crop farm stored eligible additional peanuts on or before January 31, 1981, and for 1980 crop farm stored eligible quota peanuts on or before March 31, 1981.

(b) *Purchases.* Producers desiring to offer for purchase 1980 crop eligible quota peanuts not under loan must execute and deliver to the appropriate county ASCS office, on or before April 30, 1981, a Purchase Agreement (form CCC-614) indicating the approximate quantity of peanuts to be sold to CCC. Additional peanuts are not eligible for purchases.

§ 1421.293 Maturity of loans.

Unless demand is made earlier, loans on additional and quota peanuts will mature on April 30, 1981.

§ 1421.294 Loan and purchase rates.

(a) *Loan and Purchase Rate.* Subject to the discounts specified in paragraph (b) of this section, the loan and purchase rates for quota peanuts placed under farm stored loan or purchase shall be the following rates by type per ton.

Type	Dollars per ton
Virginia	452
Runner	459
Spanish	438
Valencia	452

Loans on additional peanuts shall be made at 54.95 percent of the quota support rate.

(b) *Location adjustment to support prices.* The loan and purchase rates specified in paragraph (a) of this section shall be subject to the following discounts for farmer's stock peanuts placed under a farm stored loan in the States specified where peanuts are not customarily shelled or crushed.

State	Dollars per ton
Arizona	25
Arkansas	10
California	33
Louisiana	7
Mississippi	10
Missouri	10
Tennessee	25

(c) *Settlement values.* The support prices, premiums, and discounts for use in computing the settlement value, under § 1421.289(b)(2) of the continuing supplement of peanuts acquired by CCC under loan or purchase shall be those specified in § 1446.39 of the 1980 Crop Peanut Warehouse Storage Loan Supplement, including the location adjustments specified therein for peanuts delivered to CCC in States where peanuts are not customarily shelled or crushed.

Signed at Washington, D.C., on January 28, 1981.

Edward Hews,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-4311 Filed 2-4-81; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 214

Postponement of Final Rules

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of postponement of effective dates of final rules until March 30, 1981.

SUMMARY: In compliance with the President's Memorandum of January 29, 1981, the Immigration and Naturalization Service is postponing the effective dates of the following final rules for a period not to exceed 60 days from January 29, 1981:

1. 8 CFR Part 211—Documentary Requirements: Immigrants; Waivers; Returning Immigrants and Crewmen. Published: January 12, 1981 at 45 FR 2590.

2. 8 CFR Parts 211 and 214—Documentary Requirements: Immigrants; Waivers; Nonimmigrant Classes: The Effect of a Strike on the Admission and Continued Employment of Certain Nonimmigrants. Published: January 19, 1981 at 46 FR 4856.

3. 8 CFR Part 214—Nonimmigrant Classes; Revised Requirements for Nonimmigrant "F-1" Students. Published: January 23, 1981 at 46 FR 7267.

DATE: The above listed final rules shall be effective on March 30, 1981, unless notice of earlier effective dates is subsequently published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536. Telephone: (202) 633-3048.

For Specific Information: Paul W. Schmidt, Deputy General Counsel, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536. Telephone: (202) 633-3195.

Dated: February 2, 1981.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 81-4189 Filed 2-4-81; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 123, 125, 135 and 145

[Docket Nos. 19779 and 20813; Amendment Nos. 43-22, 91-174, 121-169, 123-10, 125-1, 135-12, and 145-18]

Amendments of Effective Date of Part 125 and Amendments Adopted in Relation to Part 125

Note.—This document originally appeared in the **Federal Register** for Wednesday February 4, 1981. It is reprinted in this issue to meet requirements for publication on the Monday-Thursday schedule assigned to the Department of Transportation.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Postponement of Part 125.

SUMMARY: On January 29, 1981, the President issued a memorandum to certain agency heads directing that they issue a notice in the **Federal Register** postponing for 60 days after January 29, 1981, the effective date of regulations that have already been issued but were scheduled to become effective in the next 60 days. This amendment consistent with the President's directive, postpones the effective date of new Part 125 and related amendments from February 1, 1981, to April 1, 1981.

EFFECTIVE DATE: January 30, 1981. New Part 125 effective date is April 1, 1981.

FOR FURTHER INFORMATION CONTACT: Harold E. Smith, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

Part 125 was published in the **Federal Register** on October 9, 1980, (45 FR 67214). That part, and related amendments to Parts 43, 91, 121, 123, 135, and 145 have an effective date of February 1, 1981. On January 29, 1981, the President issued a memorandum which directs that all agencies, by notice in the **Federal Register**, postpone for 60 days from January 29, 1981, the effective date of all regulations that have been promulgated in final form and that are scheduled to become effective during that 60 day period. Part 125, and regulations adopted with it, fall within the scope of the President's memorandum.

The President stated in his memorandum that the establishment of a new regulatory oversight program that will lead to less burdensome and more rational Federal regulations was among his priorities as President. He indicated that this program was especially important because of the country's economic climate.

In order to give his Administration, through the Task Force on Regulatory Relief, sufficient time to implement that process and to subject to full and appropriate review many recent regulations that would increase rather than relieve the current burden of restrictive regulation, he directed the postponement of pending regulations.

Consistent with this view, I am by this notice postponing for 60 days the effective day of Part 125.

Description of These Amendments

The effective date of Part 125 and of related amendments 43-21, 91-169, 91-107A, 121-164, 123-9, 135-7, and 145-17 is changed from February 1, 1981, to April 1, 1981. In addition, in order to preserve the application and compliance procedure timing, certain dates specified in any of the related amendments listed in the preceding sentence are revised. However, although the effective date of Amendment 91-107A is changed from February 1, 1981, to April 1, 1981, the designation date of November 29, 1980, for applicable noise rules is unchanged.

Need for Immediate Adoption

The FAA realizes that the postponement of pending regulations may not be viewed by certain persons to be in their best interest. However, in accordance with the President's directive, the economic condition of the nation is such that the government must rethink the need and expense of each new regulation. For a new Administration and any new Department head to effectively accomplish this objective, some time is needed for adequate review. Sixty days is the minimum period to accomplish such a review and the impact of such a delay will be minimal. For these reasons, the FAA is convinced that good cause exists for postponing for up to 60 days the effective date of this rule for 60 days and that the end result of such a delay, a more cohesive and effective regulatory program, is in the public interest. For similar reasons and because of this rule is scheduled to become effective very shortly, additional notice and public procedure on this change of effective dates is impracticable, unnecessary and contrary to the public interest and good cause exists for making these changes effective immediately. Since this change of effective dates must be accomplished immediately and does not involve rulemaking, compliance with Executive Order 12044 is also unnecessary.

Accordingly consistent with the President's memorandum of January 29, 1981, on Postponing of Pending Regulations, the effective dates of Part 125 is postponed until April 1, 1981.

Adoption of the Amendment

Accordingly, 14 CFR Chapter 1 is amended as follows:

1. By amending the effective date February 1, 1981, of Part 125 and Amendment Nos. 43-21, 91-169, 91-107A, 121-164, 123-9, 135-7, and 145-17 to read April 1, 1981 in each case.

§§ 121.53, 123.1 [Amended]

2. By amending the date "January 31, 1981" in § 121.53(f) as adopted in Amendment 121-164 and in § 123.1(d) as adopted in Amendment 123-9, to read "March 31, 1981" in each case.

§ 125.5 [Amended]

3. By amending § 125.5 by revising the date "February 1, 1981" in paragraph (a) to read "April 1, 1981" and the dates "June 1, 1981" and "January 31, 1981" in paragraph (b) to read "August 1, 1981" and "March 31, 1981" respectively.

(Secs. 307, 313, 601 through 611, and 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354, 1421-1431 and 1502); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Title III, Aviation Safety and Noise Abatement Act of 1979 (94 Stat. 50))

Additional Actions Pending

In addition to the amendments adopted herein, the Agency has other regulatory actions as to which it has not been able to act to carry out the President's memorandum because they have been issued by the various FAA Regions. These include, but are not limited to, airworthiness directives, airspace actions, and standard instrument approach procedures. Additional postponements of these regulations will be issued in the next several days to comply with the President's memorandum.

Issued in Washington, D.C., on January 30, 1981.

Charles E. Weithoner,

Acting Administrator.

[FR Doc. 81-4206 Filed 2-2-81; 12:57 pm]

BILLING CODE 4910-13-M

14 CFR Parts 43, 91, 121, 123, 125, 135 and 145

[Docket Nos. 19779 and 20813; Amendment Nos. 43-22A, 91-174A, 121-169A, 123-10A, 125-1A, 135-12A, and 145-18A]

Amendment of Effective Date of Parts 125 and Amendments Adopted in Relation to Part 125; Effective Date Reestablished

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Establishment of Effective Date.

SUMMARY: This document reestablishes the effective date of new Part 125 and related amendments to February 3, 1981. This change in effective date is necessary since the Office of Management and Budget, in accordance with the President's Memorandum dated January 29, 1981, concerning postponement of pending regulations, authorized the FAA to allow Part 125 to become effective without further delay.

EFFECTIVE DATE: New Part 125 effective date is February 3, 1981.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Assistant Chief Counsel for Regulations (AGC-200), Regulations and Enforcement Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-3235.

SUMMARY INFORMATION:

Background

Part 125 was published in the **Federal Register** on October 9, 1980 (45 FR 67214). That part, and related amendments to Parts 43, 91, 121, 123, 135, and 145 had an effective date of February 1, 1981. On January 29, 1981, the President issued a memorandum which directed that all agencies, by notice in the **Federal Register**, postpone for 60 days from January 29, 1981, the effective date of all regulations that had been promulgated in final form and that were scheduled to become effective during that 60 day period. Part 125, and regulations adopted with it, fall within the scope of the President's memorandum.

In accordance with the President's memorandum the effective date of Part 125 was postponed by notice which is published in today's **Federal Register**. That notice was issued on January 30, 1981, and forwarded to the **Federal Register** for publication. The Department of Transportation asked the Office of Management and Budget to allow Part 125 to become effective without delay. OMB reviewed that request and advised the Department on February 3, 1981, that Part 125 could become effective in accordance with the President's memorandum. This approval, however, was received by the Department after the Notice postponing the effective date had already been sent to the Government Printing Office by the Office of Federal Register. Therefore, it is necessary to issue this document to establish the effective date for Part 125 as February 3, 1981.

Consistent with this view, I am by this Notice establishing the effective date of Part 125 as February 3, 1981.

Description of Changes

The effective date of Part 125 and of related amendments 43-21, 91-169, 91-107A, 121-164, 123-9, 135-7, and 145-17 is changed to February 3, 1981. In addition, in order to preserve the application and compliance procedure timing, certain dates specified in any of the related amendments listed in the preceding sentence are similarly revised.

Need for Immediate Adoption

Since the Office of Management and Budget approval was too late to stop publication of the January 30 Notice and since the Notice must be rescinded, I find that notice and public procedure are impracticable and contrary to the public interest and good cause exists for making these amendments effective in less than 30 days.

Change of Dates

Accordingly, 14 CFR Chapter 1 is changed as follows:

1. By changing the effective date of Part 125 and Amendment Nos. 43-21, 91-169, 91-107A, 121-164, 123-9, 135-7, and 145-17 to read February 3, 1981 in each case.

§§ 121.53, 123.1 [Amended]

2. By changing the date "January 31, 1981" in § 121.53(f) as adopted in Amendment 121-164 and in § 123.1(d) as adopted in Amendment 123-9, to read "February 2, 1981" in each case.

§ 125.5 [Amended]

3. By changing § 125.5 by revising the date "February 1, 1981" in paragraph (a) to read "February 3, 1981" and the dates in paragraph (b) to read "June 1, 1981" and "February 2, 1981" respectively.

(Secs. 307, 313, 601 through 611, and 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354, 1421-1431 and 1502); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Title III, Aviation Safety and Noise Abatement Act of 1979 (94 Stat. 50))

Issued in Washington, D.C. on February 3, 1981.

Charles E. Weithoner,
Acting Administrator.

[FR Doc. 81-4455 Filed 2-4-81; 9:35 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 80-CE-21]

Designation of Transition Area—Hebron, Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Hebron, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Hebron, Nebraska, Municipal Airport, utilizing the Hebron Nondirectional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: April 16, 1981.

FOR FURTHER INFORMATION CONTACT: Charles A. Sears, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Hebron Municipal Airport, Hebron, Nebraska, is being established utilizing the Hebron NDB as a navigational aid. The estabishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Hebron, Nebraska, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 74932 of the **Federal Register** dated November 13, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Hebron, Nebraska. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. Five comments were received offering no objections to the proposal. The Air

Force, while not objecting to the proposal, expressed concern about what effect the Hebron, Nebraska, transition area would have on Military Training Route IR–505. The FAA has determined that due to the limited activity on both IR–505 and in the Hebron transition area, the Air Force training mission will not be adversely affected.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1981, (46 FR 540), is amended effective 0901 GMT April 16, 1981, by adding the following new transition area:

Hebron, Nebraska

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Hebron, Nebraska, Airport (latitude 40°09'09"N, longitude 97°35'01"W) and extending 3 miles either side of the 316° bearing of the Hebron, Nebraska, NDB (latitude 40°09'01"N, longitude 97°35'14"W) from the 5 mile radius to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

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

Issued in Kansas City, Missouri, on January 28, 1981.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 81-4297 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-ARM-02]

Redesignation of Control Zone, Casper, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the effective time for the Casper, Wyoming control zone from continuous to part-time to establish effective times for this control zone which coincide with the availability of weather reporting service at this location. The National Weather Service is reducing their hours of operation at Casper, Wyoming, making this amendment necessary.

EFFECTIVE DATE: 0901 G.m.t., February 1, 1981.

FOR FURTHER INFORMATION CONTACT:

David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM–500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837–3937.

SUPPLEMENTARY INFORMATION:

History

The National Weather Service at Casper, Wyoming, currently provides full-time weather reporting service supporting the full-time control zone at Casper, Wyoming. Beginning February 1, 1981, operational hours for the National Weather Service at Casper, Wyoming, will be changed from full-time to the periods from 0500 to 2100 hours local time daily and weather reporting service will not be available for an 8-hour period. Therefore, the present continuous effective period for the Casper, Wyoming, control zone must be revised to establish effective times for this control zone coincidental with the availability of weather reporting service by the National Weather Service.

Furthermore, it is anticipated that the loss of weather reporting service at Casper, Wyoming, will be temporary. Therefore, the revised Casper, Wyoming, control zone designation provides for changes in the effective periods for this control zone by Notice to Airmen with continuous publication of these effective periods in the Airmen's Information Manual.

Since effective periods for the Casper, Wyoming, control zone are contingent on the availability of weather reporting service at that location, it was further determined that issuance of a Notice of Proposed Rule Making for this amendment would be impractical and not within the public interest.

Rule

This amendment to Part 71 of the Federal Aviation Regulations (FAR's) revises the control zone at Casper, Wyoming.

The reduced hours of weather reporting service by the National Weather Service at Casper, Wyoming, necessitates the changing of the effective hours of operation for the Casper, Wyoming, control zone.

Drafting Information

The principal authors of this document are Mr. David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Mr. Daniel J. Peterson, Office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective February 1, 1981, as follows:

By amending Subpart F § 71.171 by adding the following:

Casper, Wyoming

This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

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

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

Issued in Aurora, Colorado on January 26, 1981.

Arthur Varnado,

Director, Rocky Mountain Region.

[FR Doc. 81-4298 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-17496]

Delegation of Authority to the Director of the Division of Corporation Finance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces an amendment to its Rules of Organization by delegating to the Director of the Division of Corporation Finance the authority to accelerate the termination of the registration of certain securities of certain foreign issuers.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus or Ronald Adee at (202) 272-3246.

SUPPLEMENTARY INFORMATION: The Commission announces a technical amendment to its general organization rule which delegates authority to the Director of the Division of Corporation Finance [17 CFR 200.30-1]. Rule 12g3-2(a)(2) [17 CFR 240.12g3-2(a)(2)] provides for the termination of registration under Section 12(g) of the Securities Exchange Act of 1934 (the "Act") [15 U.S.C. 78/[g)] of a class of equity securities of a foreign private issuer if such securities are held of record by less than 300 shareholders resident in the United States. The termination is effective 90 days after the registrant has filed with the Commission a certification that the number of United States shareholders is less than 300. At the request of the registrant, the Commission can accelerate the effective date of the termination of registration.

Since the Commission has delegated to the Director of the Division of Corporation Finance authority to accelerate the termination of registrations pursuant to Section 12(g)(4) of the Act,[1] the action taken today is consistent with existing procedure and will facilitate the timely disposition of requests for acceleration of termination pursuant to Rule 12g3-2(a)(2).

Text of Amendment

17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

In § 200.30-1 paragraph (d)(8) is amended to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) * * *

(8) At the request of the issuer to accelerate the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act [15 U.S.C. 78/[g)(4)] or as provided in Rule 12g3-2(a)(2) [§ 240.12g3-2(a)(2)].

* * * * *

Statutory Authority

This amendment to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance is adopted pursuant to Section 1(a) of the Delegation of Functions Act [15 U.S.C. 78d-1(a)].

(Sec. 1(a), 76 Stat. 394; 89 Stat. 163; 15 U.S.C. 77g, 77j, 77s(a), 78m, 78q(d), 78u(a), 79e(b), 79n, 79q(a), 80a-8, 80a-29, 80a-30(c), 80a-37(a), 78d-1(a))

Procedural Matter

With respect to the amendment to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance, the Commission finds that such amendment relates solely to agency management and personnel and, accordingly, is excepted pursuant to section 553(a)(2) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(a)(1)) from the provisions of the APA which require prior notice and comment (5 U.S.C. 553(b)) and postponement of the effective date for at least 30 days after publication in the **Federal Register** (5 U.S.C. 533(d)).

By the Commission.

George A. Fitzsimmons,

Secretary.

January 29, 1981.

[FR Doc. 81-4300 Filed 2-4-81; 8:45 am]

BILLING CODE 8010-01-M

[1] That Section provides for termination of registration when the class of equity securities is held by less than 300 security-holders.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

Float Glass From Belgium; Countervailing Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Countervailing duty order.

SUMMARY: This notice is to advise the public that, pursuant to an order of the Customs Court (now the Court of International Trade), the Department of Commerce is issuing a countervailing duty order applicable to imports of float glass from Belgium. The table in section 355, Annex III of the Commerce Regulations is amended to reflect this change.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Susan Silver, Office of Compliance, Room 1126, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1487).

SUPPLEMENTARY INFORMATION: On January 7, 1976, the Treasury Department published a negative "Notice of Final Countervailing Duty Determination" with respect to float glass from Belgium (41 FR 1299), determining that "no bounty or grant is being paid or bestowed, directly or indirectly, * * * upon the manufacture, production, or exportation of float glass from Belgium."

The petitioner challenged that determination and, on July 17, 1980, the U.S. Customs Court held in *ASG Industries Inc.* v. *United States*, (C.D. 4863), that imports of float glass from Belgium manufactured by Boussois-Souchan-Neuvesel and Glaceries de Saint-Roch did in fact benefit from the payment of bounties or grants. Liquidation was suspended following the court's decision. The court remanded this case to the Department of Treasury to:

(1) Ascertain and determine or estimate the net amount of bounties or grants paid or bestowed upon the manufacture or production of float glass in Belgium by Boussois-Souchan-Neuvesel and Glaceries de Saint-Roch; and

(2) Direct the appropriate customs officers throughout the United States to assess countervailing duties in the net amount equal to said bounties or grants, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of this order.

The Department of Commerce ("the Department") is complying with this order because Reorganization Plan No. 3 of 1979, effective January 2, 1980, transferred authority for administering the countervailing duty law from the Department of the Treasury to the Department of Commerce.

The Department determines that bounties or grants (subsidies) are being or have been paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of float glass from Belgium within the meaning of section 303 of the Tariff Act of 1930 ("the Act"), as in effect prior to the amendments made by the Trade Agreements Act of 1979 ("the TAA"). In the notice of Final Countervailing Duty Determination Treasury stated that the amount of assistance provided by regional incentive programs for Belgian float glass was less than 2%. The Department therefore determines that an *ad valorem* rate of 2% is the appropriate estimate of the net amount of the bounties or grants paid or bestowed upon the manufacture of float glass from Belgium. This *ad valorem* rate will be revised upon completion of the administrative review which the Department intends to conduct within twelve months of the publication of this order, pursuant to section 751 of the Act and section 104(c)(2) of the TAA. The Department will report the results of the review to the International Trade

Commission in the event that a request for an injury determination concerning this merchandise is made under section 104(b) of the TAA (19 U.S.C. 1671, note).

A cash deposit of estimated duties will be required in the amount of 2% of the f.o.b. value of shipments of float glass from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs officers shall continue the suspension of liquidation of entries of float glass from Belgium.

The float glass covered by this order is flat glass manufactured in Belgium by the float process. The glass may be either tinted or clear and is produced in a wide variety of sizes ranging from ⅛" to 1" in thickness. The glass is currently classifiable under item numbers 543.21 through 543.69 of the Tariff Schedules of the United States (TSUS). Entries of float glass which have been substantially further manufactured (e.g., into tempered glass or laminated glass) are not subject to this countervailing duty order on float glass from Belgium.

Annex III [Amended]

The table in Part 355, Annex III of the Commerce Regulations is amended by inserting after the last entry for Belgium the words "Float glass" in the column headed "Commodity", the Federal Register citation of this notice in the column headed "Treasury Decision", and the words "Net subsidy declared-rate" in the column headed "Action".

This order and publication of this notice are in accordance with section 303 of the Act (19 U.S.C. 1303) as in effect prior to the amendments made by the TAA, and section 104(c) of the TAA (19 U.S.C. 1671, note).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

February 2, 1981.

[FR Doc. 81-4302 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[SD-169]

Issuance of Nonimmigrant Visa; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This document corrects the regulations amending visa issuance procedures, which were published as a final rule on December 12, 1980 (45 FR 81739). This action is necessary to correct the omission of a sentence from the text contained in § 41.124(i) of the regulations.

FOR FURTHER INFORMATION: Gerald M. Brown, Chief, Legislation and Regulations Divison, Visa Services, Bureau of Consular Affairs, (202) 632-1900.

Accordingly 22 CFR 41.124 is corrected by adding the following sentence at the end of subparagraph (i).

§ 41.124 Procedure in issuing Visas.

* * * * *

(i) * * * The executed Form OF-156 and any additional statements furnished by the alien in accordance with § 41.115(b) shall be retained in the consular files.

* * * * *

Dated: January 22, 1981.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 81-4312 Filed 2-4-81; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

23 CFR Parts 140, 450, 630, 655, 656, and 765

33 CFR Parts 117, 157, 161, and 162

49 CFR Parts 173, 179, 192, 195, 460, 613, 635, 639, 640, and 642

[OST Notice No. 81-2]

Postponement of Pending Regulations

Note.—This document originally appeared in the **Federal Register** for Wednesday February 4, 1981. It is reprinted in this issue to meet requirements for publication on the Monday-Thursday schedule assigned to the Department of Transportation.

AGENCY: Department of Transportation.

ACTION: Notice of Postponement of Pending Regulations.

SUMMARY: On January 29, 1981, the President issued a memorandum to certain agency heads directing that they issue notices in the **Federal Register** postponing for 60 days after January 29, 1981, the effective dates of regulations that had already been issued but were scheduled to become effective during that 60-day period. This action is essential, in light of the Nation's present economic climate, to effectuate the Administration's goal of less burdensome and more rational Federal regulation. This notice, consistent with the President's directive, postpones the effective date of all the Department of Transportation regulations covered by the President's memorandum, except those covered in the Notice of Postponement issued by the Federal Aviation Administration, which I directed be issued and published in this edition of the **Federal Register**. The specific regulations covered by this notice are set forth below.

EFFECTIVE DATE: January 30, 1981.

FOR FURTHER INFORMATION CONTACT: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, C-50; Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590; Telephone (202) 426-4723.

SUPPLEMENTARY INFORMATION: On January 29, 1981, the President issued a memoradum to certain agency heads directing them to publish a notice in the **Federal Register** postponing for 60 days, after January 29, 1981, the effective date of regulations that have been promulgated in final form and that are scheduled to become effective during such 60-day period. The memorandum also directs agencies to refrain, for 60 days following the date of the memorandum, from promulgating any final rules. A number of specific exemptions are set forth in the memorandum. For several other circumstances, procedures are established for promulgating final rules and for making rules effective in the 60-day period following the date of the memorandum provided that appropriate consultations are held with the Office of Management and Budget.

The President stated in his memorandum that the establishment of a new regulatory oversight program that will lead to less burdensome and more rational Federal regulations was among his priorities as President. He indicated that this program was especially important because of the Nation's economic climate. In order to give the Administration, through the Task Force on Regulatory Relief, sufficient time to implement that process and to subject to full and appropriate review many recent regulations that would increase rather than relieve the current burden of restrictive regulation, the President directed this postponement of pending regulations.

The Department of Transportation shares the President's goals and will do all in its power to comply with the spirit as well as the letter of the President's memorandum. Consistent with this view, I am by this notice postponing until March 31, 1981, the effective day of all Department of Transportation rules covered by the President's directive

except those issued by the Federal Aviation Administration (FAA). Those regulations with pertinent information are listed below. Elsewhere in this issue of the **Federal Register** is an FAA Notice of Postponement, issued and published at my direction, that is similar to this Notice. A separate FAA notice is needed because certain rulemaking authority is assigned directly to the FAA by statute.

It should be noted that certain Departmental rules must continue to be issued and be made effective during the 60-day period following the President's memorandum. Primarily, these regulations will be responding to emergency situations or statutory or judicial deadlines and are specifically excepted from the memorandum's postponement requirements. We expect that other situations, such as those involving relaxatory rules, may also be exempted from certain of the Presidential memorandum's requirements where they meet the objectives discussed in that memorandum.

The Department recognizes that the effective dates of some of the rules listed below may have been the subject of public comment during the comment periods on the related notices of proposed rulemaking or were otherwise issues considered when the rules were promulgated. Furthermore, the Department realizes that the postponement of pending regulations may not be viewed by certain persons to be in their best interests.

However, the Department is convinced that the economic condition of the Nation is such that the government must rethink the need and burden of each of the below listed regulations. For a new Administration and any new Department head to accomplish this objective effectively, some time is needed for adequate review. Sixty days is the minimum period to accomplish such a review and we believe the impact of such a delay will be minimal. For these reasons, the Department is convinced that good cause exists for postponing for up to 60 days the effective dates of the covered pending regulations and that the end result of such a delay—a more cohesive and effective regulatory program—is in the public interest. For these reasons and because many of the covered rules are scheduled to become effective very shortly, additional notice and public procedure on this change of effective dates is impracticable, unnecessary and contrary to the public interest and good cause exists for making these postponements effective immediately.

Since this change of effective dates must be accomplished immediately and does not involve rulemaking, compliance with Executive Order 12044 is also unnecessary.

Accordingly, consistent with the President's memorandum of January 29, 1981, on Postponing of Pending Regulations, the effective dates of the following rules are postponed until March 31, 1981:

U.S. Coast Guard (USCG)

Title and CFR part number	FR citation	Previously scheduled effective date
Vessel Traffic Service (VTS), New York, N.Y. (Docket No. CGD 77-087), 33 CFR 161.	44 FR 55005; 9/24/79.	Pending.
Vessel Traffic Service (VTS), Puget Sound (Docket No. CGD 78-041a), 33 CFR 161.	45 FR 84057; 12/22/80.	2/1/81.
Inland Waterways Navigation Regulation, Great Lakes, 33 CFR 162.	46 FR 7959; 1/26/81.	2/25/81.
Drawbridge Operation Regulations: St. Croix River, Wisconsin and Minnesota, 33 CFR 117.	46 FR 9579; 1/29/81.	3/1/81.
Exemption Procedures, Segregated Ballast Tanks (Docket No. CGD 79-126) 33 CFR 157.	46 FR 3510; 1/15/81.	2/17/81.

Federal Highway Administration (FHWA)

Title and CFR part number	FR citation	Previously scheduled effective date
Urban Transportation Planning Process; Transportation Improvement Program (issued in conjunction with UMTA), 23 CFR 450, 630, 49 CFR 613.	46 FR 5702; 1/19/81.	2/18/81.
Traffic Controlled Devices on Federal-aid and other Streets and Highways, 23 CFR 655.	46 FR 2038; 1/8/81.	1/30/81.
Carpool and Vanpool Projects, 23 CFR 656.	46 FR 2298; 1/8/81.	1/30/81.
Payroll and Related Expense of Public Employees, 23 CFR 140.	46 FR 3501; 1/15/81.	2/17/81.
Archeological and Paleontological Salvage, 23 CFR 765.	46 FR 9570; 1/29/81.	2/27/81.

Urban Mass Transportation Administration (UMTA)

Title and CFR part number	FR citation	Previously scheduled effective date
Urban Transportation Planning Process/Transportation Improvement Program, 23 CFR 450, 630, 49 CFR 613.	46 FR 5702; 1/19/81.	2/18/81.
"Buy America" Requirements of Surface Transportation Assistance Act of 1978, 49 CFR 460.	46 FR 5808; 1/19/81.	2/18/81.
Bus Rehabilitation Program (UMTA Docket 80-A), 49 CFR 640.	46 FR 9862; 1/29/81.	2/24/81.
Public Hearing Requirements, 49 CFR 635.	46 FR 5476; 1/19/81.	2/18/81.
Stockpiling of Buses (UMTA Docket 80-B), 49 CFR 639.	46 FR 5480; 1/19/81.	2/18/81.
Urban Initiatives, 49 CFR 642.	46 FR 5820; 1/19/81.	2/18/81.

Research and Special Programs Administration (RSPA)

Title and CFR part number	FR citation	Previously scheduled effective date
Incorporation by Reference (192-37 and 195-21 Docket No. PS-65), 49 CFR 192 and 195.	46 FR 10157; 2/2/81.	3/4/81.
Design and Construction of Pipelines Carrying Highly Volatile Liquids, Docket No. (PS-56A), 49 CFR 192.	46 FR 39; 1/2/81.	2/2/81.
Safety Improvement Program for DOT 105 Tank Cars, 49 CFR 173, 179.	46 FR 8005; 1/26/81.	3/1/81.

(23 U.S.C. 101(e), 103, 104(f)(3), 109(d), 109(h), 109(j), 114(a), 134, 142, 146, 217, 305, 315; 33 U.S.C. 1221, 1231; 41 U.S.C. 10a, 10c, 10d; 42 U.S.C. 4332, 7401, 7506; 46 U.S.C. 391a; 49 U.S.C. 1602, 1604, 1604(i)(3), 1607, 1651 et. seq., 1672, 1803, 1804, 1808)

Issued in Washington, D.C., on January 30, 1981.

Darrell M. Trent,

Deputy Secretary.

[FR Doc. 81-4210 Filed 2-2-81; 1:25 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26a

[T.D. 7769]

Due Date of the Generation-Skipping Transfer Tax Return

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides a temporary regulation establishing a new initial filing date for the generation-skipping transfer tax return and the information returns. The generation-skipping transfer tax was added to the Internal Revenue Code of 1954 (Code) by the Tax Reform Act of 1976. It affects trustees and beneficiaries of generation-skipping trust.

DATE: The regulations apply generally to any generation skipping transfer made after June 11, 1976.

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

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1980, § 26a.2621–1 of the Temporary Generation-Skipping Transfer Tax Regulations was published in the **Federal Register** (45 FR 51771) relating to the filing of the generation-skipping transfer tax returns.

Under § 26a.2621–1(k), the earliest filing date for filing Form 706–B, Generation-Skipping Transfer Tax Return, was February 5, 1981. Since Form 706–B and forms 706–B(1), Information Return by Trustee for Taxable Distribution or Termination From a Generation-Skipping Trust, and 706–B(2), Beneficiary's Share of a Taxable Distribution From a Generation-Skipping Trust, have not been issued to the public, the February 5, 1981 date is changed.

Provisions of the Regulation

Under this temporary regulation, Forms 706–B (1) and (2), the information returns, are due no earlier than June 30, 1981, and Form 706–B, the tax return, is due no earlier than October 15, 1981.

Waiver of Certain Procedural Requirements of Treasury Directive

A determination has been made by William E. Williams, Acting Commissioner of Internal Revenue, that there is an immediate need for these regulations to provide guidance to taxpayers. Compliance with the procedural requirements of paragraphs 8 through 14 of the Treasury directive relating to improved regulations (43 FR 52120) would therefore be impractical and, accordingly, the requirements have been waived.

Drafting Information

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 26a is amended as follows:

Paragraph. Paragraph (k) of 26a.2621–1 is revised to read as set forth below.

§ 26a.2621–1 Generation-skipping transfer tax return requirements.

* * * * *

(k) *Initial filing date.* Notwithstanding any other provision of these regulations, the time for filing Form 706–B shall be the date determined under paragraph (c) of this section or October 15, 1981, whichever is later. The due date for Forms 706–B (1) and (2) shall be the date determined under paragraph (f) of this section or June 30, 1981, whichever is later.

This Treasury decision adds a temporary regulation to enable taxpayers to comply with the due dates for filing the generation-skipping transfer tax returns. Because this regulation is necessary to provide immediate guidance to taxpayers, it is impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of this section.

This Treasury decision is issued under the authority contained in sections 2622 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1887, 68A Stat. 917, 26 U.S.C. 2622, 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: January 30, 1981.

Emil M. Sunley,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81–4211 Filed 2–3–81; 2:00 pm]

BILLING CODE 4830–01–M

Office of Revenue Sharing

31 CFR Part 51

Deferral of Effective Date for Revenue Sharing Regulations

AGENCY: Office of Revenue Sharing, Treasury.

ACTION: Notice of deferred effective date for revenue sharing handicapped discrimination regulations.

SUMMARY: The effective date of the Revenue Sharing Handicapped Discrimination Regulations, which otherwise were due to become effective on February 4, 1981, is deferred until March 30, 1981, as required by President Reagan's memorandum of January 29, 1981.

FOR FURTHER INFORMATION CONTACT:

Richard S. Isen, Acting Chief Counsel, Office of Revenue Sharing

or

Jacqueline L. Jackson, Attorney-advisor, Office of Chief Counsel, Office of Revenue Sharing, Washington, D.C. 20226, telephone: (202) 634–5182.

SUPPLEMENTARY INFORMATION: On January 5, 1981, the Office of Revenue Sharing published in the **Federal Register** (46 FR 1120), a final regulation § 51.55 "Discrimination on the basis of handicap", which prohibits discrimination against the handicapped, by the recipients of revenue sharing funds, in services, employment and access to facilities, as provided in section 504 of the Rehabilitation Act of 1973, as amended. The final regulation will become a part of the revenue sharing regulations contained in 31 CFR Part 51, Subpart E. This regulation was due to become final and effective on February 4, 1981.

On January 29, 1981, President Ronald Reagan issued a memorandum entitled "Postponement of Pending Regulations" which in part requires each agency with pending final regulations with an effective date that falls within the next 60 days, to defer the effective date for 60 days and publish a notice to that effect in the **Federal Register.** The deferral will permit appropriate officials of the new administration to consider whether these regulations should be permitted to become effective as originally promulgated. Notice is hereby given that the effective date of § 51.55 has been deferred. The new effective date for the regulation will be March 30, 1981.

Judith A. Denny,

Deputy Director (Enforcement), Office of Revenue Sharing.

Dated: February 2, 1981.

John E. Schmidt,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 81–4261 Filed 2–3–81; 4:57 pm]

BILLING CODE 4810–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 59

[DoD Directive 7330.1][1]

Voluntary Military Pay Allotments

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule updates established Department of Defense policies and procedures for voluntary military pay allotments and provides guidance for active and retired military members in accomplishing their personal financial responsibilities through the voluntary allotment system.

EFFECTIVE DATE: January 16, 1981.

FOR FURTHER INFORMATION CONTACT:

J. Jasinski, Office of the Assistant Secretary of Defense (Comptroller).

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

Washington, D.C. 20301, telephone 202–697–0536.

SUPPLEMENTARY INFORMATION: In FR Doc. 68–1107, appearing in the **Federal Register** (33 FR 1206) on January 30, 1968, the Office of the Secretary of Defense published DoD Directive 7330.1, July 28, 1967, as Part 59. DoD Directive 7330.1 was reissued on May 24, 1974, and again on January 16, 1981. The following is the latest revision of Part 59 of this title.

Accordingly, 32 CFR, Chapter I, is amended by revising Part 59, reading as follows:

PART 59—VOLUNTARY MILITARY PAY ALLOTMENTS

Sec.
59.1 Reissuance and purpose.
59.2 Applicability.
59.3 Policy.
59.4 Responsibilities.

Authority: Chapter 13 of Title 37, United States Code.

§ 59.1 Reissuance and purpose.

This Part updates the policies that implement Title 37, U.S.C., Chapter 13 and governs voluntary allotments of pay and allowances for active duty and retired members.

§ 59.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense and the Military Departments. The term "Military Service," as used herein, refers to the Army, Navy, Marine Corps, Air Force, and Coast Guard.

§ 59.3 Policy.

(a) *General.*

(1) The voluntary allotment system is provided primarily as a means to assist military members in accommodating their personal and family financial responsibilities to the exigencies of military service. It is a convenience and privilege not to be exploited or abused. To avoid unjustifiable expense to the Government, its use shall be limited to the purposes outlined below.

(2) All existing approved registered allotments of military pay and allowances for active duty and retired members that were previously authorized by this Part at the time registered may be continued as approved allotments. However, if any such allotments are discontinued, they may not be reestablished except as a new allotment in accordance with the requirements of this Directive. Any change in the allotment that is initiated by the member is considered a discontinuance, except those that are beyond the control of the member.

(3) Changes beyond the control of the member are changes that are of an administrative nature dictated by events incidental to the purpose of the allotment. Examples of administrative changes that are beyond the control of the member are: name and address changes by the payee or amount changes due to contractual obligation existing at the time the allotment was executed, such as a mortgage payment change because of a variable rate mortgage or changing escrow requirements. Although the changes are given above do not constitute a discontinuance, such administrative changes that adjust the amount of the allotment shall only be accepted when communicated by the member on a new allotment request. Discontinuance occurs with any mortgage refinancing action

(4) A change in allotment initiated by an organizational allottee may be accepted, when the change is properly documented, is of an administrative nature, and does not increase the amount allotted.

(b) *Active Military Service.* Voluntary allotments of military pay and allowances of members in active military service shall be limited to:

(1) The purchase of U.S. Savings Bonds.

(2) The payment of premiums for insurance on the life of the allotter, including U.S. Government Life Insurance, National Service Life Insurance, Navy Mutual Aid Insurance, Army Mutual Aid Insurance, and commercial life insurance.

(i) Allotments for insurance on the lives of a spouse or children are not authorized, except under a family group contract that primarily provides insurance on the life of the allotter and includes insurance on the lives of the spouse and children as a subordinate feature.

(ii) Allotments for health, accident, or hospitalization insurance or other contracts that, as a secondary or incidental feature, include insurance on the life of the member are not authorized.

(iii) Requests to initiate commercial life insurance allotments shall be processed only after compliance with requirements of 32 CFR 276.

(3) The repayment of loans to the Navy Relief Society, Army Emergency Relief, Air Force Aid Society, and American Red Cross.

(4) Allotments to a spouse, former spouses, other dependents, and relatives who are not legally designated as dependents. The payment of such an allotment to a financial institution or association shall not deprive a member of the use of the allotments authorized by § 59.3(b)(6).

(5) The voluntary liquidation of indebtedness to the United States.

(i) This includes indebtedness incurred by reason of defaulted notes insured by the Federal Housing Administration or guaranteed by the Veterans Administration (VA); payment of amounts due under the Retired Serviceman's Family Protection Plan, in the case of retired members serving on active duty; payment of delinquent federal income taxes; and any other indebtedness to any department or agency of the U.S. Government, except to the department paying the member.

(ii) this authority does not include the liquidation of indebtedness to nonappropriated fund activities, such as clubs, messes and exchanges.

(6) The payment to a financial organization for credit to an account of the member. A financial organization is any bank, savings bank, savings and loan association or similar institution, or Federal or state chartered credit union. Monies thus credited to the member's account may then be used for any purpose in accordance with the desires and direction of the member. No more than two such allotments under this paragraph shall be allowed any member at any one time.

(7) Repayment of loans obtained for the purchase of a home, including a mobile home or house trailer used as a residence by the member. This does not authorized repayment of loans for business purposes or for additions or improvements to homes, mobile homes, or house trailers. Allotments authorized herein are in addition to those authorized under § 59.3(b)(6), of this section. Only one such allotment shall be allowed any service member at any one time.

(8) Charitable contributions to:

(i) A Combined Federal Campaign, in accordance with DoD Directive 5035.1,[1] "Fund-Raising within the Department of Defense," April 7, 1978, and DoD Instruction 5035.5,[1] "DoD Combined Federal Campaign—Overseas Area," August 23, 1978.

(ii) Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(9) Deposits to the account of a member participating in the Uniformed Services Savings Deposit Program (Title 10, U.S.C. Section 1035). This program is limited to members in a missing status as a result of the Vietnam conflict.

(10) Allotments to the VA for deposit to the Post-Vietnam Era Veterans Education Account within the periodic and cumulative depository limitations specified in DoD Directive 1322.8,[1]

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

"Voluntary Educational Programs for Military Personnel," July 15, 1971. Once authorized by the member, the allotments must run a minimum of 12 consecutive months, unless the member suspends participation or disenrolls from the program because of personal hardship.

(11) Payment of delinquent state or local income or employment taxes.

(c) *Retired Military Personnel.*

(1) Voluntary allotments by members receiving retired or retainer pay shall be limited to the following:

(i) Purchase of U.S. Savings Bonds.

(ii) Payment of premiums for insurance on the life of the member, subject to the limitations prescribed in § 59.3(b)(2)(i) and (ii).

(iii) Voluntary liquidation of indebtedness to the United States, subject to the limitations prescribed in § 59.3(b)(5), of this section.

(iv) Allotments to a spouse, former spouses, and/or children of the retired member having a permanent residence other than that of the retired member.

(v) Charitable contributions to the Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(vi) The repayment of loans to the Army Emergency Relief, Navy Relief Society, or Air Force Aid Society.

(2) To assist personnel in the transition from active duty to retired status, all allotments authorized for active duty members may be continued, except those allotments in § 59.3(b)(8)(i), (9), and (10) of this section. However, if an allotment continued from active duty, but not authorized by § 59.3(c)(1), of this section, is discontinued by the retiree, such an allotment may not be reestablished.

(d) *Exclusions and Restrictions.*

(1) The amount of pay and allowances that may be allotted shall exclude amounts required to be withheld for taxes, liquidation of indebtedness determined under applicable provisions of law to be chargeable against the member's pay account, or required premiums on Servicemen's Group Life Insurance.

(2) The total amount that may be allotted shall comply with the restrictions in the DoD Military Pay and Allowances Entitlements Manual and DoD Military Retired Pay Manual (DoD 1340.12-M,[1] September 5, 1979).

(e) *Control and Use of Forms.*

(1) Allotment requests shall be accepted only on authorized allotment forms, unless otherwise provided in this Directive. Supplies of allotment forms shall not be made available to non-Federal organizations; except that each Military Department may authorize issuance of forms to the Army Emergency Relief, Navy Relief Society, the Air Force Aid Society, and American Red Cross.

(2) Active duty enlisted members shall sign the allotment authorization form in the presence of the member's commanding officer, personnel or disbursing officer, or one of their representatives who shall witness the signature. The Military Departments may waive this requirement for senior enlisted members and loan repayment allotments payable to the Army Emergency Relief, Navy Relief Society, the Air Force Aid Society, and American Red Cross.

(3) Charitable contribution allotment requests by enlisted members may be accepted without a witnessing official, when submitted on contribution forms in accordance with DoD Directive 5035.1 and DoD Instruction 5035.5.

(4) Retired military personnel need not submit allotment requests on the prescribed forms. A signed personal letter may be used to support an allotment request, change, or cancellation by retired military members as long as all required information is provided.

§ 59.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* shall exercise primary management responsibility for the voluntary military pay allotment program and provide assistance to the Military Departments in the form of instructions, requirements, reviews, and other guidance.

(b) The *Secretaries of the Military Departments* shall ensure that this Directive is implemented by the Military Services concerned.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

January 30, 1981.

[FR Doc. 81-4300 Filed 2-4-81; 8:45 am]

BILLING CODE 3810-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-1744-6]

Emission Inventory Requirements for 1982 Ozone State Implementation Plans; Guideline Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final guideline availability.

SUMMARY: In a January 22, 1981, announcement (46 FR 7182), the Agency stated that emission inventory data developed for use in the 1982 Ozone SIPs must be consistent in content and format with the EPA guideline document, *Final Emission Inventory Requirements for 1982 Ozone SIPs* (EPA-450/4-80-016, December 1980). This notice announces the availability of this document. This guideline was made available for comment in draft form in September 1980, and was referenced in a September 30, 1980, announcement (45 FR 64856). The final guideline reflects pertinent comments submitted to Docket Number A-79-43 on or before December 1, 1980.

ADDRESSES: Copies of *Final Emission Inventory Requirements for 1982 Ozone SIPs* (EPA-450/4-80-016, December 1980) are available from the EPA Library, MD-35, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919) 541-2777.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Lahre, Office of Air Quality Planning and Standards (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919) 541-5285.

Dated: January 29, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 81-4307 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-10-FRL 1744-8]

Approval and Promulgation of Implementation Plans—Alaska State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: Corrections are being made to EPA's final regulations approval of portions of the Alaska State Implementation Plan. These regulations were published in the **Federal Register** on December 30, 1980 (45 FR 85744-48).

FOR FURTHER INFORMATION CONTACT: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: 206/442-1226, FTS 399-1226.

SUPPLEMENTARY INFORMATION:

Corrections: In FR Docket No. 80-40222, appearing in December 30, 1980 (45 FR 85744-48) the following corrections are made:

To page 85748, to amended Code of Federal Regulations:

§ 52.71 [Amended]

1. Section 52.71 is amended by changing the heading "photochemical oxidants (hydrocarbons)" to "ozone." Also, in the Table the listing for Cook Inlet Intrastate carbon monoxide "III" is changed to "I."

§ 52.81 [Amended]

2. Section 52.81 is amended by changing the Table for Cook Inlet Intrastate carbon monoxide from the letter "d" to "e" and by replacing the date "May 31, 1977" for the Northern Alaska Intrastate with the letter "e". The following footnote is then added: "e. December 31, 1987." Also, the heading is changed on the Table from "Photochemical Oxidants (hydrocarbons)" to "Ozone."

3. In § 52.82 paragraph [c] is added as follows:

§ 52.82 Extensions.

* * * * *

[c] The Administrator hereby extends the attainment date for carbon monoxide in the Anchorage and Fairbanks nonattainment areas to December 31, 1987.

Corrections are made only to correct typographical and CFR heading placement errors.

Dated: January 22, 1981.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 81-4308 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 56

[AD-FRL 1744]

Regional Consistency Regulations: Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Correction.

SUMMARY: This action deletes extraneous material published as Regional Consistency Regulations on December 24, 1980 (45 FR 85405). Tab B, "Estimated Resource Demand," and Tab C, "Evaluation Plan," were inadvertently published. These provisions were part of the information package to the Administrator and were not intended for codification.

FOR FURTHER INFORMATION CONTACT:

Ted Creekmore, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Control Programs Development Division (919) 541-5437 or 629-5437 (FTS).

Accordingly, Tab B and Tab C on pages 85406 and 85407 of the Regional Consistency Regulations published on December 24, 1980 are hereby deleted.

Dated: January 29, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 81-4309 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-26-M

[SWH-FRL 1745-1]

40 CFR Parts 264 and 265

Availability of Guidance on RCRA Personnel Training, Closure, Financial, and Selected Interim Status Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public of the availability of four draft documents. These documents are the RCRA Personnel Training Manual, Regional Guidance Manual on Selected Interim Status Requirements, Guidance for Subpart G—Closure and Post-Closure, and Guidance for Subpart H—Financial Requirements. These draft documents may be of particular interest to those affected by regulations implementing Sections 3001-3004 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA).

DATES: The draft documents are available for inspection as of today. EPA hopes to complete revised drafts of the manuals by May 1981. Comments on the accuracy of the documents should therefore, be submitted as early as possible and no later than March 31, 1981.

ADDRESSES: Comments should be addressed to Deborah Villari, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments should be identified by the date of this notice and the manual to which they pertain.

AVAILABILITY: Copies of the documents are available for reading at the RCRA Docket Room (Room 2711) located at 401 M Street SW., and at each EPA Regional Office library. [Copies of the documents may also be made at a cost of 20 cents a page.]

FOR FURTHER INFORMATION CONTACT:

Training Manual—Mr. Marc Turgeon, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755-9203

Guidance on Selected Interim Status Requirements—Mr. Ted Senger, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-9200

Guidance on Closure and Financial Requirements—Ms. Ellen O'Boyle, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-9190.

SUPPLEMENTARY INFORMATION: *Status of the Manuals.* The draft manuals have been prepared by EPA contractors in cooperation with the Office of Solid Waste, EPA's Regional Offices, Office of General Counsel and Office of Enforcement have not yet reviewed the drafts; therefore, the documents do not represent EPA's final views and opinions.

Training Manual. The manual contains initital guidance for establishing training programs at hazardous waste facilities. Major topics covered include Personnel and Training, Training Methods and Evaluation, Assigning Training, Training Program Elements, and Sources of Information. The manual is intended as a guide to establishing the framework of personnel training at facilities, particularly for the public, for affected industries, and for State or Agency permit writers who will be implementing the Phase I and Phase II RCRA regulatory standards.

The draft of the document is being made available now for public convenience and comment. EPA will appreciate comments on the approach and accuracy of the Training Manual, particularly with a view to a final version incorporating training standards paralleling the soon to be promulgated Phase II RCRA regulatory standards.

Interim Status Guidance Manual. Included in the manual are chapters on waste analysis, contingency and ground-water assessment plans; variances to security, ground-water monitoring and post-closure care requirements; demonstrations on growing food-chain crops; and the operating record. The manual is intended to assist EPA's regional personnel in explaining certain of the more complex interim status requirements to the regulated community.

EPA will appreciate comments on the

approach and accuracy of the Interim Status Guidance Manual.

Closure and Post-Closure Manual. The purpose of this guidance document is to assist the Regional Office in implementing those sections of the regulations relevant to closure and post-closure plans. The document will clarify the concepts, definitions and rationale behind the requirements; identify the major issues that affect closure and post-closure requirements; discuss site-specific factors that affect closure and post-closure plans; clarify the role of the Regional Office in evaluating these plans; provide examples of the kinds of information for closure and post-closure plans; and provide guidance to owners or operators who need to develop closure and post-closure plans.

The document is divided into the following sections: Basic rules for developing closure and post-closure plans; guidance for developing closure and post-closure plans; adequacy of closure and post-closure plans; and implementing closure and post-closure during interim status.

The draft of the document is being made available now for public comment. EPA will appreciate any comments on the draft guidance.

Closure Cost Estimates

The regulations as promulgated on May 19, 1980, required owners or operators to prepare cost estimates for closure and post-closure. This guidance document only covers those portions promulgated as of that date. At a later time this guidance will also cover the final regulations containing liability requirements and financial assurance mechanisms.

The purpose of this document is to assist the Regional Offices in implementing those sections of the regulations relevant to closure and post-closure cost estimates. Since the basis for the cost estimates is the closure and post-closure plans, this section should be read in association with the guidance for closure and post-closure plans. The document is divided into the following sections: Basic rules for the closure cost estimates; basic rules for the post-closure cost estimates; preparing and documenting the closure and post-closure cost estimates; adequacy of the post-closure cost estimates; revising the closure and post-closure cost estimates; adjusting the cost estimates to account for inflation; and sample cost estimates for various types of facilities.

We would appreciate any comments on this guidance document.

Dated: January 30, 1981.

Steffen W. Plehn,

Deputy Assistant Administrator for Solid Waste.

[FR Doc. 81-4305 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 707

[OPTS 120001B; TSH-FRL 1746-3]

Chemical Imports and Exports Notification of Export; corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Corrections.

SUMMARY: These are corrections to a final rule which outlines procedures for exporters to submit notifications to EPA under section 12(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2611(b). The final rule was published on December 16, 1980 (45 FR 82844).

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-429, 401 M St., SW, Washington, DC 20460. Toll Free: (800-424-9065), In Washington, DC: (554-1404).

SUPPLEMENTARY INFORMATION: On December 16, 1980, EPA published in the **Federal Register** (45 FR 82844), a final rule under section 12(b) of TSCA. Section 12(b) requires notification to EPA whenever chemicals for which certain regulatory actions have been taken under TSCA are to be exported. The rule outlines the procedures EPA will use in notifying foreign governments of such actions as required by section 12(b). The following corrections should be made to the preamble of the final rule:

(a) Page 82844, second column, first paragraph, line 3, the words "N-Methanesulfonyl-P-Toluenesulfonamide" should be inserted after the word "asbestos".

(b) Page 82844, second column, first paragraph line 4, the words "presently subject to section 6" should read "presently subject to proposed or final section 5 or 6".

Dated: January 16, 1981.

Jeanette A. Wiltse,

Chief, Chemical Information Reporting Branch.

[FR Doc. 81-4304 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-31-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

41 Parts 7-4 and 7-7

[AIDPR Notice 81-4]

Miscellaneous Revisions to the AID Procurement Regulations

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: This AID procurement regulation (AIDPR) notice amends the AIDPR to:

—Establish a new Subpart 7-4.8 entitled Consulting Services, Studies, and Reports. This new Subpart implements OMB Circular A-120 and the new FPR Subpart 1-4.8, concerning consulting services. FPR 1-4.8 implements OMB Circular A-120, and requires executive agencies to establish justification and approval procedures for contracts for consulting services.

—Supplement FPR 1-4.8 by making the justification and approval procedures applicable to contracts calling for preparation of studies or reports, as well as contracts for consulting services. This is being done by decision of the Administrator of AID in response to Congressional concern that AID closely monitor its projects which require the preparation of studies or reports by contractors, whether such contractors are consultants or not. In addition, AIDPR 7-4.8 presents guidance concerning organizational conflict of interest as it relates to contracts for consulting services or for preparation of studies or reports.

—Provide a contract clause concerning conflict of interest for use in contracts for consulting services, studies, or reports.

—Provide a contract clause setting forth conditions on contractor use of diplomatic pouch facilities, to formally establish policies previously issued as internal instructions within AID.

EFFECTIVE DATE: This AIDPR notice is effective January 7, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, CM/SD/POL, Agency for International Development, U.S. International Development Cooperation Agency, Washington, D.C. 20523. Telephone (703) 235-9107.

PART 7-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

1. The table of contents for Part 7-4 is amended by adding the following:

Subpart 7–4.8—Consulting Services, Studies, and Reports

Sec.
7–4.800 Scope of subpart.
7–4.802 Definitions—consulting services.
7–4.802–50 Definitions—studies and reports excluded.
7–4.803 Contracting requirements—consulting services.
7–4.803–50 Contracting requirements—studies and reports.
7–4.804 Contract data reporting.
7–4.804–50 Identifying contracts—consultant services, studies, and reports.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 424, as amended; 22 U.S.C. 2381.

2. Subpart 7–4.8 is added as follows:

Subpart 7–4.8—Consulting Services, Studies, and Reports

§ 7–4.800 Scope of subpart.

This subpart implements and supplements Subpart 1–4.8—Consulting Services, of the Federal Procurement Regulations (FPR). It provides supplementary, AID-Specific examples of activities excluded from the definition of consulting services; and establishes procedures for determination, justification, approval, and reporting of such services, as required by OMB Circular A–120 and Subpart 1–4.8 of the FPR. In addition, this subpart establishes special procedures for determination, justification, and approval of contracts for studies or reports in §§ 7–4.802–50, 7–4.803–50, and 7–4.804–50. Finally, this subpart establishes special marking requirements in § 7–1.804–50 for contracts for consulting services, and for contracts requiring a written report or study, when the report or study represents essentially the full cost of the contract.

§ 7–4.802 Definitions—consulting services.

Within the specific context of AID's operations, any consulting services, for which the primary beneficiary is the host country, are not considered to be consulting services.

§ 7–4.802–50 Definitions—studies and reports excluded.

The following general categories of activities are not considered to be studies or reports covered by this Subpart 7–4.8:

(a) Reports prepared as an incidental part of other services provided to AID or foreign governments (for example, progress reports prepared by contractors providing ongoing technical assistance in a bilateral project);

(b) Reports and studies prepared pursuant to AID-financed host country contracts if the primary beneficiary of the services provided is the host country;

(c) Reports and studies provided under a project-funded direct AID contract where AID is merely acting as agent for the host government in dealing with a contractor and the real party in interest is the host government;

(d) Reports and studies prepared pursuant to grants or cooperative agreements.

§ 7–4.803 Contracting requirements—consulting services.

(a) In cases where a single contract finances activities included within the definition of consulting services, and activities excluded from the definition, the contracting officer is responsible for determining whether the primary purpose of the contract is consulting services, in which case the contract will be classed as a consulting services contract.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for consulting services. If the contracting officer determines that a requested contract is for consulting services, and the required justification and approval has not been prepared, the request will be returned to the cognizant project office, together with a memorandum stating that the requested contract has been determined to be for consulting services; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for consulting services, and must provide the following information:

(1) Need and Utilization: State concisely the specific need for procuring the consulting service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(2) Review of Prior Work: Briefly describe efforts made to ensure that the proposed consulting service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank (located in the Office of Development Information and Utilization, Bureau for Development Support, DS/DIU) search.

(3) In-House Capability: Describe the expertise needed for the service and state whether such expertise exists within the Agency. If it is found that the expertise does exist in the Agency, and is available for assignment to the work, state why Agency personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within a Bureau or Office requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need be no higher than the principal AID Officer at the post.

(e) Organizational conflict of interest.

(1) As required by FPR 1–4.803(a)(4), offerors must disclose possible conflicts of interest. The offeror will be required to submit the following representation with its proposal:

"Organizational Conflicts of Interest Representation

(i) The offeror represents, to the best of its knowledge and belief, that:

The award to it of a contract or the modification of an existing contract does ( ) or does not ( ) involve an organizational conflict of interest.

(ii) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interest which (A) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or, (B) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(iii) The term "contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FPR 1–1.601–1(e)."

(2) If the offeror indicates that there are organizational conflicts of interest in the "Organizational Conflicts of Interest Representation," the offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed in the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would eliminate or neutralize such organizational conflict.

(3) The contract clause entitled "Organizational Conflicts of Interest" set

forth in Part 7-7 of the AIDPR shall be included in every contract awarded pursuant to this Subpart 7-4.8.

§ 7-4.803-50 Contracting requirements—studies and reports.

(a) The contracting officer is responsible for determining whether the primary purpose of a requested solicitation or procurement action, regardless of dollar value, is for a study or report, in which case the contract will be classed as a contract for a report or study. The contracting officer's decision shall be final.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for studies or reports. If the contracting officer determines that a requested contract is for studies or reports, and the required justification and approval has not been prepared, the request will be returned to the cognizant project officer, together with a memorandum stating that the requested contract has been determined to be for studies or reports; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for studies or reports, and must provide the following information:

(1) Need and Utilization: State concisely the specific need for procuring the study or report, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the service, but not the cost of individual reports and studies if they form only a part of the services being provided, and evaluate the cost in terms of anticipated utilization of the work product.

(2) Review of Prior Work: Briefly describe efforts made to ensure that the proposed study or report does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank (located in the Office of Development Information and Utilization, Bureau for Development Support, DS/DIU) search.

(3) In-House Capability: Describe the expertise needed for the study or report and state whether such expertise exists within the Agency. If it is found that the expertise does exist in the Agency, and is available for assignment to the work, state why Agency personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within the Bureau or Office requesting the study or report but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approving officer need be no higher than the principal AID Officer at the post.

(e) Organizational conflict of interest. Paragraph (e) of AIDPR 7-4.803 is applicable to contracts for studies or reports.

§ 7-4.804 Contract data reporting.

Within AID, input into the Federal Procurement Data System is accomplished through the Contract On-Line Reporting System. The contracting officer is responsible for insuring that contracts for consulting services or studies or reports are identified as such on Form AID 1420-49, the Contract/Grant/Cooperative Agreement Data Sheet.

§ 7-4.804-50 Identifying contracts—consultant services, studies, and reports.

(a) Contracts for consultant services. The contracting officer is responsible for identifying all contracts, including purchase orders, work orders, and amendments thereto, determined to be for consulting services in accordance with AIDPR 7-4.803. All copies of such contracts are to be legibly marked "Consulting Services" on the upper right-hand corner of the cover page of the contract.

(b) Contracts for reports or studies. If a contract requires preparation of a report or study, whether or not the contract is for consulting services, and the cost of the report or study is essentially the full cost of the contract, purchase order or work order, the contracting officer shall:

(1) Legibly mark all copies of the contract "Report" on the upper right-hand corner of the cover page of the contract (if the contract is also a consulting services contract it should be marked "Consulting Services—Report"); and

(2) Include a special provision in the schedule of the contract, purchase order, or work order, requiring the contractor to include the cost of the report or study on the front cover of the report or study.

PART 7-7—CONTRACT CLAUSES

Subpart 7-7.50—Clauses for Cost Reimbursement Contracts

2. Add a new § 7-7.5002-17 as follows:

§ 7-7.5002-17 Use of pouch facilities.

Use of Pouch Facilities (November 1980)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(7) of this section; however, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the contractor and its employees agree to idemnify and hold harmless the Department of State and AID against loss or damage occurring in pouch transmission.

(1) Contractors and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this section).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official mail pursuant to paragraph (a)(1) of this section sent by pouch should be addressed as follows:

Name of individual or organization
(followed by letter symbol "C"), Name of post (USAID/———), Agency for International Development, Washington, D.C. 20523.

(5) Personal mail pursuant to paragraph (a)(2) of this section should be sent to the address specified in paragraph (a)(4) of this section, but without the name of the organization.

(6) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(7) AID contractor personnel are *not* authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official mail from contractors and letter mail from their employees for the pouch, provided of course, adequate postage is affixed.

(b) The contractor shall be responsible for advising its employees of

this authorization and these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

3. Add a new § 7-7.5003-12 as follows:

§ 7-7.5003-12 Organizational conflicts of interest.

Organizational Conflicts of Interest (November 1980)

(a) The contractor warrants that, to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflict of interest.

(1) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interests which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (ii) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(2) The term "contractor" means any person, firm unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FPR 1-1.601-1(e).

(b) The contractor agrees that, if after award it discovers an organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) The contractor agrees further that if the award follows a formally advertised solicitation and a conflict of interest was identified prior to award, it will adequately avoid, eliminate or neutralize the conflict in a manner satisfactory to the contracting officer.

(d) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract at no cost to the Government.

Subpart 7-7.54—Clauses for Fixed Price Contracts for Technical Services

4. Add a new § 7-7.5402-8 as follows:

§ 7-7.5402-8 Use of pouch facilities.

Insert the clause set forth in AIDPR 7-7.5002-17.

5. Add a new § 7-7.5403-2 as follows:

§ 7-7.5403-2 Organizational conflicts of interest.

Insert the clause set forth in AIDPR 7-7.5003-12.

Subpart 7-7.55—Clauses for Cost Reimbursement Contracts With Educational Institutions

6. Add a new § 7-7.5502-13 as follows:

§ 7-7.5502-13 Use of pouch facilities.

Insert the clause set forth in AIDPR 7-7.5002-17.

7. Add a new § 7-7.5503-5 as follows:

§ 7-7.5503-5 Organizational conflicts of interest.

Insert the clause set forth in AIDPR 7-7.5003-12.

(41 CFR 7-1.104-4)

Dated: January 7, 1981.

John F. Owens,

Deputy Assistant Administrator, Bureau for Program and Management Services.

Determination

As required by paragraph 4a of OFPP Policy Letter 80-5, I hereby determine that AIDPR Notice 81-4 has been reviewed against the policies set forth in paragraphs (1) through (8) of section 2 of the Office of Federal Procurement Policy Act (Pub. L. 93-44 as amended by Pub. L. 96-83, hereinafter referred to as the Act), and policy directives issued by OFPP under section 6(h) of the Act. Based on this review, I hereby determine that AIDPR Notice 81-4 is not inconsistent with the policies set forth in paragraphs (1) through (8) of section 2 of the Act, and Policy directives issued by OFPP under section 6(h) of the Act.

Dated: January 7, 1981.

John F. Owens,

Deputy Assistant Administrator, Bureau for Program and Management Services.

[FR Doc. 81-4295 Filed 2-4-81; 8:45 am]

BILLING CODE 4710-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 17 and 97

[FCC 81-4]

Changes in Procedures for Approval of Proposed Antenna Structures in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending Parts 17 and 97 of its rules to simplify its procedure for processing requests for approval of Amateur Radio station antenna structures with regard to possible hazard to air navigation. The Commission is also making an editorial change to conform a rule section in Part 97 to a parallel rule section in Part 17.

EFFECTIVE DATE: The amendments being adopted are subject to the clearance of reporting requirements by the General Accounting Office, the effective date of this action will be announced by public notice in the near future.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John B. Johnston, Private Radio Bureau (202) 632-4964.

SUPPLEMENTARY INFORMATION:

In the matter of changes in procedures for approval of proposed antenna structures in the Amateur Radio Service.

Adopted: January 8, 1981.

Released: January 21, 1981.

By the Commission: Chairman Ferris absent.

1. Section 303(q) of the Communications Act of 1934, as amended, provides that the Commission shall "have authority to require the painting and/or illumination of radio towers if and when in its judgment * * * there is a reasonable possibility that they may constitute, a menace to air navigation." Part 17 of the Commission's rules sets forth criteria and procedures by which the Commission exercises this authority.

2. In the Amateur Radio Service, an antenna structure which would exceed certain height limitations (set forth in § 97.45) may not be erected or used unless prior approval by the Commission has been obtained. Currently, amateur radio operators obtain this approval by filing FCC Forms 610 and 714 with the Commission and FAA Form 7460-1 with the FAA. These requests for antenna structure approval are processed partially at the Private Radio Bureau licensing facility in Gettysburg, Pa. and partially at FOB

Antenna Survey Branch in Washington, D.C.

3. We are amending Parts 17 and 97 of our rules to allow amateur radio operators to file a single form to obtain approval of proposed antenna structures, instead of the two forms (610 and 714) currently required. By this action, we are simplifying the antenna approval process for both Amateur Radio licensees and the Commission. All antenna structure approval requests filed on the new form will be processed entirely in Washington, D.C. by the Antenna Survey Branch.

4. We are also amending paragraph (a) of § 97.45 to agree with the current wording of § 17.7 of the rules. Since Amateur Radio Service licensees are subject to the provisions of Part 17, this amendment is editorial in nature and imposes no new requirements.

5. Since the rule changes herein ordered concern the Commission's antenna approval procedures and practices, and also involve an editorial amendment to conform Part 97 Amateur Radio Service Rules to Part 17 antenna requirements, we are dispensing with the prior notice and public procedure provisions of the Administrative Procedure Act (see 5 U.S.C. 553(b) (A) and (B)). However, as the amendments being adopted are subject to the clearance of reporting requirements by the General Accounting Office, the effective date of this action will be announced by public notice in the near future.

6. For information on these rule changes contact John B. Johnston, (202) 632–4964.

(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

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

I. Part 17 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

In § 17.4, paragraph (a) is revised, and a new paragraph (h) is added:

§ 17.4 Commission consideration of proposed antenna structure with respect to possible hazard to air navigation.

(a) Except as provided in paragraph (h) of this section, all applications are reviewed to determine whether there is a requirement that the applicant file a Notice of Proposed Construction or Alteration (FAA Form 7460–1) with the Federal Aviation Administration.

* * * * *

(h) Applications for amateur radio station licenses and RACES station licenses are not reviewed for antenna structure approval. Applicants and licensees in those services may not erect or use an antenna which exceeds the height limitations contained in §§ 17.7 and 17.14 of this chapter unless notice has been filed with both the FAA on FAA Form 7460–1 and with the Commission on FCC Form —— and prior approval by the Commission has been obtained.

PART 97—AMATEUR RADIO SERVICE

II. Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

In § 97.45 paragraph (a) introductory text and subparagraph (3) thereof are revised as follows. Also, a new subparagraph (4) is added to paragraph (a).

§ 97.45 Limitations on antenna structures.

(a) Except as provided in paragraph (b) of this section, an antenna for a station in the Amateur Radio Service which exceeds the following height limitations may not be erected or used unless notice has been filed with both the FAA on FAA Form 7460–1 and with the Commission on FCC Form ——, and prior approval by the Commission has been obtained for:

(1) * * *

(2) * * *

(3) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed an obstruction standard of the FAA (§ 17.7(c) of this chapter).

(4) Any construction or alteration on any of the following airports, including heliports (§ 17.7(d) of this chapter).

(i) An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(ii) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and except for military airports, it is clearly indicated that the airport will be available for public use.

(iii) An airport that is operated by an armed force of the United States.

* * * * *

[FR Doc. 81-4215 Filed 2-4-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-95; RM-3117, RM-3165, RM-3204]

FM Broadcast Stations in Bountiful, Centerville, and West Jordan, Utah, and Rock Springs, Wyoming; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action assigns Class C FM Channel 258 to Bountiful, Utah, and Channel 274 to West Jordan, Utah, in response to petitions filed by D. Garry Munson and John Charles Larsh for the Bountiful assignment and Robert R. Busch for the West Jordan assignment. In other actions, FM Channel 283 is substituted for Channel 258 at Rock Springs, Wyoming, to prevent short spacing to the Bountiful assignment and FM Channel 288A is reassigned from Bountiful to Centerville, Utah, to reflect its use there.

DATES: Effective March 23, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau, (202) 653–7586.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: January 22, 1981.

Released: January 30, 1981.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Bountiful, Centerville and West Jordan, Utah, and Rock Springs, Wyoming).

By the Chief, Policy and Rules Division:

1. The Commission has before it a *Notice of Proposed Rule Making*, 45 FR 17600, published March 19, 1980, proposing the assignment of several FM channels in the above-captioned communities. The original petitioners and the assignments they request are as follows:

RM–3117: Petitioners: D. Garry Munson and John Charles Larsh ("Munson/Larsh").
Request: Assign FM Channel 258 to Bountiful, Utah, and substitute Channel 283 for Channel 258 in Rock Springs, Wyoming.

RM–3165: Petitioners: General Broadcasting, Inc. ("GBI").
Request: Assign FM Channel 274 to Bountiful, Utah.

RM–3204: Petitioners: Robert R. Busch d.b.a. Busch Corporation ("Busch").

Request: Assign FM Channel 274 to West Jordan, Utah.

Channel 274 cannot be assigned to Bountiful and West Jordan due to minimum spacing requirements. Because the three proposals are interrelated, the *Notice* sought to consider all of the proposals together. The *Notice* also proposed to reassign FM Channel 288A from Bountiful to Centerville, Utah, to reflect its use there. In order to set forth each possible assignment for public comment, the *Notice* proposed five alternative plans, which are listed below.

City	Channel No.	
	Present	Proposed
Alternative I		
Bountiful, Utah	288A	258, 274
Centerville, Utah		288A
Rock Springs, Wyo	243, 258	243, 283
Alternative II		
Bountiful, Utah	288A	258
Centerville, Utah		288A
Rock Springs, Wyo	243, 258	243, 283
Alternative III		
Bountiful, Utah	288A	258
Centerville, Utah		288A
West Jordan, Utah		274
Rock Springs, Wyo	243, 258	243, 283
Alternative IV		
Bountiful, Utah	288A	274
Centerville, Utah		288A
Alternative V		
Bountiful, Utah	288A	
Centerville, Utah		288A
West Jordan, Utah		274

Comments on these options were filed by Munson/Larsh, GBI, Busch, and Imperial Broadcasting Company, Inc. ("Imperial"), one of two applicants for Channel 258 in Rock Springs. Reply Comments were filed by Munson/Larsh, GBI and Busch. Munson/Larsh also filed supplemental comments after the formal comment filing deadline had passed along with a petition to accept the supplemental comments.

The Comments

2. In their comments, Munson/Larsh incorporate by reference the information contained in their original petition and state that they will promptly apply for and construct a station on Channel 258, if assigned. Munson/Larsh also addresses several of the questions raised by the Commission in the *Notice*. At paragraph 6 of the *Notice*, further comments on the availability of a suitable transmitter site were requested. Munson/Larsh indicates that a new transmitter site has been located which is 16.6 kilometers (10 miles) north of Bountiful and can provide totally unobstructed line-of-sight service to Bountiful. The new site is also approximately 16.1 kilometers (10 miles) closer to Bountiful than their original proposed site which Munson-Larsh claim is evidence that they in fact intend to serve Bountiful as opposed to Ogden, Utah, to which their original transmitter site was closer. Munson/Larsh also contends that the new site location will provide a first FM service to approximately 4,835 people in an area of 1,897.9 square kilometers (1,179.5 square miles).[1] Munson/Larsh therefore support adopting Alternative II or Alternative III. Other alternative assignment plans are opposed by Munson/Larsh on the basis that they will result in no new first or second FM service to underserved areas.

3. GBI urges the Commission to favor the assignment of Channel 274 to Bountiful instead of to West Jordan. GBI argues that West Jordan's phenomenal growth was the result of annexation which has now been reversed by the courts. GBI also asserts that Bountiful is a much larger center of business and commerce than West Jordan. The assignment to West Jordan also creates a spacing problem with Channel 221A in Tooele, Utah, which the proponent of the West Jordan assignment intends to correct by placing its transmitter 3.6 miles from Salt Lake City but 15 miles from West Jordan. GBI questions why a site closer to West Jordan was not found and suggests that the West Jordan proposal is really a proposal to serve Salt Lake City. GBI opposes the assignment of Channel 258 to Bountiful on the basis of the spacing restrictions necessary to protect Channel 205 in Provo, Utah. Furthermore, GBI argues that the site originally proposed by Munson/Larsh is inadequate to serve Bountiful. GBI therefore supports the adoption of Alternatives I or IV.

4. Busch contends in its comments that Alternative V is the only logical proposal before the Commission. In support of its position, Busch states that there is no viable line of sight transmitter location to serve Bountiful and that because of these engineering problems, only an AM station can serve Bountiful economically. Busch also contends that the population of West Jordan is growing while the population growth rate of Bountiful is "flattening." According to Busch, West Jordan is also more deserving of an FM assignment than Bountiful because it is more nearly autonomous and self-sustaining than Bountiful, which, Busch opines, is a classic "bedroom community."

5. Imperial, an applicant for FM Channel 258 at Rock Springs, Wyoming (BPH-790625AB) opposes the substitution of Channel 283 for 258 in Rock Springs which would be necessary if Channel 258 were assigned to Bountiful. Imperial avers that the substitution would disrupt the Commission processes now underway to grant a permit in Rock Springs. In the alternative, if the Commission determines that assignment of Channel 258 to Bountiful is in the public interest, Imperial requests that it retain its file number and its "cut-off" status at the Commission.

6. The reply comments of the parties generally tend to rebut the assertions concerning the various transmitter sites proposed. Munson/Larsh state that Imperial's position, which would deny its proposal for Channel 258 at Bountiful, is unreasonable since the proposal was submitted a year before Imperial's application. Rock Springs is already well served by a number of broadcast stations. Bountiful is larger and has no local FM service. Munson/Larsh also state that GBI's proposal to serve Bountiful by locating its transmitter in the valley may result in a less efficient use of the frequency. Several disadvantages of the valley floor transmitter site, including the extra antenna height needed, the close proximity to Salt Lake City and the lack of any first FM service, are explained by Munson/Larsh. Munson/Larsh has provided us with an engineering study to rebut Busch's assertions that Bountiful cannot easily be served from a mountain location such as the one it has proposed. GBI, is its reply comments disagrees with Munson/Larsh's assertion that the new transmitter site, proposed by Munson/Larsh, is available for use. In this regard, GBI has conferred with the current lessee of the designated site and has reportedly been told that the use of that property for the proposed facilities was not desirable. GBI further contends that the Munson/Larsh site, even if available, does not afford an unobstructed line-of-sight to Bountiful and in fact approximately 31.5 percent of the area within the city will be shadowed. GBI also suggests that it would be inappropriate to make the Channel 258 assignment because of the disruption it would cause to the applicants for Channel 258 at Rock Springs. As to its Channel 274 proposal for Bountiful, GBI responds to the assertions of Busch by noting that the valley floor is a suitable location for a

[1] This claimed area does not appear to be accurate due to an incorrect ratio of square miles to square kilometers.

transmitter serving Bountiful, and labels Busch's population statements as purely speculative. GBI states that Bountiful is clearly the more important center of activity. In its reply comments, Busch makes several allegations relating to GBI's proposed valley floor transmitter site. Busch states that those stations which have moved from former valley floor sites to higher mountain sites have experienced less multipath interference problems, that stations have moved their transmitters to the higher elevations regardless of the more expensive operating costs, and that the remaining stations utilizing valley floor locations have filed for permission to relocate them. Busch responds to the allegations that it intends to serve Salt Lake City instead of West Jordan by noting that its proposed site is an existing site which will require much less expense to develop. Munson/Larsh subsequently filed supplemental comments which contain correspondence from the owner of its proposed transmitter site in which the owner expressed its willingness to negotiate a lease for the property for use as a transmitter site.[1]

Discussion

7. Bountiful (population 29,900),[2] in Davis County (population 99,028), is located 10 kilometers (6 miles) north of Salt Lake City, Utah. Bountiful presently has no local aural service, although a construction permit for a new AM station has been filed. West Jordan (population 4,221), in Salt Lake County (population 458,607), is located 16 kilometers (10 miles) south of Salt Lake City, Utah. West Jordan has no local aural service.

8. After carefully considering all of the comments filed in this proceeding, we conclude that Alternative III represents the most equitable and efficient assignment plan for the communities. Under that plan, Channel 258 is assigned to Bountiful, Channel 283 is substituted for Channel 258 in Rock Springs, Wyoming, and Channel 274 is assigned to West Jordan. Several important factors lead us to this conclusion. First, this alternative could provide both Bountiful and West Jordan with a first local aural service. Persuasive evidence has been presented attesting to each community's need for local service. According to both of the Bountiful proponents, Bountiful is a growing community with distinctive needs and interests which justify an FM station in the city. Busch presents equally persuasive evidence with regard to the need of West Jordan for its own FM assignment.

9. *Technical Issue.* Most of the pleadings in this proceeding have been directed to the question of whether the proposed facilities will be adequate to serve the cities to which the channels will be assigned. Such technical considerations are generally not germane to rule making proceedings such as this, unless it can be shown that there are no possible sites which can be utilized to provide city grade service in compliance with the mileage separation requirements. In this regard, there has been no serious questioning of the ability of Busch to serve West Jordan from its proposed site, and a closer site to West Jordan, which could be chosen by an applicant for the channel, appears to be feasible. Two sites have been proposed by Munson/Larsh for the use of Channel 258 at Bountiful. While each has technical limitations and potential legal and economic problems, there is a strong likelihood of acceptable service to Bountiful from one of the sites.

10. *Suburban Issue.* In the *Notice*, the proposals of Munson/Larsh and Busch were questioned because their proposed transmitter sites were closer to other large cities than the communities of assignment, raising the issue of whether the parties truly intended to serve the communities proposed in their petitions. Initially, it is important to reiterate that no Class A channels are available for assignment to the cities involved. High power, wide coverage Class C channels are the only channels left for assignment to these communities. The fact that Munson/Larsh took the time and expense to locate an alternative transmitter site closer to Bountiful helps negate the suspicion that it intends to primarily serve Ogden. As for the West Jordan proposal, it appears that alternative sites closer to that community are in fact available. Thus, the assignments in themselves can accomplish the purpose for which they are ostensibly sought. Should the applications raise a question on that matter, then the Commission would have the opportunity to inquire further at that stage.

11. The assignment of Channel 258 to Bountiful necessitates the substitution of Channel 283 at Rock Springs, Wyoming. Imperial requests that if such action is taken, the current applicants for the channel at Rock Springs retain their file numbers and "cut off" status. Imperial apparently fears that the channel substitution will open up the channel for further competing applications. Such is not the case. According to Commission policy, any new assignment to a community must be made available for competing applicants under our interpretation of the Ashbacker doctrine. See *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976). In this situation, however, the change is a simple substitution of channels; no additional channel is becoming available in Rock Springs. Thus, the applicants' current "cut off" status will be protected and they will be permitted to amend their applications to specify operation on FM Channel 283 instead of Channel 258, without the opportunity for others to apply. See e.g., *Miami, Florida, et al.*, 45 FR 2844, published January 15, 1980.

12. As proposed, Channel 288A will be reassigned from Bountiful to Centerville, Utah, to reflect its use there.

13. Accordingly, it is ordered, That effective March 23, 1981, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to the communities listed below as follows:

City	Channel No.
Bountiful, Utah	258
Centerville, Utah	288A
West Jordan, Utah	274
Rock Springs, Wyo	243, 283

14. Authority for the actions 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.

15. It is further ordered, That this proceeding is terminated.

16. For further information concerning this proceeding, contact Michael A. McGregor, Broadcast Bureau, (202) 653-7586.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-4207 Filed 2-4-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Because the supplemental comments contain important information not previously available, we shall grant Munson/Larsh's request that we accept and consider its comments.

[2] All population figures are taken from the 1970 U.S. Census.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1-158]

Organization and Delegation of Powers and Duties; Delegation to the Research and Special Programs Administrator

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Research and Special Programs Administrator is delegated authority to implement the Working Capital Fund at the Transportation Systems Center and authorize work to be performed under the Fund.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross Office of the General Counsel, (202) 426-4723.

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

Accordingly, § 1.53 of Title 49 of the Code of Federal Regulations is amended by adding at the end thereof a new paragraph (f), to read as set forth below:

§ 1.53 Delegations to Research and Special Programs Administrator.

The Administrator of the Research and Special Programs Administration is delegated authority to exercise powers and perform duties, including duties under the specified statutes as follows:

* * * * *

(f) *Working Capital Fund for Financing the Activities of the Transportation Systems Center.*

(1) Section 207 of Pub. L. 96-254 (49 U.S.C. 1657(r)), authorizing the Secretary to establish a working capital fund for financing the activities of the Transportation Systems Center.

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

Issued in Washington, D.C. on January 15, 1981.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 81-3928 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1201, 1206 and 1207

[No. 37549]

Capitalization of Interest Cost During Construction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is formally adopting a generally accepted accounting principle issued by the Financial Accounting Standards Board on Capitalization of Interest Cost (FASB Statement No. 34, October 1979). Except for motor carriers of property (49 CFR Part 1207), the Commission required major carriers subject to its uniform systems of accounts to capitalize interest during construction before the issuance of FASB Statement No. 34. This rule requires all carriers subject to its uniform systems of accounts to capitalize interest during construction in accordance with FASB Statement No. 34. This incorporates the statement's details relating to the amount of interest cost to be capitalized and certain disclosure requirements.

DATES: Effective for the reporting year beginning January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 49 CFR Part 1200, the Bureau of Accounts issued on April 23, 1980, Accounting Series Circular 175 (ASC 175), on Capitalization of Interest Cost. ASC 175 includes a discussion on capitalization of interest during construction and a summary of FASB Statement No. 34, Capitalization of Interest.

Review of Responses

Eight respondents (listed in Appendix B) submitted comments on ASC 175. These are summarized below.

The Association of American Railroads (AAR) states that if the Commission adopts FASB Statement No. 34, the rule should refer to the statement refraining from further discussion and interpretation. The AAR maintains that FASB Statement No. 34 includes adequate discussion and interpretation.

The American Trucking Associations, Inc. (ATA) requests clarification of the ASC 175 interest rate definition compared to FASB Statement No. 34. Further, ATA feels that the conditions for capitalization of interest differ between ASC 175 and FASB Statement No. 34.

Bessemer and Lake Erie Railroad Company (Bessemer) states that additional interpretation may be needed on two items: materiality and period of time necessary to make the capitalized asset ready for use. Bessemer points out that an item may be material for an individual entity and immaterial from a consolidated viewpoint. Bessemer maintains that the period of time should not include relatively short construction or production process times.

Complete Auto Transit, Inc.; M&G Convoy, Inc.; Las Vegas, Tonopol, Reno Stage Line, Inc.; and Ryder Specialized Transportation Division support adoption of FASB Statement No. 34.

Consolidated Freightways believes the subject has little applicability to motor carriers. It maintains that since FASB Statement No. 34 is a generally accepted accounting principle, special disclosures for Commission accounting are unnecessary.

Discussion and Conclusions

Capitalization of interest during construction is not new or contrary to present Commission regulations. Railroad companies (49 CFR Part 1201) already capitalize interest during construction. Property account 76, Note C, requires railroads to charge specific property accounts for interest assignable to the construction period. Account 76, Interest During Construction, is not depeciated. Rather an "equitable proportion" is cleared with the retirement of property [Instruction 2-7(c)]. Capitalized interest charged to a specific unit of property is depreciated as an integral component of the property. This is consistent with FASB Statement No. 34.

Further, control Account 70, General Expenditures, applies to Account 76. It states that "when assignable, such expenditures [interest during construction] shall be included in the cost of the property for which the expenditures occurred."

Motor Carriers of Passengers (49 CFR Part 1206) charge simple interest during construction to carrier operating property accounts (Instruction 2-19). However, the USOA for Motor Carriers of Property (49 CFR Part 1207) does not address capitalization of interest. Account 1245, Unfinished Construction, and Instruction 19, Carrier Operating

Property, do not address interest cost.

FASB Statement No. 34 alters the widely accepted historical viewpoint that interest is a cost of borrowing rather than an integral cost of the asset acquired with those funds. The statement identifies the assets qualifying for interest capitalization, the amount of interest cost to be capitalized, the capitalization period, the disposition of the amount capitalized and disclosure requirements.

ASC 175 summarizes and paraphrases FASB Statement No. 34. We agree with those respondents who expressed concern with the confusion that develops by paraphrasing a specific issuance of the Financial Accounting Standards Board. Accordingly, the adoption of FASB Statement No. 34 is simplified by the language: "Unless provided for otherwise, interest costs shall be capitalized in accordance with generally accepted accounting principles."

This rule applies to all railroads, motor carriers of property and motor carriers of passengers subject to the Commission's uniform systems of accounts. The materiality concept incorporated in FASB Statement No. 34 should preclude any additional reporting burden. We recognize, however, that FASB Statement No. 42, November 1980, amended FASB Statement No. 34 to exclude pro forma prospective or retroactive materiality computations. Carriers shall consider the materiality of interest capitalization based on the effect on current year income.

This action will incorporate all of FASB Statements No. 34 and No. 42 requirements including disclosure items without encumbering the intent of this action by paraphrasing the statements. Carriers requiring additional clarification may submit accounting details to the Bureau of Accounts for interpretation.

This action does not significantly affect the quality of the human environment, the conservation of energy resources or small businesses.

This action is taken under authority of 49 U.S.C. 553 and 49 U.S.C. 10321.

We adopt the changes to 49 CFR Parts 1201, 1206 and 1207 set forth in Appendix A to this final rule.

Decided: January 26, 1981.

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

Agatha L. Mergenovich,

Secretary.

Appendix A

PART 1201—RAILROAD COMPANIES

PART 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

1. Add the following sentence to the uniform systems of accounts detailed below.

Unless provided for otherwise, interest costs shall be capitalized in accordance with generally accepted accounting principles.

a. 49 CFR Part 1201, Subpart A, as last sentence of Instruction 2–7(c) and Note C, Account 76.

b. 49 CFR Part 1206, as last sentence of Instruction 2–19(b).

c. 49 CFR Part 1207, after first sentence of Instruction 19(a)(3).

PART 1206—COMMON AND CONTRACT MOTOR CARRIERS OF PASSENGERS

2. Amend 49 CFR Part 1206, Instruction 2–19(b) by changing the words "simple interest" to read "interest."

Appendix B—Respondents to Accounting Series Circular 175

1. Elizabeth S. Lewis, Asst. Executive Director, Technical Services, American Trucking Associations, Inc., National Accounting and Finance Council, 1616 P Street, N.W., Washington, D.C. 20036.
2. Harry J. Breithaupt, Jr., Hollis G. Duensing, Attorneys for the Association of American Railroads, 1920 L Street, N.W., Washington, D.C. 20036.
3. V. W. Kraetsch, Vice President—Finance Bessemer and Lake Erie Railroad Company, 600 Grant Street, P.O. Box 536, Pittsburgh, Pennsylvania 15230.
4. M. J. Wagner, Vice President, Finance & Controller, Complete Auto Transit, Inc., P.O. Box 930, Bloomfield Hills, Michigan 48013.
5. N. R. Benke, Vice President—Finance, Consolidated Freightways, P.O. Box 3301, Portland, Oregon 97208.
6. John E. True, Vice President of Finance/Controller, M & G Convoy, Inc., 590 Elk Street, P.O. Box 104, Buffalo, New York 14240.
7. E. J. Paulus, Controller, Las Vegas, Tonopah, Reno Stage Line, Inc., 101 North Mojave, P.O. Box 42130, Las Vegas, Nevada 89104.
8. Chris B. Jordan, Controller, Ryder, Specialized Transportation Division, 3600 N. W. 82 Avenue, P.O. Box 520816, Miami, Florida 33152.

[FR Doc. 81-4287 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1331

[Ex Parte No. 297 (Sub-No. 5)]

Motor Carrier Rate Bureaus; Implementation of Pub. L. 96-296

AGENCY: Interstate Commerce Commission.

ACTION: Notice of corrections to notice of decision and policy statement.

SUMMARY: The Commission has issued a notice clarifying and correcting errors appearing in its decision served December 30, 1980, and its notice published at 45 FR 86736, December 31, 1980. That decision established standards for motor carrier rate bureau activities to implement the provisions of the Motor Carrier Act of 1980. The corrections to the **Federal Register** notices appear below. The complete decision and notice of clarification and errata to the decision are available from the Secretary, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7428.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: On page 86737 of the decision published on December 31, 1980, delete item 5 and replace it with the following:

5. The quorum for holding meetings at which rates, rules, or classifications are discussed or considered is 30 percent of the membership of the organization or 50 percent of the membership of the respective committee.

Also on page 86737, delete item 7 and replace it with the following:

7. To retain antitrust immunity, the bureaus shall comply with 49 U.S.C. 10706 and this decision, when it becomes effective. Then, on the prescribed date, the bureaus shall submit for our approval agreements amended in accordance with 49 U.S.C. 10706 and this decision.

Dated: January 29, 1981.

By the Commission, Chairman Gaskins, Vice Chairman Alexid, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-4286 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 46, No. 24
Thursday, February 5, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 791 0140]

Albertson's, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, a Boise, Idaho operator of retail grocery stores to refrain from acquiring any unapproved retail grocery stores business in specified areas for a period of ten years.

DATE: Comments must be received on or before April 7, 1981.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/C, E. Perry Johnson, Washington, D.C. 20580. (202) 523–3601.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the matter of ALBERTSON'S, INC., a corporation.

File No. 791 0140. Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of an acquisition by Albertson's, Inc., a corporation, and it now appearing that Albertson's, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order precluding certain future acquisitions and for other relief,

It is hereby agreed by and between Albertson's, Inc., by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Albertson's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 250 Parkcenter Boulevard, in the City of Boise, State of Idaho 83726.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order precluding certain future acquisitions and for other relief shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

As used in this order:

(A) "Albertson's" means Albertson's, Inc., a corporation organized under the laws of Delaware with its principal executive offices at 250 Parkcenter Boulevard, Boise, Idaho 83726, and its directors, officers, agents and employees, and its subsidiaries, successors and assigns.

(B) "Retail grocery stores" are retail food stores currently classified under Bureau of Census Industry Classification No. 541, including supermarkets, convenience stores and delicatessens, which primarily sell a wide variety of canned or frozen foods, such as vegetables, fruits and soups; dry groceries, either packaged or in bulk, such as tea, coffee, cocoa, dried fruits, processed food and nonedible grocery items. In addition, these stores often sell smoked and prepared meats, fresh fish and poultry, fresh vegetables and fruits and fresh or frozen meats.

(C) "Acquisition", "acquire", "merger", or "merge with" includes all other forms of arrangement by which Albertson's may obtain all or any part of the market share of any other retail grocery store or stores.

II

It is ordered that for a period of ten (10) years from the date on which this order becomes final, Albertson's shall not merge with or acquire, or merge with or acquire and

thereafter hold, directly or indirectly through subsidiaries or in any other manner, without the prior approval of the Federal Trade Commission, the whole or any part of the stock or assets of any individual, firm, partnership, corporation or other legal or business entity which directly or indirectly owns or operates any retail grocery stores, where such acquisition or merger involves five or more such retail grocery stores, any one of which is located in any of the following areas:

(A) In Washington, Oregon, Nevada, Idaho, Montana, Wyoming, New Mexico, Utah, Colorado, Florida, California, Texas, Louisiana, Alabama or Arizona; or

(B) Within five hundred (500) miles of any warehouse owned or operated by Albertson's at the time of such acquisition or merger and which is engaged in the shipment of products to retail grocery stores; or

(C) Within three hundred (300) miles of any retail grocery store owned or operated by Albertson's at the time of such acquisition or merger.

III

It is further ordered that upon written request of the staff of the Federal Trade Commission, Albertson's shall submit such reports in writing to assure compliance with this order as may from time to time be requested.

IV

It is further ordered that Albertson's notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate changes, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance with the obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Albertson's, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The case arose from the July 1978 acquisition by Albertson's, Inc. (Albertson's) of Fazio's, the California Division of Fisher Foods, Inc. (Fisher). Albertson's was a large supermarket chain with stores primarily on the West Coast, including California, and in the Rocky Mountain area of the United States. Fisher was also a large supermarket chain, with stores in Northern Ohio and the Chicago area, as well as in the Los Angeles/Orange County, California area. Albertson's and Fisher's California Division were in direct competion at the time of the acquisition. Immediately following the acquisition, Albertson's market rank increased from ninth to sixth.

The Commission's complaint charges that the acquisition violated Section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges anticompetitive effects in the retail grocery store industry in Los Angeles/Orange County, a market that is alleged to be concentrated. The alleged anticompetitive effects include: (a) the elimination of actual competition between Albertson's and Fisher, (b) the lessening of retail grocery store competition in the market in general, (c) the elimination of Fisher as a competitor, (d) increased concentration in the market and (e) the encouragement of further acquisitions.

The proposed order contains provisions limiting Albertson's future acquisitions and requiring normal compliance reports. For a period of ten (10) years from the effective date of the order, Albertson's (with certain minor exceptions) will not be permitted to make any acquisitions in the retail grocery store business in designated areas of the United States without prior Commission approval. The areas included in this provision are: (a) the states of Washington, Oregon, Nevada, Idaho, Montana, Wyoming, New Mexico, Utah, Colorado, Florida, California, Texas, Louisiana, Alabama and Arizona; (b) anywhere within five hundred (500) miles of any Albertson's warehouse at the time of the acquisition; and (c) anywhere within three hundred (300) miles of any Albertson's retail grocery store at the time of the acquisition.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 81-4300 Filed 2-4-81; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1221

[Docket No. 81-01; Notice 2]

Performance Standards for Speed Measuring Radar Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed rule; extension of comment closing date.

SUMMARY: This document extends from February 2, 1981, to February 17, 1981, the period within which comments may be submitted to the notice proposing performance standards for speed measuring radar devices which was published January 8, 1981 (46 FR 2097).

DATE: Comment closing date for the proposed rule is February 17, 1981.

FOR FURTHER INFORMATION CONTACT: Kathy DeMeter, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1834).

SUPPLEMENTARY INFORMATION: The purpose of this extension is to allow interested parties additional time to submit their comments on the proposed regulation.

Issued on January 29, 1981.

George L. Reagle,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 81-4158 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 868

[Docket No. R-81-909]

Comprehensive Improvement Assistance Program; Transmittal of Interim Rule to Congress

AGENCY: Department of Housing and Urban Development

ACTION: Notice of transmittal of interim rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the **Federal Register.** This Notice lists and summarizes for public information an interim rule which the Secretary is submitting to Congress for such review. This rule sets forth the requirements under which HUD is authorized to provide financial assistance to Public Housing Agencies, including Indian Housing Authorities, to improve the physical conditon and upgrade the management and operation of existing public housing projects.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 868—Comprehensive Improvement Assistance Program

(Sec. 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), sec. 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., January 29, 1981.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 81-4301 Filed 2-4-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[LR-2118]

Manufacturers and Retailers Excise Taxes on Special Fuels; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations concerning manufacturers and retailers excise taxes on special fuels.

DATES: The public hearing will be held on April 8, 1981, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by March 25, 1981.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-2118), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 4041 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, October 22, 1980 (45 FR 69933).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by March 25, 1981. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue:

David E. Dickinson,

Acting Director, Legislation and Regulations Division.

[FR Doc. 81-4212 Filed 2-4-81; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Portsmouth Naval Shipyard, Restricted Area; Navigable Waters

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish a restricted area in the waters adjacent to the Portsmouth Naval Shipyard, Kittery, Maine. The revised restricted area will improve the security of vessels and waterfront facilities by limiting access to these waters.

DATES: Comments must be received on or before March 26, 1981.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Otis at (617) 894-2400 (extension 322) or Mr. Ralph T. Eppard at (202) 272-0200.

SUPPLEMENTARY INFORMATION: Regulations in 33 CFR 207.6 were approved by the Secretary of the Army on September 1, 1960, establishing a restricted area in the waters adjacent to the Portsmouth Naval Shipyard in Kittery, Maine. The Department of the Navy has now requested the restricted area be expanded to provide added security for vessels and the waterfront facilities. The Corps is also redesignating the agency responsible for enforcement of these regulations by this action. For the reasons stated above, 33 CFR 207.6 is proposed to be amended as follows.

§ 207.6 Piscataqua River at Portsmouth Naval Shipyard, Kittery, Maine; restricted area.

(a) *The area.* Beginning at a point on the easterly side of Seavey Island at latitude 43°04'37" longitude 70°43'44"; thence to latitude 43°04'36" longitude 70°43'40", thence to the pier on the westerly side of Clark Island at latitude 43°04'36.5", longitude 70°43'34"; thence along the northerly side of Clark Island to a point on the easterly side at latitude43°04'37", longitude 70°43'25"; thence northeasterly to the easterly side of Jamaica Island at latitude 43°04'49", longitude 70°43'24"; thence along the southerly and westerly sides of Jamaica Island and thence generally along the easterly side of Seavey Island to the point of beginning. A line beginning at a point on the southerly side of Seavey Island at Henderson Point at latitude 43°04'29", longitude 70°44'14"; thence to latitude 43°04'29.5", longitude 70°44'17.4"; thence to latitude 43°04'36.6", longitude 70°44'22.6"; thence to latitude 43°04'44.8", longitude 70°44'33.2"; thence to latitude 43°04'47.4", longitude 70°44'42.1"; thence to latitude 43°04'48", longitude 70°44'52"; thence to latitude 43°04'49", longitude 70°44'54"; thence to latitude 43°04'51", longitude 70°44'55"; thence to latitude 43°04'53", longitude 70°44'53"; thence to latitude 43°04'57", longitude 70°44'47"; thence to latitude 43°04'58", longitude 70°44'46"; thence to latitude 43°05'02", longitude 70°44'36"; thence to latitude 43°05'04", longitude 70°44'31"; thence along the westerly side of Seavey Island to the beginning point.

(b) *The regulations.* All vessels are prohibited from entering the area unless approved by the Commander, Philadelphia Naval Base, or such agency as he may designate, except vessels of other military agencies in case of emergency.

(40 Stat. 266; 33 U.S.C. 1)

Note.—The Chief of Engineers has determined that this document does not contain a major proposal requiring the

preparation of a regulatory analysis under EO 12044.

For the Chief of Engineers.

Forrest T. Gay III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 81-4290 Filed 2-4-81; 8:45 am]

BILLING CODE 3710-92-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 1-4

Procurement and Contracting Government-Wide for Automatic Data Processing Services and ADP Related Services

AGENCY: General Services Administration.

ACTION: Notice of distribution for review and comment of draft Federal Procurement Regulation (FPR) subpart.

SUMMARY: On January 28, 1981, the General Services Administration distributed to Federal agencies and other interested parties a proposed new FPR Subpart 1-4.12. Review and comments on the draft were requested to be submitted within 60 days.

The new subpart is intended to replace existing regulatory coverage contained mainly in the Federal Property Management Regulations (FPMR) and to provide clear and concise provisions regarding procurement and contracting by Federal agencies of commercial ADP services. Updated provisions regarding GSA's major contract services program, the Teleprocessing Services Program, and software conversion requirements for commercial ADP services are included. Subpart 1-4.12, together with existing Subpart 1-4.11 and FPMR 101-35.2 are intended to provide the Government-wide overall management and procurement policy regulations for GSA's implementation of the Brooks Act (Pub. L. 89-306).

DATES: Review and comments are invited through March 28, 1971.

ADDRESS: GSA (CPEP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Procurement Policy and Regulations Branch, Policy and Analysis Division, Office of Policy and Planning, ADTS, 202-566-0194.

Dated: January 28, 1981.

Francis A. McDonough,

Deputy Commissioner for Government-wide Management.

[FR Doc. 81-4059 Filed 2-4-81; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-252; FCC 80-742]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor

AGENCY: Federal Communications Commission.

ACTION: Further notice of Proposed Rulemaking.

SUMMARY: The Federal Communications Commission has tentatively concluded that the Communications Act of 1934 does not compel the application of any of the regulatory obligations set forth in Title II of the Act to all companies which offer communication services and facilities to the public. Rather, the Commision has the discretion to decide which communications suppliers should be treated as common carriers and hence subject to Title II regulation as well as the discretion to forbear from imposing the full panoply of Title II regulation upon those entities which the Commission determines should be treated as common carriers.

This discretion is not unfettered, and the Commission must have a set of standards upon which to exercise it. We therefore seek comment on what criteria should be used but we tentatively conclude that at least one element sufficient to identify those firms which should be treated as carriers as well as those common carriers which need not be subjected to full regulation under Title II is market power. This element emerges from an analysis of the regulatory scheme embodied in Title II of the Act, the historical context in which the Act was adopted, and applicable legal precedent. We also seek comment on how this discretionary authority should be applied to the telecommunications industry although we have tentatively determined that only those carriers with substantial market power in relevant submarkets need be subjected to Title II regulation. And finally, we seek comment on how our tentative conclusions should be implemented.

DATES: Comments: March 2, 1981. Reply comments: April 6, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael B. Fingerhut, Common Carrier Bureau (202) 632-6917.

In the matter of policy and rules concerning rates for competitive common carrier services and facilities authorizations therefor, CC Docket No. 79-252.

Further Notice of Proposed Rulemaking

Adopted: December 16, 1980.

Released: January 16, 1981.

By the Commission: Commissioners Lee and Fogarty concurring in part and dissenting in part and issuing statements; Commissioner Quello concurring in the result; Commissioner Washburn issuing a separate statement; Commissioner Jones concurring and issuing a statement.

Table of Contents

	Paragraphs
I. Introduction	1-10
II. Economic Regulation	11-33
III. The Communications Act	33a-53
A. Introduction	33a
B. Statutory framework	34-42
C. Context in which act was adopted	43-53
IV. Deregulatory approaches	54-134
A. Definition of common carrier	54-66
B. Forbearance	67-119
1. Introduction	67-70
2. Legal precedent	71-86
3. Statutory provisions supporting forbearance	87-119
a. Section 203—Tariffing requirement	87-101
b. Section 205—Prescription of rates	102-103
c. Section 201—Duty to serve	104-111
d. Section 214—Licensing requirements	112-119
C. Deregulation of resale carriers	120-134
1. Introduction	120-121
2. Private carrier status	122-127
3. Regulatory restraint	128-134
V. Deregulatory proposals	135-199
A. Introduction and summary	135-140
B. Paradigm of analysis	141-148
C. Market definitions	149-157
D. Analysis of the basic transmission market	158-195
1. MTS/WATS submarket	158-160
2. Private line submarket	161-194
3. Public switched record submarket	195
E. Conclusion	196-198
VI. Implementation	199-209
VII. Ordering clauses	210-212
Appendices	
Appendix A—Summary of parties' comments	
Appendix B—Definition of common carrier—Common law background	

I. Introduction

1. Given the relative constancy of the telecommunications industry between 1934 and the 1970's, the Commission has not previously found the need to undertake a careful examination of the nature of its authority under Title II of the Communications Act of 1934. Rather, the practice has been to make determinations on a case by case basis, adding refinements from time to time as necessary. For a number of reasons we have concluded that a more thorough inquiry into the congressional purpose is due. The present communications marketplace is quite different from the one in 1934. New technologies and public needs have in recent years spawned a variety of communications services, often provided by new entrants into the communications marketplace. A number of these firms offer innovative or specially designed services and

facilities to a relatively small number of business customers. Many own few or no facilities of their own, but utilize the basic transmission services of other carriers. Almost all are subject to vigorous competition among themselves or with established carriers. An even greater number of entrants and new services seem certain to emerge in years to come. Thus, the future communications marketplace also promises to be quite different in many ways from that in 1934.

2. In Section XI of our *Notice of Inquiry and Proposed Rulemaking*, 77 F.C.C. 2d 308 (1979) (hereafter *Notice*), we recognized that it may be in the public interest to reduce or even eliminate fundamental forms of rate and entry regulation of some of these competitive carriers. We noted that statutes should be interpreted with reference to present conditions and needs so that the goals sought to be accomplished are not frustrated by interpretations that may not have been intended by Congress. Therefore, we set for inquiry and solicited comments on the legal sufficiency and overall impact of two approaches to "deregulation" that we considered, at least initially, to be reasonable.

3. The first approach was the Commission's possible discretion to forbear from exercising its full regulatory authority. We sought comment on our authority to refrain generally from regulating competitive carriers and, specifically, our authority to deregulate resale and enhanced service providers.[1]

4. The second approach on which we sought comment was a reconsideration of the traditional definition of "common carriers" to determine whether competitive carriers are "common carriers" within the meaning of the Act. We raised the question of whether, when examining the rationale for regulation of common carriers, it would be more accurate to recognize that common carriage contains some element of essentiality or market power. If this were the case, we noted, certain competitive carriers would not be subject to the provisions of Title II.

5. In response to the *Notice*, we received direct and reply comments from a government agency, several communications carriers, customers of carriers, equipment suppliers, resale carriers, cable television stations, business associations and a law firm. A detailed summary of the positions taken by the parties is attached as Appendix A.

6. Upon review of the comments as well as our own research, we have concluded tentatively that the Communications Act does not compel the application of traditional Title II regulation to all companies that offer basic communications service. Beginning with a review of traditional rate base regulation, its purposes and its costs and benefits, we have set forth our fundamental policy determination that the application of such regulation to all communications suppliers is contrary to the public interest. Our anaylsis continues with an examination of the 1934 Act and its legislative history. That examination, we believe, reveals a regulatory scheme in Title II which tracks the rate base regulation model and was primarily enacted to constrain the exercise of substantial market power possessed by firms providing communications services in 1934.

7. Upon this review, we propose to remove our regulatory efforts from those areas in which their application is inefficient and costly, and to rededicate those efforts to areas where regulation may appropriately be used to constrain the ability of firms with market power to act contrary to consumer welfare. This sharpening of our regulatory focus, we believe, is consistent with, and perhaps mandated by, the express objectives of the Act to assure widely available, efficiently produced, and reasonably priced communications service. Section 1, 47 U.S.C. § 151.

8. Applying this conclusion, we have tentatively determined that those communications suppliers without market power need not be treated as common carriers. Implicit in this determination is the assertion that this agency has the authority to impose or to refrain from imposing common carrier status on communications entities within its jurisdiction where it discerns and develops a principled basis for doing so. We believe that at least one basis for the imposition of common carrier obligations is the possession of market power so clearly addressed by the 1934 enactment. There may well be other relevant criteria, and commenting parties are encouraged to bring these to our attention.

9. The congressional intent to regulate market power also drives our determination that not all entities defined or heretofore treated as common carriers need be subjected to the full panoply of Title II requirements. Implicit in this determination is our authority and or obligation to ensure that the express purposes of the Act found in Section 1 prevail in our quasi-legislative judgments, particularly when we address circumstances neither confronted nor contemplated by the 1934 Congress.

10. We appreciate that this fundamental review of our Title II regulatory responsibilities may well engender far-reaching consequences. The two approaches set forth, while driven by the same goal to remove inefficacious and counterproductive regulation, each may portend different legal and administrative changes to the current environment. We wish to make clear at the outset, however, that a decision to remove entities from Title II regulation—under either a forbearance or definitional approach—does not remove our Title I and Title III jurisdiction over such entities, nor does it foreclose our ability to reimpose Title II regulation upon a principled finding that such action would be warranted under the Act. Nonetheless, a decision to remove some companies in some markets from Title II regulation raises significant issues not only as to the proper identification of the affected companies, but also as to the actual implementation of such a decision. These issues are explored in Section V, *infra*. Comment is sought on our tentative conclusions, their specific applications, and the necessary consequences of such applications.

II. Economic Regulation

11. Having placed in perspective the history of this proceeding, and the objectives that we seek to achieve, we turn to a brief description of the economic concepts relevant to our Title II regulatory responsibilities. Economic regulation was imposed by Congress in order to serve specific purposes, and any rational evaluation of our current regulation or of the changes proposed here must consider how well these purposes are in fact served. Therefore, we think it useful at the outset to review the means by which Title II regulation alters the economic outcomes that would occur in the absence of governmental intervention in the communications market and the benefits and costs which attend their use. We think such a review will expose in a general way the consumer welfare consequences of adjusting the application of Title II regulation to fit varying circumstances.

12. We believe that this description shows that the mechanisms Congress adopted in Title II are designed to be employed to limit the conduct of dominant firms and that, conversely, they are not effective, in the sense that

[1] The Notice was issued prior to our Final Decision in *Second Computer Inquiry*, 77 F.C.C. 2d 384 (1980), *reconsid.* FCC 80-628 (adopted October 28, 1980) where we found that enhanced services were not common carrier services within the meaning of the Act and are not regulable under Title II.

they do not directly vary economic performance, when employed with respect to the conduct of firms without market power. The description also reveals that, while the regulatory tools are able to prevent dominant firms from fully exercising their market power, use of these tools also imposes costs beyond the obvious administrative costs of enforcement and compliance to regulatory agency and regulated companies respectively. In some circumstances these costs can have profoundly negative implications for consumer welfare. Thus, as a matter of policy it is clear that it is desirable to adjust regulatory methods in particular circumstances to the extent the law permits.

13. The market mechanism is the major social institution for the allocation of scarce resources in the United States. Many markets, however, function with some degree of government participation that supplements or conditions the process of voluntary exchange.[2] A particular variant of market intervention is the economic regulation of monoploy firms that have come to be considered "public utilities," such as those that produce gas, electricity, water and communications.[3] In general, the economic regulation of public utilities has traditionally included control over entry into the market, some degree of price control, the specification of both quality standards and conditions of service, and, usually, an obligation to serve all customers requesting service under reasonable, non-discriminatory terms. The historical arguments justifying the imposition of such social controls on public utility firms are diverse, varying widely from market to market and from one legal jurisdiction to another. Kahn identifies such diverse justifications as: "natural monoploy;" the need for franchises to obtain the power of eminent domain; the desire to promote risky enterprises; the desire to protect consumers who cannot readily evaluate the quality of goods or services purchased; the desire to prevent the emergence of "destructive competition;" the need to prevent deterioration in the quality of service; the need to control "monopoly power;" the need to prevent "cream-skimming;" and other social-political rationalizations.[4]

14. The factors identified by Kahn as leading to the regulation of public utilities provide the general social-political motives for constraining the behavior of such entities. More specifically, in sec. III, *infra*, we discuss the particular environment that led to telecommunications regulation and conclude that market power provided the principal justification for that regulation. Of special importance in the present context, however, are the intended and actual effects of the practice of the economic regulation of telecommunications entities as public utilities. The following discussion provides the rationale for the imposition of this type of regulation and explains why the application of such regulation to competitive firms disserves the public interest.

15. Market power is the ability of a firm to raise and maintain its prices above costs, including an allowances of a fair profit.[5] As a result, consumers pay more than the costs of production. Thus, resources that could have gone into the production of more goods are wasted.[6]

16. Another potential problem raised by market power is the ability of the dominant firm to maintain prices below costs in order to forestall entry by potential competitors or to eliminate existing competitors by a predatory pricing strategy. The potential problems created by the existence of market power were perceived to be so great in certain cases that state legislatures and Congress responded by imposing direct controls over the prices and profits of the firms possessing such power.[7] Control over prices and profits of such dominant firms typically has been implemented through the institution of rate of return regulation.

17. Rate of return regulation has several constituent elements. Fundamental is the prescription of an allowed rate of return that provides the firm a just and reasonable profit on its invested capital. The regulator here must first determine the "proper" percentage return, the expenditures that belong in the rate base on which the return can be earned, the expenditures that are to to be allowed as a current expense, and the expenditures that are to be disallowed altogether. To carry out these requirements effectively, the regulator must be able to obtain detailed cost information. Additionally, the power to disallow expenses and to order refunds is necessary to remedy such potential problems as imprudent expenditures or excessive rates of return.

18. All of the elements of the rate of return regulation paradigm discussed above are embodied in Title II of the Communications Act of 1934. Section 201(a) provides for furnishing service on reasonable request. Section 201(b) provides for public control of rates by requiring just and reasonable charges.[8] Section 202(a) makes unreasonable price or service discrimination unlawful.[9] Section 205 provides the FCC with the authority to prescribe carrier rates and practices.[10] Section 214 provides the Commission with authority to approve investments.[11] Other portions of Title II provides for reports and accounting systems that can be used to implement rate of return regulation. Our power to order refunds is derived from Section 204(a).[12]

19. Rate base regulation applied to a monopoly firm is conceptually straightforward. The basic idea is to control what the regulated firm charges its customers by allowing it to collect just enough revenue from its customers to recover its cost of operation.[13] In principle, the imposition of rate base regulation prevents the monopoly firm

[1] A substantial amount of economic literature examines the reasons for government intervention in a market economy. A classic introduction to this literature is provided by F. M. Bator, "The Anatomy of Market Failure," 92 *Quarterly Journal of Economics* 351 (1958).

[2] Economic regulation of a market can be contrasted with government ownership and control of a firm or industry. In general, economic regulation only constrains the behavior of privately-owned enterprises while preserving private ownership and management of the firm. For a brief discussion of both the legal and economic rationale of regulation and its historical evolution, see Kahn, *The Economics of Regulation*, Vol. I, Ch. 1 (1971). A useful discussion of the "public utility concept" is provided by Bonbright, *Principles of Public Utility Rates*, Ch. 1 (1961). In many foreign countries, firms regulated as public utilities in the United States are nationalized or socialistic enterprises.

[3] Kahn, *The Economics of Regulation*, Vol. II., pp. 2-8.

[4] *See, e.g.*, F. M. Scherer, *Industrial Market Structure and Economic Performance* (2nd Ed. 1980).

[5] For a detailed discussion of the allocative inefficiency resulting from monopoly prices, *see, e.g.*, W. Nicholson, *Microeconomic Theory: Basic Principals and Extensions* (1972).

[6] Traditional wisdom held that the market power of the dominant firm often was based on substantial economies of scale, *i.e.*, a situation in which large scale production by a single firm is essential to achieve least cost production of telecommunications services. Such a firm is said to have a "natural monopoly". This view has, of course, not prevailed in interstate telecommunications. *See Customer Interconnection*, 75 F.C.C. 2d 506 (1980).

[8] Section 201(a) and (b); 47 U.S.C. 201(a), (b).

[9] Section 202(a); 47 U.S.C. 202(a).

[10] Section 205; 47 U.S.C. 205.

[11] Section 214; 47 U.S.C. 214.

[12] Section 204(a); 47 U.S.C. 204(a).

[13] This relationship is presented in textbook discussions in terms of the familiar regulatory relationship "Revenue Requirement (RR) = Cost of Service (COS)," where $COS = E + d + T + r(V - D)$. The definitions of E, d, T, r, V and D are, respectively, operating expenses, depreciation expense, taxes, the allowed rate of return, gross valuation of public utility property used in producing public utility services, and accrued depreciation. The expression $(V - D)$ represents the regulated firm's "rate base" net of depreciation and $r(V - D)$ measures its "allowed earnings" on its rate base. For further discussion see Paul J. Garfield and Wallace F. Lovejoy, *Public Utility Economics* (Englewood Cliffs, N.J., Prentice-Hall 1964), Chapter 5.

from exercising its monopoly power by pricing its services well above cost and earning monopoly (supranormal) profits. Arguably, rate base regulation provides consumers with two major benefits: (1) the cost advantages of large scale production that fully exploits the assumed natural monopoly conditions and (2) the assurance that rates charged by the regulated firm are not excessive but instead are "just and reasonable," reflecting the average untit cost of production at high levels of output. Additionally, regulation also requires the monopoly firm to serve all customers reasonably requesting service and to do so on non-discriminatory terms. In brief, the social contract between society and the regulated firms appears to protect the consumer from monopoly abuse, provide consumers with public utility service at rates reflecting the economies of large scale production; and provide owners of the regulated firm "just and reasonable" compensation for use of their property.

20. Rate base regulation as just described suggests only its fundamental logic in general terms and does not address the complexities of real-world application.[14] Implementing regulation requires that the agency, among other things (1) determine the property to be included in the rate base; (2) prescribe the rate of depreciation the regulated firm may use in computing depreciation expenses; (3) determine the allowed rate of return that presumably reflects the firm's financial "cost of capital," (4) establish the criteria for "allowable" operating expenses; (5) develop a regulatory accounting or information system that tracks the firm's revenues and expenses; (6) specify the criteria for reviewing tariffs submitted by the reguated firm to the regulatory agency; and (7) establish rules and procedures for exercising regulatory control. The actual administration of regulation requires expert staffs of lawyers, accountants, engineers, and economists and is implemented through a process that is often slow, subject to protracted procedural delay, and costly, to both the regulatory agency (and therefore taxpayers) and the regulated firm (and therefore consumers).[15]

21. The regulatory process is also highly dependent on a constant flow of information. Detailed data on revenues, depreciation schedules, expenses, rate base investment, cost of finance, tariffs, construction plans, and numerous other aspects of the regulated firm's activities are necessary for the regulatory process. The source of this information is, of necessity, the regulated firm itself.[15a] Thus, there are additional costs to regulated firms and consumers that must be acknowledged.

22. This Commission over the past twenty years has attempted to respond to the shortcomings of the regulatory process by introducing competition as an additional constraint on the behavior of dominant firms.[16] To a large extent, however, these entrants have been subjected to the same regulations as the dominant firms. Therefore, they are required to provide the same detailed kinds of data on revenues, costs, investment schedules, etc., as dominant firms. Collection of such data are expensive for firms. However one perceives the ultimate cost benefit tradeoff in the context of regulating dominant firms, it seems clear that the application of these same regulations to firms that possess insignificant market power imposes costs without any corresponding benefits.

23. Most importantly, the requirements of the regulatory process itself, particularly the requirements for prior review of prices and investments, take away firms' ability to make rapid, efficient responses to changes in demand and cost. Thus there is a danger that risky investments will not be undertaken. Many entrepreneurs may simply choose to invest their funds in other areas of the economy rather than subject themselves to the risks and costs of being regulated. This barrier to entry reduces both competition and innovation.

24. Additionally, the requirement that firms post their prices makes it difficult for those same firms to bargain with their customers over rates or to adjust them quickly to market conditions. This in turn means that the kind of price discounting that often occurs in a workably competitive market cannot take place. Particularly affected are the kinds of discounts that occur when a fairly large potential customer seeks service during a time of otherwise slack willing to demand for the supplier. In competitive markets, suppliers are lower prices in order to attract such customers. Because such periods cannot always be predicted, it is often not possible to file tariffs which can take effect in time to cover this situation.

25. The requirement that firms file tariffs, in practice, immediately subjects them to petitions from competitors for rejection or suspension and investigation of the tariffs. Should a competitor be successful in persuading the regulatory agency to order a hearing the firm can face substantial legal costs in defending its proposed prices. As a result, it may find it less expensive to withdraw the new rate. Conversely, the tariff filing requirement may also lead firms to file tariffs for services they are

[14] Rate of return regulation is sometimes characterized as a substitute for competition. Unfortunately, the implementation of rate of return regulation does not cause the monopolist to behave exactly like a competitive firm. While rate of return regulation imposes some control over the monopolist's market power, such regulation introduces systemic distortions in resource allocation and may hinder the achievement of good market performance in the industry. In recent years economic theorists have examined the implications of rate of return regulation on economic efficiency. For example, Averch and Johnson in their pioneering article show that rate of return regulation creates incentives that may distort the input choices of a regulated firm away from production at minimum cost. See Averch and Johnson, "Behavior of the Firm Under Regulatory Constraint," 52 *American Economic Review*, 1053–69, (Dec. 1962). Charles Needy emphasizes that rate of return regulation may encourage the regulated firm to produce at non-optimal levels of output. See Needy, *Regulation-Induced Distortions* (1978). V. Kerry Smith shows that rate of return regulation may distort the direction of technological change. See Smith, "The Implication of Regulation of Induced Technical Change," 5 *The Bell Journal of Economics and Management Science* 623–32, (Autumn 1974). Roger Sherman and Michael Visscher show that rate of return regulation may encourage price structures that do not maximize consumer welfare. See Sherman and Visscher, "Rate-of-Return Regulation and Price Structure" in Michael A. Crew, ed., *Problems in Public Utility Economics and Regulation*, 119–132 (1979).

[15] For a further discussion of this point, see Bruce Owen and Ronald Braeutigam, *The Regulation Game: Strategic Use of Administrative Process* (Cambridge, Mass.: Ballinger Publishing Co., 1978). pp. 2–9.

[15a] Since regulation is imposed as an economic constraint on the behavior of the regulated firm that might otherwise rationally attempt to exercise its market power and earn unconstrained monopoly profits, the regulated firm may have a diminished incentive to provide the quality and quantity of information required by the regulatory agency. Strategic disclosure of information to the regulatory agency by the regulated firm both attentuates the constraining effects of economic regulation as well as frustrates the efficient exercise of regulatory processes. A classic discussion of such regulatory frustration resulting from repeated attempts to obtain desired cost data from firm is provided by Judge Miller's *Initial Decision in Phase I of the Docket 20814* proceeding concerning AT&T's MPL tariff, released March 19, 1979.

[16] *See, e.g., Allocation of Frequencies in the Bands above 890 MHz*, 27 F.C.C. 359 (1959), *recon.* 29 F.C.C. 825 (1960); *Microwave Communications, Inc.*, 18 F.C.C. 2d 953 (1969); *Specialized Common Carrier Servcies*, 29 F.C.C. 2d 870 (1971), *recon.* 31 F.C.C. 2d 1106 (1971), *aff'd sub. nom. Washington Utilities and Transportation Commission v. FCC*, 512 F. 2d 1142 (9th Cir.) *cert. denied* 423 U.S.C 836 (1975); *Domestic Communications Satellite Facilities*, 35 F.C.C. 2d 844 (1972), *recon.*, 38 F.C.C. 2d 665 (1972); *Packet Communications, Inc.*, 43 F.C.C. 2d 922 (1973); *Graphnet Systems, Inc.*, 44 F.C.C. 2d 800 (1974), *Resale and Shared Use*, 60 F.C.C. 2d 261 (1976), *recon.*, 62 F.C.C. 2d 588 (1977), *aff'd sub nom., ATT&T v. FCC*, 572 F. 2d 12 (2d Cir.), *cert. denied*, 99 S. Ct. 213 (1978); *Graphnet Systems, Inc.*, 67 F.C.C. 2d 1059 (1978), *Report and Order* 71 F.C.C. 2d 471 (1979); *Second Computer Inquiry*, 72 F.C.C. 2d 358 (1979), 77 F.C.C. 2d 384 (1980); *MTS/WATS Market Structure Inquiry*, Docket 78–72, F.C.C. 80–463, adopted August 1, 1980; *Resale and Shared Use of Domestic Public Switched Network Services*, F.C.C. 80–58 (adopted October 21, 1980).

not yet ready to provide. Since such petitions are filed more often over proposed rate decreases than proposed rate increases, the consumers are the losers in such battles.

26. Tariff posting also provides an excellent mechanism for inducing noncompetitive pricing. Since all price reductions are public, they can be quickly matched by competitors. This reduces the incentive to engage in price cutting. In these circumstances firms may be able to charge prices higher than could be sustained in an unregulated market. Thus, regulated competiton all too often becomes cartel management.

27. The requirement for prior approval of facilities construction, with the requirement that the regulatory agency obtain public comment on such requests, similarly imposes costs beyond those of preparing the applications. If the application calls for new technology or a new service, the proposing firm not only is required to give its competitors an early blueprint of such technological innovations but also its exact plan for deployment. Because such early warning does not take place in markets not subject to price and entry controls, technological innovation by existing competitors or new entrants is discouraged in regulated markets compared with unregulated ones. However, to the extent that firms prefer to avoid regulation, these same regulatory requirements result in wasteful use of resources. Firms with private microwave facilities, for example, are unable to sell their excess capacity without becoming common carriers.

28. Finally, there are additional costs in regulating competitive carriers that are borne by the agency and thus the public interest that it is designed to protect. The resources devoted to regulating and to complying with regulations are wasted, since the firm would be unable to earn excess profits in any case. That is, lacking market power, non-dominant firms are unable to do what the rules are designed to prevent them from doing anyway. The costs of resources wasted on competitive carriers could be used to attempt to do a better job regulating the dominant carriers. The resources used by the regulatees are inevitably passed on to the public in the form of higher prices.

29. The implication of this review of the consequences of rate of return regulation is that similar requlatory restraints applied to firms with diverse characteristics (particularly varying degrees of market power) can have disparate results, often in conflict with the statutory goals of regulation itself. The extent to which a firm is regulated should depend upon the economic consequences of the regulation and other public interest considerations. In our opinion, regulation should be applied only where the benefits of that regulation for consumers exceed the costs.

30. In summary, the central issue we face is to reconcile the use of traditional regulatory tools (control of entry and exit, expansion of facilities, rate and revenue requirement regulation) with the characteristics of the firms operating in the communications arena. Regulation of those carriers with little or no market power can have negative effects on market behavior and on costs to consumers. These firms typically face a series of rival firms offering similar service to the same locations. Their ability to price and diversify their services as the market dictates may be impeded by regulation, while they have no power to engage in practices detrimental to the public. There is no anticipation of overcapitalization nor excessive rates because the market constrains their behavior. Further, the fact that immediately-available, close substitutes exist means that exit regulation need not be of critical concern. Retention of significant Commission control over entry would only serve to delay the availability of new sources of supply and new services. Current entry regulation causes firms to declare their strategies before entry, thus reducing any time-related advantages that a new firm would have over existing firms by giving the latter more opportunity to react to the entrant. The import of these matters certainly varies from firm to firm. Therefore, our regulations must be flexible to account for these differences among carriers and they must reflect actual market place conditions so that they are applied only in a form that confers greater benefits upon consumers than costs.

31. In performing our cost/benefit analysis, we must take into account that, while initially regulation was applied under a concept of single-output monopoly firms, today the firms supplying basic communications service participate in several markets. Recognizing the existence of multiple markets requires the regulatory authority to examine the rationale for regulation in each market. Consequently attention must be paid to the demand side, since consumers are no longer purchasing a single, indifferentiated product. If this were the case, then regulatory policy could be interchangeably and equivalently focused on either the monopoly firm *per se* or on the market it serves. The presence of the same firm in several markets, often with different characteristics, blurs this interchangeability. Continuing to formulate regulatory policies directed toward the firm itself rather than the firm's performance in the various markets it serves obscures the original purpose of regulation, i.e., the protection of consumers from the potential abuse of a monopolist's market power. Directing policies toward the regulated firm and not toward its observed or potential behavior in the individual markets it serves may lead to policies that protect competitors rather than consumers.

32. Finally, we have attempted here to move away from static analysis involving heavy reliance on historical data. While analysis of such data may be easier than analyzing dynamic markets, the rapidly changing telecommunications industry requires forward-looking decisionmaking.

33. While these objectives may be simpler to state than to implement, an attempt to satisfy them must be made in determining the degree and type of regulation appropriate for various communications submarkets. The actual manner in which we propose at this time to apply an analysis which considers the multi-output characteristic of firms, the demand side of markets, and the dynamic aspects of determining the public interest is detailed in Section V, *infra*.

III. The Communications Act

A. Introduction

33a. The guiding principle implicit in our discussion of the economic consequences of Title II regulation is that competition will serve the public interest and achieve the Act's underlying purpose "to make available, so far as possible, to all the people of the United States a rapid, efficient, nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . ." Section 1, 47 U.S.C. 151. This principle also has led the Commission to adopt and implement since 1959 a consistent policy of encouraging competitive entry into previously monopolized markets. See cases cited at fn. 16, *supra*. As this policy has developed and its merits have been sustained and often endorsed by the courts, *see e.g., United States v. FCC* (SBS), No. 77–1249 (D.C. Cir. March 7, 1980), and as the results of this policy have been further spurred on by rapid technological change and innovation, a dynamic, competitive telecommunications market has begun

to emerge. However, the continued rigid uniform application of Title II requirements to all market participants threatens to undermine this dynamism and in turn betray the overriding goals of the Act. We do not believe that Congress intended such a result. Indeed, as the following examination of the statutory framework and the legislative history clearly shows, Congress imposed Title II regulation primarily to constrain the market power of communications suppliers and hence those carriers without such power need not be subjected to the full panoply of Title II requirements, if they are regulable under Title II at all.

B. Statutory Framework

34. The essential elements of Title II regulation entail control on price, publication of terms and conditions of service, prohibitions on discrimination, control on investments and an obligation to serve all. In assessing the import of this statutory scheme, we begin with the observation that Title II represents the traditional approach to public utility regulation. The carrier is required to provide service upon reasonable request, all charges and practices thereafter are to be just, reasonable and not unduly discriminatory, and facilities investment must be authorized.

35. We believe that this regulatory scheme was developed in recognition of the monopoly position held by the providers of what Congress deemed to be an essential public service. This believe stems from a recognition that the regulatory measures of the sort contained in Title II make sense only in the context of an industry lacking beneficial competitive restraints. A brief review of the major statutory obligations imposed by Congress on Title II firms reveals this purpose.

36. Section 201(a) requires Title II firms to "provide service upon reasonable request." The presence of an affirmative duty to serve suggests that Congress intended to regulate communications entities whose refusals to deal would leave consumers without an essential service.[17] By definition, in a competitive marketplace alternative sources would be readily available and there would be no need to assure service to all through a regulatory device. Indeed, under both the common law and our nation's basic economic policies founded in the antitrust laws, no duty to deal exists in the absence of monopoly power. See *United States v. Colgate*, 250 U.S. 300 (1919).[18]

37. The obligations imposed by Congress upon Title II firms with regard to the prices they may seek to charge are found in Sections 201(b) and 202(a). As discussed in the *Notice* and our *First Report and Order*, the legal obligation to charge just and reasonable rates need not be imposed in the absence of market power. Accepted economic theory, both in 1934 and today, informs us that competition will assure the "reasonableness" of price. The presence of market power, in contrast, is the ability to charge and maintain price above the cost (including a reasonable profit) of providing service. Indeed, it has often been noted that rate regulation has been created to substitute for, and compensate for the lack of, competition. See, Section II, *supra*.

38. The tariff and rate supervision responsibilities with which the Commission is charged strongly suggest a congressional concern for curbing monopoly abuse. Section 203 requires the public filing of all rates and conditions proposed, prohibits carrier activity at variance with the filing, and empowers the agency to impose fines when such discriminations occur. Section 204 invests the agency with authority to suspend new filings and hold hearings on the lawfulness thereof. Refunds may be ordered for unreasonable rates that have been collected. Section 205 provides the extreme remedy of removing the carrier's right to initiate charges and substituting governmentally prescribed rates. It is readily apparent that each of these sections seeks to monitor and prevent the exercise of control over prices otherwise resulting in wealth transfers from consumers to monopoly carriers.

39. Section 214 requires agency authorization of new facilities investments by carriers. At least one of the concerns behind passage of this section was the fear that consumers would utimately suffer the burden of imprudent or wasteful investments by carriers. See discussion paras. 112–15, *infra*. As noted elsewhere, only firms with monopoly power are capable—in the absence of governmental intervention—of passing these costs along to their captive payers; the inefficiency of competitive firms must be shouldered by their investors. Other sections supplement this purpose. Section 213, for example, invests the Commission with the power to investigate the carrier's rate base to assure that the rates charged reflect accurately the cost of the property used to provide the service. Other information with regard to corporate structure, earnings, expenses and management are accessible to the agency. *See* Sections 218, 219, 220. The power to prescribe depreciation rates—a highly significant aspect a carrier's revenue requirements—is also specifically provided. Section 220.

40. We have discussed the generally accepted proposition that competitive firms, in contrast, cannot profitably engage in activities of the kind Congress sought to prevent in Sections 201–205 and 214. None of this type of regulation is of any public benefit where firms lacking market power are involved, for they have no ability or incentive to charge unlawful rates. Regardless of the level of investment, their prices will be determined by the market, typically in the present context by the prices set by firms with market power. They have no ability to discriminate unreasonably and, in any case, their customer can always obtain service from a competitor in the event their rates exceed the prevailing market price. Such firms would thus be also unable to pass on to their customers the cost of inefficient facility investments.

41. Congress fashioned the rate base regulatory scheme of Title II to address the ills it perceived in a communication marketplace dominated by a few firms. Moreover, the language of the Act suggests that Congress did not foresee the prospects of new entry or significant competition in an industry which for years had been tending toward or under monopoly control. Although Section 214 of the Act has subsequently been applied by this Commission to new entrants, which due to technological innovation or other conditions have sought to participate in the industry, the language of that section seems primarily, if not exclusively, concerned with controlling an industry in which new entry could not feasibly occur. Thus, Section 214 addresses the public convenience and necessity for "additional or extended line[s]", but is silent on the matter of new carriers undertaking the operation of new facilities networks.[19]

42. In sum, Title II can readily be viewed as a logical and consistent regulatory scheme directed at the problems associated with monopoly

[17] This purpose is generally set forth in Section 1 of the Act, wherein one stated purpose is "to make available, sofar as possible, to all the people of the United States" efficient and reasonably priced communications service.

[18] See n. 82, *infra*.

[19] Compare the Natural Gas Act of 1938, as amended, wherein certificates of public convenience and necessity are required for the construction or extension of facilities by any "natural gas company *or person which will be* a natural gas company upon completion of any proposed construction or extension. * * *" 15 U.S.C. 717f(c) (1976).

control or market power. While this construction is not totally free from doubt, our ensuring analysis of the legislative history and the historical context of the Act bolsters our conclusion that Congress intended to create a regulatory system to constraint the abuses market power portends.

C. Context in which the Act was Adopted

43. In 1934, when it considered and ultimately adopted the Communications Act, Congress faced an industry that was largely absent of competitive forces. Indeed the statutory language and history demonstrate that Congress was well aware of this and, in various ways it specifically tailored its regulation for the then existing industry. The primary source materials used by Congress in drafting the Communications Act were the Report of the Secretary of Commerce [20] and, particularly, the multivolume Splawn Report.[21] Those reports indicated that the demand for communications was growing rapidly for most services, but that the industry consisted almost entirely of four very large companies. Congress was well aware of the fact that the Bell System had a virtual monopoly of all interstate telephone communications, 94.3 percent of the operating revenues of all substantial telephone companies, and 89.8 percent of all local exchange messages.[22] It also had a monopoly of all international telephone communications, whether by wire or radio. Both the President's message in proposing the legislative reports and the legislative history emphasized that the primary purpose of the Act was to regulate this vital monopoly. President Roosevelt in his message to the Congress stated: "I have long felt that for the sake of clarity and effectiveness the relationship of the Federal Government to certain services known as 'utilities' should be divided into three fields—transportation, power and communications." 78 Cong. Rec. 3181. The Splawn Report concluded that "[t]he American people are entitled to know if they are being overcharged for (telephone) service though they may be satisfied with the qulaity of the service. * * * Telephone business is a monopoly—it is supposed to be regulated".[23] The Senate Report stated that "[t]his vast monopoly which so immediately serves the needs of the people in their daily and social life must be effectively regulated".[24] When the President of AT&T testified in opposition to certain provisions of the bill before the Senate Committee, Chairman Dill responded:

> The trouble is that you are arguing this bill on the basis of a competitive business when in reality we are undertaking to regulate a monopoly; and how can people be protected against monopoly unless someone has control to go into its business and know about its business.[25]

44. The three other major communications companies were Western Union, ITT, and RCA. Western Union was the dominant domestic telegraph company, with 75.26 percent of all operating revenues in 1932.[26] It also owned or participated in a number of undersea cables to international points and by contract with RCA, furnished international radiotelegraph service. In effect, Western Union and RCA operated as the major and dominant telegraph communications group.

45. The sole arguably effective telegraph competitor was ITT, which owned the domestic Postal Telegraph System in addition to international cable and radiotelegraph companies interconnected to furnish worldwide service. Significantly, though, Postal Telegraph was losing money and ITT sought permission to sell it to Western Union. ITT's other operations, however, were profitable.[27]

46. Together, Western Union and ITT accounted for 99.9 percent of all telegraph and cable revenues.[28] Similarly RCA and ITT together had almost total dominance over radiotelegraph.[29]

47. Finally, there were a few small telegraph and radiotelegraph companies, but they were insignificant. These were generally small industrial or railroad-controlled enterprises. Most simply served particular industries and most lost money. In total they accounted only for about 0.1 percent of telegraph cable revenues and the Splawn Report described the competition they offered as "virtually negligible."[30]

48. All of these minor, specialized services were considered inconsequential, and the reports and hearings focused solely upon questions of how to regulate the enormous telephone monopoly and telegraph duopoly. It was considered, for example, that telephone service was a so-called "natural monopoly", almost totally dominated by the Bell System.[31] Thus, all Bell System companies were to be fully regulated under Title II.

49. There was also considerable evidence before the Congress as to the lack of competition among the international record communications companies.[32] User groups testified to collusive behavior among these companies resulting in large, undue rate increases.[33] As one witness stated, the American consumer "must take his choice between doing busines on the terms laid down for him [by these companies] or doing no business at all."[34]

50. For domestic telegraph, Congress apparently wished to preserve the existing duopoly. The Commerce Report demonstrates considerable debate over the issue of whether the limited competition between Western Union and Postal was in the public interest and should be preserved. The majority of that Report urged that the legislation should include a grant of antitrust immunity to a merger of the companies.[35] Although that grant did not occur until the 1943 amendments to the Act, the 1934 legislative background strongly suggests that, for telegraph and cable, Congress concluded that a duopoly was the closest that could be achieved to full competition, and that regulation was necessary to preserve it.[36]

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[20] Study of Communications by an Interdepartmental Committee, 1934. (Commerce Report)

[21] Preliminary Report on Communications, H. Rep. No. 1273, 73d Cong. 2d Sess. (1934) (Splawn Report).

[22] Splawn Report, at XII. Also, *see* Hearings on S. 2910 before the Committee on the Interstate Commerce, U.S. Senate, 73d Cong. 2d Sess. 86, 87 (Chairman Dill), 82 (Senator Smith), 100 (Senator Capper) (1934).

[23] Id. at xxi.

[24] S. Rep. No. 781, 73d Cong., 2d Sess. 2 (1934).

[25] Hearings on S. 2910, 73d Cong., 2d Sess. 87 (1934).

[26] Id. at xiv.

[27] Splawn Report at 964. That company also held extensive foreign telephone and telegraph interests.

[28] Splawn Report, at 961.

[29] See, *e.g.*, First Annual Report of the FCC at 75 (1936).

[30] Splawn Report at 962, 102-03.

[31] AT&T itself argued that telephone was a natural monopoly. *See* Hearings on S.2910 at 100 (Statement of Walter S. Gifford, President, AT&T); Hearings on H.3801 before the Interstate and Foreign Commerce Committee, U.S. House of Representatives, at 200 73d Cong. 2d Sess. (1934) (Statement of Walter S. Gifford).

[32] See Hearings on S. 2910 at 142 (statement of G. M.-P. Murphy); also see 145 (statement of C. O. Pancake). Both witnesses characterized the industry as a monopoly.

[33] *Id.* at 144 (statement of G. M.-P. Murphy).

[34] *Id.* at 143.

[35] One purpose in requiring the FCC to report in one year on any further enactments desirable in the public interest was apparently to seek more imput to the merger question. *See* Hearings on H. 3801 12 (statement of Dr. Irving Stewart).

[36] The minority of the Commerce Report urged against merger authority and for limited competition: "Regulation of any company which has little competition is necessary. . . ." Hearings on H. 3801 at 30 (Statement of Secretary Hooper, Dept. of Navy).

The issue of consolidation also involved whether telephone and telegraph should merge, and whether wire and radio companies should merge to the detriment of the new technology. *Id.* at 10 (citing Splawn Report); *Id.* at 32 (Secretary Hooper).

51. Rate and facilities regulation, though designed and intended for monopolies, thus did make some sense as applied to Postal and the other ITT companies. Oligopoly theory was well-developed by 1934.[37] As it would predict, Postal could not charge rates higher than Western Union and retain customers, even if its costs were different. Postal could to some degree force Western Union to reduce its rates, or to strive for greater efficiency to maintain profits; but its own profitability depended entirely on the rates and practices of its single, larger rival. In 1937, for example, Postal petitioned jointly with Western Union for an across-the-board increase in telegraph rates.[38] Postal was by that time in the process of reorganization under the Bankruptcy Act, but could not effectively increase its own rates unless Western Union's rates were increased a like amount.[39]

52. In similar fashion, facilities authorization requirements were also expected to help preserve competition. One of the Splawn Report committee members explained the bill's provisions to the House committee, and suggested that unrestricted duplication of facilities by Postal might lead to greater pressures for merger.[40] This was the only explanation given for applying Section 214 to these carriers.

53. The pattern of the legislative history, although not wholly unambiguous, gives strong support to the congressional intent we have inferred from the language of the Act. The reason and purpose for regulation, as stated by the President, the Splawn Report, and Congress, was the control of public utilities in communications. That term was generally used and equated with the actual or virtual monopolies in telephone and telegraph communications at the time. It is also the specific situation for which tariff and facilities authorization requirements set forth in Title II of the Act were devised. Nowhere in the legislative history did Congress demonstrate an actual intention to extend this form of regulation to communications companies without market power, for, indeed, that history reveals a perception of an industry characterized by "natural monopoly" where new entry was not contemplated. In short, neither the framework of the Act nor the context in which it was adopted suggests any congressional intent to bind this agency to impose common carrier status upon all current and future communications suppliers operating in a competitive environment or to subject all these carriers to the full panoply of Title II regulatory requirements regardless of market power.

[37] See, *e.g.*, Augustine Cournot, Researches into the Mathematical Principles of the Theory of Wealth (1838). *See also*, E. H. Chamberlain, "Duopoly: Value Where Sellers Were Few, Quarterly Journal of Economics." (Nov. 1929).

[38] Postal Telegraph-Cable Co., 5 F.C.C. 524 (1938).

[39] There was some controversy in the hearings as to whether Western Union and Postal were competitive. While a Western Union official testified that there was "real competition" between the two companies, see Hearings on S. 2910 at 106, its union members testified that Western Union and Postal had some power over price. *Id.* at 196 (Statement of Frank B. Powers, International President Commercial Telegrapher's Union).

[40] Hearings on H. 3801 at 16.

IV. Deregulatory Approaches

A. Definition of Common Carrier

54. The following discussion explores and asserts this agency's authority to classify communications suppliers subject to our jurisdiction as either within or without our specific Title II regulatory authority. Historically, we have not focused upon such judgments, but rather have confined our decisions to the nature of services provided. *See, e.g., Frontier Broadcasting Co.* v. *Collier*, 24 F.C.C. 251 (1958). Thus, once having identified a particular service as a "common carrier communications" service, we have not previously sought to distinguish among the providers of that service. On the basis of the following, we conclude that we have ample authority to impose or to refrain from imposing common carrier status upon entities subject to our general jurisdiction. Upon a principled basis, we believe, we may opt to either apply Title II regulatory tools or rely on other regulatory mechanisms provided in the Act. *See Philadelphia Television Broadcasting* v. *FCC*, 359 F. 2d 282 (D.C. Cir. 1966). That the scope of this authority is limited in some instances—*e.g.*, that broadcasters cannot be common carriers, 3(h), 47 U.S.C. 153(h)—does not mean that the authority itself does not exist within those limits.

54a. At the outset, we wish to make clear the import and intent of a definitional approach to the problems before us, as well as its relationship to the forbearance approach addressed *infra*. At one level, we have been inclined to view the question before us as purely a "definitional" one, at least insofar as we address precedent that has attempted to search out relevant criteria that would define a "common carrier" inflexibly. At another level, we have also set forth our conclusion that Title II regulation need not always be applied to all entities acknowledged to be common carriers, i.e., that we have the authority to forbear.

54b. The distinction between these approaches is not nearly as harsh as we may have initially delineated it—neither on a conceptual level nor as a practical matter. Because both the "definitional" and forbearance approaches seek ultimately to identify the carriers and services to which Title II obligations should apply, taking into account both legislative purpose and the particular carrier or service before us, the two approaches may actually be viewed as complementary sides of the same coin. In our discussion of the definitional approach, we have focused upon the circularity of the statutory definition of a common carrier in section 3(h), the lack of explicit guidance in the legislative history, and the Congress' obvious intention to confer broad discretion upon the Commission to implement the Communications Act in dynamic and changing conditions. This led to the conclusion that the Act does not confine us rigidly to an absolute, ever-enduring "definition" of a common carrier. See *Philadelphia Television Broadcasting Co.* v. *FCC, supra*. Indeed, there is every reason to believe, because the Act itself contains no meaningful definition in the Act, that the Congress did not attach great significance to the process of "labeling" particular communications entities.

54c. The Congress did not mandate an *a priori* definition of common carriage; and we believe that there are serious difficulties and deficiencies with attempting to devise an *a priori* standard from the common law.[40a] We believe Congress intended that we deal with such questions in a practical but principled manner, focusing on the particular entities and markets involved and, particularly, on the need to impose Title II regulatory obligations. Specifically, we can and should examine in light of current conditions whether particular Title II obligations—which clearly limit the flexibility available to unregulated firms such as to refuse to deal with third parties or establish varying prices for different customers—are appropriately imposed on specific entities in particular market circumstances. Where the Commission can reasonably conclude that some or all such requirements are useful or necessary because of the individual characteristics of a firm or market environment, and imposes some or all of these obligations, then we believe that an entity *is* a common carrier. "Common carrier" simply describes an entity to which such obligations have attached—

[40a] See our discussion of *NARUC I, infra*, and in *Second Computer Inquiry* (Final Decision; Reconsideration Order).

no more and no less. A common carrier need not—and should not—be regarded as an entity that in conceptual terms could be described as "existing in nature" independently of a process of determining whether Title II obligations are deemed to be applicable in light of the purposes of the Act, the characteristics of the entity, and the markets it serves.

54d. For reasons which are more fully set forth in the discussion of our forbearance powers, we believe that we are not required to apply all of Title II's provisions to every common carrier; and it is certainly well-established that we have broad discretion as to how particular Title II requirements are implemented. See paras. 71–86, *infra*, and cases discussed therein. Thus, as already noted, we regard the so-called "definitional" approach as essentially closely related to our forbearance approach.

54e. This definitional approach is essentially part of a spectrum of regulatory determinations. At one end of that spectrum we determine at the threshold whether any Title II obligation should apply to a new entity or service or an entity or service dissimilar from others that historically has been subject to Title II. At the other end of the spectrum we determine in the case of established entities now subject to Title II whether and to what extent such obligations should be relaxed or eliminated. From either perspective—that of making threshold judgments to impose regulation on entities or services or that of relaxing existing requirements—we believe that the key elements of any regulatory determination are essentially similar or closely related. In particular, we should be examining the specific nature or characteristics of an entity or particular service, the extent of any market power possessed, and the characteristics of a market which might warrant reliance upon regulatory as opposed to competitive restraints to achieve the statutory purposes of the Communications Act.

55. Our inquiry begins with the language of the Act itself. Title I accords us jurisdiction over interstate or foreign communications. Title II, however, additionally imposes licensing and tariff filing requirements upon "common carriers," defined only generally as "any person engaged as a common carrier for hire . . ." 47 U.S.C. 153(h). The legislative history specific to this section provides only limited guidance in distinguishing common carriers from other persons "engaged . . . in . . . communication" 47 U.S.C. 152(a); the only direct reference to the definition lies in the Conference Report which stated that the phrase "common carrier" was not intended to include "any person if not a common carrier in the ordinary sense of the term." [41]

56. The circularity of this statutory definition unresolved by its legislative history has been widely recognized. *See, e.g., F.C.C.* v. *Midwest Video Corp.*, 440 U.S. 689 (1979). In the absence of any concrete legislative statement, we believe that this agency, in the first instance, has the authority to interpret and define ambiguous statutory terms. And given the absence of any direct statutory directive to guide the agency in the exercise of that authority, we believe that we are obligated to discern congressional intent, in the first instance, from the rest of the statute. [42] The regulatory framework of Title II, and its attendant legislative history, reveals an almost unambiguous intent to regulate entities with market power. *See* Section III, *supra*. Although there is authority to the contrary, we believe that market power forms at least one basis for applying common carrier treatment under under the Communications Act. [43]

57. Common carriers under the 1934 Act have been heretofore defined by this agency as persons "engaged in rendering communication service for hire to the public." [44] Relying on both this agency's determinations and the common law, a panel of the U.S. Court of Appeals for the D.C. Circuit developed the "holding out" standard. *NARUC* v. *FCC, 525 F.2d 630* (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976) *(NARUC I)*. Some commenters have urged that this decision forecloses the definitional approach urged in the *Notice*.

58. The *NARUC I* court affirmed a Commission Order holding that Specialized Mobile Radio Systems were not common carriers. Although the Commission ruling at issue had rested on no standard more definite than the "public interest," the D.C. Circuit set forth a standard of communications common carriage which it derived from prior Commission pronouncements, the common law, and its own interpretation of the functions which communications common carriers appear to perform. The court relied upon the Commission's definition of common carriage, "any person engaged in rendering communication service for hire to the public," [45] as the point of departure from which its analysis and ultimate holding derived. Because it found the "public" aspect of the definition insufficiently definite, [46] the court relied essentially on common law concepts of common carriage. Once having discerned the "holding out" standard from these concepts, the court noted prior agency determinations that had incorporated that standard.

59. The court assumed the task of developing a principled basis for a regulatory action intended to achieve practical objectives at least in part because of the notable absence of any well-defined basis provided by the Agency. The court clearly rejected those parts of the Commission orders "which imply an unfettered discretion in the Commission to confer or not confer common carrier status on a given entity, depending upon the regulatory goals it seeks to achieve." [47] We do not question that the Commission lacks "unfettered discretion" to classify companies as common carriers when there is not a principled basis for doing so. We believe, however, that the principled basis must flow from the congressional intent of communications common carrier regulation, and must be designed to achieve the objectives set out in Section 1 of the Act.

60. In considering the binding constraints which some commenters would have *NARUC I* place on our authority, it must first be acknowledged that there is a fair split of authority within the D.C. Circuit. In 1966, a different panel of that Court affirmed the Commission's decision not to treat cable television companies as common carriers. *Philadelphia Television*

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[41] H. Conf. Rep. No. 1918, 73d Cong., 2d Sess. 48 (1934).

[42] *See, e.g.*, n. 50, *infra* and accompanying text.

[43] We acknowledge that this criterion may not be exhaustive or absolute. Market power is not absolute both in the sense that no small measure of judgment may be required to determine whether or not it is present in any given case, but also in the sense that the goals established by Congress in Section 1 and elsewhere in the Act may not be entirely consistent in every circumstance and therefore must be viewed as sufficiently flexible to permit reconciliation. For example, while efficient production of and reasonable prices for communications services normally would be readily reconcilable, in some circumstances, those two principles and wide availability of service might be harder to reconcile—as where it is argued that only internal subsidies can assure universal service. *But see* N. Cornell, P. Greenhalgh, D. Kelley, "Social Objectives and Competition in Common Carrier Communications: Incompatible or Inseparable?" *OPP Working Paper Series #1* (April 1980). In any event, we are soliciting comment here as to whether there are other elements necessary to the identification of firms to be treated as communications common carriers beyond or instead of market power.

[44] 47 CFR 21.1. In granting 214 authority to many new entrants, the Commission merely assumed common carrier regulation would apply without discussion.

[45] *Id.* at 640, citing 47 CFR 21.1 (1974).

[46] *Id.*

[47] *Id.* at 644, citing 46 F.C.C. 2d 783–84.

Broadcasting Co. v. *FCC*, 359 F.2d 282 (D.C. Cir. 1966). In affirming the agency decision, the opinion makes clear that the court believed that the application of Title II was a matter of discretion committed to the agency:

> It is the FCC's position that regulating CATV systems as adjuncts of the nation's broadcasting system is a more appropriate avenue for Commission action than the wide range of regulation implicit in the common carrier treatment urged by petitioners. This seems to us a rational and hence permissible choice by the agency. (*Id.* at 300 (footnote omitted.))

That the issue was one for agency choice is emphasized further: "Certainly the Commission's assertion of jurisdiction over CATV systems . . . is substantial enough to serve as a basis for declining to regulate them as common carriers." *Id.* n.5. The *NARUC I* court, in its statement that an entity is a common carrier "by virtue of its functions, rather than because it is declared to be so," 525 F.2d at 644, specifically cited *Philadelphia Television* as contrary authority. In the absence of any attempt to reconcile this conflict, or an *en banc* review, we believe one may fairly infer that the question remains open within the U.S. Court of Appeals for the D.C. Circuit.[48] This inference is further supported by the language of the *NARUC I* opinion itself. That opinion also recognized that the Commission can impose common carrier obligations upon firms. 525 F.2d at 644, n.76. Thus, as we noted in the *Second Computer Inquiry*, *NARUC I* can be fairly interpreted as devising two elements to common carriage: "holding out" and whether a legal obligation to deal indifferently should be imposed on a particular firm. We reiterate here our reliance on this second prong of the *NARUC I* test.

61. We respectfully submit, then, that the common law analysis used in *NARUC I*—leading to an anomalous conclusion that common carriage status and its attendant obligations and requirements results from the personal choice of a firm rather than a principled determination made in the first instance by the agency charged with the enforcement of those requirements—need not be construed to foreclose our authority in this area. Our previous *dicta* endorsing the "holding out" standard and relied on by the *NARUC I* court must be considered nonauthoritative.[49] The adoption of a "holding out" standard becomes even more anamolous in light of the relatively unambiguous legislative intent derived from the Title II statutory scheme and its legislative history. As a basic canon of statutory construction, one is obliged to first examine the regulatory framework and context in which the Act was adopted in order to resolve ambiguities of a statutory term.[50] The Act "must be read as a whole and with appreciation of the responsibilities of the body charged with its fair and efficient operations." *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 203 (1959).[51] As discussed above, that statutory framework indicates strongly Congress' intent to regulate under Title II entities with market power. Moreover, these indications are supported by the legislative history, often the most fruitful source to determine congressional intent. *See, e.g., United States* v. *Flora*, 362 U.S. 145 (1960).[52]

62. Finally, we do not believe a review of the common law decisions compels the conclusion that "holding out" is necessary or even relevant to a definition of common carriage under the Communications Act. In Appendix B, we have extensively reviewed those cases, and discerned that the holding out standard developed in a wholly different context—and for wholly different purposes—than those before Congress in 1934, or before us today. The "holding out" standard was developed within the context of imposing strict liability for damage caused by the carrier, i.e., a judicial recognition of a bailment relationship between a carrier and its customer. In contrast, a duty to deal indifferently, legislatively imposed in 1934 for communications carriers, was imposed because of a recognition of a carrier's monopoly control over essential services. The *NARUC I* court, in fact, recognized that common law principles of common carriage derived from two distinct sets of logic, 552 F.2d at 640–41, but then proceeded to merge the two, thereby creating a commonality of the criteria developed in each. We cannot conclude, then, that Congress foreclosed administrative discretion to impose common carrier obligations or to refrain from imposing such obligations upon entities subject to our Title I jurisdiction by virtue of their "public" offering of communications service. Nor can we conclude that a market power standard cannot be employed as the basis upon which we exercise that discretion.

63. A number of commenters argue, however, that other federal regulatory statutes are not intended to have application limited to entities with substantial market power, but apply to all members of the respective regulated industry. Thus, they infer from the comprehensive regulation of trucking under the 1935 Motor Carriers' Act and airlines under the 1938 Civil Aeronautics Act that Congress intended to regulate all interstate communications companies under the Communications Act as common carriers. The assumption is that because those two statutes regulate competitive industries under regulatory frameworks similar to the one in the Communications Act, Congress also meant to regulate all communication carriers regardless of market power. We find no merit in this argument. As we have emphasized, the actual language and history of the Communications Act are the primary indications of its meaning, and references to other statutes with perhaps similar language and purposes must be approached with considerable caution. Although on occasion they may be said to shed some light on the congressional intent by analogy, they are, nonetheless, secondary sources at best. More to the point, we are unwilling to assume, as some commenters do, that the similarity of regulatory schemes connotes equivalency of regulatory purpose.[53] Indeed, in dismissing the argument that because the public convenience and necessity standard of Section 214 was based upon Section 1(18) of the Interstate Commerce Act, it must be interpreted in the same manner,

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[48] The subsequent decisions defining and clarifying the status of CATV systems not to be common carriers—*under the control over content standards*—*see* United States v. Southwestern Cable Co., 392 U.S. 157, 169 n.29 and U.S. v. Midwest Video (II), 440 U.S. 689, (1979) citing *NARUC I*, *supra*, cannot serve to undermine the legal principle of *Philadelphia Television*.

[49] The court specifically cited to Frontier Broadcasting Co. v. Collier, 24 F.C.C. 251 (1958) and Industrial Radio Location Service, 5 F.C.C. 2d 197 (1966). The definition of common carrier, however, was used solely to address the distinction between types of communications services involving content and those which leave the "intelligence [to] the subscriber's own choosing." See n.48, *supra*.

[50] *See, e.g.*, Group Life and Health Insurance v. Royal Drug Co., 440 U.S. 205, 210 (1979) ("the starting point . . . in any case involving the meaning of the statute is the language of the statute itself.").

[51] *Accord*, Philbrook v. Godgett, 421 U.S. 707 (1975); Chemehuei Tribe v. FPC, 420 U.S. 395 (1975); Richards v. U.S., 369 U.S. 1 (1962).

[52] For similar reasons we do not believe that the cases cited by the *NARUC I* court (525 F.2d 640, note 58) compel application of the holding out standard to the Communications Act. Significantly, none of these cases purports to interpret the congressional intent behind our statutory definition. Rather, they address only the meaning of common carrier in areas other than communications, such as insurance, railroads, oil pipelines and carriers of petroleum products.

[53] As one commentator describes it, "the industries subject to federal regulation make up a motley crew, and the types of regulation imposed on them and the historical reasons for installing these regulations vary from case to case. Caves, *American Industry Structure and Performance* 72 (2d ed. 1967).

the U.S. Court of Appeals for the Fifth Circuit stated:

> Initially it is urged that the public convenience and necessity standard of Section 214 must be interpreted in the same manner as Section 1(18) of the Interstate Commerce Act from which the language of Section 214 was drawn. *While the similarities between the two sections are unquestionable, it must be emphasized that the functions of the Interstate Commerce Commission, as outlined in the National Transportation Policy (49 U.S.C. Sec. 1), are of an entirely different nature than those of the Federal Communications Commission.* The former is required to weigh variables which are foreign to the mandates of the Communications Act.
>
> In view of the differing demands placed upon the two agencies the question of public injury in the communications field need not and, in some instances cannot, be approached in the same manner as the question of public injury in the transportation field. *Carter Mountain Transmission Corp.* v. *FCC*, 116 U.S. App. D.C. 93, 321 F.2d 359 (1963). Thus we are unwilling to restrict the Federal Communications Commission to a course of action which has been dictated by the requirements of the transportation industry. *General Telephone of the Southwest* v. *U.S.*, 449 F.2d 846, 856 (5th Cir. 1971) (emphasis added).

64. Our scrutiny of the Motor Carrier Act as well as the Civil Aeronautics Act easily refutes the claim that identity of purpose is shown by similarity in schemes. The economic conditions motivating the Motor Carrier Act could not have contrasted more starkly with the communications industry of 1934:

> [T]he industry was unstable, economically dominated by ease of competitive entry and a fluid rate picture. And as a result, it became overcrowded with small economic units which proved unable to satisfy even the most minimal standards of safety or financial responsibility. So Congress felt compelled to require authorization for all interstate operations to preserve the motor transportation system from over competition, while at the same time protecting existing routes through the "grandfather" clause.

American Trucking Assn. v. *U.S.*, 344 U.S. 298, 312–13 (1952) (citation omitted).

65. To appreciate the distinction between the purposes of the Civil Aeronautics Act of 1938 and the Communications Act, one need go no further than the declaration of policy contained in Section 2 of the former statute. It directed the Authority (later, the Civil Aeronautics Board) to consider, among other things:

> * * * (b) The regulation of air tranportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in such transportation. * * * (c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences in advantages, or unfair or destructive competition practices * * * (and) (d) Competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense * * *

66. Another significant distinction that must be noted between the Communications Act of 1934 and the Motor Carrier Act of 1935 is that each contains a different definition of common carriers. Under 49 U.S.C. 303(14), "common carrier by motor vehicle" is legislatively defined to be "any person *which holds itself out* to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property * * *." By contrast, our statute, passed one year earlier than the Motor Carrier Act, defines a common carrier as "any person engaged as a common carrier for hire." 47 U.S.C. 153(h). Given the stark contrast between these contemporaneous statutes, we cannot find any basis upon which to infer a congressional intent to regulate as common carriers all entities that make public offerings of basic communications service.[54]

B. Forbearance

1. *Introduction.*

67. The policy grounds supporting our tentative conclusion that we should refrain from imposing traditional regulatory procedures upon carriers with limited or no market power are compelling. The record in this proceeding and the Commission's substantial experience in reviewing tariffs and 214 applications filed by such carriers demonstrate that the costs of maintaining such regulation of their services far outweigh any conceivable benefits to the public. The burdens that result, both on private firms and—of central importance under the Act—on the general public, frustrate rather than effectuate the specific statutory goals established by Congress in 1934.

68. We have previously explored the costs imposed by mechanical application of Title II regulation to entities lacking market power. These costs serve directly to undermine our statutory mandate declared in Section 1 of the Act. As we continue to saddle competitive firms with the full requirements of rate regulation, and burden the U.S. communications consumer, we act increasingly at odds with those stated goals. Artificial barriers to entry erected by an indiscriminate application of Section 214 entry and exit authority translates into less varied communications services, the slower introduction of new services, and the greater security of the market positions of those firms to which our regulatory efforts should be targeted. The tariff requirements also can effecutate such consumer welfare harms—slowing once again the introduction of new services, dampening competitive responses and ultimately encouraging price collusion through the forced publication of charges. The imposition of a duty to deal indiscriminately can similarly inhibit entry and disable suppliers from tailoring their services to meet particular customer needs. The failure to apply discretely the requirements and obligations created by Title II results, then, in inefficiencies inevitably borne by consumers through the higher cost of goods and services. We are thus confronted with a critical conflict between our duty to act "so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges," and a continued practice of regulating all suppliers indiscriminately which directly and unquestionably works contrary to those goals. We are convinced, as a matter of law and policy, that the overriding goals of the Act must take precedence over specific sections initially provided to achieve those goals. The conflict identified above can be rationally resolved by forbearing in appropriate instances from specific application of the regulatory tools of Title II.

69. We note that our review here is consistent with a recent congressional enactment dedicated to these same issues on a federal regulatory agency-wide basis. See *The Regulatory Flexibility Act*, Pub. L. 96–354, 94 Stat. 1164 (1980). The stated findings and purposes of that Act include:

> * * * Laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those small entities. * * *
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> * * * * *

[54] The Civil Aeronautics Act of 1938 called for the economic regulation of "air transportation," defined therein as tranportation engaged in by common carriers. 52 Stat. 973, recodified in the Federal Aviation Act of 1958, 49 U.S.C. 1301(21). The term common carrier is not defined in that Act. We note, however, that the Civil Aeronautics Authority employed the "holding out" standard in determining common carriers by relying on other tranportation precedent. See, e.g., Alaska Air Transportation Investigation, 2 C.A.B. 785, 788 (1941).

> The failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;
>
> Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
>
> The practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems and, in some cases, to action inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;
>
> Alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions. * * *

5 U.S.C. 601. We believe that the breadth of the powers granted us by the 1934 Act permits recognition of, and action in accordance with, these findings and objectives expressed by the Congress in 1980.

70. Forbearance discretion, of course, must be exercised upon some well-defined bases which can be measured against the overall statutory goals and mandates of the Communications Act. The lack of market power is, in our view clearly a sufficient ground upon which to exercise such discretion. We also find that other entities, with only limited, transitional market power, need not be regulated where a further cost/benefit analysis compels the conclusion that regulation will harm consumer welfare. The application of such analysis to the specific record before us is provided in Section *V, infra*. We proceed in this section to discuss the legal basis for our forbearance authority.

2. *Legal Precedent.*

71. In view of the fact that significant competitive entry into common carrier communications markets did not occur prior to the last decade, the question of whether we have the discretion to refrain from applying traditional rate and service regulation to these entrants has never been directly addressed by this agency or the courts.[56] There can be no doubt, however, of our broad discretion and flexibility to adjust to the dynamic and rapidly changing nature of the communications industry. Congress foresaw that circumstances and conditions might change and, accordingly, gave this agency broad powers to respond appropriately to such events. As the Court of Appeals for the D.C. Circuit has observed:

> "The substantial discretion generally allowed the F.C.C. in determining both what and how it can properly regulate, is often attributed to the highly complex and rapidly expanding nature of communications technology. Because Congress could neither foresee nor easily comprehend the fast-moving developments in the field, it 'gave the Commission not niggardly but expansive powers'."[58]

72. The breadth of the Commission's discretion to regulate has long been interpreted in terms of the wide purposes sought to be achieved by the Act. *See, e.g., United States* v. *Midwest Video Corp.*, 406 U.S. 649 (1972); *General Telephone Co. of Southwest* v. *United States*, 449 F. 2d 846 (5th Cir. 1971). Thus, the Commission's refusal to impose common carrier status on cable systems was upheld in *Philadelphia Television Broadcasting Co.* v. *FCC*, 359 F. 2d 282 (D.C. Cir. 1966), although the technology clearly had some attributes suggesting Title II regulation could apply. As the court put it:

> In a statutory scheme in which Congress has given an agency various bases of jurisdiction and various tools with which to protect the public interest, the agency is entitled to some leeway in choosing which regulatory tools will be most effective in advancing the Congressional objective.

Id. at 284. Our refusal to subject cable systems to Title II regulation was also upheld by the Court of Appeals for the 9th Circuit. *ACLU* v. *FCC*, 523 F. 2d 344 (9th Cir. 1975). In a more recent decision of the U.S. Court of Appeals for the D.C. Circuit in which the Commission's assertion of ancillary jurisdiction over certain intrastate cable services was denied, the court noted:

> There may be arguments for allowing the Commission to decline to exercise its statutory powers * * * it may be contended and *has elsewhere been held* [citing *Philadelphia Television* 359 F. 2d 282] *that a part of the broad discretion allowed the Commission under the Act involves the power not to exercise particular authority which it has been granted.* (emphasis added).[57]

73. Our broad flexibility under the Act as interpreted by the courts to adapt our policies to new and changing circumstances is therefore clear. Just as we are able to fashion an appropriate regulatory structure for a new and developing cable industry, [58] so too are we able to adopt a non-traditional regulatory scheme for certain common carriers, especially when we find that the imposition of traditional regulatory requirements upon them is contrary to the underlying statutory purpose.

74. While the full extent of FCC discretion to forbear has not been tested, sister agencies have been upheld in exercising such discretion without express authority to do so. The most illustrative decision in this area is *Pan American World Airways, Inc.* v. *CAB*, 392 F. 2d 483 (D.C. Cir. 1968). There, despite the acknowledged absence of express statutory authority for the Civil Aeronautics Board's declination of jurisdiction over an indirect foreign air carrier, the court upheld the Board's decision to permit the operation of package tours for foreign nationals without prior agency approval.[59] Conceding that a literal reading of the Federal Aviation Act [60] would restrict Board authorization of foreign air carriers' transportation to the United States to situations in which a license was issued after administrative hearing, the D.C. Circuit nonetheless upheld the

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[56] The comments have argued extensively over the Second Circuit's decision in *AT&T* v. *FCC (Resale)*, 572 F. 2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978). That opinion contains considerable language rejecting an appellant's argument that this agency erred in deciding that Title II regulation was required for resellers. Limited to its holding, that case compels only the conclusion that this agency has the authority to apply Title II regulation to resale activity. To the extent that the decision can be read more broadly so as to imply that the question of whether we have discretion to forbear is closed, we respectfully note that there is a split in authority among the Courts of Appeals. *See, e.g., NARUC* v. *FCC (NARUC II)*, 533 F. 2d 601, 620 (D.C. Cir. 1976). Also see discussion n. 67, *infra*, and accompanying text, and n. 91, *infra*.

[57] *NARUC* v. *FCC, (NARUC I), supra*, 525 F. 2d 630, 638 n. 37, quoting *NBC* v. *United States*, 314 U.S. 190 (1943); *See also FCC* v. *Pottsville Broadcasting* 309 U.S. 134 (1940); *Philadelphia Television Broadcasting Co.* v. *FCC*, 359 F. 2d 282, 284 (D.C. Cir. 1966) ("expert agency entrusted with administration of a dynamic industry is entitled to latitude in coping with new developments in that industry").

[58] *NARUC* v. *FCC, (NARUC II)*, 533 F. 2d 601, 620 n. 113 (D.C. Cir. 1976). The court also noted the 9th Circuit's decision in *ACLU* could be characterized as "holding that the Commission had discretion to refuse to exercise its common carrier regulatory power." *Id.* at 620.

[59] Several of the commenting parties argue that these cases are inapposite to the issue of whether the Commission can refrain from regulating common carriers under Title II since they involve the question of regulation of cable television systems. See *e.g.*, Comments of AT&T, UST&T, Telecator, and MCI. We believe the principle involved in these cases, *i.e.*, our broad discretion under the Act to readily adapt our regulatory policies to changing circumstances, is as applicable to new firms providing voice and data services unknown in 1934 as it is to new firms providing video and information services also unknown in 1934. Moreover, at least one court has interpreted the *ACLU* decision as addressing specifically FCC authority to refrain from Title II regulation of common carrier activities (access channels). See *NACRU II*, 533 F. 2d at 620.

[60] In addition to the CAB's declination of jurisdiction, the courts have consistently upheld the National Labor Relations Board's forbearance from exercising its authority in certain circumstances. *See Labor Rel.* v. *Denver Bldg. Construction Trades Council*, 341 U.S. 675, 684 (1951). In 1959, Congress codified the NLRB's discretion in this area. 29 U.S.C. § 164(c)(1).

[61] 49 U.S.C. 1372(a), 1461 (1976).

Board's exercise of forbearance discretion. The court stated that an attempt to impose the traditional regulatory regime in the particular factual surroundings involved would (i) fail to advance the underlying purposes of the Act and (ii) tend to actively frustrate both Board and presidential policy respecting American supplemental carriers flying abroad.[61] In contrast, the Board's declination of jurisdiction would (i) parallel analogous Board precedents, and (ii) avoid a result incongruent with the statute.

75. The implications of this rationale for this Commission's assertion of forbearance authority in the communications context are obvious. As in *Pan Am*, strict adherence to a statutory scheme of common carrier regulation for non-dominant carriers would confound the underlying purposes of the Communications Act, and tend to frustrate broad Commission policies designed to encourage competition in the telecommunications industry. Conversely, reasoned forbearance by the Commission would parallel previous actions in specific common carrier contexts taken in reliance on competitive forces.

76. For example, as early as 1958, the Commission declined to prescribe rates on an individual basis for every participant in a communications market (there, the international record market), but chose rather to rely on a prescription for the "bellweather" carrier. *Western Union Telegraph Co.*, 25 F.C.C. 532 (1958). The Commission stated:

> It should be noted that the rates we propose to authorize herein are the maximum rates which [the bellweather carrier] may file. It is reasonable to assume because of historical practices and the competitive situation that the other carriers will not seek to file schedules which will contain rates higher than those we propose. * * *

Id. at 639 (1958).

77. In *American Satellite Corp.*, 55 F.C.C. 2d 1 (1975), the Commission upheld a proposed tariff reduction against a competitor's claim that the resulting rates would not be compensatory. Conceding that a question of compensatory pricing existed, the Commission stated there was no basis for requiring a fully compensatory rate at all stages of operation because no basic or monopoly services were offered by the carrier. Its users therefore faced no prospect of being burdened by losses in the competitive environment, and regulatory flexibility was appropriate to encourage carriers to undertake service and technical innovation. Because customers could procure the services from other sources, it was felt the carrier should be left free "to compete and to offer such rates as it believes will establish itself in the market". *Id.* at 3. *See also United States Transmission Systems*, 66 F.C.C. 2d 1091 (1977) (competitive carrier allowed to offer bulk rate discounts since it did not offer monopoly-type service which could cross-subsidize competitive offerings); *Resale and Shared Use of Common Carrier Services*, 60 F.C.C. 2d 261 1976) (applicants seeking license to resell services of underlying carrier not required to show economic impact or special need for services since such a showing in competitive markets is superfluous).

78. We have also declined as a matter of discretion to assert jurisdiction over certain interstate communication services finding that our regulation was unnecessary. For instance, we have exempted radio common carriers licensed in the Domestic Public Land Mobile Radio Service whose reliable service areas extend across state boundaries from Title II rate regulation if they are subject to state or local regulation.[62] Yet such a delegation is not expressly authorized by the Act.

79. Similarly, we have previously declined to assert Title II jurisdiction over local exchange service when used in connection with foreign exchange (FX) and Common Control Switching Arrangement (CCSA) services,[63] even though the local portion was interstate in character.[64]

80. Thus, our tentative conclusion that we should forbear from imposing Title II regulation can be viewed, to some degree, as the logical extension of past rulemakings and case-by-case determinations that the full appication of Title II regulation is counterproductive in competitive markets. Perhaps more significantly, our proposal reflects our daily experience and practice in the tariff review and certification process, where we have recognized that the truly significant consumer welfare issues addressable under our regulatory powers lie in the filings and applications of the dominant carriers.[65]

81. Some commenters have argued that the Supreme Court's decision in *FPC* v. *Texaco*, 417 U.S. 380 (1974), forecloses our discretion to exempt carriers from certain requirements of Title II. We believe, however, that *Texaco* does not constrict our discretion as alleged. The Supreme Court's invalidation of that FPC action—which left small natural gas producers' prices to be determined entirely by the intrastate marketplace—is appropriately limited to that industry, in light of the express statutory mandate addressing the market structure of the natural gas industry.

82. Indeed, the Court clearly stated that its decision was compelled by its review of the legislative history of the Natural Gas Act. There was little evidence that the FPC was confronting a different industry structure than that which the Congress faced in the 1930's in passing that Act. Because Congress had so clearly chosen rate regulation of these producers upon its unambiguous finding that the industry was "monopolistic" and "heavily concentrated", the Court concluded that the Federal Power Commission's attempt to alter the congressional resolution of the same marketplace failures could not stand.[66] In reversing that agency's determination, then, the Court merely reiterated a basic rule of administrative law: an agency may not supplant its own solutions to the same problems already addressed by the legislature. What we do here is far different: we are addressing and responding today to a wholly different environment than that facing the 1934 Congress, and responding to a circumstance not contemplated—and therefore not addressed—by the enacting Congress. In so responding, we attempt, as we must, to do so in a manner consistent with the overriding

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[61] The decision in *Pan Am* does state that "extraordinary deference" to those decisions of the Board that are subject to presidential approval was required by both traditional judicial deference to executive discretion in foreign policy and by the statute. Ample question was raised as to the reviewability of the decision altogether. Nonetheless, the court disposed of the controversy on the merits, *i.e.*, whether the Board had acted within its statutory powers.

[62] FCC Public Notice FCC 65-805 (September 16, 1965) reissued May 15, 1975.

[63] *American Telephone and Telegraph Co.*, 56 F.C.C. 2d, 14, 21 (1975), *Aff'd sub nom. California* v. *FCC*, 57 F. 2d 84 (D.C. Cir. 1977).

[64] *New York Telephone Company* FCC 80-95 (released March 12, 1980), *Aff'd sub nom. New York Telephone Co.* v. *FCC* No. 80-4047 (2nd Cir. Sept. 17, 1980). See also *American Telephone and Telegraph Co. Interconnection with Private Interstate Communication Systems*, 71 F.C.C. 2d 1 (1979) where we ordered interconnection of the local network with private line microwave systems but allowed for the application of state rates to the local portion of the services.

[65] *See, e.g., MCI* v. *FCC* (WATS)—F. 2d—(D.C. Cir. No. 79-1119, April 2, 1980), where the protracted struggle to establish lawful rates for AT&T's WATS service is descripted at length. Also, *see Aeronautical Radio, Inc.*, v. *FCC* (Telpak)—F. 2d.—(D.C. Cir. No. 77-1333, June 24, 1980), where the regulatory efforts to establish a cost methodology for the largest of the dominant carriers, AT&T, are recited. We note in contrast that we have rarely found cause to suspend and investigate the tariff filings of non-dominant carriers.

[66] The Court stated expressly, "we bow to our perception of legislative intent". 417 U.S. at 400.

goals of the Act found in Section 1. We do not believe that *Texaco* can be read to prevent this approach.

83. Moreover, there are significant factual bases to distinguish the *Texaco* situation from our undertaking here. The FPC order under review failed to mention the statutory just-and-reasonable standard. *Id.* at 396. The "ambiguous" FPC order did not reveal whether the FPC had considered the reasonableness of flow-through rate increases already permitted by some producer-pipeline contracts, nor did it articulate factors to be considered in reviewing such contracts. *Id.* at 395–97. Absent any conclusion, based on record findings, that market conditions would ensure that rates were just and reasonable, the FPC order was criticized for doing litle more than abdicate rate determination to a prevailing market price not determined to be just and reasonable. Here, by contrast, we have already made ample findings that, because of the structure of the industry, carriers with limited or no market power will not be able to charge prices which would contravene Sections 201(b) and 202(a) of the Act. See paras. 102–03, *infra*, and the *First Report and Order* in this docket. Thus, our reliance on competition is very different from the FPC's in *Texaco*.

84. This conclusion is bolstered by the Court's indications of permissible agency action. Although the Court rejected the agency's abdication of its responsibility to determine whether rates were just and reasonable, it gave the FPC great leeway in the manner in which it could ensure reasonable rates. The Court stated that indirect regulation was not precluded and that market price could be a decisional factor in the Commission's review of rates.

85. Significantly the scope of the *Texaco* decision with regard to agency discretion has been further elaborated upon by the Supreme Court in *FERC* v. *Pennzoil Producing Co.*, 439 U.S. 508 (1979). The FERC decision under review had determined that the agency could not allow royalty costs for gas in interstate commerce to be determined in part by the value of natural gas in an unregulated intrastate market. The Court held to the contrary. The agency had authority to allow special relief from prescribed area rates to individual producers based on increases in such costs, and the FERC's attribution of a more restrictive reading of *Texaco* was in error.

Our concern in *Texaco* was that rates of small producers might be totally exempted from the Act, and we did not indicate that producer or pipeline rates would be per se unjust and unreasonable because related to the unregulated price of natural gas. *Texaco* did not purport to circumscribe so severly the Commission's discretion to decide what formulas and methods it will employ to ensure just and reasonable rates. Indeed, the decision underscored the discretion vested in the Commission. 439 U.S. at 516.[47]

86. In sum, we conclude that precedent under the Communcations Act and analogous regulatory statues supports our discretionary authority to forbear from formalistic application of Title II obligations to carriers when, as here, it would further the overall statutory purposes. Our discretionary authority is further strengthened by the elementary canon that in construing a statute, one must look to the object to be accomplished and place on it a reasonable construction that will best effectuate its purpose. *See Statutes and Statutory Construction* § 58.06 (C. Sands, ed. 1972). In accordance with this general rule, specific sections of an act should not be interpreted or implemented so as to disserve the stated purposes of the act. *See United States* v. *Barsky*, 72 F. Supp. 165 (D.D.C. 1947). Thus, the "plain meaning" rule has always been considered subservient to the legislative purposes of a statute. *See Wilderness Society* v. *Morton*, 479 F. 2d 842 (D.C. Cir.), *cert. denied*, 411 U.S. 917 (1973). And as we have indicated, refraining from imposing traditional Title II regulation upon carriers would further the overriding purposes of the Communications Act. Against this background, we now turn to a discussion of the specific sections of Title II. Contrary to arguments of certain of the commenting parties, we believe that these sections do not preclude our conclusion above.

3. *Statutory Provisions Supporting Forebearance.*

a. *Section 203—Tarffing Requirement.*

87. As discussed above, the effects of applying the tariff requirements of Section 203 to non-dominant carriers frustrate the underlying purposes of the Act. The advance publication of prices and other terms and conditions—in the context of unregulated industries—has been clearly recognized as anticompetitive. *See United States* v. *Container Corp. of America*, 393 U.S. 333 (1969). In a regulated environment imposed to constrain market power, such requirements had evolved to protect the consumer from supranormal or discriminatory pricing. See discussion Sec. III, *supra*. Applying the tariff requirements to competitive entities, however, has worked the perverse effect of imposing a measure which (1) is superfluous as a consumer protection device, since competition circumscribes the prices and practices of these companies, and (2) stifles price competition and service and marketing innovation. We cannot find, as some comments urge us, that the requirements of Section 203 must be applied absolutely and without regard to market position of the service provider.

88. *Section 203(b).* Section 203(a) provides that "every common carrier * * * shall * * * file * * * schedules [of] charges * * *."

Subsection 203(b)(2), however, provides that:

> The Commission may, in its discretion and for good cause shown, modify any requirement made by or under authority of this section either in particular circumstances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than ninety days.[48]

47 U.S.C. 203(b)(2). The plain meaning of this section gives us ample authority to remove the requirement of tariff filings where appropriate.

89. The courts have not fully decided the extent of our authority under this section. Only two cases deal with this point. Neither limits our authority to suspend the tariffing requirement in appropriate circumstances. In *AT&T* v. *FCC (Special Permission)*, 487 F. 2d 864 (2d Cir. 1973), a panel of the Second Circuit held that this grant of authority could not be used to displace the clear statutory scheme of carrier-initiated rates. The court thus struck down the agency decision prohibiting AT&T from filing any tariff amendments pending completion of an investigation of AT&T's rate structure unless specific permission was obtained from the agency. The court held that this requirement amounted to a rate freeze and thus a prescription of rates under Section 205, but without the attendant procedural rights accorded the carrier in that section. The court stated:

> [I]t is abundantly clear to us that the statutory scheme of the Communications Act reflects the realization of Congress that when a carrier is prevented from placing in effect new rate increases it may suffer irreparable loss which in turn may impede the provision of adequate service during a period of rising costs.

[47] To the extent the Second Circuit's construction of *Texaco* in *AT&T* v. *FCC*, (Resale) 572 F. 2d 17 (2nd Cir. 1978) appears more restrictive, we believe it is more appropriate to defer to the *Pennzoil* holding one year later as definitive on this point.

[48] The relevant language was initially found in Section 203(b)(i), and a thirty-day notice period was provided. In 1976, the notice period was extended to ninety days, without change to the "modify" authority except to move it to 203(b)(2) and to limit enlargement of the notice period by the agency to the ninety day period. Pub. L. 94–376, 90 Stat. 1080 (1976).

487 F.2d at 873–74. In a period of declining costs, delay in implementing rate reductions can be equally damaging. *Id.* n.18. The court thus recognized the necessity for a carrier's rates to be responsive to market conditions, and the statutory scheme was designed to accommodate that necessity. Nothing in our proposal here conflicts with the statutory scheme of carrier-initiated rates. By removing the regulatory overlay in circumstances where it serves no useful purpose, our proposal promotes the purposes of that statutory scheme.

90. One year after the *Special Permission* case, another panel of the Second Circuit considered another question regarding the scope of authority granted by 203(b). In *AT&T* v. *FCC* (Enlarged Notice), 503 F.2d 612 (2d Cir. 1974), the court upheld FCC authority to expand the notice period (i.e., the period between the date of filing and effective date) beyond the statutory term—at that time, 30 days. The court rejected the argument that the 203(b) authority to "modify" included only the power to shorten the notice period, stating that the agency's "prime responsibility * * * is to the public and not to the protected monopolist." 503 F.2d at 616.

91. The court explicated the relationship of Section 203(b) and its predecessor in the Interstate Commerce Act, Section 6, Pub. L. 337, 34 Stat. 586 (1906). As the court noted, at the time of the passage of the Communications Act of 1934, that section read:

> The Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances and conditions.

The variation in the language of the two sections formed the basis for the conclusion that Congress intended the FCC to have broader authority than the ICC with regard to the notice period, that is, where the ICC had authority only to reduce the time, the FCC was given authority to "modify"—expand or contract that period of time. 503 F.2d at 617. Critical to our analysis here, however, is a recognition that the ICC authority to modify all tariffing requirements with regard to notice and specifically "publishing, posting and filing" was transferred to this agency by the 1934 Congress by the general grant of authority to "modify *any* requirement * * * of this section."

92. The distinction between the two statutes should not be viewed as significant in this regard. The *Enlarged Notice* discussion clearly accounts for the difference in the language, that is, a congressional intent to broaden this agency's authority vis-a-vis that of the ICC. It seems fairly evident that the 1934 section merely folded that authority (and, indeed, perhaps more) into its "any requirement made by * * * this section" language.

93. The *Enlarged Notice* case rejects an interpretation of Section 203(b) which would have restricted our authority to modify the requirements of Section 203.[69] It does not, however, give clear guidance as to the extent of that authority. Similarly, the legislative history is silent on this point other than a recognition of 203(b)'s Interstate Commerce Act heritage. But given that the Second Circuit has found the section to be unambiguous, resort to the legislative history—even if it were contrary—is unnecessary. See 503 F.2d at 616 and cases cited therein. "We can only conclude that the plain language was intended to mean what it says." *Id.* at 617.[70]

94. *Section 203(c).* Section 203(c) provides that no carrier "shall" offer service without a published schedule of charges as required by 203(a). But 203(c) expressly excepts this requirement where "otherwise provided by or under authority of this Act." We note initially that 203(b)(2) may be construed as the authority referenced in 203(c). Thus, while the statute generally provides for the filing and publishing of charges by carriers, and for carrier provision of service in accordance with those filings, the statute also contemplates, and provides for, exemptive authority in this agency from those general requirements.

95. The "unless otherwise provided" proviso of Section 203(c) has also been construed to permit provision of service without a tariff filing when it has been determined that use of contracts is permissible under the Act. Because Sections 201(b) and 211(a) acknowledge the use of contracts when carriers provide communications service to or in conjunction with other carriers, it has been held that tariffs need not be filed in those situations and that the terms of the contract prevail over a subsequently filed tariff. *Bell Telephone Company of Pennsylvania* v. *FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975). The touchstone of the *Bell* decision was the court's finding that the Act clearly contemplated the use of either contracts or tariffs between carriers. We believe the Act contemplates the use of contracts for non-carrier customers as well.

96. Initially we take heed of the basic rule that statutes in derogation of the common law, particularly those involving contract rights, are strictly construed to preserve all common law rights unless the opposite result is absolutely required by the statute. *See, e.g., Statutes and Statutory Construction* § 61.06 (C. Sands, ed. 1972); *Bell Telephone Company of Pennsylvania*, 503 F.2d at 1280.[71] There is no explicit denial of common law contractual rights contained in the statute, and in the absence of such express directive, we are not free to infer an implied denial of those rights.[72]

97. Several sections of the act specifically address carrier contracts but do not preclude the use of carrier-customer contracts. Section 219 of the Act, for example, provides that the Commission is authorized to require annual reports from all carriers and that:

> Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, *or contracts affecting the same*, as the Commission may require.

Unlike either Section 201(b) or Section 211(a), which specifically address only carrier to carrier contracts, the language of Section 219 makes no distinction between contracts of service for other carriers and those for non-carrier customers. Section 219—which empowers us as a matter of discretion to require the filing of contracts, would simply be duplicative of Section 211(a)—which *requires* such filing if one did not interpret the former provision to include contracts with noncarriers. It is a cardinal rule of statutory construction that, if possible, meaning should be given to every section of a statute so that no part of the statute is rendered superfluous or meaningless. *See, e.g., Adler* v. *Northern Hotel Co.* 175 F.2d 619 (7th Cir. 1949); *Pacific Gas & Electric Co.* v. *SEC*, 127 F. 2d 378 (9th Cir. 1942).

98. Similarly, Section 211(b) provides that the Commission may require the filing of "any * * * contract" of any carrier. Such broad language implies congressional recognition of the use of

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[69] The words "this section" clearly refer to the entire Section 203. When Congress wished to identify subsections it used the word "subsection" or "paragraph" (followed by the letter or number throughout the Act. See, e.g., Sections 204, 213.

[70] We shall not "succumb * * * to semantic aphasia", 503 F.2d at 615, by exploring the etymology of the word "modify." *Id.*

[71] Similarly, statutes restrictive of a free economy are to be strictly construed. See *United States* v. *McKesson-& Robbins*, 351 U.S. 305 (1956).

[72] In this regard, we note that Section 414 of the Act, 47 U.S.C. 414, provides that "Nothing in this chapter * * * shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies".

all types of contracts for communications service. This construction is buttressed when Section 211(b) is read in conjunction with 211(a) of the Act, which requires every carrier to file with the Commission all contracts between it and any other carrier "in relation to any traffic affected by" the Act. Because 211(a) refers to contracts for communications service between carriers (*e.g.*, contracts for interconnection), section 211(b) must be said to include, at the very least, contracts of a similar nature, or of the same subject matter—*i.e.*, contracts for communications services between carriers and other persons.[73] In light of the breadth of Sections 211 and 219, then, we can find nothing in the statutory language that actually precludes the use of carrier-customer contracts.

99. Another section of the Act that supports our view that the Act does not preclude the use of carrier-customer contracts as a means of structuring that relationship is Section 3(s), 47 U.S.C. 153(s). That section specifically mentions contracts with subscribers for communications service in its definition of "telephone toll service."[74] Thus, the Act, when read in its entirety establishes that contracts between carriers and customers are contemplated and that as long as such contracts fulfill the express commands of the statute (*e.g.*, the reasonableness of rates), such contracts are permissible. Section 211 authorizes, but does not require, the Commission to supervise and inspect these contracts. Therefore, under the rationale of *Bell Telephone Co. of Pennsylvania, supra*, the contemplation of regulatory power over carrier-customer in turn permits the use of such contracts to supplant the filing of tariffs.

100. The legislative history and the purpose behind the Communications Act lend support to our view that customer-carrier contracts are permissible means of providing communications service. The primary reason for the enactment of the Interstate Commerce Act, on which the Communications Act is based, was the elimination of discriminatory pricing and service practices of the carriers.[75] Presumably, the provision for filing tariffs was included as a means of insuring that carriers not discriminate; it was not an end in itself. It follows that if other means exist of ensuring that rates are reasonable and carriers are not unjustly discriminating among customers, then perhaps the filing of tariffs would not be necessary or required under the Act. Clearly, we have such means. We have power under Section 211 to require the filing of contracts. In addition, as we read Sections 204 and 205, we have full powers to investigate and alter rates established by contract as well as rates set by tariff. Similar authority may be found in Section 208, which gives us power to investigate and adjudicate complaints filed against carriers. Therefore, if need be, we may adjsut rates and practices adopted pursuant to contract.

101. Finally, our reading of the cases cited by those who oppose our forbearance discretion as well as leading cases in this area, *Armour Packing Company* v. *United States*, 209 U.S. 56 (1908); *United Gas Pipe Line Co.* v. *Mobile Gas Service*, 350 U.S. 332 (1956); *Bell Telephone Company of Pennsylvania* v. *FCC*, 503 F.2d 1250 (3d Cir. 1974); *cert. denied*, 411 U.S. 1028 (1975); and *American Broadcasting Co.* v. *FCC* (ABC), No. 78-1968 (D.C. Cir. April 28, 1980), does not compel a different result. The first two cases grew out of the Interstate Commerce Act and the Natural Gas Act respectively. Thus, to the extent that the Communications Act differs from those Acts, the cases are not controlling, but merely useful by analogy.[76] See *e.g.*, *General Telephone Company of the Southwest* v. *United States*, 449 F.2d 848, 856 (5th Cir. 1971). In addition, the *Bell of Pennsylvania* and *ABC* cases, which do involve the Communications Act, do not answer the question of whether it is permissible for a carrier to offer its service to a noncarrier customer by contract in the absence of a tariff. Rather, the issue in *Bell of Pennsylvania* was whether two carriers subject to the Act could order their business relations pursuant to contract rather than tariff and, if so, whether the carrier offering service could unilateratlly change the contract by the filing of a tariff. *ABC* involved the related question of whether the terms of an effective tariff could be altered by an unfilled contract. Thus the issue in both cases was which of two co-existing, but inconsistent instruments, tariff or contract, was controlling; it was not whether a contract is a permissible substitute means of offering service under the act.[77] We therefore conclude that neither statutory nor judicial authority prohibit the substitution of tariffs with contracts.

b. *Section 205—Prescription of rates.*

102. We also believe that Section 205, our tariff prescription authority, provides the necessary power to rationally relieve carriers of section 203 requirements when required to implement the underlying purposes of the Act. In essence, Section 205 empowers this agency to prescribe just and reasonable rates after opportunity for hearing. We are not however, limited to prescribing a fixed dollar price become. We are not, however, limited to prescribing a fixd dollar price because of under this Section "the Commission is authorized and empowered to determined and prescribe what will be just and reasonable change, or the maximum or minimum charge or charges to be thereafter observed * * *"[78] We have tentatively concluded herein that the charges made by carriers without substantial market power will, in fact, fall within a range of reasonableness permissible and lawful under the act. This finding of reasonableness, made through rulemaking procedures, is of course not a traditional prescription or rate adjudication. But the Commission is not bound to a single ratemaking approach. Under the statutory standard of "Just and reasonable," it is the result reached and not the method employed that is controlling. *See FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1943). Of course a theory of ratemaking must be adequately explained and supported, *Continental Airlines, Inc.* v. *CAB*, 551 F.2d 1293, 1301 (D.C. Cir. 1977), but, clearly the economic rationales and factual record in this proceeding provide such support.

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[73] This is a corollary to the rule of "ejusdem generis" which provides that when general words follow specific words, the general words are to be construed to embrace only things similar in nature to those enumerated by the preceding specific words.

[74] Telephone toll service is defined to mean: "telephone service between stations in different exchange areas for which there is made a separate charge not include in contracts with subscribers for exchange service."

[75] See S. Rep. No. 46, 49th Cong. 1st Sess. 181–82 (1886).

[76] Unlike the Communications Act, the Interstate Commerce Act had no provision for the filing of contracts with customers *Compare* § 211(b), 47 U.S.C. b 211(b) *with* sections 16(5), 49 U.S.C. 16(5).

[77] In *Midwestern Relay Co.*, 59 F.C.C. 2d 477 (1976), *recon.*, 69 F.C.C. 2d 409 (1978), *aff'd sub nom. ABC* v. *FCC*, No. 78-1968 (D.C. Cir. 1980), we stated that Sections 201(a), 211(b), and 414, either individually or read together, do not create an exception to the general requirement of Section 203(c) that carriers provide service under tariff. To the extent that the case can be real so broadly, we believe it was incorrect. The noted language, however, was clearly *dicta* to the actual holding that an unfiled contract could not alter the terms of a published, effective tariff. On appeal, the D.C. Circuit affirmed our decision solely on this narrower ground, and expressly refused to rule on the merits of that *dicta*: "[W]e emphasize that we need not and do not determine the nature or extent of the Commission's power under § 211(b)." Slip op. at 12, n. 5.

[78] 47 U.S.C. 205(a). This section also gives us the authority to determine and prescribe just and reasonable terms and conditions.

103. In the *Notice*, we set forth our tentative findings that non-dominant carriers will rationally price at cost. Based on accepted economic principles as well as our experience in the tariff review process, we demonstrated that these carriers' rates are circumscribed by a range between their costs and the price permitted by this agency to be charged by the dominant carriers. Significantly none of the commenting parties seriously disputed these findings. While allowing for the possibility of irrational conduct, or for transitional aberrations, we conclude that the charges of non-dominant carriers will generally fall within a just and reasonable range. Thus, the marketplace will ensure that carriers comply with their obligations of Sections 201(b) and 202. In addition, the complaint process under Section 208 is sufficient to check any temporary exceptions to these findings. We are clearly free to choose between general rules designed to prohibit abuses before they occur, and adjudicatory forums which will monitor abuses on the basis of complaint received. *See SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *GTE Service Corp.* v. *F.C.C.*, 474 F.2d 724 (2d Cir. 1973). We believe that a regulatory framework in which we would continue to review the charges and practices of the carriers with sustained market power before they are allowed to become effective, but would monitor those of carriers without such dominance through reliance on the complaint process and the use of other investigatory tools when required, strikes the appropriate and necessary balance required in exercising our Title II authority.

c. *Section 201—Duty to serve.*

104. Section 201(a) imposes a duty upon carriers to provide service upon reasonable request. Although on its face this section appears to leave little discretion, we believe our powers under Sections 1 and 4(i) and our specific power to modify the requirements of this section give us sufficient flexibility to refrain from imposing this requirement when the purposes of both the section and the act generally would be fulfilled.

105. In addition to imposing a duty to provide service, Section 201(a) provides that the "Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter." As we read this language, it gives the Commission the power to modify what might otherwise be construed as an absolute duty.[79] This power is not, of course, unlimited and in order to determine the circumstances under which we can forbear from imposing this duty, we must look to the purpose behind the requirement.

106. Section 201(a) is based on Section 1(4) of the Interstate Commerce Act, which in turn is a codification of the common law. *American Trucking Assn.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 387 U.S. 397, 406, *rehearing denied*, 389 U.S. 889 (1967). Common law duty to serve was imposed when the service being offered was considered a necessity and when the provider of the service had monopoly power.[80] The duty was imposed in order that all persons in need of such services would be able to obtain them. As discussed above prior to enactment of the legislation, the structure of the communications market was basically that of a monopoly. Because of this, several courts, relying on the common law duties and realizing the importance of communications to the public's health and safety, imposed a requirement on telephone companies to provide service upon reasonable request.[80a] Moreover, the absence of such a duty would mean, in all likelihood, the absence of service in some instances.

107. Today we are confronted with markets very different from that confronting the courts in the early days of telephony and Congress in 1934. Because we have the flexibility to react to congressionally unforeseen and unforeseeable circumstances, *see NBC* v. *United States*, 319 U.S. 190, 219 (1943), we must reexamine Section 201(a) in light of current conditions.

108. In the context of carriers subject to Title II regulation, but wholly in market lacking power, a literal reading of Section 201(a), without regard to its origin and purpose, has disserved the overall purposes of the Act. This conclusion becomes critically obvious upon examination of the effects of imposing a duty to deal upon those carriers lacking market power. A duty to deal indiscriminately can inhibit service providers from responding to specialized requirements of their customers and from negotiating individualized terms and conditions with each customer. Such specialized and individualized contracts in a competitive market are solely reflections of the competitive environment, and cannot work either the economic inefficiencies or social harms to which the Section is actually targeted.

109. The imposition of a duty to deal becomes even more counterproductive when one considers it in the context of the "holding out" standard. The regulatory distinctions evolved from *NARUC I* between private and common carriers have inhibited private carriers and society generally from full utilization of communications investments.[81] Such inhibitions inevitably flow from these private carriers' fear of being brought under Title II regulation, and deprived of their otherwise undisputed right to refuse unilaterally to deal.[82]

110. For example, rather than take service from a carrier, a company may find it preferable to set up a microwave route for itself. It will, of course, be motivated to utilize the facilities fully but if it cannot do so from its own requirements, the company might decide to make a limited offering to provide capacity to other users. At some point, under the logic of the "holding out" standard, the company's achievement of the desired efficiency may well cross the line from private carriage to common carriage. Thus, such a company is forced to tailor its offering to conform to an artificial constraint for risk of having Title II regulation, in its full force, brought upon it. Such undesirable phenomena are not uncommon[83] and

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[79] Although this language was added to the Act by an amendment that related primarily to reports of positions of ships at sea, there is no indication that Congress did not intend that the modification language apply to the entire section, and by its terms (since "chapter" refers to chapter 652, *i.e.*, the 1934 enactment., the entire Act.

[80] *Munn* v. *Illinois*, 94 U.S. 113 (1876).

[80a] *See, e.g., Hockett* v. *State*, 5 N.E. 178 (Ind. 1886); *State ex rel Webster* v. *Nebraska Telephone Co.*, 222 N.W. 237, 238 (S. Ct. Neb. 1885).

[81] So-called private carriers currently provide communications service for themselves (or a limited group of others) free of Title II regulation. To remain outside a common carrier regulations, these entities must restrict the kinds of uses that may be made of their facilities. Although Section 3(h) of the Act equates the term "carrier" with "common carrier," the distinction between private and common carriage has evolved and has been recognized under relevant case law. *See NARUC I, supra.*

[82] "In the absence of any purpose to create or maintain a monopoly, the [Sherman] Act does not restrict the long recognized right of [a] trader of manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." *United States* v. *Colgate*, 250 U.S. 300, 308, (1919). The *Colgate* doctrine has been seriously eroded only to the extent that unilateral refusals to deal have been exercised to enforce underlying combinations in restraint of trade. *See, e.g., United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960). Our decision to relieve nondominant carriers of the duty to serve obviously does not relieve them of their obligations under the antitrust laws; rather, we have made these sets of obligations fully congruent. *See* Section 313(a), 47 U.S.C. 313(a). Indeed, the duty to deal imposed on the monopolist under the antitrust laws is derived from the same common law principles. *See generally*, Sullivan, *Antitrust* 548 (1977).

[83] Hughes Television Network and Robert Wold Company, Inc. have applied for authority to sub-lease communications capacity in excess of their own needs as communications users without being subjected to Title II common carrier status. Application File No. W.P.C.-1497. Westinghouse Broadcasting Co., Inc. has filed a similar request.

For a fairly explicit depiction of the perserse effects on firm behavior that the "holding out"

have been recognized and remedied in other contexts in which regulatory constraints had inhibited economic efficiency. *See Second Computer Inquiry*, at paras. 111–112 (rejection of outmoded jurisdictional distinction between "enhanced communications" and "enhanced data processing").

111. Finally, removing the duty to deal will not work any of the harms contemplated in its original imposition by Congress. When there are competing carriers offering similar service, a unilateral refusal to deal will not leave a person in need of service without service. Nor can such a unilateral refusal to deal, by definition, aid to achieve some exploitation or abuse of market power, *e.g.*, extension of power to other markets.[84] In the absence of an ability to effect such contemplated harms, we cannot accept mechanical, uniform adherence to a constraint which has demonstrably resulted in inefficient use of communications facilities. Continuing the requirement for those carriers alone which can evoke these harms to consumers welfare rationally achieves the goals of the Act.

d. *Section 214—Licensing Requirements.*

112. Congressional intent in enacting the Section 214(a) certification provisions in the Communications Act of 1934 and the discontinuance provision in the Communications Act Amendments of 1943, as well as public policy objectives, support our decision that we can forbear from this type of regulation of competitive carriers. Much of the confusion manifested in past interpretations of the legislative purposes behind Section 214 arises from the act that this Section was patterned after Section I (18)–(22) of the Interstate Commerce Act. 78 Cong. Rec. 10314 (1934). Although the language of these two sections is very similar, the industries to which these sections relate have a different structure and dissimilar characteristics. Much of the concern underlying Section 214 arises from previous state and federal experience with railroad regulation. In enacting the Communications Act of 1934, Congress focused on competitive failures in the railroad industry. *See generally* Staff of Subcomm. on Communications of House Comm. on Interstate and Foreign Commerce, 96th Cong., 1st Sess., Communications Act of 1934: Section 214 Legislative Background House Committee on Interstate and Foreign Commerce (Comm. Print 1979). As we have noted before, whatever the analogy between the railroad cases and competitive entry in the monopoly telephone and telegraph fields, "questions of competitive injury in the transportation field are very different from questions of public injury in the field of communications" and this Commission need not adopt the rationale of ICC decisions when they are of little relevance to the situation before it. *Specialized Common Carrier Services*, 29 F.C.C. 2d at 902 n. 20, *citing Carter Mountain Transmission Corp.* v. *FCC*, 321 F.2d 359, 362–63 (D.C. Cir.), *cert. denied*, 375 U.S. 951 (1963).

113. Congress in enacting the 1934 Act focused on the need to ensure provision of widely available basic telephone service. As Congressman Wadsworth testified when discussing amendments to the Communications Act of 1934:

> My recollection of the Communications Act of 1934 is not as complete as to details perhaps as it should be, but my impression is that in drafting that act, the committee had in view giving powers to the Commission to see to it that in given cases the service performed by a telephone company was not deliberately destroyed or injured against the public interest.
>
> The matter of service was in our mind as the predominant consideration, not how the service was performed, whether one wire, two wires, or with this equipment or with that equipment * * *. It strikes me that the idea of service is what we were striving for and not how it should be performed in detail, mechanical detail * * *. Hearings in S. 2598 before a subcommittee of the House Committee on Interstate and Foreign Commerce, 77th Cong., 2d Sess. 40 (1942).

114. Congress was also primarily interested in assuring the provison of nation-wide basic service when it enacted the Section 214(a) discontinuance procedure. It was enacted against the backdrop of the merger of Western Union and Postal Telegraph. Congress feared that the resulting market structure, with only one company providing most basic telegraph service, was a threat to the availability of basic service. 89 Cong. Rec. 785–787 (1943).[85] This threat was heightened in the wartime era in which the discontinuance provision was enacted. 89 Cong. Rec. 774. (1943).

115. Entry and exit by competitive carriers, when basic service is ensured by nationwide interconnected telecommunications service, as it is today, was not a concern of the framers of Section 214. The legislative history of the Section 214 certification provisions indicates that the only other purpose of Section 214 was to allay congressional fear that duplicate facilities would inflate rates paid by communications customers.[86] When presenting the proposed legislation to the House, Sam Rayburn, Chairman of the sponsoring committee, stated that Section 214 was "designed to prevent useless duplication of the facilities, with consequent higher changes upon the users of the service", 78 Cong. Rec. 10314 (1934). Similarly, in *American Telephone and Telegraph Co.*, 10 F.C.C. 315, 321 (1944), the Commission noted; "[o]ne of the purposes of Section 214 is to prevent improvident increases in facilities, with higher charges to the users of the service." We attempt to guard against such higher charges by our oversight of the investments of dominant carriers. Only ratepayers who are captives of monopoly communications service providers will pay the costs of unnecessary or unwise facilities construction or other expenses incurred by the dominant carrier in the form of increased rates. The shareholders, not the customers, of non-dominant carriers must bear the burden of improvident investment decisions, because customers upon whom such charges are levied will seek out alternatives, more efficient suppliers charging lower rates.[87]

116. In light of this examination of the legislative history, we believe application of the Section 214 requirements to firms without dominance in the marketplace is unnecessary to achieve Congress' purposes. Indeed, that history itself reflects an intent to provide this agency with sufficient flexibility to so interprest the section. Describing Section 214, Senator Dill told the Senate: "[s]ection

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standard induces, see "Keeping Your Private Radio System 'Un-Common,'" *Communications* (O t. 1960). Private carriers are advised there, e.g., that they should arbitrarily refuse to deal with some potential customers to ensure that they remain outside Title II regulation.

[84] *See, e.g., Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973); *Case-Swayne Co.* v. *Sunkist Growers, Inc.*, 369 F.2d 449 (9th Cir. 1966).

[85] Mr. Brown, in the House Floor debate on S. 158, stated:

"The committee, inconsidering this merger, came to the unanimous conclusion that the thing the American public is interested in, and the thing that Congress is interested in is the discontinuance and maintenance of adequate service to each and every community and every part of every community. I do not believe that the Congress or the country is interested in whether the telegraph company should abandon or take out a certain insulator or pole or even close down one office, if the community is adequately served by another office. The only thing that the congress and the country is (sic) interested in is adequate service." 89 Cong. Rec. 786 (1943).

[86] There was some fear that duplication of facilities would compel a merger of the two domestic telegraph companies. See discussion at para. 50, *supra*.

[87] To the extent that Congress may have intended us to permit entry only upon finding that such new entry would not generate "ruinous" competition and would be in the public convenience and necessity we have clearly made that determination previously through our general rulemaking authority as to all of the interstate communications markets. *See* MTS/WATS Market Structure Inquiry, *supra*; Domestic Public Message Services, *supra*; Above 890, *supra*.

214 provides for certificates of necessity for communications companies; such as are required for railroads, although there are inserted provisions giving the Commission power to be quite liberal in its interpretation of the section." 78 Cong. Rec. 9128 (May 15, 1934). Accordingly, we have in the past developed general policies favoring entry of competitive carriers by rulemaking rather than considering each application individually, and the courts have sustained the exercise of such powers. *See, e.g., Washington Utilities and Transportation Commission* v. *FCC*, 513 F. 2d 1142, 1160–65 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); *Network Project* v. *FCC*, 511 F. 2d 786 (D.C. Cir. 1975).

117. Admittedly, however, the question of our authority with respect to total forbearance from 214 regulation of competitive carriers remains unanswered. It is not suprising, or course, that Congress left the question unanswered since new entry was not contemplated by the 1934 Congress. See discussion at n. 19, and paras. 43–53, *supra*. Once again, we are obligated to respond to circumstances unforeseen by the enacting legislature, and once again, we must do so in a manner consistent with the overriding goals of the Act. Viewed in this light, it becomes clear that forbearance from entry and exit regulation under Section 214 is warranted.[88] Certification procedures can actually deter entry of innovative and useful services. They can be abused by competitors to delay or block innovation.[89] The presence of Section 214 barrriers to exit may also deter potential entrants. The time involved in the decertification process may impose additional losses on a carrier after competitive circumstances make a particular service uneconomic. The cost of imposing artificial exit constraints is without any concomitant benefit in competitive markets, since reasonable alternatives are available to continue service. Furthermore, customers are free to protect their interests in advance by negotiating termination indemnification clauses in service contracts.

118. In view of the frustration of congressional purpose which would result from uncritically imposing certification requirements on such competitive carriers, we believe we need not, and should not, continue to impose Section 214 requirements upon no-dominant carriers. To a great extent, our proposal may be viewed as a logical extension of our previous findings that competitive entry furthers the public interest. *See* cases cited at note 16, *supra*. Having made these findings, the 214 process serves only to undermine the lawful policy determinations underlying those findings.

119. In sum, we believe that the foregoing discussion demonstrates that inflexible application of Title II powers is not required by the Act. We conclude that we have sufficiently broad authority to judge that such application would disserve the public interest as defined in the purposes of the Act.

C. *Deregulation of Resale Carriers.*

1. *Introduction.*

120. In explicating our reasons for concluding that entities without market power should not be subject to Title II regulation—under either a definitional or forbearance approach—one necessary result must be a review of our regulatory treatment of resale carriers. The decision to regulate resellers as common carriers, 60 F.C.C. 2d 261 (1976), hereinafter *Resale, recon.* 62 F.C.C. 2d 588 (1977), *aff'd sub nam.* AT&T v. *FCC*, 572 F. 2d 17 (2d Cir.), *cert denied*, 439 U.S. 8954 (1978), even at the time of its adoption, was not without considerable debate and controversy.[90] In some recognition of both the legal and policy arguments against the conclusions reached in the *Resale* decision, we expressly noted that:

> Later experience may show that the public interest would be served by deregulation of resellers. If so, to the extent that the law allows it, we will review the matter and act accordingly.

60 F.C.C. 2d at 308. It is that review—compelled by the public interest and allowed by the law—which we now undertake.

121. The conclusion that resellers should not be regulated under Title II is, we believe, rationally and firmly based upon the discussion, set forth above, generally applicable to all communications entities lacking market power. Additionally, however, we discuss below two approaches specific to resellers that compel the same conclusion. The first approach assumes *arguendo* that the "holding out" standard controls, and concludes under that standard that resellers are more appropriately classified as private carriers. The second approach, akin to some degree to our general forbearance discussion, demonstrates why regulation of underlying carriers is alone sufficient to protect the public interest.[91]

2. *Private Carrier Status.*

122. The Resale decision applied the *NARUC I* "holding out" criterion for common carriage in concluding that resellers were common carriers. But even applying that standard, some resellers are not common carriers. In *NARUC I* the court reasoned that in determining whether a carrier was offering indiscriminate service, it " * * * must inquire, first, whether there will be any legal compulsion to serve indifferently, and if not, second, whether there are reasons implicit in the nature of [the services'] operations to expect an indifferent holding out to the public user." 525 F.2d at 642. Because

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[88] The other primary goal of the Act—spectrum allocation and prevention of interference—is clearly served by continued Title III regulation of those competitive carriers seeking to provide service through the use of radio facilities.

[89] To illustrate, review of the Domestic Services Branch Section 214 application records for 1979 reveals that in all cases where applications were contested, competitors had challenged the Section 214 application. Customers brought no contested cases.

[90] "If the Commission's decision to treat resellers as common carriers is not compelled by law, it is even less compelled by economic policy." 60 F.C.C. 2d at 339 (Commissioner Robinson dissenting).

[91] We cannot view the Court of Appeals affirmance of our 1976 conclusions as foreclosing a reconsideration today of the wisdom of those conclusions. In an argument posed initially to the court rather than to the FCC, the coincidence of the terms "forwarding" and "freight forwarders" took on apparent significance. The Second Circuit concluded that "" * * if resale is viewed as akin to freight forwarding, then it must be included in the definition of communication by wire and communications by radio and concomitantly, in the definition of common carrier." Yet a review of the history of telegraph regulation reveals that the term "forwarding" when referring to freight forwarders means something totally different from the term "forwarding" as used in the Communications Act.

"Freight forwarder" refers to an entity which buys in bulk to resell for profit. The term "forwarding" in the 1934 Act, on the other hand, should not be construed alone, for it is a term of art specific to the telegraphic industry. When examined in conjuction with the terms receipt and delivery, (thus as "" * * receipt, forwarding, and delivery * * * "") it becomes clear that the Act is referring to functions of the telegraph industry. For example, the state of Ohio enacted legislation which required telegraph companies to transmit messages in the order of receipt, to forward telegrams on lines not owned by that company if so requested, and to deliver messages in order of receipt. Act of March 31, 1865, 62 Ohio Laws 72. Similarly, Pennsylvania required that telegraph companies " * * * forward and receive over their own lines, all messages that may be offered for transmission, by indivduals or incorporated companies." Act of March 29, 1849, Pa. Laws, p. 263. Other state statutes had similar provisions. See Jone, *The Common Carrier Concept as Applied to Telecommunications: An Historical Perspective*, Appendix to IBM's Reply Comments.

Looking at federal legislative history, in an Act to Encourage and Promote Telegraphic Communications between America and Asia, the language reads: " * * * transmission of dispatches shall be made in the following order * * *all messages, dispatches, and communications shall be forwarded in the order in which they are received * * * ." Act of August 15, 1876, 19 Stat. 201 as cited in Hearings on S. 6 before the Senate Committee on Interstate Commerce, 71st Cong., 1st Sess. at 355 (1929).

In sum, it appears that the terms "receipt, forwarding, and delivery" refer to the non-electrical interconnection functions imperative to telegraph service. That Section 2[a] reveals an intent to regulate such activity in no way bears upon the question or whether resale—which is akin to *freigh* forwarding—is to be regulated under Title II.

the Commission determined to regulate resale carriers as common carriers in 1976, these questions, posed here again with respect to resale, create a circular casuality. In 1976, we imposed the legal compulsion to serve indifferently because of our perception that resellers would hold themselves out indifferently in the marketplace. But the fact that resale entities today may "hold out" to the public is clearly a function of our 1976 order requiring them to do so. Neither the 1976 order nor the resellers' compliance with that order can be viewed as a sufficient basis upon which to find, on reevaluation, that resellers are today common carriers under either prong of the *NARUC I* test. To conclude otherwise would forever cement the initial conclusion, regardless of whether it was inherently incorrect or whether facts had changed in the interim.

123. Because we do not view our initial determination as foreclosing a reevaluation, we next look at whether the nature of resale operations is such that one would expect an indiscriminate offering of service to the pubic, in light of *NARUC I*. A close evaluation of the evolving resale market indicates that our original characterization of resellers was not correct, and that even under the *NARUC I* criteria, some resellers are not common carriers.

124. The court in *NARUC I* distinguished common carriers from private carriers. It found that the " * * * requirement of holding oneself out to serve the public indiscriminately draws a logical and sensible line between the two types of carriers." *NARUC I* at 642. The court concluded that " * * * a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." *Id.* at 64.

125. In *Resale*, we in effect authorized resale carriers to create a market that had not, because of the prevalence of restrictive tariffs, been able to flourish before. Therefore, any conceptions of how resale carriers would function in the marketplace was of necessity speculative, based only on limited prior market practice. We thus painted the resale market with a broad brush, looking not at service characteristics of individual resellers or prospective resellers but at the type of offering we then perceived to be in the public interest. Furthermore, "[n]o one contend[ed] that resellers [would] make a private offer of communications service rather than a public offering." 60 F.C.C. 2d at 308. We therefore did not closely examine the nature of the offering. We simply assumed, in light of our limited experience up to that point, that all service provided by resellers would lend itself to being offered indiscriminately.

126. In the record now before us, several parties advocate that resale carriers are more appropriately deemed private carriers, and thus should not be regulated under Title II. For instance, ISA Communications Services, Inc. concludes that:

> Left to operate in the competitive marketplace, resellers would tailor their services to fulfill unmet or specialized user requirements. They would undertake individualized service arrangements based on a particular potential customer's own telecommunications requirements. They would offer prices, service quality grades, back up capabilities, repair services and communications capabilities which could widely vary from customer to customer. Moreover, they would decline new business where disadvantageous to the reseller or its other customers. In sum, in the marketplace, they would operate as private carriers * * *. Comments of ISA Communications Services, Inc., at 14. See also comments filed by Plexus Corporation, and Computer and Business Equipment Manufacturers Association.

Indeed, some of the comments express the view that the imposition of common carrier obligations on resale carriers has inhibited the natural development of that market. Plexus Corporation, at 5. Our own experience, too, draws us to that conclusion.

127. We now recognize that the imposition of common carrier status has forced resellers to make only generalized offerings, thus denying them the flexibility to tailor their services to individual need and demand. Contrary to our present regulatory scheme, our experience in this market indicates that the public interest will be furthered by permitting those resale carriers to mold their offerings to meet these specialized individual needs, and to determine when and on what terms to deal. We thus conclude that no Title II regulation is appropriate for them. This conclusion is compelled by *Geller* v. *FCC*, 610 F. 2d at 978, 980 (D.C. Cir. 1980) which holds that the "Commission [has] an affirmative duty to ascertain whether * * * regulations still [serve] some aspect of the public interest". Certainly, we cannot continue to impose regulatory policies on entities when, as here, the justification for these policies no longer exists. *See Second Computer Inquiry* at para. 129.

3. *Regulatory Restraint.*

128. Without regard to the "public" or "private" nature of a reseller's marketing efforts, we believe that regulation of such activity is unnecessary duplication of our efforts aimed at activities of the underlying carriers. Since resellers merely provide an alternative means of access to the regulated underlying carriers' service, our jurisdiction under Title II has already been exercised. A brief review of the aims of Title II amply demonstrates that the public interest is served without duplicative review of rates and services.

129. The nature of the reseller's offering of itself restricts charges to those which are just and reasonable. A pure reseller of basic services purchases its capacity from the underlying carrier, with the sole purpose of reselling at a profit. Thus, by the very nature of a reseller's service, there is always at least one competitor in the marketplace. Further, pure resale activity is usually only profitable, and therefore usually only occurs, where the underlying carrier offers bulk discounts which allow the reseller to buy in bulk, and then divide up its bulk purchase among its customers. Assuming an adequate demand for the service, the existence of a sufficient disparity between the "single lot" price and the bulk discount price charged by the underlying carrier will encourage brokerage activity. Since the motivating force behind resale is the profit to be made by buying in bulk at a discount and reselling at a price higher than the discounted one but lower than the individual offering, the price a reseller may charge for its service is determined by the price charged by the underlying carrier. The reseller's price, then, is monitored by the rates of the underlying carrier, which in turn are constrained by this agency under Sections 201–205.

130. The character of resale operations also eliminates the need to apply Section 214, 47 U.S.C. § 214, because the underlying carrier remains subject to Section 214. Whether the reseller offers service at all is contingent on whether the underlying carrier must apply for a certification that "neither the present or future public convenience and necessity will be adversely affected * * *" before it can discontinue service. Whether a reseller discontinues service would be a decision left to the reseller yet the underlying carrier's service would continue to be offered regardless of whether the reseller continues service. In other words, continued regulation of the underlying carrier assures that the public convenience and necessity will not be adversely affected.[93]

[93] To the extent the underlying carrier is non-dominant and not itself subject to full Title II regulation, the judgment as to the lack of need for regulating the underlying carrier compels the same conclusion for any resellers of the carrier.

131. The foregoing discussion demonstrates why the full panoply of Title II regulation should not and need not be construed as applicable to resellers. This construction, in essence, recognizes and acknowledges the actual relationship between a carrier and a reseller as one of carrier-subscriber. As such, that relationship continues under our jurisdiction as any carrier-subscriber relationship does—by virtue of our control over the carriers' tariffs.

132. The early resale cases support this analysis. Historically, the carriers' tariffs generally prohibited resale. When resale of telephone service had been challenged, the courts enjoined such activity on the basis of a finding that the resale activity violated a lawfully filed tariff. See *Ambassador Hotel* v. *U.S.*, 325 U.S. 317 (1945); *United States* v. *American Telephone & Telegraph*, 47 F. Supp. 451 (S.D.N.Y. 1944). In its decision to sustain the injunction of the district court which prohibited hotels from reselling MTS, the Supreme Court clearly resolved the controversy within the context of what rights and what restrictions govern a subscriber's right to use the service provided by the carrier. The Court's analytical approach becomes critical when viewed within the context of the 1943 FCC decision leading to the federal court controversy, *Special Telephone Charges*, 10 F.C.C. 252 (1943). The 1943 Commission had asserted jurisdiction over hotel surcharges because Section 203 prohibited the levying of charges not on file with the agency. The opinion specifically found the hotels to be "agents" of the carrier, *id.* at 264, because they were jointly providing interstate communications service to hotel patrons. The Commission only noted in passing that regulation of the surcharges could be obtained via the subscriber's obligation to comply with a tariff.

133. The argument of the principle-agent relationship was raised in the Supreme Court. As to this argument, the Court stated:

> We do not think it necessary in determining the application of a regulatory statute to attempt to fit the regulated relationship into some common law category. *It is sufficient to say that the relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the telephone company but subject to the approval and review of the Federal Communications Commission.*

325 U.S. at 326 (emphasis added). The Court's ruling thus makes clear that our Section 205 prescription authority is sufficiently broad to reach subscriber activity that is contrary to the public interest.

134. The paradigm example of our exercise of that 205 authority to prescribe subscriber use is found in the area of terminal equipment. In *Hushaphone* v. *U.S.*, 238 F. 2d 266 (D.C. Cir. 1956), it was clearly established that we could prescribe subscriber use of the network within certain express limits—i.e., privately beneficial while not being publicly detrimental. Accordingly, the Commission's Registration Program, Part 68 of our Rules, was developed and upheld as a lawful exercise of authority under Section 205. *North Carolina Utilities Commission* v. *FCC*, 552 F. 2d 1036 (4th Cir. 1977). Similarly, we remain competent to control any resale activity found to be publicly detrimental under that same statutory authority.[92a] The breadth of this authority, we believe, can and should amply supplant our previous assertion of full Title II jurisdiction over resale.

V. Deregulatory Proposals

A. Introduction and Summary

135. The thrust of this rulemaking is to adjust our regulatory processes to reflect current marketplace conditions. Our guiding principle is to apply regulations only where the benefits of those regulations exceed the costs. In this section we identify the telecommunications services which we propose to deregulate in light of our recognition that the application of Title II regulation to these services disserves the public interest.

136. The methodological approach we take here is new to this proceeding in that we employ a market specific rather than a firm specific analysis of the communications industry.[93] In this manner we are able to take a broader and more dynamic view of the telecommunications industry. New technological methods for transmitting information can be viewed in the context of the market in which they occur, including all reasonable substitutes for such methods, rather than as distinct segments of the communications industry without regard to their economic relationships with other methods or services.[94] Additionally, a market specific approach affords us the opportunity to treat the services of a multi-market carrier differently, if marketplace conditions dictate such an outcome.[95]

137. The general framework we rely upon for defining markets is well established in economic literature and antitrust law.[96] To define telecommunications markets we take into account substitution possibilities in both consumption and production. Where these possibilities are limited we recognize the existence of a distinct market or submarket. At the outset we note that our definitions of telecommunications markets are not meant to take on lasting significance. We recognize that market boundaries can easily become blurred with advances in technology or shifts in consumer demand. See *Final Decision, Second Computer Inquiry* 77 F.C.C. 2d 384. Nevertheless, we believe our definitional structure affords us a sufficient framework to analyze the efficacy of our present regulations.

138. In our *Final Decision* in Second Computer Inquiry, *supra*, we recognized and defined two broad service markets of the telecomunications industry—basic and enhanced. Basic service was held to be that group of services which are communications subject to Title II jurisdiction. Within this broad service market, we find three relevant submarkets: MTS/WATS, private line and public switched record. We treat pure resellers as part of the market in which they are reselling service.[97]

139. Our analysis of the relevant telecommunications markets leads us to conclude tentatively that only AT&T and the independent telephone companies require detailed Title II regulation for provision of service in the MTS/WATS market and the private line market,[98] and only Western Union

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[92a] We also believe that our authority under Sections 204, 205 and 211(b) are sufficiently broad to reach resale activity where the relationship between the underlying carrier and the reseller is controlled by contract. See para. 100, *supra*.

[93] In the *First Report and Order* in this proceeding, *supra*, we categorized the industry by the physical attributes that differentiated one carrier or group of carriers from the others. We then treated all of the activities of a carrier similarly for purposes of our dominant/non-dominant classification scheme. However, as noted in that order, such an approach to regulation is overly conservative in that it does not reflect dynamic marketplace conditions.

[94] For an example of a market approach to regulation, see *In Re Satellite Business Systems*, 62 F.C.C. 2d 997 (1977), *reconsideration denied*, 64 F.C.C. 2d 872 (1977), *aff'd sub nom United States* v. *FCC* (SBS), No. 77-1249 (D.C. Cir. March 7, 1980).

[95] *See Final Decision in Second Computer Inquiry*, 77 F.C.C. 2d 384 (1980).

[96] *See, e.g.*, F. M. Scherer, *Industrial Market Structure and Economic Performance*, 61-3 (2d ed. 1980). *See also, U.S.* v. *E. I. du Pont de Nemours and Co.*, 351 U.S. 377 (1956).

[97] Resellers that employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different or restructured information, or involve subscriber interaction with stored information are enhanced service providers and are not regulated under Title II of the Act. *See* 47 CFR 64.702(a).

[98] Where the independents provide interstate MTS or private line service independent of AT&T we propose to deregulate these services subject to

requires Title II regulation in the public switched record market. We find that continued application of Title II regulation to other communications service offerings will confer greater costs upon consumers than benefits and, therefore, we proposed to deregulate these offerings.

140. We plan to implement our proposal to deregulate services provided by carriers that do not possess any market power in the relevant market by removing common carrier treatment of those carriers or, in the alternative, by forbearing from applying Title II regulations to the services. Regulation of such services can offer consumers no beneficial results, but can impose significant costs upon consumers. Where a carrier has no market power in one market but has market power in another, we propose to forbear from regulating the carrier's competitive services. For services that are provided by carriers that possess some market power in the relevant market but for which Title II regulation, would nevertheless impose greater costs upon consumers than benefits, we also propose to forbear from applying Title II regulation. The practicalities of implementing these proposals are explored in Section VI, *infra.*

Section VI, *infra.*

B. Paradigm of Analysis

141. In the *First Report and Order* in this proceeding, *supra,* we streamlined our regulatory procedures for non-dominant carriers. Our definition of dominance was one of market power (*i.e.,* the power to control price). Our analysis was predicated on a supply side, or facilities basis, view of the industry. This view led to our treatment of carriers as single output firms. The practical result of such a conservative methodological approach was to remove some unnecessary regulatory burdens from resale carriers of terrestrial services and specialized common carriers, but only it these carriers also were not dominant in the provision of any other communications service.

142. The static and inflexible nature of this methodological approach is readily apparent. Although we felt wedded to this approach in the *First Report and Order* because of our analysis and proposals in the Notice, we recognized its shortcomings and stated our intention to revisit in the near future the question of the appropriate scope of regulation for the telecommunications industry.

143. The first major change in focus that we make here is to analyze the industry on a market specific rather than firm specific basic.[99] After identifying the relevant markets, we analyze the performance of carriers providing service within these markets. In this manner it is possible for us to remove partially our regulations of carriers providing service in markets that differ markedly in size and structure. We also retain the flexibility to apply only part of the obligations imposed by Title II.

144. The Second major area for which we adjust our regulatory paradigm is the classification of service offerings. The analysis of the telecommunications industry in the *First Report and Order, supra,* was a conservative one in that it considered only two types of carriers: dominant and non-dominant. Dominant carriers were defined as those carriers that possessed market power. All carriers classified as dominant continued to be subject to the full panoply of our traditional regulations. Several parties, however, have argued in response to our original *Notice* in this proceeding that detailed regulation of carriers or their individual service offerings is beneficial to consumers only where "substantial" market power exists.[100] The commenting parties have presented a considerable amount of evidence demonstrating that even some of the carriers that we have classified as dominant are subject to sufficient potential competition so that detailed regulatory scrutiny of their operations is neither warranted nor justifiable.[101]

145. As we stated in the *Notice,* application of the rules and procedures designed essentially for monopoly carriers has resulted in unnecessary regulatory burdens and has retarded some of the benefits anticipated when we adopted our general policies favoring competition. See also Section II, *supra.* It now appears, after analyzing the comments on our Notice and performing our own review of the scholarly economic literature and the pertinent market data, that the results derived from a dominant/non-dominant classification scheme do not afford some carriers that possess only limited market power in the provision of a service with enough flexibility to meet consumer demand in the most efficient manner possible.

146. The traditional economic view of market power differs from the dominant/non-dominant approach in the *First Report and Order* in that it is a dynamic one and one that looks toward degrees of market power rather than at the very narrow question of whether market power exists or not.[102] With this broader view of market power in mind, it is apparent that a carrier may be classified as dominant in a market even if it has only very limited market power in that market, and fleeting market power at that. In such a case the costs resulting from the imposition of regulation may be significantly greater than the benefits for consumers, if any, from that regulation.

147. The change we propose here is to perform a dynamic, forward looking analysis of the telecommunication industry. For example we explicitly recognize that economic theory suggests that the pricing strategy of dominant firms in some instances may be to limit prices to competitive or nearly competitive levels because of the threat of entry or the likelihood of substitution of other services by consumers in the long run.[103] We believe that regulation of the behavior of firms that otherwise is constrained by actual or potential competition deserves the public interest. On the other hand, regulation of carriers that can restrict their output and thus price significantly above their cost of operation because of substantial or persistent market power can be beneficial to consumers. We recognize, of course, that regulation that is beneficial for consumers today may require modification or elimination in the future if marketplace conditions change significantly. The problem we face here is to determine the structural characteristics of a market that signify that regulation of some or all of its suppliers can be eliminated under present conditions without adversely affecting the public interest.

148. Consistent with the *First Report and Order,* the market features we rely upon to determine whether a carrier has market power in a particular market is the number and size distribution of competing firms, entry business and potential competition. After defining the relevant telecommunications markets, we look to the degree of market power that carriers possess in the individual markets in order to determine whether regulation of the services in that market confer greater benefits on consumers than costs.

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successful implementation of an efficient access charge arrangement. Also, see n. 106a, *infra.*

[99] Analyzing the telecommunications industry by market rather than by carrier or type of carrier was suggested, for example, in the direct comments of Satellite Business Systems at p. 7–9.

[100] *See, e.g.,* the Comments of COWPS.

[101] *See, e.g.,* the Comments of NTIA.

[102] *See, e.g.,* F. M. Scherer, *Industrial Market Structure and Economic Performance* (2d ed., 1980). We also specifically focus here on the power to restrict output and raise price.

[103] *Id.*

C. Market Definitions

149. The general approach we take to define telecommunications markets is well-established in antitrust law and scholarly economic literature. For example the Supreme Court, in *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 404 (1956), said:

> The "market" which one must study to determine when a producer has monopoly power will vary with the part of commerce under consideration. . . . That market is composed of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered.

In *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 325 (1962), the Supreme Court noted that:

> The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it. However, within this broad market, well-defined sub-markets may exist which, in themselves, constitute product markets for antitrust purposes. . . . The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct prices, sensitivity to price changes, and specialized vendors.

In a similar manner, Scherer, a noted scholar on industrial organization, states:

> The ideal definition of a market must take into account substitution possibilities in both consumption and production. On the demand side, firms are competitors or rivals if the products they offer are good substitutes for one another in the eyes of buyers. . . . Substitution on the production side must also be considered. Groups of firms making completely nonsubstitutable products may nevertheless be meaningful competitors if they employ essentially similar skills and equipment and if they can quickly move into each others' product lines should the profit lure beckon. . . . [W]e should probably draw the line to include as substitutes on the reproduction side only existing capacity that can be shifted in the short run, i.e., without significant new investment in plant, equipment, and worker training.[104]

150. With this general definitional framework in mind, several broad markets and submarkets readily can be identified in the telecommunications industry. In our *Final Decision* in Second Computer Inquiry, *supra*, we recognized and defined two broad services of the telecommunications industry—basic and enhanced. A basic transmission service is the offering of transmission capacity for the movement of information between two or more points.[105] To move information over a given channel at some specified degree of reliability, the basic service provider must decide on the trade-off between the bandwidth of the channel, the noise potential of the channel, and the time necessary to convey the information.[106] Technology is such, however, that virtually any transmission pipeline is suitable for carrying most forms of information without substantial losses in efficiency. For example, telephone companies often use common plant to provide various services and are able to direct their capacity from one service to another to satisfy demand. Thus, substitution possibilities generally exist on the supply side in the basic service market. Nevertheless there do exist same limits to the substitution possibilities in the basic service market, especially on the demand side, that counsel us to treat MTS/WATS, private line and public switched record as relevant submarkets for regulatory purposes.[106a]

151. As a preliminary matter we note that our determination of relevant submarkets is not made with scientific precision. Statistical estimates of demand elasticities and cross-elasticities for basic services are not available. There also is the more general problem of the possibility of technological advancement blurring any meaningful boundaries between the submarkets that we recognize here. Despite these not insignificant problems, we believe we are able to draw boundaries around certain submarkets that will permit us to execute our regulatory policies more effectively. MTS/WATS, private line and public switched record service traditionally have been viewed by the carriers, the public and this agency as distinct services catering to distinct needs. As market conditions evolve or if factual evidence is presented to render the predicate of our analysis obsolete, we will revisit the question of the appropriate scope of regulation for the communications industry. Such flexibility and responsibility is intrinsic to efficient regulation and is the touchstone upon which we premise our proposals today. See Section IV, *supra*.

152. MTS/WATS is interstate or long distance telephone service.[107] It is provided on a switched basis which means a user can reach potentially any telephone subscriber in the United States. MTS/WATS is used by both residential and busines customers, and it is the largest form of interexchange telecommunications service.

153. Private line telecommunications services are provided between or among two or more points over facilities dedicated to a particular customer's use. Various types of services are available on a private line basis, including voice, data, facsimile and audio/video programming transmission. The demand for private line services consists entirely of business traffic.[108]

154. As a technical matter, transmission capacity used for MTS/WATS can be devoted for the exclusive use of private line customers. Similarly channels devoted to private lines can be combined and used for MTS. Therefore, production substitution between the two services is possible, although the incentive to do so is limited somewhat by the inability of private line carriers to compete effectively in the MTS/WATS market if they were to switch the usage of their facilities.[109] More importantly, however, because private line channels often are designed with special technical characteristics and cost functions, business customers find it difficult to substitute the ubiquitous

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[104] F. M. Scherer, *Industrial Market Structure and Economic Performance* 59–60 (2d ed., 1980).

[105] *See Final Decision*, 77 F.C.C. 2d 384 (1980).

[106] Shannon, C. E., A Mathematical Theory of Communications, 27 *Bell System Technical Journal* 379–423 (Part I, July 1948), 623–56 (Part II, October 1948).

[106a] Our submarkets do not include other services such as mobile services offered by radio common carriers or wireline carriers, MDS or international services. These services have been excluded from the scope of this proceeding *ab initio*, as the proceeding was intended to address interstate, inter-exchange services only. As new services are offered in the future we will address at that time whether they fit into the current market analyses, or whether additional markets are relevant to a decision as to how and if they are to be regulated.

[107] MTS is offered on a usage-sensitive basis, while WATS has been primarily offered on a flat bulk discount rate basis. We previously have found MTS and WATS to be like services. *See Wide Area Telecommunications Services* (WATS) 70 F.C.C. 2d 593 (1978), *recon. denied* 79 F.C.C. 2d 10 (1980).

[108] The private line market consists of various dedicated services which include, *inter alia*, such services as switched digital, switched video, and a variety of services that are offered under separate tariff classifications. Whether any of these tariff offerings constitute relevant submarkets is highly questionable. For example, in our *Notice of Inquiry and Proposed Rulemaking in Private Line Rate Structure*, 74 F.C.C. 2d 226 (1979), we found functionally identical services offered under a multiple of tariff classifications. In *Satellite Business Systems*, *supra*, we found that the carriers' tariff classifications are not determinative of reasonable interchangability. We discussed in considerable detail in that decision why distinctions such as those between voice/data/image or analog/digital cannot withstand scrutiny as representing distinct submarkets. In short, we believe the technical fungibility of private lines erodes any meaningful distinction that can be drawn among them for purposes of defining separate submarkets for regulatory purposes.

[109] For example, revenues of the private line carriers, excluding ATT, equal approximately one hundredth the revenue that AT&T and the independent telephone companies garner in the MTS/WATS market.

MTS for their specialized needs. And, conversely, customers would not shift in large quantity from MTS/WATS to private line service in response to a small increase in the price of MTS/WATS. Thus, while MTS/WATS can be viewed as a subsitiute for private line service, we believe there are sufficient limits to the substitution possibilities between these services, especially on the demand side, to treat private line as a relevant submarket.

155. The final submarket we look to is the public switched record market. The term record refers to any communications method that results in electrical/mechanical creation of a hardcopy at the remote site. The public switched nature of the service refers to the ability of any subscriber to exchange information through a network to all other locations with a compatible machine.

156. On the supply side, while Western Union has some specific features built into its Telex/TWX network such as Infomaster Computers and Centralized Telephone Bureaus which distinguish its network from other transmission networks, the transmission capacity used by the telephone companies for MTS/WATS can be used to provide a public switched record service. Thus, substitution possibilities exist on the supply side, even though substitution would require additional equipment to be added to the existing transmission pipelines. On the demand side, however, the output of printed information clearly differentiates this service with voice services such as MTS/WATS. The demand to convey record information with a minimum time laspe also differentiates services such as Telex/TWX and High and Low Speed Facsimile from services such as Mailgram or First Class Mail, which take at least one day to be delivered. Finally, for similar reasons to those stated above, we believe that the demand for a public switched record service is sufficiently distinct from that of a private record service for us to recognize a separate submarket.

157. Having defined what we believe are the appropriate telecommunications submarkets for regulatory purposes, two further considerations are relevant. First, we consider carriers that are pure resellers of a service to be participants in the submarket they are selling service. This is true because consumers view resale carriers as direct competitors of the underlying carrier whose service they are reselling. For purpose of simplicity, however, since our reasons for proposing the deregulation of resellers are the same regardless of which submarket they are participating in, we discuss resellers separately. See Section IV, *supra*. Second, we believe the appropriate geographic boundaries of the MTS/WATS, private line and public switched record markets should be defined by the locus of all points within the United States. The geographic area of a market is defined as the area in which sellers of a particular service or product effectively compete. *Tampa Electric Co. v. Nashville Coal Co. et al.*, 365 U.S. 320, 331–2 (1961). Communications carriers have the opportunity to market their services throughout the country and AT&T currently is doing just that. The capability of MTS/WATS and Telex/TWX networks to provide service throughout the United States is a critical aspect of these services for subscribers. With respect to private line service, we view the national market as a cluster of point-to-point or point-to-multipoint services with effective competitive possible for all of these services. For example, AT&T provides private line service throughout the nation.

D. Analysis of the Basic Transmission Markets

1. *MTS/WATS Submarket.*

158. The major participants in the MTS/WATS market are AT&T, the Bell operating companies and the independent telephone companies, all of which participate in the market on a joint partnership basis. In recent years MCI, SPCC, ITT and Western Union have entered the market. However, AT&T and the independents capture virtually all of the revenues in the MTS/WATS market. AT&T's share alone is greater than 80%.

159. The effect of actual competition on the rates charged by AT&T for MTS/WATS is virtually non-existent at the present time. Moreover, because of the extremely high capital barriers to large scale nationwide entry, it is highly unlikely that potential competition is having much of an effect on the rates charged by AT&T and the independents for MTS/WATS at the present time.[110] Therefore, we will continue to apply the full panoply of our regulations to the long distance telephone service offered by AT&T and those independent telephone companies that concur in the rates of AT&T.

[110] Another important characteristic of the basic transmission market is that AT&T and the independent telephone companies have control of bottleneck facilities by virtue of their franchised local monopolies. In the absence of an appropriate access charge arrangement such control enables these carriers to deny competitors entry into the marketplace. *See Otter Tail Power Co. v. U.S.* 410 U.S. 366 (1973).

160. On the other hand, suppliers of MTS/WATS that compete with AT&T have little or no market power, regardless of the method of transmission. For example, in the *First Report and Order* in this proceeding, we found that specialized common carriers (that is, terrestrial microwave carriers) do not have any market power in the provision of service. Therefore we propose to deregulate all service offerings of MTS/WATS that are offered in competition with AT&T. We believe regulation of such competitive services will confer greater costs on consumers, as discussed in Section II, than benefits. Our plan to implement this proposal is provided in Section VI, *infra*. The proposal includes that of deregulating interstate service offered by independent telephone companies that is not merely a concurrence in AT&T's tariffs, provided that an appropriate access charge arrangement is in effect.

2. *Private Line Submarket.*

161. AT&T, the Bell operating companies and the independent telephone companies also offer private line service on a joint basis. While the OCCs have a somewhat layer share of private line market than the MTS/WATS market (because entry was permitted at an earlier date), AT&T and the independent telephone companies still dominate the private line market. The Current competition in the private line market includes the services provided by the SCCs, the domestic satellite carriers, the miscellaneous common carriers and private microwave carriers.

162. We believe that current competition has not gained a strong enough foothold in order for marketplace forces to supplement regulation as the appropriate method to insure that AT&T's private line offerings redound to the public benefit. For example, this competition serves only about 10% of the private line market, while AT&T alone captures over 80% of private line revenues. The effect of the potential entry of firms such as SBS and XEROX Corporation on AT&T's performance in the private line market is not known at this time. Therefore, because of the extremely large market share that AT&T possesses and the uncertainty that surrounds new entry, we prefer to defer judgment of the effect of this potential competition until we have more definitive data on its effect. Until that time, we will continue our current regulatory treatment of AT&T's and the independents' joint provision of private line service.

163. With respect to carriers competing with AT&T in the private line market, we believe application of the

full panoply of our regulations to their operations will disserve the public interest. For example, in the *First Report and Order* in this proceeding, we found that the SCCs do not possess any market power. Regulation of these carriers can provide no public interest benefits. On the other hand, based upon our facilities basis view of the industry, we found that the Domsats and the MCCs do possess market power. The problem we face here is to determine whether regulation of their service offerings, within the context of a market analysis, confers greater benefits upon consumers than costs.

164. Although AT&T is the price leader in the private line market, domestic satellite carriers have ability to raise price above their cost of operation because they have a cost advantage over landhaul carriers in the provision of service, especially with respect to video interconnection.[111] This cost advantage, however, does not translate into market power when viewed in a market context because the rates charged by AT&T form a ceiling for the Domsats. The practical effect of this cost advantage is that, if regulation is instrumental in holding price down to the cost of operation, the users of private line facilities, especially those demanding video interconnection, will shift their preferences to satellite distribution. In fact, such a result currently can be witnessed in the marketplace. However, for a variety of reasons, the demand for existing transponder space at the present time appears to exceed the supply at the regulated (*i.e.*, constrained) price. Thus there is a problem of allocating the existing scarce transponders among competing applicants.

165. One tool employed to allocate scarce resources is price. Therefore, the firms proposing that use which is valued most highly by consumers will bid the highest for the resource and the sale is likely to be made to them. As a result, the resource is employed in producing the product or service most highly valued by society.

166. We recognize that so long as the fundamental factors of production in satellite communications, *i.e.*, electromagnetic frequency and/or orbital position, are provided to licensees for no direct costs, the price allocation method takes on diminished applicability in relation to an auction of the frequencies. Nevertheless, within the allocations and assignments already made, and considering that all licensees receive "free" frequency, price may still be an efficient method of allocation in this case.

167. This is true for two reasons. First, with applicability to the Domsat services, consumers are contending for access to the satellite in greater number than the facility can serve. The choice among those entities has already created uncertainty and controversy. For example, in *RCA Americom, Inc.*, FCC No. 80–369 (released July 24, 1980), appeal pending *sub nom EMI* v. *F.C.C.*, No. 80–2135 (D.C. Cir. filed Sept. 19, 1980), we authorized a carrier to allocate two transponders among at least eleven parties by means of a lottery when the carrier said it could determine no other reasonable method of allocating the capacity.

168. Had RCA Americom, for instance, been able to conduct an auction of those transponders, the various entities would have been required to assess how valuable their proposed service was in terms of the likely revenues it would generate. Those with the highest projected revenues, which would reflect consumers' willingness to pay the most to get those services, would have been able to bid the highest. Under such an arrangement, unlike under the lottery actually conducted, the consumers who placed the highest value on a service necessarily would have received it.

169. It cannot be argued that consumers are the necessary beneficiary of the lower rates that have been required under our present system. Many, if not most, of the customers contending for access to currently available satellites are resellers serving the cable industry or program distributors to the cable industry. The program distributors are, of course, unregulated and this Commission cannot assure that they pass through to consumers the difference between the regulated rate charged by the satellite carrier and the market clearing rate.

170. Similarly, resellers primarily deliver their service to cable systems. Regardless of the source of the programming, these cable systems frequently are not rate regulated and, in fact, cannot be regulated by the states under current circumstances for their "pay TV" services.[112] Thus consumers may be receiving only minor benefits from a cost-based satellite transmission service.

171. The second, and perhaps more important, reason that price is an efficient mechanism for allocation of communications capacity with respect to Domsat facilities is that it would serve as a true indicator to business as to whether there was sufficient demand to support new entry, thereby enabling the marketplace to adjust to the efficient outcome. For example, if a carrier charged the market price in the private line market which was above the cost of satellite transmission, other potential entrants would realize that entry into the private line market with Domsat facilities would be supported by demand yet unsatisfied but still willing to pay a cost-compensatory price. This would serve as an incentive for potential entrants to increase the supply of transponder capacity, thereby putting downward pressure not only on price for satellite transmission, but on AT&T's private line rates as well.

172. Opportunities for an increase in the supply of transponder capacity exist in many areas. For example, satellites can receive assignments in already allocated frequency bands other than those currently used, frequency reuse (e.g., through orthogonal polarization or spot beams) could increase the effective capacity of satellites, transponder loading could be increased, operational characteristics could be designed precisely enough to allow reduced spacing between satellites, thereby increasing the total number.[113] Each of these opportunities, however, requires an investment by an entrant in developmental costs. These costs must be able to be recouped if entry is to be justified. Price allocation mechanisms are perhaps the most reliable indicator of the ability of the market to allow new entrants to recover these costs.

173. We recognize, of course, that the demand for satellite transmission will exceed supply over short run periods as satellite capacity develops. Although this characteristic might be more pronounced with Domsat facilities, with their inherent indivisibilities, such fluctuations are typical of any dynamic, competitive area. All dynamic markets are expected to have some firms earning excess profits in the short run. The resulting incentive for other firms to enter the market creates a mechanism to insure that consumers derive the best attainable service at reasonable prices. In contrast, by inserting regulation and attempting to hold the price of Domsat facilities to cost, we believe we will

[111] See Network Inquiry Special Staff, *Video Interconnection: Technology, Costs and Regulatory Policies* (March 1980). For a discussion of why satellite communications are nevertheless reasonably interchangeable with terrestrial communications and therefore do not constitute a relevant submarket, see *Satellite Business Systems* 62 F.C.C. 2d 997, 1078 (1977).

[112] *See Brookhaven Cable TV* v. *Kelley*, 573 F.2d 765 (2nd Cir. 1978).

[113] We recently granted applications for 25 new domestic satellites and launch authority for 20 new or replacement satellites. *See Authorization of New Domestic Satellites*, FCC 80–711 (adopted Dec. 4, 1980).

disserve consumers over the long run. Regulation not only would slow the development of satellite technology, but also would increase the cost of providing service above competitive levels. See Section II. In short, we believe the economic costs of maintaining a regulatory presence for the purpose of effecting a smooth transition will disserve the public.[114]

174. Although we have dedicated a great deal of our resources in the past two decades to establishing a cost based system of rates, *Private Line Rate Cases, supra; ARINC* v. *FCC, supra,* we have done so because we recognize that the industry affected was becoming more competitive. *Id.* at 15. We have been most concerned with adherence to this system with respect to the rates of the largest of the dominant interstate firms, AT&T. Given our conclusions regarding the likely pattern in rate levels for Domsat service, we now examine the question of whether rates evaluated for justness and reasonableness under a broader public interest theory may also be permissible under the Act.

175. Initially, the standard embodied in Section 201 of the Act, similar as it is to that in the Natural Gas Act, mandates not a specific rate level, but rather a "zone of reasonableness." *FPC* v. *Natural Gas Pipeline Co.* 315 U.S. 575, 585. Section 205 of the Act, which empowers the Commission to prescribe "maximum and minimum charge or charges," clearly establishes the Commission's authority to approve or accept rates falling within a broad range.

176. Moreover, the Commission's power in performing this evaluation is of a breadth comparable to legislative power, extending to:

> The method used in reaching the legislative determination as well as that determination itself * * * rate making agencies are not bound to the service of any single regulatory formula; they are permitted unless their statutory authority otherwise plainly indicates to make the pragmatic adjustments which may be called for by particular circumstances (citations omitted).

In Re Permian Basin Area Rate Cases, 390 U.S. 747, 776–777 (1968), *FPC* v. *Texaco,* 417 U.S. 380, 388–389 (1974). In *Permian,* the court upheld the FPC's creation of a two-tier rate system not related to costs in all cases based on the agency's ratemaking power and its reasonable exercise in that case to further the purposes of the statute.

177. Thus, we believe that a broad finding that rates following the pattern discussed in the analysis of Domsats above are likely to be just and reasonable within the meaning of the Act is not foreclosed by the statute. We are simply exercising our discretion to analyze lawfulness of rates based on broader principles than cost alone.[115] Indeed, regulatory agencies are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday. *American Trucking Assn.* v. *Atchison, Topeka and S.F. Ry Co.,* 387 U.S. 397, 416.

178. We believe also that our findings are not a radical departure from our policy that "the cost of service is at the heart of the statutory requirements * * * for just and reasonable * * * rates * * *" AT&T, 59 F.C.C. 2d 671, 678 (1976), *recon.* 64 F.C.C. 2d 538 (1977) citing: *Private Line Rate Cases,* 34 F.C.C. 244, 297 (1961), 34 F.C.C. 217, 231 (1963). *Re WATS,* 35 F.C.C. 149, 153–56 (1963) *Re WATS,* 37 F.C.C. 695, 698 (1964); *Re Part 61 of the Rules,* 25 F.C.C. 2d 957, 965 (1970), 40 F.C.C. 2d 149, 154 (1973); *Re 48 kHz,* 20 F.C.C. 2d 493 (1971); and *Hi-Lo,* 55 F.C.C. 2d 224, 241 (1975), 58 F.C.C. 2d 362, 366 (1976). As noted, this policy has been directed primarily at AT&T because of its substantial market power. We have allowed non-dominant firms to charge rates not immediately related to specific costs, *American Satellite Corp., supra; United States Transmission Systems, supra.* And at least with respect to AT&T's private line services we are exploring the possibility of allowing AT&T more rate flexibility by abandoning the requirement that individual services each earn a prescribed rate of return and requiring simply that private line services do so as a whole. *Manual and Procedures for the Allocation of Costs,* FCC 80–371 (released June 26, 1980).

179. Based on an examination of the actual workings of the industries involved, as well as the comments of parties on this issue, we have specified what we believe is the reasonably likely pattern of the rates to be followed by Domsats. To summarize, we expect those rates to remain reasonably related to the costs of providing the services involved due to the pressure generated by both direct and potential competitors. Moreover, we believe that to the extent these carriers are able to charge prices which are in the upper range, or even exceed a direct relation to their own costs, the consumer will be best served by the resulting increase in allocative efficiency and by the stimulus to high risk innovative technological development and new entry that will result.

180. We have concluded that such rates will best serve the public interest in having available "to all the people * * * a rapid, efficient, nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *" as specified in the purposes of the Act. 47 F.C.C. 151. Indeed, we think such rates will enhance the likelihood of the most efficient and reasonably priced service being provided the public compared to a ratemaking policy which relies solely on the direct costs attributable to a service at any single instant in that service's availability. This is especially so in the satellite field, which has been marked by significant technological advancements embodied in successive generations of satellites.

181. We would warrant, in fact, that the proposed modification in the rules applicable to these common carriers is reasonably likely to best serve the public's long term interest than were we to continue the application of a uniform system of rules to all carriers regardless of their market position. In this regard, we believe that we, too, enjoy the presumption the Supreme Court spoke of when the Federal Power Commission decided that "the ultimate achievement of the Commission's regulatory purposes may easily depend upon the contrivance of more expeditious administrative methods." *Permian, supra,* at 777. In such a case, the Court said:

> It followed that Commission action taken in the pursuit of a legitimate statutory goal enjoyed the presumption of validity, * * * and that he who would upset the rate order under the Act carries "the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable

[114] A special case in regulating Domsat facilities is presented by Alascom's use of RCA Americom's domestic satellite facilities to provide MTS service to Alaska. Because entry currently is restricted by regulation, there presently are no reasonably interchangeable methods of delivering MTS service to Alaska. Nevertheless we believe that lifting regulation of Domsat facilities will create incentives to drive the price of Domsat service down to efficient levels. Thus we do not believe it is necessary to make a general exception to our proposals for the Domsats for the provision of MTS service to Alaska. Alascom is encouraged to negotiate with alternative carriers to find the most efficient method of transmission. We do recognize, however, that a significant public interest question may be raised by the termination of service to Alascom. We seek comment on how to address this problem within the scope of our proposals to deregulate the Domsats. In this regard we refer commenting parties to the issue raised in Docket 78–72 of permitting entry into the MTS/WATS market in Alaska.

[115] Our proposal to permit the Domsats to allocate scarce transponder space by raising price does not mean that their prices will be unrelated to cost. The price for transponder space will be equal to or less than the opportunity cost of other distribution technologies in alternative uses. In other words, the Domsats currently will be constrained in their pricing decisions by the cost of competing carriers in the private line market, even though these costs may be higher than their own. Over the longer term, we believe marketplace forces will drive the price of Domsat facilities to cost.

in its consequences" *FPC* v. *Texaco, Supra*, at 381, quoting *Permian, supra*, at 767. *See also FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602.

182. We believe the Supreme Court reasoning in these cases, and the precedent cited therein, indicate that Congress has empowered this Commission to evaluate the rates filed by the Domsats under the more comprehensive standard we have enunciated today. Because we think it more likely to further the public interest as embodied both in Section I and Title II if we do so, we have tentatively decided to adopt such a policy. We would implement it by removing domestic satellite carriers from Title II regulation.

183. In the *First Report and Order* in this proceeding, we concluded that the resale and value added carriers of domestic satellite facilities are dominant. We reasoned that because the Domsats possess market power and are unable to use this market power because their rates are constrained to cost by regulation, the market power is transferred to the Domsat resellers. In this Notice we propose to let the Domsats increase price above cost, if necessary, to allocate scarce transponders. If this occurs, the Domsat resellers will no longer be the windfall recipients of a scarce resource. Firms will compete for the use of transponder space and competitive pressures will cause them to bid away any rents that could be derived from resale activity. Moreover the additional profits earned by the Domsats will encourage them to use existing transponder capacity more efficiently and to seek ways of expanding that capacity. It also will encourage new entrants into satellite transmission, with incentives to seek solutions to the spectrum and orbital contraints that exist presently. Thus, under our rate methodology proposal for the Domsats, the Domsat resellers will have no market power. Therefore if our proposals for the Domsats are finalized in the form that is proposed in this Notice, we also propose to deregulate totally the resale and value added carriers of domestic satellite facilities.[116]

184. The final participants in the private line market are miscellaneous common carriers (MCCs). Miscellaneous common carriers relay video signals and their audio components by terrestrial microwave links. In the original Notice in this proceeding, we noted "the rapidly developing competitive pressures" in market served by the MCCs, but expressed some reservations that it might not be workably competitive. Thus, while we concluded tentatively that the advent of satellite competition eliminated the necessity to demonstrate that population-sensitive pricing, was reasonable under Section 202(a) of the Act, we felt that, if a microwave terrestrial carrier implements population-sensitive pricing "it should show that rates charged to each of its CATV system customers cover the direct cost of that customer's connection to the microwave carrier's main trunkline plus appropriate coverage of the joint or common trunkline and other network costs." *Id.* at 376. Although we proposed to retain the current regulatory procedures for carriers relaying network television signals, we stated that our "underlying rationale for permitting population-sensitive pricing may also be appropriate for video relay to other users, e.g., broadcasters." *Id.* at 377. Finally we solicited comment on whether the retransmission policy adopted in *American Television Relay, Inc.*, 63 F.C.C. 2d 911 (1977), should be revised in light of our suggested changes in ratemaking principles for carriers providing video relay service.

185. The comments on the proposals with respect to microwave terrestrial carriers were split. Cable television interests argued for retention of the current regulatory procedures. The carriers argued for a reduction in or an elimination of the current regulations, although they strongly urged the Commission to grant them control over retransmission rights. NTIA supported our proposal concering population sensitive rates, while COWPS opposed allowing video relay carriers to use population sensitive rates until the Commission establishes some linkage between that methodology and an efficient pricing mechanism.

186. In the *First Report and Order* in this proceeding, we found that some of the MCCs have the power to raise price over cost but that any differentiation among the MCCs for regulatory purposes may create administrative and economic inefficiencies. We therefore classified all of the MCCs as dominant and continued in force our regulatory procedures for the MCCs established in *American Television Relay, Inc.*, 63 F.C.C. 2d 911 (1977). Finally we noted the conservative nature of the approach taken therein and expressed our intention to revisit the appropriate scope of regulation for the MCCs in the near future. The following analysis constitutes that re-examination.

187. The most significant structural characteristic for analyzing MCC performance in the private line market is our open entry policy established in 1959, *Above 890, supra*. Nonetheless, Teleprompter and NCTA contend that our regulatory policies effectively have precluded competition among terrestrial carriers. They point to our decision in *Collier Electric Co.*, 14 R.R. 848 (1956), as supporting their argument. Given the fact that this policy was reversed by *Above 890*, we cannot accept their argument. We also have rejected previously the contention that the provision of private line services is charcterized by economies of scale.[117] In fact, new entrants providing microwave terrestrial video relay service, in some cases, have been able to outperform existing firms. There appear to be relatively low barriers to entry.[118]

188. The comments in this proceeding have persuaded us that alternative distribution methods are more readily substitutable for terrestrial microwave service than we previously had envisioned. For example, in the Notice, we did not place much emphasis on the fact that Cable Television Relay Stations (CARS) compete with the MCCs. However several commenting parties have informed us that CARS service captures a large portion of the microwave relay market and has

[116] Several parties, including Metromedia, ABC, MPAA, and the Commissioner of Baseball argue that we should find that some satellite resellers, referred to as "superstation distributors," are not by definition common carriers. Such a determination, they maintain, would establish that secondary transmission by these satellite resellers are not exempt from copyright liability under Section 111(a)(3) of the Copyright Revision Act of 1976, 17 U.S.C. 111(a)(3). That provision exempts "any carrier" from liability when it makes certain types of secondary transmission. We cannot conclude that our tentative determination here that resellers are not common carriers effectively removes the superstation distributors from the protection of Section 111(a)(3) of the Copyright Act. The copyright provision is drafted to encompass a broad class consisting of "any carrier." By contrast, we are concerned here only with "common carriers" within the meaning of the Communications Act, which presumably is only one subset of carriers. The statutory history of Section 111(a)(3) lends support to this interpretation. As originally proposed H.R. 2223 gave the exemption in question to all "common, contract or special" carriers. For reasons not directly pertinent to the status of the superstation distributors, Congress amended that section to cover "any carrier." In so doing, it seemingly preserved its intention not to limit the exempt class to a particular type of carrier. We thus conclude that our determination here as to the meaning of "common carrier" under the Communications Act in no way decides the issue of copyright liability for "any carrier" under the Copyright Revision Act. That decision is ultimately for the Courts, the Copyright Tribunal or Congress to make. It appears to us, however, that the general class of "carrier," as used in that provision, could easily encompass the resellers which we here determine not to be common carriers.

[117] *See Specialized Common Carrier Services*, 2d F.C.C. 2d 870 (1971).

[118] For example, the average gross plant of the 48 MCCs reporting financial data to the Commission in 1979 was only $2.2 million.

replaced MCC service in several instances, even at the alleged "constrained" price at which the MCCs now are permitted to operate.[119] This information particularly is important because of our previous belief that network signals are not being supplied in a workably competitive interconnection market. The commenting parties have argued that the over-the-air broadcasts of the network signal reach a sufficient portion of the nation to make CARS service a reasonable alternative to the MCCs in virtually all areas of the country. We find merit in this argument.[120]

189. Additionally we did not even consider that direct over-the-air reception at the cable head-end may be substituted for MCC service. Yet Western Tele-Communications, Inc. states that some of its customers chose precisely such a strategy. Thus we find that potential alternatives exist to the MCC provision of network signals, even in sparsely populated areas of the country, that offer sufficient competitive pressure on the MCCs to assure good performance. This is an extremely important point and one that the cable interests in this proceeding have overlooked by arguing that the MCCs are providing the only interconnection service in some areas and, therefore, require detailed regulatory scrutiny.[121]

190. As a practical matter, satellite transmission represents a significant competitive threat to the MCCs. Numerous existing transmission lines have become obsolete and, because of the inherent cost advantages of satellite transmission,[122] we expect this trend to continue. As a matter or equity, as well as economic efficiency, we believe it is appropriate to revise our regulatory procedures for these carriers.[123]

191. The final characteristic of MCC performance in the absence of regulatory constraint that we must analyze is the ability of the MCCs to price discriminate unjustly. Price discrimination is of particular importance here because of the desire of the MCCs to implement population-sensitive pricing. That is, some carriers would like to charge cable television systems for video delivery based upon the number of subscribers to the system, and not necessarily the actual cost of the delivery. The carriers have noted, however, that such a pricing scheme is impossible without retransmission rights to the programming delivered by their systems.

192. A necessary condition for a price discrimination scheme to harm consumers is that the firm must possess market power.[124] As noted above we do not believe the MCCs possess sufficient market power to raise prices significantly above cost without precipiating large scale entry into their markets and large concurrent losses in their revenues. Thus we believe harmful price discrimination cannot be practiced rationally by the MCCs.

193. However, under the *ATR* decision, MCCs are greatly constrained in their pricing decisions because other carriers are permitted to interconnect into a MCC network without any access charge. This produces perverse incentives because each potential customer has the incentive to take a free ride and not contribute anything to the common costs of the systems.

194. In light of the above factors, we propose to remove MCC operations from Title II regulation and to permit them to exclude business entities from interconnecting with their network at no charge. We note that we believe the MCCs will not be able to operate to the detriment of consumers if our proposals are implemented because actual competition forces efficient performance from most of the MCCs and potential competition limits the market power that the rest of the MCCs currently possess.

3. *Public Switched Record Submarket.*

195. The public switched record submarket consists almost entirely of Western Union's Telex/TWX service. Since AT&T discontinued TWX service in 1971 and sold some of the associated facilities to Western Union, Western Union has maintained virtually a 100% share of this market. Recent entry by Graphnet into the market has had no noticeable effect on Western Union's performance. We recognize that additional entry into the public switched record market may eliminate or significantly reduce the market power that Western Union currently possesses.[125] However, we wish to defer judgment of the appropriate scope of regulation of Western Union's Telex-TWX service until the completion of our *Telex/TWX Investigation*, 67 F.C.C. 2d 1420 (1978). In the meanwhile, as discussed *supra*, we propose to deregulate Western Union's private line and MTS/WATS-type offerings.

E. Conclusion

196. Our experience with regulating the common carriers that have entered the market after implementation of our general policies favoring competition has been that such regulation has retarded some of the benefits anticipated from those pro-competitive policies and has conferred greater costs on consumers than benefits. Competing carriers have used procedural devices triggered by Title II regulation to stifle some of the beneficial results derivable from a competitive marketplace. For example carriers often have been challenged when filing for decreased rates in response to competitive pressures. Moreover an inapposite result of the tariff posting process is that it provides carriers that otherwise are competitive with a mechanism to collude. Technological innovation also has been suppressed compared to the unregulated sector of the economy because of the requirement for prior approval of facilities construction, after the public has been afforded the opportunity to comment on the plan. Such a requirement provides competitors not only an early blueprint of technological innovations but an exact plan for deployment as well. Finally, under the holding out standard for common carriers, private carriers have been unable to offer excess capacity to the public without subjecting themselves to detailed regulation. These deficiences of regulation are indirectly borne as costs by consumers. When analyzing the desirability of applying Title II regulation to competitive or nearly competitive carriers these costs must be added to the direct costs

[119] *See, e.g.*, the Comments of United Video, Inc. *See also* the Comments of Western Tele-Communications, Inc.

[120] For a discussion of network television coverage, see Network Inquiry Special Staff, *An Analysis of the Network-Affiliate Relationship in Television* (Oct. 1979).

[121] It is interesting to note that cable interests in the franchise fee proceeding before the Commission have argued that although cable system operators provide the only service of its kind in the local franchise area, the operators do not possess market power because of the existence of reasonable substitutes.

[122] See Network Inquiry Special Staff, *Video Interconnection: Technology, Costs and Regulatory Policies March* (1980).

[123] For a discussion of the inefficiency introduced into declining industries by regulation, see "Barriers to Exit" by Caves and Porter in *Essays on Industrial Organization in Honor of Joe S. Bain*, (1979), edited by R. T. Masson and P. D. Qualls. The MCCs competing with AT&T or the Domsats do not possess any market power due to their small share of the market traffic. Therefore we propose to remove the common carrier status of these MCCs. For the copyright implications of this proposal, see n. 116, *supra*. We propose only to forbear from regulating the MCCs that provide network interconnection service in remote areas of the country where the generally available substitutes are not present.

[124] *See, e.g.*, F. M. Scherer, *Industrial Market Structure and Economic Performance* (2nd ed. 1980).

[125] For a discussion of the actual and potential competition that Western Union faces in the provision of Telex/TWX, see the *First Report and Order* in this proceeding. As circumstances change, we would of course review our conclusion here accordingly, and thus to the extent that Western Union's market power is substantially reduced or eliminated in the future, it may be deregulated at that time.

attributable to the administrative expenses of regulation and the out-of-pocket regulatory expenses incurred by the carriers. The consumer ultimately bears all of the above stated costs.

197. In contrast to the significant costs that regulation of competitive or nearly competitive carriers imposes on consumers, such regulation offers consumers few, if any, benefits. The behavior of carriers with persistent or substantial market power that Title II regulation seeks to remedy—excessive prices, undue discrimination, overcapitalization and exit from a market thereby leaving consumers without adequate service—is precluded for some carriers by actual or potential competition. Competitive carriers cannot subsist in a market competing against an entrenched monopoly if they do not operate more efficiently than the monopolist. Additionally, if these carriers are unable to compete viably, consumers would still have alternative sources of supply after their exit.

198. Comparison of the costs of applying Title II regulation to competitive or nearly competitive carriers to the benefits derived from such regulation shows clearly that the public would be served better if our regulations were adjusted to conform more closely to actual marketplace conditions. We have found that application of Title II regulation to competitive carriers has hindered the attainment of a rapid, efficient nationwide communications service with adequate facilities at reasonable prices. Given what we believe are the overriding purposes of the Communications Act, we propose to remove Title II regulation from all service offerings herein analyzed except MTS/WATS and private line service offered jointly by AT&T and the independent telephone companies and Telex/TWX service offered by Western Union. We will retain Title I and Title III jurisdiction over all communications services, including those that we propose to deregulate here. We believe that our proposed scope of regulation more closely conforms to actual marketplace conditions and that its adoption will enable consumers to receive more efficient communications service.

VI. Implementation

199. The tentative conclusions herein reached and their applicability to discrete suppliers in discrete markets of course represent a marked change from our previous regulatory scheme. The move from our historical practice to the environment now contemplated without doubt necessitates significant changes not only by this agency but by the private entities affected as well. We will attempt to identify those areas in which some change may be expected to occur, but comment is sought on any other areas that require attention.

200. Implementation of the proposals raises immediate questions regarding the procedures to be followed. While we have tentatively identified those carriers and their services which we would exempt from Title II regulation, we propose also the use of a "decertification" process in which the actual application of these conclusions can be made. This process would be subject to notice and comment procedures. The one exception we would make to this decertification process would be resellers. Because these companies do not own transmission facilities, transitional problems noted below such as Title III licensing or interconnection are absent for this group of carriers. Should we adopt the proposals herein, then, resellers would be immediately deregulated at that time.

201. For those carriers that will be subject to this decertification process, we would note that separate treatment would be given to those companies which are competitive in all markets that they serve. This group of carriers could be deregulated under either a definitional or forbearance approach. Other carriers that participate in both monopoly markets and competitive markets, however, may apply for agency forbearance from regulation of those services for which they lack market power. This latter group of carriers raises critical questions with regard to their participation in multiple markets. *Cf. Second Computer Inquiry, supra.* Thus, we would also determine at that time whether or not a dominant carrier's participation in competitive markets should be monitored by either accounting, separate subsidiary, or other requirements.

202. New entrants and new services seeking Title III licenses to offer basic service could be classified as to their regulatory status at the time of license authorization. Questions may also arise with regard to new entry via wire cable, fiber optic, etc., that is, areas for which Title I but not Title III jurisdiction would attach.

203. In addition to establishing procedural steps toward implementing our proposals, there are other significant effects which must be considered and accommodated. One such effect would be to eliminate prior distinctions between private carriers and common carriers. The alteration of the concept of common carrier poses three distinct issues. First, the elimination of the "holding out" standard would mean that restrictions on output of the facilities of private carriers may be removed. Such carriers are now limited with regard to the classes of customers they may serve, and these restrictions could be eliminated resulting in more efficient utilization of the facilities involved. Thus, some rule changes would be required in this area. Second, the elimination of a private-common carriage distinction for many licensees raises problems with regard to frequency allocation. If we adopt a definitional approach of restricting common carrier obligation to those entities with market power (and perhaps other criteria), some companies, no longer common carriers, would hold Title II licenses in frequency bands allocated for common carrier use. Moreover, common carrier frequency may be viewed as more valuable than other allocated frequency by these firms. Some transitional period would have to be established in which we would either reclassify the relevant frequencies or reassign equally suitable frequency. Pending such solutions, we would, of course, propose to maintain the *status quo* so that no rights are abrogated in the transition.[126]

204. The third critical area that must be noted is interconnection. Currently, non-dominant carriers have legal rights to interconnection with other carriers by virtue of Section 201(a) and related Commission orders. Again, a definitional approach puts into question whether such companies no longer classified as common carriers maintain these rights as carriers, or whether such rights devolve upon them as "customers" within the meaning of Section 201(a). We note in this regard that we have ordered AT&T to interconnect with customers on terms similar to those offered to other carriers. *See In re AT&T Interconnections with Private Interstate Communications Systems*, 71 F.C.C. 2d (1979). Whatever the label given to such arrangements, it is certainly desirable that all such companies be provided nondiscriminatory access to bottleneck facilities. *See Docket 78-72 (Access Charges)* — F.C.C. 2d — (released June 12, 1980).

205. We also note that differing legal consequences might result depending on whether we exercise a forbearance vis-a-vis definitional approach. Sections 206

[126] Another transitional concern would be the need for some carriers, now filing tariffs with the agency, to reorder their relationships with their customers through the use of contracts. Some period of adjustment would obviously be provided to allow for such transitional problems.

through 208 and Section 406 of the Communications Act subject common carriers to complaint and *mandamus* actions both before the Commission and in the district courts.[127] If we were to exclude certain carriers from treatment as common carriers, one apparent effect would be to eliminate such actions under these sections. Nonetheless, other provisions of the Act would appear to provide remedies co-extensive with those specific sections, *see* Sections 401, 501, 502 and of course, private causes of actions based on contract, tort, etc., may be heard in federal and state courts. *Cf.* Section 414. Thus, while an approach removing common carrier obligations from some companies would not appear to remove or abridge available remedies, the legal effects of our proposal in this regard should be acknowledged.

206. An additional area of concern, not only for the transitional period but generally, is the effect of our different proposals on the powers of the states to regulate. Our actions here reflect a finding that for certain communication entities Title II regulation is inappropriate and, in the case of resellers, perhaps beyond our authority. In so doing, however, we do not intend to merely free the states to impose the same kind of burdensome and unnecessary regulation. If we adopt the forbearance approach, our decision to leave certain common carriers unregulated in certain circumstances would also bind the states.

Brookhaven Cable TV, Inc. v. Kelly, 573 F. 2d 765 (2d Cir. 1978), *cert. denied* 99 S. Ct. 1991 (1979).

207. If we adopt the definitional approach, however, the problem is more complicated. We do not intend, by concluding that non-dominant communications entities are not subject to regulation as common carriers, to be merely opening the way for state commissions to impose that same kind of regulation. We have found that regulation inhibits the market forces which we believe will best serve federal communications policies and goals as stated in Section 1 of the 1934 Act. We intend to preclude the states from regulating non-dominant entities providing communications services in competitive markets on an interstate basis. We request comments on our legal basis for doing so.

208. The above is intended only as a brief listing of problems or changes arising out of implementation of our proposals. Comments are requested on those areas which we have identified, as well as any others parties wish to bring to our attention.

209. 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 proceedings 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 outrside 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, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

VII. Ordering Clauses

210. Accordingly it is ordered, That pursuant to the provisions of Sections 4(i), 4(j), 201–205, 214, 303, 308 and 403 of the Communications Act of 1034, as amended, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, there is hereby instituted a notice of proposed rulemaking into the foregoing matters. Members of the public are put on notice that any such policies which may be established in this proceeding may be embodied in the Rules and Regulations of the Commission.

211. It is further ordered, That all interested persons may file comments on the specific proposals discussed in this Notice and the supporting analysis, on or before March 2, 1981. Reply comments shall be filed on or before April 6, 1981. 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. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments, shall be furnished to the Commission.

212. 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.

Note.—In an effort to reduce publishing costs, Appendix A, "Summary of Parties' Comments", has been omitted herein. However, these comments may be inspected on file in the Dockets Branch, Room 239, 1919 M St. N.W., Washington, D.C.

Appendix B—Definition of Common Carrier Common Law Background

I. Introduction

1. Our tentative conclusion that the possession of market power is a sufficient condition for the imposition of common carrier status upon communications suppliers is based in the first instance upon an examination of the textual framework of the Act as well as the context in which it was adopted. Here, we explore the common law meaning of the term common carrier as developed by the English and American courts since those precedents provided the foundation for the public utility regulatory scheme set forth in the Act. As the U.S. Court of Appeals for the District of Columbia Circuit in its decision in *NARUC v. FCC*, 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976) (NARUC I) observed, a good deal of confusion surrounds this concept since the common law principles of common carriage derived from two distinct rationales. We believe, however, after examining this long and rather complicated history, that monopoly control over services regarded as essential to the public welfare formed the basis for imposing common carrier obligations upon businesses.

II. Development of the Duties of Common Carriers

A. Origins of the Duty to Serve All on Reasonable Terms.

2. We look first to the development of the concept of common carriage in English common law. The first common carrier case on record is of a ferryman in

[127] Also, see Sections 407, 415.

1348.[1] Later cases discuss other common occupations such as innkeepers,[2] marshalls,[3] and surgeons.[4] These were common or public occupations at common law with an obligation to serve all at reasonable rates. "If a man takes upon him a public employment, he is bound to serve the public as far as the employment extends; and for refusal an action lies, as against a farrier refusing to shoe a horse * * * Against an innkeeper refusing a guest when he has room * * * Against a carrier refusing to carry goods when he has convenience, his wagon not being full." *Lane v. Cotton*, 1 Ld. Raym. 646, 654 (1701), per C. J. Holt. In effect, this early law of common or public callings was a forerunner of later government regulation of business, and these common callings were the first "public service companies."

3. There is, however, some dispute as to the rationale for and purposes of the obligations placed upon common callings, and the reasons why such obligations changed over time. In particular, two basic conflicting explanations have been suggested for the common carrier's duty to serve the public.

4. The first is based upon notions of the due care and liability for the care of goods. This theory as espoused by the commentators is that the word "common" simply meant "business" and "marks off the carrier not from other classes of business but from that carrier who carries, not as a trade or business not for everybody but for himself or some particular employer." Adler, "Business Jurisprudence", 28 Harv. L. Rev. 135, 152 (1914). This theory points out that many occupations were at one time or another referred to as "common" in the Year Books, including bakers, drivers, cooks, and builders.[5] Although those cases did not concern the duty to serve all, it is argued that all of the occupations referred to as "common" were public employments and thus all had the same obligations to serve the public and all the same liability for failure to exercise due care in their trades. For example, in one case it was held necessary to prove a horse surgeon as common to establish liability for loss of a horse in the surgeon's care.[6] Similarly, in the leading case of *Coggs v. Bernard*, [7] the court ruled that a common carrier was liable for any damage to goods in his charge save those caused by acts of God or the public enemy, but that a private person who agrees to carry goods is liable only for negligence. One who undertook the business of a carrier, in this view, was a "common" carrier with duties to the public; those duties did not apply to one whose profession or business was as a private carrier.

5. A second theory held by the commentators is that only certain essential occupations were common callings, and that the duty to serve was imposed to protect the public against actual or virtual monopolies in those occupations. Carriers, innkeepers, and smiths, for example, were trades upon which the traveler depended, and there might well be only one such tradesman in a given medieval English village. "The traveller would be at the mercy of the innkeeper, who might practice upon him any extortion, for the guest would submit to anything almost, rather than be put out into the night." Wyman, "The Law of the Public Callings as a Solution of the Trust Problem," 17 Har. L. Rev. 156, 159 (1904). A carrier, too, because of the comparatively small traffic and the dangers of travel to distant towns and villages, would have a virtual monopoly.[8] The duty to serve all at reasonable rates protected against abuse of this monopoly position. As economic conditions changed, moreover, certain occupations ceased to be common callings. For example, smiths, tailers, and surgeons were common callings in the fifteenth century, but by the nineteenth century it appears that the duties of a common calling applied only to carriers and innkeepers. One commentator concludes that the commonlaw principle was "that in the private calling the situation was that of virtual competition, while in the public calling the situation was that of virtual monopoly." Wyman *op. cit at 161.*[9]

6. The instant controversy does not lend itself to easy resolution. The cases are fragmentary and were decided in different contexts of fact and law. They also span a period of several hundred years, (from the 14th to the 18th century) in which there were many changes in economic and social conditions. The courts themselves appear not to have articulated the principles clearly.

7. Nevertheless, the available evidence strongly suggests that monopoly and essentiality were the bases for imposing the duties of common callings. Only a limited number of trades clearly were held to be subject to a public duty to serve. The cases generally repeat the specific instances of smiths, carriers, and innkeepers which in many cases were considered to have an effective monopoly over essential services.[10] Taken as a whole they appear to theorize that these professions were in the nature of public offices.[11] Indeed, if all the professions had been held to the same duties the courts most likely would have said so, rather than making this analogy to the few offices which were purely public. Many other professions were at one time or another referred to as "common" in the Year Books and cases,[12] but there are no cases and no convincing evidence that these references meant that the public duty to serve was imposed upon them. The word "common" was used in many different senses, and often meant "ordinary" as for a common soldier, or "habitual" as for a common scold. There is little reason to believe that the various references to common cooks, builders, or bakers implied that those professions bore a legal duty to serve, and surely no cases hold to that effect. Rather, these references seem only to have been to ordinary members of those trades. Thus, it appears that the common law imposed the duty of common or public callings on a case-by-case basis upon certain essential occupations which were effective monopolies. The theory, as expressed in *Lane v. Cotton*, 1 Ld Rym. 646 (1701) was that these particular occupations exercised a form of public office, analogous to sheriffs and public clerks.

8. In other words, the basic approach of the common law was to impose the duty to serve indiscriminately upon certain occupations particularly likely to abuse the public if no legal protection were extended. Moreover, as economic conditions changed, the requirements imposed upon different callings changed. By the 19th Century, for example, only carriers and innkeepers appear to have retained effective local monopolies and thus retained their traditional "public office" status.

B. *Origin of the "Holding Out" Standard.*

9. On the other hand, the "holding out" test adopted by the *NARUC I* court

[1] Y.B. 22 Ass. 94, pl. 41 (1348).
[2] Y.B. 2 Hen. IV. 7, pl. 31, Y.B. 5 Ed. IV. 2, pl. 20.
[3] Y.B. 19 Hen. VI. 49, pl. 5.
[4] Y.B. 9 Ed. IV. 32, pl. 4.
[5] Id. at 151.
[6] Y.B. 19 Hen. VI. 49, pl. 5.
[7] 2 Ld. Raym. 909 (1714).
[8] Id. at 160.
[9] The importance of legislation throughout this period also cannot be underestimated. Parliament at various times imposed wage and price restrictions in times of economic distress. For example, the first Statute of Laborers (348) imposed limits on wages in order to deal with the drastic shortage of labor cased by the Black Death. Criminal actions brought under these statutes may often have supplanted civil actions to obtain damages for any breach of a similar common law duty.
[10] Keilway, 50.4 (1450); Y.B. 39 H. VI. 18'24 (1460); *Jackson v. Rogers*, 2 Show. 237 (1683); *Lane v. Cotton*, Ld. Raym. 546 (1701).
[11] *Lane v. Cotton*, Ld. Raym. 546 (1701), *Ansell v. Waterhous*, 2 Chet. R. 1 (1817).
[12] See Adler, supra, pp. 149–52.

for determining common carrier status appears to have developed out of the common law's development of special standards of liability for the care of goods imposed upon "public occupations". A carrier was frequently held to be a common calling in cases involving damage for goods, even though this had nothing to do with a common calling's duty to serve. In those cases, the common carrier was held to be an insurer against damage or loss of goods in his care, unless caused by an act of God or the public enemy.

10. Oliver Wendell Holmes examined this process at some length in his treatise, The Common Law.[13] Basically, he argued that the insurer's liability of a carrier is a "fragmentary survival from the general law of bailment" which resulted from a confusion of precedents based upon different procedural forms, and also from conceptions of public policy.[14] The principle first appeared as dicta in the 1703 case of *Coggs v. Bernard*, where Chief Justice Hold stated that a bailee for hire exercising a common employment, such as a common carrier, was strictly liable for any damage or loss of goods in its charge, except when caused by acts of God or the public enemy. The carrier was thus an insurer of the goods being carried. Otherwise, the Chief Justice argued, carriers "might have an opportunity of undoing all persons that had any dealings with them, by combining with thieves."[15]

11. The dicta in this case was later affirmed by Lord Mansfield, who relied explicitly on considerations of policy, stating: "To prevent litigation, collusion, and the necessity of going into circumstances impossible to be unravelled, the law presumes against the carrier." *Foreward v. Pittard*, 1 T. R. 27, 33 (1785). For these reasons, a common carrier was held to be an insurer of the safety of goods entrusted to him. A private carrier, however, was required only to use "ordinary care," and thus the distinction became crucial in liability cases. Virtually all of the subsequent common law cases defining common carriers in fact concern liability for damages, as opposed to the carrier's duty to serve. The definitions reflected this fact and, in addition, reflected a growing reluctance of the courts to impose this harsh standard of liability.[16]

12. Because it was held in *Coggs v. Bernard* that a private person transporting goods was not liable as an insurer, but only for his negligence the courts developed the rule that a carrier was a private carrier if it reserved to itself the right to deal with individual customers on a contractual basis, and was only a common carrier if it held itself out to serve the public indiscriminately. This new distinction made no sense in terms of the traditional carrier's duty to serve, for it allowed the carrier to avoid that duty simply by refusing to deal with customers who insisted on insurer's liability, or by otherwise dealing solely on a contractual basis. Nevertheless, this concept has survived. Indeed, most English carriers of goods by road to this day are not regarded as common carriers if they reserve to themselves the liberty to reject goods tendered to them. They thus avoid liability as insurers.[17]

13. The U.S. courts also adopted the private common carrier distinction as the dividing line for liability cases.[18] But the private/common distinction, based upon whether one held oneself out to serve all, broke down when the issue was whether a duty to serve at reasonable rates could be imposed. Since the distinction had been devised for liability cases, the public duty to serve would have been rendered meaningless if it could be avoided merely by the carrier's choosing to deal only on a contractual basis as a private business. In fact, when the issue of regulating business by imposing the duty to serve all on reasonable terms finally did arise in the leading case of *Munn v. Illinois*, 94 U.S. 113 (1876), the Supreme Court looked to a different set of legal principles.

14. In resolving this issue, the Court relied heavily upon an essay by Chief Justice Hale written in the late 1600's. That essay, part of a treatise on the common law relating to seaports, contained the following oft-quoted passage:

> A man, for his own private advantage, may, in a port or town, set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage; for he doth no more than is lawful for any man to do, viz., makes the most of his own * * *. If the king or subject have a public wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the queen, * * * or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, &c., neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the king's license or charger. For now the wharf and crane and other conveniences are affected with a public interest, and they cease to be juris privati only; as if a man set out a street in a new building on his own land, it is now no longer bare private interest, but is affected by a public interest.[19]

15. This public interest test provided the *Munn* court with a reasonable and flexible standard for subjecting to public regulatory private property dedicated to the public's use. Not everyone carrying on a trade would be subject to a public duty; rather it would extend only to those whose operations were "affected with the public interest." This test also formed the basis to require common carriers to serve the public at reasonable rates since these carriers provided an essential service on a monopoly basis. If the essential or monopoly character of a common carrier disappeared, for example with the growth of competing services, the duty to serve would no longer be imposed. (See paras. 7–8 *supra*)

16. This approach was particularly congenial to changing economic thought and conditions. The laissez faire economics of Adam Smith emphasized the ordinary right of entrepreneurs to pursue their own private profit. On the other hand, the growth of the railroads and other utilities created massive new public interest problems, as the public became dependent upon these new, monopolistic enterprises. In Britain, Lord Hale's approach was followed in two early 19th Century cases. In *Bolt v. Stennet*,[20] it was held that the owner of a licensed wharf must permit the use of his crane upon reasonable terms. In *Allnutt v. Inglis*,[21] it was held that the owner of a warehouse with a Parliamentary monopoly to receive certain wines could not lawfully exclude from its docks the cargo of an owner who refused to pay an arbitrary storage charge, but must be content with a reasonable payment. As Lord Ellenborough explained, the owner was

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[13] Holmes, The Common Law, 160 (Harvard ed. 1963).

[14] *Id.* at p. 142

[15] 2 Id. Raym., 909 (1714).

[16] Indeed, Holmes doubted that there was a sound policy basis for the rule and suggested that the courts may well have hesitated to extend the significance of the term common carrier. The pertinent decisions appear to support Holmes. One line of cases reveals that the courts allowed carriers to insert excupaltory clauses in bills of lading. In the U.S., for example, the Supreme Court allowed carriers to contract away insurer's liability, but held that it would offend public policy if the carriers could avoid liability for actual negligence. *New Jersey Navigation Company v. Merchant's Bank*, 47 U.S. (How.) 344; *Railroad Company v. Lockwood*, 84 U.S. (17 Wall.) 357; *Bank of Kentucky v. Adams Express Co.*, 93 U.S. (otto.) 1974.

[17] Halbury's Laws of England, 135–37 (4th ed. 1974).

[18] See fn. 16, *supra*.

[19] De Portibus Maris, Hargrove Law Tracts, 77–78 (1787).

[20] 8 T.R. 606, 101 Eng. Rep. 1572 (1800).

[21] 12 East 527, 104 Eng. Rep. 206 (1810).

required to serve all at a reasonable price:

> There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it: but if for a particular purpose the public have a right to resort to his premises and make use of them, and he has a monopoly in them for that purpose, if he will take the benefit of that monopoly he must, as an equivalent, perform the duty attached to it on reasonable terms. The question then is, whether, circumstanced as this company is, by the combination of the warehousing act with the act by which they were originally constituted, and with the actually existing state of things in the port of London, whereby they alone have the warehousing of these wines, they be not, according to the doctrine of Lord Hale, obliged to limit themselves to a reasonable compensation for such warehousing. And, according to him, whenever the accident of time casts upon a party the benefit of having a legal monopoly of landing goods in a public port, as where he is the owner of the only wharf authorized to receive goods which happens to be built in a port newly erected. He is confined to take reasonable compensation only for those of the wharf.[22]

C. *Conclusion.*

17. In summary, although the state of the early common law is in some doubt, it seems likely that only a few, essential occupations were subject to the public duties of common callings, because of their essentiality and virtual monopoly characteristics. Those duties had vanished by the 19th Century except for carriers and innkeepers and their survival for those occupations probably reflected their special economic positions. In contrast, the "holding out" standard reflected the accidental associations of common callings with an insurer's liability for goods held in their care. Nevertheless, it is clear that as society and the economic system changed, the Courts articulated a basis for subjecting certain occupations to public regulation. Relying on Lord Hale's treatise, the courts found that the franchised monopoly or essentiality of a particular business which raised it to the status of a business affected with the public interest and only those businesses were subject to the traditional requirement of a common calling, that they serve the public without discrimination at reasonable rates.

III. American Regulation of Business

A. *Introduction.*

18. Although the United States adopted much of its regulatory and business law from England, the fact that the American government system is based upon a written Constitution strongly influenced the development of this area of the law. Unlike England, where there is no question of Parliament's ability to impose regulation of prices, wages, and other matters, a fundamental issue here was the permissible extent of government regulation of business under the Due Process Clause and freedom to contract.[23]

19. In any event, as a matter of practice, American legislatures have developed a particular form of public utility regulation for businesses which exercise monopoly control over essential services. Such regulation sees far beyond fixing prices, and includes control over market entry and exit, as well as investment decisions, determination of allowable rates of return, and review of all rates and practices. Generally, such regulation is administered by an autonomous government agency with extensive investigating powers. This is, of course, the same form of regulation which this Commission exercises under Title II of the Act.

20. As we now explain, this plan of regulation came about, historically, as a developing response to public need for the services these utilities provided, and as a means of assuring that the lack of competition did not permit unreasonable rates and practices.

B. *Regulation in Colonial America.*

21. The colonists brought with them English common law and practice, but they also experimented with new legal concepts thought more appropriate to each colony's philosophy and circumstances. Massachusetts, with its Puritan hostility toward leisure and luxury for the laboring class, initially adopted extensive regulation of maximum wages and minimum working hours. Prices were fixed by local communities for commodities such as meat, bread, leather, wood and bricks. Georgia had a planned economy with public sawmills, farms, and herds of livestock. Other colonies at various times regulated fees of physicians, apothecaries, and lawyers. It was a common rule that every able-bodied male had a duty to work. No person, said the Laws and Liberties of Massachusetts (1648) "shall spend his time idly or unprofitably under pain of such punishment as the Court of Assistants or County Court shall think meet to inflict." [24]

22. Colonial attempts to fix maximum wages were generally abandoned by 1700. The colonies has become more prosperous and maximum wages were impossible to enforce in an economy of scarce labor and cheap land. Some attempts at wage and price control were made during the Revoluntary War, [25] but these wartime measures were quickly abandoned afterwards. Both the colonies and the new states did, however, regulate the essential activities of carriers, ferrymen, millers, and the like. These occupations were as vital to the community as bread and meat. Colonial governments sought both to promote and control these essential services in a pattern which would soon become familiar. Charters were granted to individuals, often with inducements of land or materials, and the grantee would agree to provide service to the public at a reasonable or legally fixed rate.[26]

C. *Regulation in the Post Revoluntary War Era.*

23. After the Revoluntary War, the new states continued this pattern especially with the advent of canal and railroad companies. Such enterprises required massive investment and the cooperation or patronage of state and local governments. Although some states built or invested heavily in such projects themselves, the more usual practice in the early 19th Century was to grant charters to railroad or canal companies. The proposed companies would often receive the right of eminent domain, public lands without charge, public backing or credit, and tax exemptions. In return, the charters would generally require prompt and safe service, reasonable rates, annual reports, and the following of specified routes. Usually the charters were granted in perpetuity.

24. These early efforts at developing the nation's transportation network were pragmatic and promotional. They were intended to encourage construction of needed facilities by private means if possible, but with whatever public assistance was necessary and available. Unfortunately, the attempt to regulate railroad practices and rates through legislative charters quickly proved ineffective. The wide variety of charter provisions was confusing and difficult to enforce. Legislative remedies would often be uncertain and slow. Frequently, railroads ignored the charters entirely. In response, the states replaced chartering with general laws in the

[22] 12 East at 537.

[23] The issue was finally settled by the Supreme Court in *Nebbia v. New York*, 291 U.S. 502 (1934). See discussion *infra* at paragraphs 31–34.

[24] See generally, Morris, Government and Labor in Early America (1975).

[25] Note, 33 Harv. L. Rev. 838 (1920).

[26] For example, a typical 1681 Connecticut grant gave a miller an old dam, stone, timber, and land to erect a mill. In return he agreed to attend the mill one day a fortnight and limit his toll to the legal rate. Friedman, A history of American Law, 65 (1973).

period 1830 to 1870 and, in some cases, established advisory Railroad Commissions. The purpose of the general laws governing organization, rates, services, interconnections and similar matters was to provide effective legislative oversight. The Railroad Commissions, on the other hand, were simply fact-finding bodies, authorized to inspect the physical condition of the railroads and the company books. The Commissions could then report any suspected violations of law to the Attorney General, and its finding as to general conditions to the legislature. They had no authority with regard to rates, practices or adequacy of services.

25. Even these measures proved ineffective. Railroad Commissions were to unweildy and lacked the administrative resources to determine and continuously monitor fair rates and practices. The political power of the railroads also blunted attempts at effective regulation by the legislature.

26. Nevertheless, the industrialization, growth, and technological development of the United States after the Civil War made regulation essential, even if legal and administrative theory has not kept pace. Whole new industries upon which the public increasingly relied developed at an exceedingly fast pace. Private waterworks increased from 50 in 1850 to 1489 in 1896; gasworks from 30 in 1849 to 877 by 1899. Street railways, which first appeared in Boston in 1836, expanded rapidly after the introduction of electric systems in the 1880's. Telephones and electric companies appeared and quickly flourished about the same time.[27] Although some of these enterprises were competitive, at least initially, in most cases such utilities enjoyed local monopolies and later consolidations almost always eliminated whatever competition existed previously.

D. *The Munn Standard.*

27. Attempts to regulate the rates of these new, increasingly vital industries began in the praires. The most notable regulatory effort in this period was the Granger movement, a farmer's revolt aimed at bringing under their control the railroads, grain elevators, and warehouses upon which prairie farmers depended. Led by Illinois, Iowa, Wisconsin, and Minnesota, Granger legislatures passed statutes fixing maximum fares (two and a half cents per mile for passengers in Illinois) and attacking other abuses. For example, Illinois and Wisconsin sought to prevent railroad favoritism of monopolizations of grain to any elevator specified by the shipper.[28] However, the major legislative effort remained the fixing of rates, and this was the legislation most strenuously contested in the courts. Rate fixing was a direct challenge to the prevailing orthodoxy of laissez-faire economics, and was assailed as an attempt to deprive private businesses of property in violation of the Due Clause in the Fourteenth Amendment. This was the issue presented in *Munn* v. *Illinois*, 94 U.S. 113 (1876), the first case in which the Supreme Court considered the possible constitutional limits upon government regulation of business.

28. *Munn* involved an Illinois statute which set maximum rates for Chicago grain elevators.[29] Grain elevators has been treated as public warehouses, and were required to be licensed and bonded. In its decision written by Chief Justice Waite, the Court began by discussing at length the grain shipping and storage business. Chicago, it recognized, was the greatest grainmarket in the world, where the grain of the Midwest was stored, bought, and shipped to the East and to Europe. In 1874, there were fourteen elevators controlled by nine business firms. Each year, the elevators agreed upon storage rates which were published in January for the following year. In effect, storage for the vast commerce in grain was a virtual monopoly of these few Chicago firms who established all of their prices by agreement. They stood, as their counsel said, "in the very 'gateway of commerce' and [took] toll from all who pass."[30]

29. To consider the appropriate limits upon government regulation of business, the court looked to the English common law. Specifically, it quoted and relied upon Lord Hale's statement that when private property is "affected with a public interest, it ceases to be *juris privati* only." This, the court said, "has been accepted without objection as an essential element in the law of property ever since."[31] The court then laid down the essentials of the common law rule rule as follows:

> Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintained the use, he must submit to the control.[32]

30. A number of examples were cited of the application of this principle, including ferries, wharves, and warehouses. This same principle, the court went on, was the source of "the power to regulate the charges of common carriers,"[33] because "[c]ommon carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is, therefore, 'affected with a public interest,' within the meaning of the doctrine which Lord Hale has so forcibly stated."[34] Applying this principle to the grain elevator statute and, in other cases, to railroads,[35] the court upheld the validity of government rate fixing.

31. Although the *Munn* decision ratified the government's authority under common law to regulate businesses, it was interpreted by some later courts as establishing a substantive constitutional principle that the Due Process clause limited government regulation to public businesses only. It, therefore, sparked several decades of difficult constitutional litigation seeking to distinguish public businesses. See, *e.g.*, *Wolff Packing Co. v. Court of Industrial Relations*, 262 U.S. 522 (1923); *New State Ice Company v. Liebmann*, 285 U.S. 262 (1932).

32. This constitutional principle, however, became increasingly untenable. Ultimately, the Supreme Court in *Nebbia* v. *New York*, 291 U.S. 502 (1934) rejected the argument that the Due Process Clause forbids government regulation of prices unless the business is a public utility or has a monopoly or a public franchise. The Court perceived that the question in each case was whether a challenged regulation was valid as a reasonable exercise of governmental authority, or invalid because it was arbitrary, discriminatory, or demonstrably irrelevant to a policy the legislature is free to adopt. *Id.* at 537. And referring to the *Munn* use of the concept of "affected with the public interest", the Court held that this and similar phrases "are not susceptible of definition and form an unsatisfactory test of the constitutionality of legislation directed at business practices or prices." Id. at 536.

33. *Nebbia*, however, does not undermine the validity of the common law standard established by the *Munn*

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[27] Barnes, The Economics of Public Utility Regulation, 23–41 (1942).

[28] Merk, Economic History of Wisconsin During the Civil War Decade, 371 (1916).

[29] 94 U.S. 113.

[30] *Id.* at 132.

[31] *Id.* at 126.

[32] *Id.*

[33] *Id.* at 129.

[34] *Id.* at 130.

[35] *Chicago, B&Q R.R. Co. v. Iowa*, 94 U.S. 155 (1876), *Peck v. Chicago & Northwestern Ry. Co.*, 94 U.S. 164 (1876).

Court for subjecting businesses to regulation. Rather, *Nebbia* simply stands for the proposition that this standard cannot be read into the Due Process clause as a basis for striking down otherwise reasonable regulation of businesses. Indeed as the *Munn* Court recognized,[36] legislatures are not bound by common law and Congress and state legislatures are considered to have the power to regulate prices for businesses that are not public utilities or monopolies, as in *Nebbia* where the state established minimum retail and wholesale prices for milk.

34. In other words, *Nebbia* and its progeny establish that Congress can impose tariff regulation upon all communications firms offering service to the public, if the regulation is reasonable and not arbitrary. The question here is what services and carriers Congress intended the Commission to regulate under Title II when it gave this agency the responsibility which until 1934 had generally resided in the courts to determine common carrier status. In this regard the common law principles of regulation as stated by *Munn* are directly relevant, since *Munn* fixed the standard for common law courts in deciding when to impose the duty to serve the public without discrimination upon reasonable rates and terms upon private businesses. It was a flexible standard well adapted to the dynamism and variety of the American economy and became the basis for a wide range of cases in which the courts imposed public service duties upon private businesses.

35. Under it, the courts would find that an enterprise was affected with the public interest if it was essential to the public and possessed an actual or virtual monopoly. The Colorado Supreme Court, for example, citing *Munn* applied the test to an irrigation company, stating:

> The carrier voluntarily engages in the enterprise. It has in most instances, from the nature of things, a monopoly of the business along the line of its canal. Its vocation, along with the use of its property, are closely allied to the public interest. Its conduct in connection therewith materially affects the community at large. It is, I think, charged with what the decisions term a "public duty or trust." In the absence of legislation on the subject, it would, for these reasons be held, at common law, to have submitted itself to a reasonable judicial control invoked and exercised for the public good, in the matter of regulations and charges; and an attempt to use its monopoly for the purpose of coercing compliance with unreasonable and extortionate demands would lay the foundation for judicial interference.[37]

Irrigation, in other words, was recognized as being vital for farmers in the arid region of the West. Other services were recognized as equally vital in other places. The Alabama Supreme Court held that the owner of a cotton gin in one town could not impose unreasonable conditions upon the public for its use since the owner had a monopoly of the cotton ginning business in the area and cotton was the foundation of the economy in the agricultural sections of the state.[38] In Kentucky and North Carolina, the same rule was applied to tobacco warehouses.[39] In New York and Washington it was applied to wharves and docks.[40] In Kentucky, it was applied to void a contract by which a railroad company granted a coal company the exclusive right to use a track, and to require that the track be used to haul coal impartially for all customers.[41]

36. More typically, however, this standard was applied in cases involving public utilities, such as gas, electric water and sewer companies. Many of these had charters or franchises, or were regulated by statute. Even when no specific duty to serve upon reasonable terms was imposed in these instruments, the courts found this duty to arise from the common law principle enunciated in *Munn*. These businesses were invariably monopolies. If they had no public duties, the courts recognized, such utilities "could charge any rates, however unreasonable, and could at will favor certain individuals with low rates, and charge others exorbitantly high, or refuse service altogether (and) the business interest and domestic comfort of every man would be at their mercy."[42] Thus, these companies were considered to be affected with the public interest and were required to serve all.[43] In general then, where some enterprise achieved public importance, either locally or nationally, and acquired a franchise or monopoly over that an essential service, public service requirements were imposed by the courts.[44]

E. Regulation of Telegraph and Telephone Companies.

37. The courts and legislatures also imposed regulation upon electronic communication companies in the same fashion and for the same reasons as other public utilities. Telegraph and telephone services quickly became as important to the public as other utilities which appeared in the 19th Century and usually were provided in a given area on a monopoly basis. The telegraph, for example, frequently followed railroad lines, though it was also widely used for intra-city messages, especially before the introduction of the telephone. Many

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[36] "Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statute is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances." 94 U.S. at 134.

[37] *Wheeler* v. *Northern Colo. Irrigating Co.*, 17 p. 487, 490 (Sup. Ct. Colo. 1888). See also, *Salt River Valley Canal Co.* v. *Nelssen*, 85 p. 117 (Sup. Ct. Ariz. 1906).

[38] *Tallasee Oil & Fertilizer Co.* v. *H. S. & L. J. Holloway*, 76 So. 434, 435 (Sup. Ct. Ala. 1917).

[39] *Nash* v. *Page*, 80 Ky. 539, 44 Am. Rep. 490:

> "It is a conceded fact that more than five million in value of tobacco annually find its way from the producers to the warehouses in (Louisville). The great part of this product is grown within the state, and the producer almost of necessity compelled to place his tobacco under the control of and for sale by these several warehouses at public auction. All this tobacco must necessarily pass through these warehouses, subject to such charges as are reasonable and proper, and to say that the proprietors, with such relations to the public, can forbid buyers to enter their auction room, and to deny to any but members of the Board of Trade or applicants for membership the right to make such purchases, is a palpable disregard of the duty they owe to the individual patron as well as to the public, and, in the absence of any statute, is in violation of the common law." *Gray* v. *Central Warehouse Co.*, 106 S.E. 657, 660 (Sup. Ct. N.C. 1921):
>
> "(I)t is easy to see that if the conduct of warehouses is left to the warehouses, and either on their own motion or upon pressure from the large tobacco manufacturing companies they can exclude any one from being a buyer either upon the charge of some previous moral delinquency, especially before conviction in court, or by requiring buyers to become members of a board of trade at high cost, or in any other manner, the result will be to place the tobacco farmers of the state absolutely at the mercy of these grant corporations, and would reduce the farmers, while nominally owners of their land, to become in reality mere tenants at will of these great monopolies and therefore peasants.

[40] *Thousand Island Steamboat Co.* v. *Visger*, 71 N. E. 764 (Ct. App. N.Y. 1904); *Barrington* v. *Commercial Dock Co.*, 45 P. 748 (Sup. Ct. Wash. 1896). In a separate New York case, however, it was held that a Coney Island bathhouse was not affected with the public interest. *Aaron* v. *Ward*, 96 N. E. 736 (Ct. App. N. Y. 1911).

[41] *Louisville & N. R. Co.* v. *Pittsburg & K Coal Co.*, 64 S. W. 969 (Ct. App. Ky. 1901). See also, *Bedford-Bowling Grey Stone Co.* v. *Aman*, 73 S. W. 1038 (Ct. App. Ky. 1903).

[42] *Griffin* v. *Goldsboro Water Co.*, 30 S. E. 319, 320 (S. Ct. N. C. 1898). See also *Spring Valley* v. *Schottler*, 110 U.S. 347 (1884).

[43] See, *e.g.*, *Pulaski Heights Sewerage Co.* v. *Loughborough*, 129 S. W. 536 (S. Ct. Ark. 1910). *New Orleans Gas Co.* v. *Citizens' Gas Co.*, 115 U.S. 683 (1885). *City of Madison* v. *Madison Gas & Electric Co.*, 108 N.W. 65 (S. Ct. Wis. 1908). *East Jersey Water Co.* v. *Board of Public Utility Commissioners*, 119 A. 679 (Ct. of Err. & App. N. J., 1923).

[44] It should be noted that an enterprise could assume public interest importance over time even though such was not the case at its inception. *See e.g. New York & Co. Grain and Stock Exchange* v. *Board of Trade*, 19 N.E. 855 (Sup. Ct. Ill. 1889); *Western Union Telegraph Co.* v. *State*, 76 N. E. 100 (Sup. Ct. Ind. 1905); *Western Union Telegraph Co.* v. *Foster*, 113 N. E. 192 (Sup. Ct. Mass. 1916) *rev'd on other grounds*, 247 U. S. 105 (1918).

states adopted statutes authorizing telegraph systems and granting them privileges such as the use of public highways and the right of eminent domain.[45] As in the case of railroads, the early statutes were primarily intended to promote the establishment and growth of telegraph systems. But they also often imposed upon these companies the duty to serve all on a non-discriminatory basis, to interconnect with other telegraph companies, and to transmit messages as received.[46]

38. Moreover, the courts imposed public service duties on telegraph companies whether a statute or charter required this or not.[47] Often, in doing so, a court would describe a telegraph company as "analogous to a transportation common carrier" pointing out that a customer gave the telegraph company a message, in much the same way that freight was given to a carrier, and the company undertook for a fee, to deliver the message to the addressee. The Nebraska Supreme Court, for example, characterized a telegraph company as a "public carrier of intelligence," with rights and duties analogous to those of a public carrier of goods or passengers.[48] Other courts specifically held, however, that a telegraph company was not a common carrier.[49] These cases involved issues of liability, and the courts decided on practical grounds that the insurer's standard liability was inapproporiate to telegraph companies. In *Primrose v. Western Union Telegraph Co.*,[50] *for example, where the issue was liability for a mistake in transmission the Supreme Court held that telegraph companies were not common carriers, explaining:*

> Telegraph companies resemble railroad companies and other common carriers in that they are instruments of commerce; and in that they exercise a public employment, and are therefore bound to serve all customers alike, without discrimination. They have, doubtless, a duty to the public, to receive, to the extent of their capacity, all messages clearly and intelligibly written, and to transmit them upon reasonable terms. But they are not common carriers; their duties are different and are performed in different ways; and they are not subject to the same liabilities.[51]

The Court went on to discuss the common law policy of insurer's liability for common carriers, and concluded that such liability should not apply to telegraphs. Telegraph messages were peculiarly susceptible to mistakes, because of the process of transmission and use of different symbols. The telegraph companies did not wholly exempt themselves from liability, but reasonably required the sender to have the message repeated at an extra charge in order to hold the telegraph company liable for mistakes or delays. Thus, telegraph companies were not common carriers for purposes of liability, but were analogous to common carriers in having the same duties to serve all upon reasonable terms.[52]

39. The telephone companies which sprang up in the 1880's generally were regulated as telegraph companies under existing statutes,[53] or specifically regulated by statutes or amendments adopted for that purpose. But their common law status as public service companies was universally recognized irrespective of any legislation. Again, the reasons for imposing these duties were that the telephone had quickly become a needed service and it was ordinarily provided on a monopoly basis. As expressed in an early Nebraska case:

> It is also true that the respondent is not possessed of any special privileges under the statutes of the state and that it is not under quite so heavy obligations, legally, to the public as it would be had it been favored in that way. But we fail to see how that fact relieves it. While there is no law giving it a monopoly of the business in the territory covered by its wires, yet it must be apparent to all that the mere fact of this territory being covered by the "plant" of respondent, from the very nature and character of its business, gives it a monopoly of the business which it transacts. No two companies will try to cover the same territory. The demands of the commerce of the present day make the telephone a necessity. All people, upon complying with the reasonable rules and demands of the owners of the commodity—patented as it is—should have the benefit of the new commerce.[54]

In the same case, the court demonstrated how the imposition of public service duties upon telephone companies could then become a basis for stating, by analogy, that they are common carriers:

> That the telephone, by the necessities of commerce and public use, has become a public servant, a factor in the commerce of the nation, and of a great portion of the civilized world, cannot be questioned. It is to all intents and purposes a part of the telegraphic system of the country, and in so far as it has been introduced for public use, and has been undertaken by the respondent, so far should the respondent be held to the same oblicgation as the telegraph and other public servants. It has assumed the responsibilities of a common carrier of news. It has and must be held to have taken its place by the side of the telegraph as such common carrier.[55]

40. The court's use of the term "common carrier" in this context plainly did not mean that such status arises from the fact that the telephone company held itself out to serve all. In fact, the company had specifically sought to reserve the right to deal with its customers on an individual basis, as any ordinary business. The court refused to allow the company to avoid its public interest responsibility, concluding that because the telephone company provided an essential monopoly service, it was bound under the common law principle in *Munn* to carry out the same duty to serve upon reasonable terms as imposed upon common carriers. Our analysis of the applicable case law shows that this reason was consistently applied. The courts repeatedly recognized that telephone service had become a modern necessity provided by local monopolies, and subjected them to the same duties imposed on other such enterprises.[56]

41. On the other hand, as explained above at paras., the holding out standard used by the *NARUC I* court to determine who is a common carrier under the Act rests upon cases concerning the tort liability of

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[45] See the Reply Comments of IBM, which contains an extensive discussion of early telegraph and telephone legislation.

[46] See e.g., Act of May 13, 1845, N.Y. Laws, c. 243, p. 264.

[47] See, e.g., *Trenton v. N. B. Turnpike Co. v. American & European Commercial News Co.*, 43 N.J. Law (14 Vroom) 381 (1881).

[48] *Western Union Telegraph Co. v. Call Pub. Co.*, 62 N. W. 506 (Sup. Ct. Neb. 1895). The court concluded that a statutory prohibition of partiality or discrimination in rates was merely declaratory of the common law.

[49] *Western Union Telegraph Co. v. Fontaine, 58 GA. 433 (1877); Birney v. New York & W. Printing Tel. Co.*, 18 Md. 341 (1862). *Schwartz v. Atlantic P. Telegraph Co.*, 18 Hun. 157 (N.Y. 1879).

[50] 154 U.S. 1 (1894).

[51] 154 U.S. at 14. (emphasis supplied)

[52] In fact, other cases involving public service duties found that telegraph companies were common carriers. *See* e.g., *Western Union Telegraph Co. v. Call Publishing Company*, 181 U.S. 92 (1901), discussed *infra*.

[53] *York Telephone Co. v. Keesey*, 5 Pa. Dist. R. 366 (Com Pl. 1896).

[54] *State ex rel. Webster v. Nebraska Telephone Co.*, 22 N. W. 237, 238 (Sup. Ct. Neb. 1885).

[55] *Id.* at 239.

[56] *See* e.g. Commercial Union Telegraph Co. v. New England Tel. & Tel. Co., 17A. 1071 (Sup. Ct. Vt. 1889); *Hockett v. State*, 5 N. E. 178 (Sup. Ct. Inc. 1886); *Chesapeake & P. Telephone Ct. v. Baltimore & O. Telegraph Co.*, A (Ct. Ap. Md); *Bell Teleph. Co. v. Com*, 3 Cent. Rep. 907 (Sup. Ct. Pa.); *State v. Bell Teleph. Co.*, 22 Alb. L. J. 363; *State ex. rel. Goodwine v. Caldwalader*, 87 N. E. 644 (Sup. Ct. Ind. 1909); *Clinton—Dunn Telephone Co. v. Carolina Tel & Tel. Co.*, 74 S. E. 636 (Sup. Ct. N.C. 1912); *Mahan v. Mich. Telephone Co.*, 93 N. W. 629 (Sup. Ct. Mich.). *State v. Bell Teleph. Co., 22 Alb L. J. 363, Missouri v. Bell Teleph. Co.*, 23 F. 539 (E. D. Mo. 1885); *Commercial Union Telegraph Co. v. New England Tel & Tel. Co.*, 17 A. 1071 (Sup. Ct. Vt. 1889)

transportation carriers [57] or the application of liability provisions under various statutory schemes. Yet this standard was unrelated to the legal principle underlying the imposition of public service duties upon communications common carriers.

42. To repeat, the holding out standard was devised and applied to determine the liability of transportation common carriers. As a matter of policy, the courts imposed the liability of an insurer upon transportation companies, except in the case of acts of God or the public enemy, because of the dangers of collusion between the carrier and thieves and the difficulty of establishing negligence while goods were under the sole control of the carrier. But these policy considerations were not thought to apply to someone who acted as a carrier as a matter of accommodation or on an occasional basis. Thus, private carriers almost from the first were held to be liable only for negligence if the goods were damaged or lost.

43. By contrast, the responsibility of transportation common carriers to serve the public upon reasonable request and at reasonable rates was based upon wholly different principles. They derived from the ancient common law of common callings and undoubtedly survived in large part because the public depended upon these services and required protection against monopoly abuses. Common carriers were the primary example of the application of such public service duties.

44. Subsequently, Lord Hale articulated a principled basis for imposing those public services duties, stating that when a business was affected with the public interest, as in the case of a franchise or monopoly of a needed service, it should be required to serve all upon reasonable terms. Although the English courts adopted the principle, the flowering of this doctrine occurred in the U.S after it was adopted as the *ratio decidendi* ini *Munn*. In other words, here was a practical, flexible principle for protecting the public while allowing other businesses to be free of such common law obligations. The doctrine was quickly and universally adopted as the common law foundation of American public utility law, and applied in a wide variety of cases. Whether the business was water, gas, electricity, sewers, irrigation, or warehouses, if it monopolized and essential service or facility or, in *Munn's* words, "stood in the very gateway of commerce and took toll of all who passed," the courts imposed public service duties as a matter of common law.

45. This same test was universally applied by the courts to subject telegraph and telephone companies to public service duties. Because they became essential services and were generally monopolies, the courts imposed the duty to serve upon reasonable terms as was borne by other public utilities. In doing so, however, the courts often compared these companies to common carriers such as railroads. And it was these comparisons that created the eventual confusion over the definition of communications common carrier.[58]

46. Indeed, as a result, the argument was made that because these companies were analogous to transportation common carriers, they should also be subject to the same liability standards. Significantly, when confronted with this issue, the Supreme Court held that a telegraph company was not a common carrier. *Primrose v. Western Telegraph Co.*, 154 U.S. 1 (1894) This was a practical result, for the factors affecting liability were very different from those for transportation common carrier, and none of the policy reasons for insurer's liability applied. Nevertheless, just six years later in the 1901 case of *Western Union Telegraph Co. v. Call Publishing Co.*,[59] when the issue before the Supreme Court was whether the common law required that a telegraph company provide interstate services without discrimination, the Court held that a telegraph company was a common carrier and subject to public service duties.[60]

F. *Conclusion.*

47. In sum, we conclude that the common law test for communications enterprises upon which public service duties were imposed is generally whether the service is affected with the public interest and specifically whether it has monoply control over an essential service of facility. On the other hand, the holding out test developed from cases dealing with the tort liability standard for transportation common carriers. These liability standards were never applied to communications companies. Rather, the imposition of common carrier status upon communications companies was always based upon whether the public interest so required, not on whether the enterprise had held itself out to serve all.

Concurring Statement of Commissioner Robert E. Lee in Re: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252

December 16, 1980.

Power Struck

I am concurring because I share my colleagues' desire to clarify the ground rules for deciding when we have jurisdiction under Title II and how we should exercise it. If no statutory purpose is served by some of our regulations, we are overregulating unnecessarily. I agree that we should examine this question and seek ways to limit the burden of regulation under Title II. However, I am far from convinced that the approach proposed in this *Notice* is the best one.

My major problem with the *Notice* is its use of market power as the basis for our jurisdiction over communications common carriers. While I suspect that concerns about market power led Congress to adopt the Communications Act and to fashion the regulatory structure it did in 1934, I find no support in the legislative history or in court decisions for the proposition that an entity becomes a common carrier subject to our Title II jurisdiction or is excluded from Title II jurisdiction on the basis of its position in some market. I believe that our jurisdiction is based on what an entity does, not on who it is.

At the risk of being simplistic in my analysis, I would point out that Congress was well aware of the existence of some very small communications entities with insignificant market positions when it adopted the Communications Act in 1934. Congress clearly intended that Title II should apply to these entities as well as to AT&T and Western Union. Since 1934, the Commission and the courts have assumed that Congress meant what it said.

[57] *J. H. Cowine Glove Co. v. Merchants' Dispatch Transp. Co.*, 106 N. W. 749 (Sup. Ct. Iowa 1906) (shipper of gloves held liable as insurer for damage in transit); *Semon v. Royal Indemnity Co.*, 279 F.2d 737 (5th Cir. 1960) (Charter boat held not a common carrier under double indemnity clause of insurance policy); *Home Insurance Co. v. Riddell*, 252 F.2d 1 (5th Cir. 1958) (motor carrier held private contract carrier not subject to liability as insurer for loss of goods in transit); *Arrow Aviation, Inc. v. Moore*, 266 F.2d 488 (8th Cir. 1959) (air taxi held common carrier as to liability for injury to passenger in crash).

[58] See, e.g., Maine, *Ancient Law*, 13-25 (Everyman ed. 1917).

[59] 181 U.S. 92 (1901).

[60] "Common carriers, whether engaged in interstate commerce or in that wholly within the state, are performing a public service. They are endowed by the state with some of its sovereign powers, such as the right of eminent domain, and so endowed by reason of the public service they render. As a consequence of this, all individuals have equal rights both in respect to service and charges. * * * To affirm that a condition of things exists under which common carriers anywhere in this country, engaged in any form of transportation, are relieved from the burdens of these obligations, is a proposition which, to say the least, is startling." 181 U.S. at 100.

My concern with the market power analysis in this *Notice* goes beyond my belief that the concept is irrelevant to the attachment of Commission jurisdiction under Title II. I believe that the use of market power for determining whether or not we have basic jurisdiction leaves us with the same dilemma that prompted this proceeding. The concept does not create any more certainty about when our jurisdiction attaches than past Commission approaches. Indeed, it may give less certainty because someone planning a service which includes some communications will not be able to limit his consideration to the regulatory consequences of various plans, as he does today. He also will have to consider his present and future positions in whichever markets we may consider relevant.

The market power concept seems arbitrary because two entities performing exactly the same function or service could be defined to have very different status under the Communications Act. One could be defined as a common carrier while the other would not, simply because of different positions in the same market. However, after a period of time, the entities could change market positions and, thus, their status as common carriers or non-common carriers under Title II could change.

To determine whether we have basic Title II jurisdiction over an entity, the Commission may find itself embroiled in antitrust-like litigation. Yet, even if we find the requisite market power,[1] the decision will be good only for the time frame studied during the market power proceeding. Changes in market power will require additional antitrust-like proceedings to determine whether the Commission has lost its jurisdiction or should shift it to another entity. All in all, this seems more like regulatory roulette than regulatory certainty or efficient regulation.

I believe that the Commission can accomplish its objectives of providing the public with a reasonable understanding of what brings an entity into our common carrier jurisdiction, retaining some Commission flexibility, and easing the burden of regulation in appropriate circumstances without relying on the strained legal theory presented in this *Notice*. One source of inspiration should be the text of the *NARUC I* decision which discusses both the "holding out" standard and the public interest. The decision appears to leave the Commission room to conclude that some contractual arrangements, such as sharing excess capacity for profit, or some resale arrangements may not be communications common carriage as many have feared. The decision also appears to allow the Commission more than enough flexibility to take action against discriminatory pricing or service by common carriers.[2] I hope that commenters will look at the *NARUC I* analysis of our jurisdiction as well as any other cases or standards which may help us achieve our objectives.

I am troubled by the application of the "forbearance" theory to entities found to be within our jurisdiction because of their market power. According to the *Notice*, entities with market power should be regulated because of Congress' intention that they be regulated and because of the harm they can do to the public interest if they are not regulated. Yet, having presented that analysis, the *Notice* proposes to "forbear" from regulation in the only situations where regulation is argued to be justified. To phrase it another way, in those situations where competition is limited, the *Notice* proposes to let competition function as an alternative to the full panoply of Title II regulation. As the *Notice* anticipates, the result will be higher prices for consumers in exchange for extremely speculative benefits.

These comments are not meant as a criticism of the "forbearance" theory generally. They are meant as a further criticism of the market power theory of jurisdiction. I am enthusiastic about "forbearance" for common carriers which do not dominate in their markets, and I believe we have adequate legal authority to adjust the burden of regulation for such carriers. However, because the "forbearance" theory discussed in the *Notice* is so tied to the market power theory, I hope commenters will offer suggestions about how to establish standards for forbearance if we conclude our Title II jurisdiction is broader than that proposed in the *Notice*.

Finally, I am troubled by the scope of Title I jurisdiction suggested by this *Notice*. While the proposal does not directly explore the full scope of our jurisdiction over communications which do not fall under our common carrier jurisdiction, it suggests an extremely expansive view of this jurisdiction, apparently as an assurance that the public interest will not be harmed by a narrow reading of our Title II jurisdiction. However, if the Commission does adopt an overly expansive view of our general jurisdiction, I fear that those entities we are trying to encourage to enter communications markets or to use their existing facilities more efficiently may actually be deterred. Our well-intentioned efforts could be counterproductive.

To quote an overused phrase, "This is only a notice." Nothing has been decided. I hope that this *Notice* will stimulate thoughtful comments to help us develop a better regulatory structure. Our goal is to limit the burden of regulation to the minimum necessary consistent with the Communications Act.

December 16, 1980.

Separate Statement of Commissioner Washburn

Re: Further Notice of Proposed Rulemaking CC Docket No. 79-252; FCC 79-599

Release of this Further Notice of Proposed Rulemaking will, I hope, help us find a reasoned base on which to forebear from imposing Title II regulation. At the same time I would not want to limit by definition or other means, the Commission's power to regulate under this Title, should the use of that power be necessary to protect the public interest in the future. It is important that careful thought and analysis be given to the power-in-the-marketplace criterion as the reasoned based on which to forebear, as well as to the proposed implementation set forth in the document. I would encourage, and believe the Commission would welcome, comments proposing, as an alternative, any other reasoned based on which this Commission might voluntarily forebear from imposing Title II regulation. Also I would encourage comments and suggestions on any better way to define submarkets or to categorize carriers other than the one being considered (which, unhappily, includes the independent telephone companies and Western Union in the dominant category.)

[1] An entity found to have market power for purposes of determining Commission jurisdiction or applying common carrier regulations could be subjected to antitrust litigation on the basis of this finding.

[2] I don't believe that, under *NARUC I*, the Commission would lose jurisdiction over a common carrier if the carrier were to discriminate in its offerings.

Separate Statement of Commissioner Joseph R. Fogarty

Concurring in Part; Dissenting in Part

In Re: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor—Second Memorandum Opinion and Further Notice of Proposed Rulemaking in CC Docket No. 79-252.

I concur in the issuance of this *Further Notice* to seek additional public comment on the issue of this Commission's discretion to forbear from imposing Title II regulation on competitive carrier services and facilities. However, I dissent to that part of the *Further Notice* which proposes a "definitional" approach to common carrier deregulation, and I also question the sufficiency of the analysis applying the deregulatory "market power" theory to particular carriers, facilities, and services.

I believe there is a sound legal and policy basis for the Commission to forbear from Title II regulation in favor of a principled assessment that marketplace forces may better effectuate the purposes and goals of our Act, and I also believe that a "market power" analysis may provide the requisite predicate for forbearance with respect to particular services, facilities, and providers. I readily acknowledge that the legal theories supporting this forbearance approach to deregulation are novel and untested, and that tangentially relevant precedent appears to cut both ways on this critical issue. Nonetheless, I believe that both the Commission and the courts should have the opportunity to examine and to apply this forbearance theory to the modern world of telecommunications which all must concede was not envisaged by the Congress in 1934.

To adhere to a *status quo* orientation with respect to the Commission's Title II jurisdictional mandate might be appealing from the standpoint of a professed deference to legislative intent. However, such specific Congressional intent is far less than self-evident, and the record developed thus far in this proceeding demonstrates that there is a compelling need for at least an initial experiment in Title II deregulation of competitive carrier facilities and services. To insist on a formalistic adherence to traditional common carrier regulatory theory would thus be a wholly artificial act, devoid of any sound policy content and truly disserving the fundamental intent of Congress in establishing this agency and charging us with ensuring the public interest benefits of ". . . rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ." [1]

While I therefore endorse and support the Commission's discretion to forbear from the exercise of its Title II regulatory jurisdiction, I see no sound basis in law or in policy for the "definitional" approach to this agency's fundamental common carrier jurisdiction under Title II. Simply put, it is one thing to maintain our regulatory jurisdiction under Title II and to forbear from the exercise of that jurisdiction when that is wise as a matter of policy; it is another thing to abdicate or renounce such jurisdiction altogether. I do not accept the notion that the fundamental question of this Commission's essential Title II jurisdiction should turn exclusively or even primarily on the construct of "market power."

My differences with the "definitional" jurisdictional theory are fundamental and not merely matters of fine-point legal nicety. I have every hope and confidence that increased reliance on marketplace forces in lieu of regulatory intervention may better stimulate the consumer benefits which our statute mandates. However, I also believe that we must be farsighted and pragmatic enough to recognize at least the possibility that these theoretical expectations may not be sufficiently realized in real-world performance. It may turn out that there will still be barriers to firm entry which may frustrate the desired competition that theory predicts. It may be that market segmentation, rather than vigorous head-to-head competition, will emerge, and that rates and charges will not be driven down to costs. It may happen that not all customers will have fair and reasonable access to critical services and pricing advantages. If such untoward and unanticipated effects occur in the deregulated telecommunications marketplace, this Commission must have the full discretion and flexibility to re-enter the field with necessary and appropriate remedial regulation. The clear effect—if not intent—of the proposed "definitional" jurisdictional theory is to make any such needed regulatory re-entry difficult, if not impossible. I find it inconceivable that the Commission would seriously consider this proposed course of jurisdictional self-denial.

This net effect is ironic and troublesome from two additional perspectives. First, it is ironic because we have consistently recommended to Congress, in the context of its "Re-Write" efforts, that this Commission be left with administrative flexibility and discretion to regulate or deregulate according to changing needs and circumstances. The "definitional" approach to our Title II jurisdiction would put the Commission in an analytic straightjacket and would be totally at odds with this previously stipulated need for flexibility and discretion. Second, the net effect is all the more troublesome because the basic policy result we wish to achieve—principled but flexible deregulation—can be attained with a more straightforward forbearance theory which avoids the more judicially risky and complicated course of the "definitional" approach.

Turning to specifics, I cannot accept the "definitional" notion that Congress intended to confine narrowly our Title II-Common Carrier jurisdiction to only those basic communications service firms which have dominant "market power." There is simply no reference to the concept of "market power," or even "monopoly," in the statute, and "legislative context" is not so easily equated with legislative history and intent, particularly when there is such a paucity of congressional record citation support for the "contextual" theories advanced. Most importantly, the "definitional" theory is contradicted by 40 years of rather consistent Commission and judicial interpretation and precedent on what is a "communications common carrier." Indeed, I believe the high gloss statutory interpretation put forward to support the "definitional" approach would have to run an extremely perilous litigational gauntlet to survive as a valid basis for our proposed deregulation of competitive carrier services and facilities.

I am concerned that the *NARUC I* decision [2] may be interpreted to put exclusive or restrictive emphasis on the "holding out" standard as the determinant of Title II-Common Carrier status. However, if the Commission's objective is to deregulate certain basic service providers previously regulated as common carriers, and to avoid Title II regulation of other basic service providers, then I believe the wiser and ultimately more effective course of action would be to rely on the well-reasoned forbearance analysis rather than plunge ahead with an extremely risky and obtuse "definitional" theory. In this regard, the *Further Notice's* "market power" analysis strongly supports the forbearance authority from

[1] 47 U.S.C. Sec. 151.

[2] *NARUC* v. *FCC*, 525 F. 2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

the standpoint of emphasizing the necessarily broad and flexible mandate given the Commission to determine how and the extent to which we regulate under Title II. The forbearance theory thus gives good assurance that *NARUC I* can be reasonably accommodated instead of nakedly and antagonistically opposed. Forbearance also leaves the Commission with the full array of our Title II regulatory tools intact for dealing with any basic service marketplace deficiencies which may arise in the future—a reservation of jurisdiction and authority which the "definitional" approach unsoundly ignores.

While I support the basic forbearance approach to competitive carrier deregulation premised on a "market power" analysis, I must question the sufficiency of the analysis advanced in favor of the proposed deregulation of domestic satellite carriers (Domsats) at the present time. The analysis put forward by the *Further Notice* clearly demonstrates that Domsats have the ability to price their services substantially above costs, and that Domsat facilities and services are "scarce" under any valid definition of this economic term. It is also readily apparent that these facilities and services are essential to the business needs of competing users, particularly cable TV system operators and program distributors. While thus conceding that absent regulation Domsats may earn excessive profits at the expense of users and consumers in the "short run," the *Further Notice* nonetheless argues that "over the long run" technological advance, new competitive entry, and intermodal competition will inevitably bring Domsat prices down to cost, and that therefore regulation is unnecessary and, indeed, counterproductive.

This analysis is weak and troublesome from several perspectives. First, the Domsats' ability to earn supracompetitive profits is indicative of their significant "market power" and their serious potential ability to set rates which may be *prima facie* "unjust and unreasonable" and also to engage in unreasonable discrimination among like customers. That the private line rates charged by AT&T establish a theoretical ceiling for the Domsats does not alleviate these statutory concerns absent a finding that AT&T and Domsat facilities are cost comparable substitutes for each other—a finding which the *Further Notice's* analysis cannot make. Similarly, that this situation may be alleviated "over the long run" by the desired technological advance, new competitive entry, and intermodal competition will be cold comfort for current Domsat customers who are given no idea by the *Further Notice* as to how long the "short run" may last. Moreover, the ameliorating developments which the *Further Notice* hypothesizes are speculative at best. In particular, it appears to me that the ease of new entry into the Domsat field which underlies this scenario is grossly exaggerated. Finally, I find entirely unsupported the suggestion that the ultimate consumers of cable TV programming will not benefit from regulatory intervention holding Domsat prices to costs. There is no evidence that the program distribution market is not competitive, and in such a competitive market it is more properly assumed that cost savings are passed through to cable system operators and their consumers. For these reasons, I find the analysis inadequate to support the proposed deregulation of Domsat facilities and services.

January 6, 1981.

Concurring Statement of Commissioner Anne P. Jones

In Re: In the Matter of Policy and Rules concerning rates for competitive common carrier services and facilities authorizations therefor. CC Docket No. 79–252

I concur in, rather than join, the majority's decision in this matter because I have some lingering doubts concerning the so-called definitional approach to deregulation of nondominant carriers. In my view the discussion in the first part of this further notice makes a very good argument that the Commission should be able to exclude from the term "common carrier" as used in Title II of the Act entities which lack market power. Clearly it is entities, which have market power in providing interstate or foreign telecommunications services which are of primary concern under Title II. It is also true that the circular definition of "common carrier" provided by the Act and the "holding out" test articulated by the court in NARUC I* for identification of communications common carriers are at best imperfect guides to sound regulation under Title II.

I am concerned, however, that in asserting authority to exclude entities which lack market power from Title II coverage by definition, regardless of whether they hold themselves out to provide telecommunications services indifferently to the public, the Commission may be going beyond its statutory prerogatives. It may be that the arguments for this approach would be better addressed to Congress for amendment of the Act than asserted as the basis for a definitional approach to deregulation by this Commission. I see no great harm, however, in proposing such an approach on a tentative basis to obtain informed comment on whether it would be sustainable under the present language of the Act and judicial precedent as to its meaning.

The argument for authority in the Commission to forebear from unnecessary regulation of entities subject to Title II regulation seems to me compelling, and I am inclined to approve this forebearance approach. Given the controversy which surrounds even this more limited approach, however, I do not object to inviting further comment on it.

*NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

[FR Doc. 81-4313 Filed 2-4-81; 8:45 am]
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47 CFR Part 73

[BC Docket No. 81-38; RM-3602, RM-3661]

FM Broadcast Station in Glendale and Phoenix, Arizona; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: In response to petitions filed by Charles Eyanson and by Donald C. Jerome, Francis M. Blythe, and Erwin W. Speakman, jointly, this action proposes two FM channel assignment plans for Glendale, Arizona and Phoenix, Arizona.

DATES: Comments must be filed on or before March 23, 1981, and reply comments must be filed on or before April 13, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: January 22, 1981.

Released: January 29, 1981.

In the matter amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations. (Glendale and Phoenix, Arizona).

By the Chief, Policy and Rules Division:

1. The Commission has before it mutually exclusive petitions for rule making regarding the assignment of FM Class C Channel 278 in Arizona, which are being consolidated in this proceeding. Petitioner Charles Eyanson

("Eyanson") proposes the assignment of Channel 278 to Glendale, Arizona, as that community's second FM channel assignment [1] (RM–3602). Petitioners Donald C. Jerome, Francis M. Blythe, and Erwin W. Speakman ("JBS"), jointly propose the assignment of Channel 278 to Phoenix, Arizona [2] (RM–3661). Comments in opposition to the Eyanson petition were received from petitioner JBS and from W. B. Browning, City Manager of the City of Flagstaff, Arizona, on behalf of that community's Mayor and City Council. Comments in opposition to the JBS petition were received from petitioner Eyanson and from Mesa Radio, Inc., licensee of radio Stations KDJQ and KDKB(FM), Mesa, Arizona. Petitioners Eyanson and JBS also filed comments and reply comments concerning their respective proposals.

2. Phoenix (population 581,562) [3] and Glendale (population 36,228) are located in Maricopa County (population 967,522) in the south central part of Arizona. Phoenix is the State Capital of Arizona. Glendale is a suburb of Phoenix, located some 14 kilometers (8.5 miles) to the northwest.

3. Glendale presently receives local aural broadcast service from one-full-time AM station, KRUX (1360 kHz), and one Class C FM station, KXTC (Channel 222). Phoenix presently receives local aural broadcast service from six FM stations: FM Station KOOL (Channel 233);
FM Station KQYT (Channel 238); FM Station KMEO (Channel 245); FM Station KBBC (Channel 254); FM Station KHEP (Channel 268); FM Station KNIX (Channel 273); and 12 AM stations: daytime only AM Station KASA (1540 kHz); full-time AM Station KFLR (1230 kHz); daytime only AM Station KHCS (1010 kHz); daytime only AM Station KHEP (91280 kHz); daytime only AM Station KIFN (860 kHz); full-time AM Station KJJJ (910 kHz); daytime only AM Station KMEO (740 kHz); full-time AM Station KOOL (960 kHz); full-time AM Station KOY (550 kHz); daytime only AM Station KPHX (1480 kHz); full-time AM Station KTAR (620 kHz); and full-time AM Station KXIV (1400 kHz). In addition, FM Channel 260 has three applications pending. [4]

4. Each petitioner submitted economic, demographic and other data sufficient to demonstrate the need for and viability of an additional channel assignment. In this regard, we note that an assignment of Channel 278 to either Phoenix or Glendale would be appropriate under the Commission's population guidelines for determining the number of FM channel assignments a community of a given size is to receive. [5] The requests for Channel 278 by the Glendale and Phoenix petitioners cannot both be granted since § 73.207 of the Commission's Rules requires a minimum mileage separation of 288 kilometers (180 miles) between co-channel Class C assignments while there is a 14 kilometer (8.5 miles) actual separation between the two communities. The Commission's staff has determined that no alternative channels are available for assignemt to either community.

5. A preclusion study was performed for Channel 278 which assumed a transmitter site in the White Tank Mountains of south central Arizona—the location specified in both petitions. [6] The study indicates that the use of Channel 278 at the proposed location will cause preclusion on Channels 275 through 280A in all or parts of the following ten counties: *California:* San Bernardino and Riverside; *Arizona:* Yuma; Mohave; Graham; Maricopa; Coconino; Apache; Yavapai; and Navajo. Accordingly, petitioners should, in comments following this *Notice of Proposed Rule Making*, submit information regarding the channels available in the precluded counties. [7]

6. According to petitioner JBS' *Roanoke Rapids* [8] *Anamosa* [9] showing, the assigment of Channel 278 to Phoenix will provide a first FM service to 9,177 square kilometers (3,585 square miles) for 1,670 persons and a first aural service to 8,261 square kilometers (3,227 square miles) for a "little less than 1,670 persons." In addition, it will, according to petitioner, provide a second FM service to 1159 square kilometers (453 square miles) for 5,050 persons and a second aural service to 2,076 square kilometers (811 square miles) for 5,050 persons. [10] Although petitioner Eyanson did not submit a *Roanoke Rapids/ Anamosa* showing, it did propose the same transmitter location as its competitor. Thus assuming approximately the same power and height parameters, its new service figures should approximate those submitted by petitioner JBS. Specification of these station parameters should provide the required 70 dBu signal strength over the entire Phoenix metropolitan area.

7. As stated earlier, comments opposing the proposed assignments were received from W.B. Browning, City Manager of the City of Flagstaff and from Mesa Radio, Inc., licensee of radio Stations KDJQ and KDKB(FM), Mesa, Arizona. The W.B. Browning comments protested what is called the possible loss of an FM frequency at Flagstaff. It argued that an assignment of Channel 278 to Glendale could be justified only if the Commission were to ignore the fact that Glendale is located near and served by stations in the Phoenix area, whereas Flagstaff's isolation rendered it more deserving of the channel assignment. Mesa Radio, Inc. opposes the JBS proposal to assign Channel 278 to Phoenix on the grounds that (a) the Phoenix market is already overcrowded with radio stations and (b) serious preclusion would result.

8. The Commission is of the opinion that neither W.B. Browning nor Mesa Radio, Inc. have made a strong enough showing to eliminate further consideration of either of the petitions before us. Despite the concern over the preclusive effect which a grant of the proposed assignment of Channel 278 would produce, that factor would not provide a basis for denial of either proposal at this stage. Rather interested parties may analyze the preclusive impact and submit comments or a counterproposal which may cause the Commission to ultimately favor one proposal over another. Thus, the Commission's procedures specifically provide an opportunity at this stage of the proceeding for precluded communities (including Flagstaff and Mesa) to come forward with counterproposals detailing facts warranting a different assignment and

[1] In response to the Eyanson petition, the Commission issued a *Public Notice* on March 20, 1980 (Report No. 1229).

[2] In response to the JBS petition the Commission issued a *Public Notice* on May 20, 1980 (Report No. 1229).

[3] Population figures were taken from the 1970 U.S. Census.

[4] American International Development, Inc., File No. 10,105; KXIV, Inc., File No. 10,109; Herbert W. Owens, Jr., File No. 10,349.

[5] Specifically, the population criteria provide that communities of 50,000 persons or less (such as Glendale) may receive up to two FM channel assignments, while communities of between 250,000 and 1,000,000 persons (such as Phoenix) may receive up to 10 FM channel assignments. As indicated above, Glendale is presently served by one local FM station while Phoenix presently has seven FM channels assigned to it.

[6] Both petitions specify a transmitter site located 33 kilometers (21 miles) west of Phoenix and 22 kilometers (13.5 miles) west of Glendale.

[7] The comments of Mesa Radio, Inc. indicate that the addition of Channel 278 to Phoenix will cause preclusion to 29 communities of 1,000 persons or more. Twenty of those communities are said to have no present assignments; and at least twelve of those communities are said to be located in the Phoenix metropolitan area, where no other channels are available for assignment to them.

[8] 9 F.C.C. 2d 672 (1967).

[9] 46 F.C.C. 2d 520 (1974).

[10] Petitionur derived these figures by specifying "maximum facilities," *viz.* station parameters of 83 kW at 2,112 feet HAAT, at its proposed transmitter site.

expressing an intent to apply for the channel.

9. One final issue remains to be discussed. Petitioners Eyanson and JBS each filed comments and reply comments in support of their opposition to their competitor's petition for rule making, raising issues much along the same lines as those raised by the comments of W.B. Browning and Mesa Radio, Inc. There was one important difference, however. Petitioner JBS' reply comments raised the possibility of a Berwick [11] issue. In the rule making context, a *Berwick* issue is said to arise when someone proposes the assignment of a channel for a particular locality but it appears that the real purpose may be to serve another nearby larger community. Petitioner JBS asserted that, although Eyanson's proposal would provide "the establishment of Glendale's first competitive FM outlet," in fact, any Class C assignment to Glendale would also be competitive with all current stations in the Phoenix metropolitan area.

10. We note that petitioner JBS has raised the issue only by way of inference, which, in itself, is not sufficient to meet the burden of proof. Moreover, there may be a number of reasons, including quite innocent ones, which can bring the inference about. For example, the inference of an intent by petitioner Eyanson to serve Phoenix rather than Glendale arises, in part, from the fact that a Class C channel assignment is involved here. It should also be pointed out that the Commission apparently found no problem in assigning a Class C channel (Channel 222) to Glendale when it initially promulgated its FM Table of Assignments.[12] Certainly, a Class C facility at Glendale would be justified in view of the proposal to serve "outlying areas." In addition, a second Class C channel assignment in Glendale would serve to avoid an unfair competitive advantage to the existing Class C facility there (KXTC(FM)) that would result if a Class A channel (for which no interest has been expressed) were to be assigned.

11. Petitioners are requested to come forward with information supporting their respective mutually exclusive proposals in order that the Commission will be in a better position to assess the comparative strengths and weaknesses of each proposal as set forth below. In addition, we invite comments concerning any of the matters discussed above.

12. Since Glendale and Phoenix are both within 318 kilometers (199 miles) of the Mexican border, the concurrence of the Mexican government in this matter must be obtained.

13. In view of the foregoing, the Commission is of the opinion that alternative proposals are in order. Accordingly, IT IS PROPOSED TO AMEND § 73.202(b) of the Commission's Rules, the FM Table of Assignments, for the following communities.

City	Channel No.	
	Present	Proposed
Plan I		
Glendale, Ariz	222	222, 278
Plan II		
Phoenix, Ariz	233, 238, 245, 254, 260, 268, 273	233, 238, 245, 254 260, 268, 273, 278

14. 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.

15. Interested parties may file comments on or before March 23, 1981, and reply comments on or before April 13, 1981.

16. 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 officially filed at the Commission or oral presentation required by the Commission.

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules.* Fed. Reg. , published , 1981.

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, § 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

[11] *Berwick Broadcasting Corporation*, 12 FCC 2d 8 (1968), *aff'd*, FCC 2d 396 (1969).

[12] The Table was proposed in the *Second Notice of Proposed Rule Making*, 40 FCC 728 (1962), and adopted in the *Third Report, Memorandum Opinion and Order*, 40 FCC 747 (1963).

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 NW., Washington, D.C.

[FR Doc. 81-4306 Filed 2-4-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 18877; RM-1589; FCC 80-765]

Aural Transmissions of Radio and TV Stations for the Purpose of Program Identification; Amendment To Permit Inclusion of Coded Information

AGENCY: Federal Communications Commission.

ACTION: Termination of Proposed Rule.

SUMMARY: The Commission terminates without rule amendments a proceeding to permit broadcast stations to transmit audio tone codes for automatic identification of program material. Comments received indicated that the proposed system was not reliable and that the tone codes within programs could be objectionable to listeners.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Report and Order

(Proceeding Terminated)

Adopted: December 18, 1980.

Released: January 12, 1981.

In the matter of amendment of Part 73 of the Commission's rules and regulations to permit the inclusion of coded information in the aural transmissions of radio and TV stations for the purpose of program identification.

By the Commission: 1. The above-entitled proceeding concerns the proposed adoption of a rule to permit the inclusion of coded information in the aural transmission of broadcast stations. The encoded information would identify the transmitted program material. Upon reception, it could be used for such purposes as an indication of broadcast commercial announcements and their sponsors for advertising agencies, copyright data of entertainment recordings for ASCAP, BMI, etc., or to identify any other pre-recorded program of a commercial or non-commercial nature distributed for broadcast use.

Background

2. This has been a long term proceeding which has resulted in the release of several successive Official Notices. The proceeding was initiated by a *Notice of Proposed Rule Making*, adopted June 10, 1970,[1] in response to a petition filed by Audicom Corporation ("Audicom"). Audicom's proposal for the transmission of coded identification information contemplates a momentary deletion of a narrow band of aural frequencies in the program material transmitted by an AM or FM broadcast station, or in the aural channel of a TV broadcast station, and in its place, insertion of coded information at a level sufficiently below the general program level as to render it substantially inaudible. After transmission of the coded information, the deleted band of frequencies would be automatically restored.

3. On February 10, 1971, a *Further Notice of Proposed Rule Making*[2] in this docket was adopted to enlarge the scope of the proceeding in order to permit consideraton of an alternative system for aural program identification proposed in a petition filed by International Digisonics Corporation ("IDC") on December 2, 1970. The system proposed by IDC appeared to have potential advantages over Audicom's in that no removal of program material was required while the identification signal was being transmitted. In addition, it was suggested that the center frequency and type of modulation proposed for the IDC system reduced the potential perceptibility of the identification signal by broadcast listeners. IDC further claimed that its system would be more reliable because it would be less susceptible to errors. In issuing the *Further Notice*, the Commission stated that both petitioners were expected to conduct on-the-air tests of their systems and to file reports on results of the requested tests.

4. After studying the reports filed by Audicom and IDC, and a number of comments received from interested parties, the Commission concluded that much more extensive testing was necessary before the adoption of rules authorizing the transmission of aural signals for program identification could be considered. Consequently, on December 12, 1973, the Commission issued a *Second Notice of Further Proposed Rule Making*[3] which outlined its findings and deferred action on the proposed rules pending submission of the results of additional testing.

5. The Commission stated that although the basic feasibility of Audicom's system has been demonstrated, a further examination of the reliability of the system under various conditions with different kinds of program material would be required. Also, it appeared that no systematic attempt had been made to determine the accuracy or reliability of IDC's system. Furthermore, there was inadequate evidence that the IDC system could perform satisfactorily without unacceptable program degradation. Thus, the Commission concluded that additional tests for system reliability and program degradation resulting from use of the IDC system were warranted.

6. In addition, the Commission noted that identification signals had been tested only on tape recordings inserted at broadcasting station studios. However, since use of an aural identification system over network lines would often be desired, the Commission stated that network transmission of the signals should be investigated. The Commission further stated that the feasibility of using the signals with other recording media should be explored, particularly with motion picture film, having both optical and magnetic sound tracks. The Commission also suggested that propagational effects between the transmitter and monitoring points should be investigated. And finally, in that *Second Notice*, the Commission observed that in order to create a consensus as to the technical feasibility of a system and its optimum parameters, broader industry participation in the further development and testing of aural identification systems would be highly desirable.

7. No dates were set for filing comments and reply comments other

[1] 35 FR 10031, June 16, 1970.

[2] 36 FR 3269, February 20, 1971.

[3] 39 FR 1073, January 4, 1974.

than the deadline for the submission of interim reports which was set at March 7, 1974. The Commission stated that after examination of these reports, it would determine the further course of the proceeding, and pending the submission of the results of additional tests by the system proponents and by others who were interested in this matter, further action by the Commission would be held in abeyance.

Comments and Reports

8. On March 5, 1974, the Commission received comments from the Ad Hoc Committee on Television Broadcast Ancillary Signals of the Joint Committee on Intersociety Coordination ("JCIC") outlining its intentions to request SMPTE (Society of Motion Picture and Television Engineers) to study and test the systems and inform the Commission of the results. The Commission received an Interim Report from the Audicom Corporation on March 7, 1974, outlining the status of their identification system at that time. Audicom stated that it intended to further develop and submit a prototype of its system components and program test material to the working group for full investigation of matters requested by the *Second Further Notice*. Audicom further stated that the data generated by SMPTE along with its own test data would be used by them in forming the basis of a recommendation to the Commission. Subsequent letters dated October 16, 1974, and June 30, 1975, were received from Audicom Corporation and its attorney explaining the incurred delay in submitting the additional test information was due to the death of the inventor of their identification system and financial shortcoming. However, Audicom indicated that progress was being made in spite of its explained misfortunes and that they intended to submit the additional data as specified in the *Second Further Notice* by December 31, 1975. Since receipt of the above referenced letters, neither additional data nor any further submission from Audicom has been received by the Commission.

9. Comments from the American Broadcasting Company, Inc. ("ABC") and Columbia Broadcasting System, Inc. ("CBS") were received by the Commission on March 7, 1974, in support of the Commission's position that final rules not be adopted in this proceeding until adequate data from field tests as outlined in the *Second Further Notice* were available and the recommendations of the SMPTE Working Group on aural program identification systems were submitted for consideration. An interim statement of IDC was received by the Commission on March 7, 1974, agreeing with the Commission that more development was necessary to achieve an optimal system with minimal program degradation using simple and reliable encoding and decoding techniques. IDC suggested that only after further investigation of other aural identification alternatives, including full testing of each to determine their characteristics with respect to accuracy, compatibility and lack of significant degradation, should the Commission undertake to consider specific regulatory standards in this area. While IDC did not withdraw its system from active consideration, it did state that, at that time its full resources were being devoted to further development of its then existing video program identification system. Consequently, IDC had not engaged in any further testing of aural based identification methods.

10. No other filings were received by the Commission until November 1, 1977. At that time, the SMPTE report on the tests of Audicom's system and related SMPTE activities [4] was received. The report stated that while the comprehensive examination of the Audicom system was the major involvement of the working group, an extensive patent and literature search was undertaken to accumulate as much background information as possible on other methods of using the audio frequency spectrum for conveying coded information. The report identified fifteen such methods and stated that six of them were potentially applicable to identification purposes in the broadcast system. However, the SMPTE working group did not conduct tests and evaluations of these methods, nor of the IDC system. Instead, its efforts were focused on the Audicom system.

11. The report indicated the testing sequence decided on by the SMPTE working group was to first subject the Audicom detection system to encoded recordings of carefully chosen audio materials. These would include recordings selected to be representative of typical program content as well as material with a high likelihood of interference with the submerged identification signals. Tests to evaluate the effects of network transmission, transfer to motion picture optical sound tracks, high-speed duplication, and other commercial sound processing techniques were to follow if the initial detection tests were successful. Listening tests to assess the degree of audio program degradation and any possible annoyance to listeners were also to be conducted.

12. The SMPTE working group reports that Audicom has demonstrated the performance of its system in August of 1975. However, despite that previous successful demonstration, SMPTE reports that the system they tested behaved erratically during the closed-circuit test sequence. The report states that the system appeared to suffer major malfunctions since it was unable to respond even to direct input signals without a substantial number of errors. Since the system did not reliably recover the submerged identification signals from any of the input sources (network transmission, film and tape, etc.), SMPTE considered the system as having failed the detection test sequence. It was further concluded that the erratic response of the system made it inappropriate to attempt to quantify error rates. Consequently, the working group decided that it would consider further detection tests only if Audicom made sufficient equipment improvements to assure its proper operation. The working group proceeded, however, with the listening test because of a reported interest on the part of the recording industry for possible use of the Audicom or a similar system to provide a copyright "signature" on tape or disk recordings that could be broadcast. However, as a consequence of the previous unsuccessful detection test series, the scope of the proposed listening tests was reduced. The objectives of the tests were limited to a determination of whether or not listeners could hear the inserted code signals, and, if so, to what extent they were considered objectionable.

13. The SMPTE report noted that two factors are to be considered when the results of the listening tests are reviewed:

(1) Conditions during the tests were optimized to increase the likelihood that the signals would be heard, e.g., acoustically isolated listening room, advance demonstration of sample signal tones, and the use of television sound without accompanying video signal.

(2) The tests were indeed limited in scope, thus the test recording did not reflect any of the degradation that can take place in over-the-air transmission, tape duplication, or signal processing. Fewer listeners were involved than had been hoped for. And, the tests were cancelled when the tape became unusable and could not be replaced. The test data base is, therefore, small.

[4] The SMPTE Working Group report is contained in a Final Report, dated May, 1978, submitted by the Ad Hoc Committee On Television Broadcast Ancillary Signals of the Joint Committee on Intersociety Coordination (JCIC).

14. While conducting the limited listening test, SMPTE observed that the listeners detected all of the identification signal insertions except those that occurred during program segments with high average intensity sound levels. The identification signals inserted during program silence were also heard by most listeners. The presence of these tones was considered objectionable. The working group found that the largest number of identification signal detections occurred as the result of listeners reacting to one (or more) form(s) of distortion introduced during the frequency shift portion of the identification signal sequence. They also found that the insertion of the identification signal during speech produced the most detectable form of distortion. Under each of these insertion conditions, the presence of the identification tones was rated objectionable by the listeners. The report further states that listeners detected distortion when listening to television sound almost twice as frequently as when listening to tests tapes played over audio high fidelity systems. There was no apparent explanation for this occurence however.

15. The SMPTE working group concluded that the Audicom system as had been presented in August of 1975, demonstrated only the principle of their proposed system technique. But, the subsequent failure of their system during the working group's detection test has left the important question of reliability under various operating conditions unanswered. SMPTE further concluded that the test results indioate that the degree of distortion produced by the identification signal-insertion process, particularly during sibilant speech, may indeed degrade programming sufficiently to prove annoying to a sizable number of listeners. This suggests that without further refinement, the Audicom system is unsuitable for any application that involves high-fidelity sound reproduction. The working group recommends that any future refinements considered should include the utilization of suitable logic circuits to prevent code signal insertions during silence or long pauses in dialogue or music, and to eliminate sibilant speech distortion. Another problem which was brought to the working group's attention during the test sequence was the matter of magnetic tape "print-through." [5] This problem is considered by SMPTE to be the most significant barrier to the successful implementation of any type of subaudible level code signal system with magnetic recording materials.

[5] Magnetic print-through is the unintentional transfer of a recorded signal from one layer of magnetic tape onto adjacent layers.

Conclusions

16. In considering the results of the limited anlaysis the SMPTE working group was able to complete, and the many questions it was unable to answer, the working group concluded that the Audicom system had simply never been developed beyond the basic feasibility breadboard stage, and not to the point where it was ready for any kind of rigorous performance testing. Thus, the working group recommended that it should expend no further effort on behalf of the Audicom system until such time as Audicom had a much more fully developed system. The working group further concluded that the vulnerability of magnetic recordings to magnetic print-through strongly suggests that such print-through could limit the utility of subaudible level code signal systems, if otherwise proven successful, to optical motion-picture sound tracks. The working group concluded by recommending that the development of non-subaudible methods of code signalling be encouraged.

17. In considering the technical acceptablilty of ancillary signals for broadcast stations, one of the restrictions consistently imposed by the Commission is that the ancillary signal not create unacceptable degradation of the regular programming. The Commission has provided ample opportunity for the development and testing of the Audicom and IDC systems during the course of this proceeding. Neither, however, has satisfactorily demonstrated that their proposed systems will perform accurately and reliably without causing unacceptable degradation to the quality of the aural transmission intended for reception by the general public. Therefore, the Audicom and IDC petitions will be denied.

18. Accordingly, it is ordered, that the petitions filed in this proceeding by the Audicom Corporation and the International Digisonics Corporation are denied.

19. It is further ordered, That this proceeding is terminated.

20. For further information contact Bernard Gorden, Broadcast Bureau, (202) 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-4208 Filed 2-4-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-202; RM-3234]

FM Broadcast Station in Goose Creek, South Carolina; Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of Proposed Rulemaking (Report and Order).

SUMMARY: This action dismisses a petition filed by William K. Durst seeking the assignment of FM Channel 269A to Goose Creek, South Carolina. The rule making is dismissed due to a lack of expressed interest in the assignment.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. McGregor, Broadcast Bureau, (202) 653-7586.

SUPPLEMENTARY INFORMATION:

Report and Order—Proceeding Terminated

Adopted: January 22, 1981.

Released: January 28, 1981.

In the matter of amendment of § 73.202(b), FM Broadcast Stations. (Goose Creek, South Carolina)

1. Before the Commission is a *Notice of Proposed Rule Making*, 45 FR 34936, published May 23, 1980, proposing the assignment of FM Channel 269A to Goose Creek, South Carolina, in response to a petition filed by William K. Durst. No comments in support of the petition were filed. Several reply comments were submitted which merely noted that no interest had been expressed in the assignment.

2. According to the Commission's procedures, a showing of continuing interest is required before a channel will be assigned. The original petitioner in this case, William K. Durst, has failed to indicate a continuing interest in the assignment. The period for filing comments in this proceeding has expired and no other party has expressed an interest in an assignment to Goose Creek.

3. In view of the foregoing, it is ordered, that the petition of William K. Durst, proposing the assignment of Channel 269A to Goose Creek, South Carolina, is hereby dismissed.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Michael A. McGregor, Broadcast Bureau, (202) 653-7586.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-4214 Filed 2-4-81; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 512 and 571

[Docket 1-21, Notice 6; Docket 70-27, Notice 21; Docket 70-7, Notice 8; Docket 74-14, Notice 20; Docket 78-10, Notice 4]

Theft Protection; Hydraulic Brake Systems; Fields of Direct View; Occupant Crash Protection; Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Extension of period to file petitions for reconsideration.

SUMMARY: In response to a request from General Motors Corporation, the agency is extending, for 30 days, the period to file petitions for reconsideration of the following five final rules recently issued by the agency: Standard No. 114, *Theft Protection* (45 FR 85450, December 29, 1980), Standard No. 105, *Hydraulic Brake Systems* (46 FR 55, January 2, 1981), Standard No. 128, *Fields of Direct View* (46 FR 40, January 2, 1981), Standard No. 208, *Occupant Crash Protection* (46 FR 2064, January 8, 1981), and Part 512, *Confidential Business Information* (46 FR 2049, January 8, 1981). This action will give manufacturers and other interested parties a total of 60 days from the date of publication of the final rules to file petitions for reconsideration.

The procedural rules governing the filing of petitions for reconsideration are set forth in 49 CFR Part 553. Those rules do not expressly provide for any extension of the time to file a petition for reconsideration. However, in exceptional cases in which the ends of justice so require, the agency has indicated its willingness to make an ad hoc modification of those rules.

The agency believes that this is such a case. A relatively large number of final rules were issued in a relatively short space of time simultaneously with the issuance of a like number of proposals. The agency appreciates the difficulties that may arise for manufacturers because the same personnel will typically be involved in responding to these final rules and proposals. To alleviate the task of developing those responses for GM and for other manufacturers, the agency has decided to extend the period for filing petitions for reconsideration for all interested parties.

DATES: The new closing dates for filing petitions for reconsideration are as follows: February 27, 1981, for Standard No. 114, *Theft Protection;* March 3, 1981, for Standard No. 105, *Hydraulic Brake Systems,* and Standard No. 128, *Fields of Direct View;* and March 9, 1981, for Standard No. 208, *Occupant Crash Protection,* and Part 512, *Confidential Business Information.*

(Secs. 103, 119, 124, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1410); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 28, 1981.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 81-3976 Filed 1-30-81; 10:24 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 46, No. 24
Thursday, February 5, 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.

CIVIL AERONAUTICS BOARD

[81-1-150]

Wien Air Alaska Additional Bush Points Proceeding; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (81-1-150).

SUMMARY: The Board is proposing to award air route authority at the 39 points listed in this attachment to Wien Air Alaska under expedited show-cause procedures.

The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed order shall file, and serve upon all persons listed below, no later than March 6, 1981, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 39075, which we have entitled the *Wien Air Alaska Additional Points Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Wien Air Alaska; the Mayor and Airport Manager of each city to which the pleading refers; the Alaska Division of Aviation, Department of Public Works; the Alaska Transportation Commission; the Postmaster General and the CAB Office of Community and Congressional Relations, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: James F. Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428, (202) 673-5197.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-1-150 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 81-1-150 to that address.

By the Bureau of Domestic Aviation:
January 29, 1981
Phyllis T. Kaylor,
Secretary.

List of Cities

Akhiok, Alaska
Aleknagik, Alaska
Amook, Alaska
Clarks Point, Alaska
Dillingham, Alaska
Egegik, Alaska
Ekuk, Alaska
Ekwok, Alaska
Igiugig, Alaska
Karluk, Alaska
King Salmon, Alaska
Kitoi Bay, Alaska
Kodiak, Alaska
Koliganek, Alaska
Larsen Bay, Alaska
Lazy Bay-Alitak, Alaska
Levelock, Alaska
Manokotak, Alaska
Moser Bay, Alaska
Naknek, Alaska
New Stuyahok, Alaska
Old Harbor, Alaska
Olga Bay, Alaska
Ouzinkie, Alaska
Parks, Alaska
Pilot Point, Alaska
Portage Creek, Alaska
Port Bailey, Alaska
Port Lions, Alaska
Port Williams, Alaska
Queen, Alaska
San Juan, Alaska
Seal Bay, Alaska
South Naknek, Alaska
Terror Bay, Alaska
Togiak, Alaska
Ugashik, Alaska
West Port-Village Isle, Alaska
Zachar Bay, Alaska

[FR Doc. 81-4260 Filed 2-4-81; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Advisory Committee on Minority Enterprise Development; Open Meeting

AGENCY: Office of Business Liaison, Commerce.

SUMMARY: The Committee was established May 11, 1979, to identify, evaluate and make recommendations concerning current and proposed federal and departmental policies, programs and activities pertinent to minority business and economic development.

TIME AND PLACE: February 17, 1981 from 1 p.m. until 5 p.m. The meeting will take place at the Main Commerce Building, Room 5851, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. (public entrance to the building is on 14th Street, between Constitution Avenue and E Street, N.W.)

AGENDA: Develop subject matter and schedules for committee activities for the rest of its term.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 30 minutes will be set aside for oral comments or questions. Approximately 10 seats will be available for the public on a first-come first-serve basis.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. N. S. Downing, Business Liaison Officer, Office of Business Liaison, Main Commerce Building, Washington, D.C. 20230, telephone 202-377-3716.

N. S. Downing,
Associate Deputy for Business Liaison, Office of Business Liaison.

Dated: February 2, 1981.

[FR Doc. 81-4257 Filed 2-4-81; 8:45 am]
BILLING CODE 3510-17-M

International Trade Administration

Clear Plate and Float Glass From Japan; Preliminary Results of Administrative Review of Antidumping Finding and of Tentative Determination To Revoke

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

ACTION: Notice of preliminary result of administrative review of antidumping finding and of tentative determination to revoke.

SUMMARY: This notice is to advise the public that, as a result of an

administrative review of the antidumping finding on clear plate and float glass from Japan, the Department of Commerce has tentatively determined to revoke such finding. All sales to the United States by Asahi Glass Co., Ltd., and Nippon Sheet Glass Co., Ltd. were made at not less than fair value from July 1, 1973 through February 17, 1977. All sales by Central Glass Co., Ltd. were made at not less than fair value from January 1, 1975 through February 17, 1977. There is no indication of sales at less than fair value by these three companies since that time. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: February 5, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Seiger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3986).

SUPPLEMENTARY INFORMATION:

Procedural Background

On May 18, 1971, a dumping finding with respect to clear plate and float glass from Japan was published in the **Federal Register** as Treasury Decision 71-130 (36 FR 9009). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise was published by the Department of the Treasury on February 17, 1977 (42 FR 9740). Reasons for the tentative determination were given in the notice and interested parties were given an opportunity to present written and oral views. The petitioner presented arguments opposing revocation. However, petitioner failed to supply additional information requested by Treasury as necessary to confirm these arguments; thus, Treasury discontinued investigation of the opposing arguments and took no further action on the proposed revocation.

On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). 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 dumpings findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on clear plate and float glass from Japan. The substantive provisions of the 1921 Act apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Merchandise covered by this review is clear plate and float glass currently classifiable under items 543.2100-543.3100 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of three Japanese exporters of clear plate and float glass to the United States: Ashai Glass Company, Ltd., Central Glass Company, Ltd., and Nippon Sheet Glass Company, Ltd. In the case of Central Glass Company, Ltd., the review covers the period January 1, 1975 through February 17, 1977, the date of the "Tentative Determination to Modify or Revoke Dumping Finding". In the case of Asahi Glass Company, Ltd., and Nippon Sheet Glass Company, Ltd., the review covers the period July 1, 1973 through February 17, 1977. The Treasury Department previously reviewed all earlier periods covered by the finding and issued appraisement instructions ("master lists") for those periods. The issue of the Department's obligation to conduct administrative review of entries, unliquidated as of January 1, 1980 and covered by prior master lists, is under review. Liquidation has been suspended pending disposition of the issue.

Purchase Price

The Department used purchase price, as defined in section 203 of the 1921 Act, since all sales by Asahi Glass Co., Ltd., Central Glass Co., Ltd., and Nippon Sheet Glass Co., Ltd. were made to unrelated purchasers.

Purchase prices here are ex-factory, packed, and are based on the United States delivered price or, when applicable, the United States delivered, duty-paid price, with deductions for cash discounts, U.S. and foreign inland freight, commissions, U.S. duty, marine insurance, brokerage and port charges, ocean freight and currency surcharges (in the case of Asahi Glass Co., Ltd.). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating the foreign market value, the Department used the home market price as defined in section 205 of the 1921 Act. Foreign market values here are packed, ex-factory prices and are derived from the delivered prices with adjustments for cash discounts, various discounts relating to sales, rebates, transport charges, advertising expenses, compensation for breakage, interest cost, and promotional aids to distributors, when applicable. Certain other selling expenses were allowed as an offset to commissions paid. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of purchase price to foreign market value, we have concluded that there were no sales at less than fair value by Asahi Glass Co., Ltd. and Nippon Sheet Glass Co., Ltd. for the period July 1, 1973 through February 17, 1977. In the case of Central Glass Co., Ltd., there were no sales at less than fair value for the period January 1, 1975 through February 17, 1977. There is no indication of any sales at less than fair value by these three firms since that time.

As provided for in section 353.54(e) of the Commerce Regulations, Asahi Glass Co., Ltd., Nippon Sheet Glass Company, Ltd., and Central Class Co., Ltd. have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that the merchandise thereafter imported into the United States (clear plate and float glass) is being sold at less than fair value.

Tentative Determination

As a result of our review, we tentatively determine to revoke the finding on clear plate and float glass from Japan. If the finding is revoked, it shall apply with respect to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after February 17, 1977. Interested parties may submit written comments on or before March 9, 1981, and request disclosure and/or a hearing within 15 days of the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

This administrative review, tentative determination to revoke and notice publication are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1),(c)) and § 353.54(e) of Commerce Regulations (19 CFR 353.54(e)).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

January 19, 1981.

[FR Doc. 81-4272 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-17-M

Exporters' Textile Advisory Committee; Management-Labor Textile Advisory Committee; Renewal

AGENCY: International Trade Administration.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976) and Office of Management and Budget Circular A-63 (Revised), and after consultation with General Services Administration, the delegate of the Secretary of Commerce has determined that the renewal of the Exporters' Textile Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Exporters' Textile Advisory Committee and the Management-Labor Textile Advisory Committee were initially established March 24, 1966 and October 18, 1961, respectively.

The Exporters' Textile Advisory Committee, based on its members' experience and expertise in textile and apparel exporting, will continue to advise Department and other government officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion. Exporters are the group best able to apprise the U.S. Government of the impact of foreign restrictions and other factors affecting textile imports.

The Management-Labor Textile Advisory Committee will continue to advise Department officials on problems and conditions in the textile and apparel industry. The Committee will furnish information on world trade in the textiles and apparel, including data on the operation and effectiveness of textile agreements, to the Department and to the Committee for the Implementation of Textile Agreements, the Textile Trade Policy Group, U.S. representatives to the General Agreement on Tariffs and Trade, and U.S. negotiators of textile agreements. The information and recommendations of the Committee are not only essential to the effective functioning of the textile agreements but are invaluable to U.S. negotiators in developing new textile agreements.

The membership of the Exporters' Advisory Committee will consist of approximately 30 members who are associated with the textile and apparel exporting industry and consumer or public interest groups. The membership of the Management-Labor Textile Advisory Committee will consist of approximately 40 members who are associated with the domestic textile and apparel industry, labor unions, and consumer or public interest groups. The members of both committees are appointed by the Secretary of Commerce for two-year terms.

These Committees will function solely as advisory bodies and in compliance with the Federal Advisory Committee Act. The charters will be filed with the appropriate committees of the Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Committee Control Officer, Arthur Garel, Director, Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, Room 2808, Washington, D.C. 20230, telephone: (202) 377-5078 or Mrs. Yvonne Barnes, the Department's Committee Management Analyst, U.S. Department of Commerce, (202) 377-4217.

Dated: January 28, 1981.

Clifford J. Parker,

Acting Assistant Secretary for Administration.

[FR Doc. 81-4270 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-17-M

Leather Wearing Apparel From Argentina; Proposal Concerning Suspension of Investigation

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of proposal concerning suspension of investigation.

SUMMARY: The Department of Commerce is considering a proposal submitted by the Government of Argentina regarding a basis for the suspension of the countervailing duty investigation involving leather wearing apparel from Argentina. The petitioner has been separately notified of and is being consulted regarding the proposal to suspend the investigation. All other parties to the investigation have also been notified of the proposal.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Vince Kane, Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230, (202) 377-5414.

SUPPLEMENTARY INFORMATION: On January 15, 1981, the Department of Commerce issued an affirmative preliminary countervailing duty determination relating to leather wearing apparel from Argentina, currently classified under TSUS 791.76 (46 FR 3582). A final determination in the investigation is to be made no later than March 24, 1981.

On January 28, 1981, the Government of Argentina informed the U.S. Government that it had taken the following actions:

(1) No shipments of Argentine wearing leather apparel to the United States on or after January 28, 1981, will benefit, directly or indirectly, from any reembolso payment constituting a subsidy; and

(2) No shipments of Argentine leather wearing apparel to the United States on or after January 28, 1981, will receive, directly or indirectly, preferential pre-export financing determined to be a subsidy in the Commerce Department's preliminary determination.

The Government of Argentina has also certified that no new or equivalent program will be substituted for the programs eliminated by virtue of the actions described above. The Government of Argentina agreed to notify the United States if it contemplates, or decides to change its position with respect to any of these actions. In order to assist the Department in monitoring any suspension agreement which may be concluded, the Government of Argentina has committed itself to permit any verification of compliance with the agreement deemed appropriate by the Department.

The Department of Commerce has determined that the actions and commitments announced by the Government of Argentina form an appropriate basis for *proposing* the suspension of the countervailing duty investigation of leather wearing apparel from Argentina pursuant to section 704(b) of the Tariff Act of 1930, as amended (93 Stat. 154, 19 U.S.C. 1671c(b)). This determination is based upon the actions of the Government of Argentina to eliminate any subsidy being paid on exports of leather wearing apparel to the United States and the commitment of the Government of Argentina to cooperate with the Commerce Department's procedures for monitoring any agreement.

The Department has informed the petitioner of the proposal for suspending this investigation, has supplied him with a copy of the proposed agreement and is being consulted with respect to it. All other parties to the investigation also have been notified of the proposal submitted by the Government of Argentina and are being provided an opportunity to submit comments.

As was stated in the Department's preliminary determination, the Government of Argentina has

cooperated in all facets of this investigation. Its actions of January 1981 are further evidence of its appreciation of, and desire to address, the concerns of the U.S. Government regarding Argentine leather wearing apparel exports to the U.S.

In view of the actions taken by the Government of Argentina which completely eliminate all the benefits presently considered to exist by the Commerce Department in its preliminary determination and the circumstances enumerated above, the Department has determined that the security required to be posted on all entries of leather wearing apparel from Argentina exported on or after January 28, 1981, be reduced to zero. Exports made before that date, and which entered the U.S. or were withdrawn from warehouse for consumption, after January 15, 1981, would be required to post security as set out in the preliminary determination unless documentation can be provided which satisfies the U.S. Commerce Department that a lesser amount of benefit be applied to a particular entry or entries.

If the Department accepts the proposed agreement and suspends the investigation, the Government of Argentina has requested that the investigation be continued pursuant to section 704(g) of the Tariff Act. In such circumstances, the Department would act expeditiously to make a final determination and would fully analyze all data supplied by the Government of Argentina in support of its position that the reembolso is a *bona fide* non-excessive rebate of allowable indirect taxes and to more precisely calculate the actual level of utilization and incidence of the pre-export financing program.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-4271 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-17-M

President's Export Council, Export Administration Subcommittee; Renewal

AGENCY: International Trade Administration, Department of Commerce.

ACTION: The purpose of this notice is to announce the renewal of the Subcommittee on Export Administration of the President's Export Council.

SUPPLEMENTARY INFORMATION: The Subcommittee was originally established as a subordinate committee of the President's Export Council pursuant to the provisions of Section 3 of Executive Order 11753 on June 1, 1976.

SUMMARY: The Subcommittee is being renewed pursuant to Executive Order 12258 of December 31, 1980. The Subcommittee advises on matters pertinent to those portions of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security, foreign policy, and short supply reasons.

Representatives shall be balanced among large and small firms, and to the extent possible, shall be from all parts of the country. They shall be appointed by the Secretary of Commerce and will serve at his discretion.

FOR FURTHER INFORMATION CONTACT: Director, Office of Export Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-4291 or Ms. Yvonne Barnes, Department of Commerce, Commerce Management Analyst, (202) 377-4217.

Dated: January 28, 1981.

Clifford J. Parker,

Acting Assistant Secretary for Administration.

[FR Doc. 81-4269 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-17-M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency announces that it is seeking applications under its program to operate one project for a twelve month period beginning June 1, 1981. The total cost of the project will not exceed $340,000.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority business persons and firms for the purpose of improving their stability by increasing their management and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

—Preparation of business plans;
—Financial packaging;
—Industrial management assistance;
—Personnel management services;
—Marketing planning;

and a broad range of other business services excluding legal services. Applications are invited for the following project:

One grant for a management and technical assistance project to operate in the Greensboro-Winston Salem-Highpoint, Raleigh-Durham, and Charlotte-Gastonia SMSAs in North Carolina. The project will operate at a cost not to exceed $340,000, and will include supplying specialized consulting services. The Project I.D. Number is 04-10-80006-01.

Eligibility Requirements: There are no restrictions. Any profit or nonprofit institution is eligible to submit an application.

Pre-application Conference: A Pre-application Conference for this project will be held on February 27, 1981 at 1:30 p.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Atlanta, Georgia 30309.

Application Materials: An application kit for this project may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, 1365 Peachtree Street, NE, Room 225, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status; i.e., State or local government, federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of March 13, 1981.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance) (This program is not subject to the requirements of OMB Circular A-95).

Dated: January 28, 1981.

Gordon M. Anderson,

Acting Regional Director.

[FR Doc. 81-4294 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Issuance of General Permits to Incidentally Take Marine Mammals

On January 29, 1981, general permits were issued to:

1. Hochseefischeri Nordstern AG, Bremerhaven, West Germany (Category 1); and
2. The Asociacion Nacional de Armadores de Buques Congeladores de Pesquerias Varias, Vigo, Spain.

for the taking of marine mammals incidental to commercial fishing operations within the United States Fishery Conservation Zone, pursuant to 50 CFR 216.24 (45 FR 72187-72196). The general permits are available for public review in the Office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.

Dated: January 29, 1981.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 81-4258 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-22-M

Taking of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Assistant Administrator for Fisheries, in consultation with the Department of State, has determined that a finding of conformance with U.S. marine mammal regulations can no longer be made for the Government of Mexico. By rescinding the previously affirmative finding, Mexico will not be permitted to export yellowfin tuna or tuna products to the United States. However, since this country is currently prohibited from exporting yellowfin tuna to the United States under provisions of the Magnuson Fishery Conservation and Management Act (MFCMA), this prohibition will not affect Mexico unless the MFCMA prohibition is removed.

EFFECTIVE DATE: February 1, 1981.

FURTHER INFORMATION CONTACT: Robert B. Brumsted, Chief, Permits and Documentation Division, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235 (Telephone: (202) 634-7529).

SUPPLEMENTAL INFORMATION: The National Marine Fisheries Service (NMFS) published regulations in the **Federal Register** on December 23, 1977 (42 FR 64551-64560), governing the taking of marine mammals incidental to commercial fishing operations. These regulations, which were amended on October 31, 1980 (45 FR 72178-72196) include provisions concerning the importation of yellowfin tuna and tuna products from nations known to be involved in the eastern tropical Pacific tuna purse seine fishery. Importation of yellowfin tuna and tuna products from these countries is contingent upon certain findings by the Assistant Administrator for Fisheries in accordance with § 216.24(e)(5). To insure that the conditions under which the original finding was made continue to exist, the Assistant Administrator for Fisheries requires an annual update of the items listed in § 216.24(e)(5)(ii). Failure to supply this information may result in a revocation of a finding.

On October 27, 1977 (42 FR 56617), the Assistant Administrator for Fisheries made a determination that Mexico's tuna purse seine fleet was fishing in conformance with U.S. marine mammal regulations and on May 16, 1980, requested updated information, due September 1, 1980, pertaining to the 1979 fishing year. However, on July 15, 1980, the Department of the Treasury noted in the **Federal Register** (45 FR 47562) that effective July 14, 1980, "the entry for consumption * * * of tuna and tuna products from Mexico is prohibited until the Department of State notifies the Secretary of the Treasury that the reasons for this prohibition no longer prevail." This prohibition is imposed under section 205(a)(4)(C) of the MFCMA which provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the United States. The seizure of a U.S. tuna vessel on July 9, 1980, by Mexico resulted in the imposition of this embargo. In consequence thereof, the Government of Mexico did not submit the information requested on May 16, 1980.

Of primary importance in making a finding of conformance with U.S. marine mammal regulations is a certification by the requesting nation that each purse seine vessel over 400 tons carrying capacity and fishing in the eastern tropical Pacific Ocean has installed a porpoise apron in the 1¼ inch porpoise safety (Medina) panel of the net. Therefore, until such time as the Government of Mexico forwards this certification and other requested information, I find that I cannot make a determination that the Mexican tuna purse seine fleet is fishing in conformance with U.S. marine mammal regulations nor that they are fishing in a manner that does not result in an incidental mortality in excess of that which results from U.S. fishing operations. Accordingly, yellowfin tuna and tuna products may not be exported to the United States from Mexico until the embargo under the provisions of the MFCMA is removed, and a determination is made that tuna vessels of the Government of Mexico are in compliance with the provisions of the regulations governing the taking of marine mammals incidental to commercial fishing operations.

Dated: January 30, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-4259 Filed 2-4-81; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Coastal Engineering Research Board.

The meeting will be held in the conference room of the Flagship Hotel, 25th Street and Seawall Blvd., Galveston, Texas, from 8:30 a.m. to 4:00 p.m. on 10 March and from 8:30 a.m. to 11:40 a.m. on 12 March.

The 10 March session will be devoted to Action Items from last meeting of the Coastal Engineering Research Board; presentations on the Atlantic Remote Sensing Land Ocean Experiment; Publications and Development of Engineer Manuals on Coastal Engineering; Floating Breakwater Prototype Testing; Damage & Recovery—Hurricane Allen; Galveston Seawall (history, grade-raising and groin

field); Hurricane flood problems; and Galveston District's shore erosion study.

The entire day of 11 March will be devoted to a field inspection by bus of projects within the Galveston District.

The morning of 12 March will be devoted to discussion of the field inspection, the Southwestern Division's research needs, and the Coastal Engineering Research Board's recommendations.

Participation by the public is scheduled for 9:00 a.m. on 12 March. Members of the public may attend field inspection trip but must provide own transportation.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room at the Flagship Hotel is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Ted E. Bishop, Executive Secretary, Coastal Engineering Research Board, Kingman Building, Fort Belvoir, Virginia 22060.

Dated: 26 January 1981.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 81-4179 Filed 2-4-81; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on Anti-Tactical Missiles; Advisory Committee Meeting

The Defense Science Board Task Force on Anti-Tactical Missiles(ATM) will meet in closed session on 24–25 February 1981 in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on 24–25 February 1981 the Defense Science Board Task Force on ATM will review the potential enemy development of new ballistic and cruise missiles and propose and evaluate options for countering such threats.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

February 2, 1981.

[FR Doc. 81-4256 Filed 2-4-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement With Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the retransfer from Denmark to Sweden of 8,945.9 grams of Uranium, containing 26.9 grams U-235, and 115.5 grams of Plutonium. This material is to be transferred to Sweden for subsequent retransfer to Italy for storage, together with other materials in order to reduce transportation costs. The subsequent retransfer to Italy will require separate approval by the U.S.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer, designated as RTD/SW(EU)–115 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 30, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-4157 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Civil Uses of Atomic Energy; Proposed Subsequent Arrangement With Sweden

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of the Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the retransfer of 8,945 grams of uranium, containing 26.9 grams of U–235 and 115.5 grams of Plutonium from Sweden to Italy for storage and ultimate processing for waste disposal.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement, designated as RTD/EU(SW)–56 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 30, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-4158 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements; U.S. and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned

agreement involve approval of the following sales:

Contract Number S–EU–679, to Kernforschungsanlage, Julich, Federal Republic of Germany, 16.55 grams of natural uranium, to be used as standard reference material.

Contract Number S–EU–680, to Franco-Belge de Fabrication de Combustibles, France, 1,187.2 grams of natural uranium for use as standard reference material.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 29, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-4276 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; U.S. and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1953, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of 2 milligrams of Thorium, enriched to greater than 80% in Th-230, for the analysis of thorium content in rocks by the University of Rennes, France.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials under Contract No. S–EU–678 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: January 29, 1981.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-4277 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Consent Order; Young Refining Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action Taken and Opportunity for Comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: *Effective date* is January 19, 1981. Comments by: March 6, 1981.

ADDRESS: Send written comments to: Bernard Fleischer, Program Manager, Production Programs, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367.

FOR FURTHER INFORMATION CONTACT: Robert H. Burch, Management Analyst, U.S. Department of Energy, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, Telephone (404) 881–2396.

SUPPLEMENTARY INFORMATION: On January 19, 1981, the Office of Enforcement of the ERA finalized a Consent Order with Young Refining Corporation, a Douglasville, Georgia, small refiner. Under 10 CFR 20.5.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution. Because of the settlement negotiations involved in this case and the desire to conclude this matter expeditiously, the DOE has determined that it is in the public interest to make the Consent Order with Young Refining Corporation, effective thirty (30) days from the date of its publication in the **Federal Register.**

I. The Consent Order:

Young Refining Corporation (Young), located in Douglasville, Georgia, is a small refiner, and is subject to the jurisdiction of the DOE with regard to prices charged in sales of covered products, pursuant to 6 CFR 150.352 from August 19, 1973 through January 14, 1974 and 10 CFR 212.83 after January 14, 1974. To resolve certain civil actions which could be brought by the Office of Enforcement of the ERA as a result of its audit of Young. The Office of Enforcement, ERA, and Young entered into a consent Order, the significant terms of which are as follows:

1. The Consent Order relates to sales of covered products by Young during the period August 19, 1973 through April 1974.

2. From the audit conducted during the above period, the Office of Enforcement considered Young's determination regarding classes of purchaser and May 15, 1973 selling prices to each class of pruchaser; the calculations of Young's May 1973 product and non-product costs; the calculations of Young's monthly increased costs and allocation of increased costs among and within classes of purchaser and product categories. The calculations of Young's unrecouped cost increases and recoveries of increased costs; calculations of Young's maximum allowable prices for products covered by this Consent Order and calculations and reports filed by Young on Form FEO–96.

3. Young agrees to refund the total sum of $75,000, in full settlement of any and all civil liability within the jurisdiction of DOE during the audit period the refunded total shall be paid by certified check within sixty (60) days of the effective date of the Consent Order and submitted to the Office of the Assistant Administrator for Enforcement, ERA, Washington, D.C. The Assistant Administrator shall direct that this sum be deposited in a suitable account for distribtution in a just and equitable manner in accordance with applicable laws and regulations.

4. Young agrees, within sixty (60) days of the effective date of this Consent Order to issue a certified check in the amount of $5,000 to the U.S. Department of Energy as civil penalty payment.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges:

In the Consent Order, Young agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. and I.3., above, the sum of $75,000 within sixty (60) days of execution of the Consent Order. Refund methodology will be as specified in I.3., above. The amount submitted to the Assistant Administrator will be in the form of a certified check made payable to the U.S. Department of Energy and will be

delivered to the Office of the Assistant Administrator for Enforcement, ERA. This submission will remain in a suitable account pending the determination of proper disposition.

The DOE intends to distribute the refunded amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program 10 CFR 211.67.

In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments:

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now beign required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your coments or written notification of a claim to Bernard Fleischer, Program Manager, Production Programs, Department of Energy, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367. You may obtain a copy of this Consent Order with proprietary information deleted, by writing to the same address.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Young Consent Order." Comments received by 4:30 p.m., local time March 6, 1981, will be considered. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f)

Issued in Atlanta, Georgia, on the 20th day of January 1981.

James C. Easterday,

District Manager of Enforcement.

Concurrence:

Leonard F. Bittner,

Chief Enforcement Counsel.

[FR Doc. 81-4275 Filed 2-3-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-027; OFC Case No. 62009-9170-01-12, 62009-9170-02-12]

Foster Wheeler, Weirton, Inc.; Availability of Tentative Staff Determination on Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Tentative Staff Determination.

SUMMARY: On May 16, 1980, Foster Wheeler Weirton, Incorporated (Foster Wheeler) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting two new major fuel burning installations (NFBIs) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBIs. Criteria for petitioning for exemptions from the prohibitions of FUA are published at 10 CFR Parts 501 and 503 (45 FR 38276, June 6, 1980).

The MFBIs for which the petition was filed are two identical field-erected boilers to be constructed at Foster Wheeler's National Steel Division, Weirton, West Virginia. Foster Wheeler requested a permanent fuels mixture exemption for each of the MFBIs in order to burn natural gas in a mixture with blast furnace gas.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Analysis has been made recommending that ERA issue an order which would grant the requested permanent exemption to use a mixture of natural gas and blast furnace gas. The natural gas to be used in the units will not exceed 25 percent of the total annual Btu heat input of the primary energy source of the units.

DATES: Written comments on the Tentative Staff Analysis are due on or before February 19, 1981. A request to convene a public hearing must be made within the same period.

ADDRESSES: Fifteen copies of written comments on the Tentative Staff Analysis shall be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461.

Docket No. ERA-FC-80-027 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, (202) 653-4226.

Ellen Russell, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, (202) 653-4265.

Marilyn L. Ross, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2967.

The public file containing a copy of the Tenative Staff Analysis and other documents and supporting materials on this proceeding is available upon request at: ERA, Room B-110, 2000 M Street, NW., Washington, D.C., Monday through Friday, 8:00 a.m.-4:30 p.m.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published Interim Rules on May 15 and 17, 1979 (44 FR 28530 and 44 FR 28950), to implement provisions of Title II of FUA. ERA has also published Final Rules (10 CFR Part 503) relating to new facilities on June 6, 1980 (45 FR 38276 and 45 FR 38302) which became effective August 5, 1980. Title II of the FUA prohibits the use of natural gas or petroleum in certain new MFBIs unless an exemption for such use has been granted.

Foster Wheeler Weirton (Foster Wheeler) is constructing at its National Steel Division, Weirton, West Virginia, two identical field-erected boilers each of which will have a design heat input rate capability of 497 million Btu's per hour, a stean generating capacity of 350,000 pounds per hour, and will be capable of burning blast furnace gas in a mixture with natural gas.

On May 16, 1980, in accordance with section 505.28 of the Interim Rules, Foster Wheeler filed a petition with ERA requesting a permanent fuels mixture exemption for each of the boilers (designated as Boilers Nos. 1 and 2 by Foster Wheeler) in order to burn concurrently a fuels mixture of blast furnace gas and natural gas. On June 20, 1980, Foster Wheeler requested that its petition be processed using the Final Rules published June 6, 1980, rather than the Interim Rules. ERA accepted the petition and published notice of its acceptance in the **Federal Register** on August 20, 1980 (45 FR 55518). A 45-day public comment period closed October 6, 1980, and no comments were received.

ERA's staff has reviewed the information contained in the record of this proceeding to date. Based upon that review, a Tentative Staff Analysis has been made which recommends that an order be issued which would grant a permanent fuels mixture exemption for Boilers Nos. 1 and 2 to use a blast furnace gas/natural gas fuels mixture in each unit, provided that the amount of natural gas used does not exceed 25 percent of the total annual Btu heat input of the primary energy source used in each MFBI. This Tentative Staff Analysis also takes into account the purposes for which the minimum percentage of natural gas provided by a fuels mixture exemption is to be used, i.e., to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Therefore, should this exemption be granted, ERA will not exclude any fuel from the definition of primary energy source for the purposes of unit ignition, start-up, testing, flame stabilization, and control uses for Boilers Nos. 1 and 2.

This recommendation is based upon the petitioner's demonstration pursuant to section 212(d)(1)(A) and (B) of the Act that he proposes to use a mixture of blast furnace gas and natural gas as a primary energy source in the installation, and that the amount of natural gas to be used will not exceed 25 percent of the annual Btu heat input of these units.

On August 11, 1980, DOE published in the **Federal Register** (45 FR 53199) a notice of proposed amendments to the guidelines for compliance with the National Environmental Policy Act of 1979 (NEPA). The granting or denial of permanent fuels mixture exemption under the provisions of 10 CFR 503.38(c) is one of the actions under FUA which the DOE has identified as an action which normally does not require an Environmental Impact Statement or an Environmental Assessment (categorical exclusion). Foster Wheeler provided as a part of its petition a duly executed certification that prior to operating Boilers Nos. 1 and 2 under the requested exemption it will secure all applicable environmental permits and approvals. The Environmental Checklist completed and certified to by Foster Wheeler pursuant to 10 CFR § 503.5(b) has been reviwed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and it has been determined that Foster Wheeler's responses to the questions therein indicate that the operation of the boilers will have no impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirms the applicability of the categorical exclusion to this FUA action. Therefore, unless substantial questions regarding the categorical exclusion in this instance are raised during the proceeding on Foster Wheeler's petition which would indicate otherwise, no additional environmental review is deemed to be required.

Recommended Terms and Conditions: ERA's staff also has tentatively determined and recommends that any order which would grant the fuels mixture exemption to Foster Wheeler should, pursuant to section 214 of the Act, be subject to the following terms and conditions:

1. No petroleum, as that term is defined in section 103(a)(4) of the Act, shall be used in these two boilers.

2. The amount of natural gas used in Boilers Nos. 1 and 2 shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources of each of these units.

3. In accordance with the reporting requirement in section 403.38(g) of the Act, Foster Wheeler will submit an annual report to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW, Washington, DC 20461, each year on the anniversary of the boiler being placed in service. The certified statement should contain the following information and be presented in the format below.

Boiler No.	Fuel type	Amount used (Mcf)	Btu equivalent	Percent of annual fuel consumption
1	Blast Furnace gas			
1	Natural gas			
2	Blast furnace			
2	Natural gas			

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with 10 CFR 503.38, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

ERA will issue a final order granting or denying the permanent exemptions from the prohibitions of the Act within six months after the public comment period provided for in this notice has expired, unless ERA extends such period. Notice of any extension together with a statement of reasons for such an extension, will be published in the **Federal Register.**

Issued in Washington, DC, on January 17, 1981.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

Tentative Staff Analysis—Foster Wheeler Weirton—Permanent Fuel Mixtures

Foster Wheeler Weirton Incorporated (Foster Wheeler) is constructing at its National Steel Division, Weirton, West Virginia, two identical field-erected boilers (designated as Boilers Nos. 1 and 2 by Foster Wheeler). These boilers will have a design heat input rate of 497 million Btu's per hour and a steam generating capacity of 350,000 pounds per hour each. Foster Wheeler proposes to use as the primary energy source in the new boilers blast furnace gas in a mixture with natural gas. Foster Wheeler states that construction of these boilers is necessary to produce the steam needed to meet the energy requirements of its National Steel Division.

The Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) prohibits the use of petroleum or natural gas in certain new major fuel burning installations (MFBIs). On May 16, 1980, Foster Wheeler petitioned the Economic Regulatory Administration pursuant to section 505.28 of ERA's Interim Rules implementing FUA for a permanent fuels mixture exemption from the prohibitions of FUA. Foster Wheeler proposes to burn a fuels mixture of blast furnace gas and natural gas in these new boilers. On June 20, 1980, Foster Wheeler requested that its petition be processed using the guidelines of the Final Rules, 10 CFR 503.38, which became effective on August 5, 1980, rather than the Interim Rules.

ERA accepted Foster Wheeler's petition on August 14, 1980, and

published notice of its acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption in the Federal Register on August 20, 1980 (45 FR 55518). Acceptance of the petition began a 45-day public comment period which provided interested persons with the opportunity to file comments on the petition for exemption. The comment period expired October 6, 1980. No comments were submitted.

The ERA staff has reviewed all of the information contained in the record of this proceeding to date. The following summarizes the results of that review.

In accordance with 10 CFR 503.38, a permanent fuels mixture exemption under section 212(d) of the Act may be granted if the petitioner can demonstrate to the satisfaction of ERA that he proposes to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source; and that the amount of petroleum or natural gas proposed to be used in the mixture will not exceed the minimum percentage of the total annual Btu heat imput of the primary energy source needed to maintain operational reliability of the installation consistent with maintaining a reasonable level of fuel efficiency. 10 CFR § 503.38(b) stipulates that ERA will not require that the percentage of petroleum or natural gas used in the mixture be less than 25 percent of the total annual Btu heat input of the installation. In cases where a petitioner proposes to use 25 percent or less petroleum or natural gas, a certification to that fact, executed by the petitioner's duly authorized representative, satisfies the evidentiary requirement with respect to the minimum percentage of petroleum or natural gas needed to maintain operational reliability and a reasonable level of fuel efficiency.

In meeting the eligibility requirements of 10 CFR 503.38(c)(1), pursuant to section 212(d)(A) and (B) of the Act, Foster Wheeler proposes to burn, as a primary energy source, a mixture of blast furnace gas and natural gas in its Nos. 1 and 2 boilers. The blast furnace gas is a waste gas consisting of CO, CO_2, H_2, and N_2 on a volume basis. Foster Wheeler contends that the use of natural gas in a mixture with the flast furnace gas is necessary to provide fuel stabilization for ignition and combustion. Foster Wheeler projects their blast furnace gas consumption, on an annual Btu heat input basis, to be approximately 75 percent, and the natural gas will not exceed 25 percent. Foster Wheeler provided certification, signed by a duly authorized representative of the Company stating that the amount of natural gas to be used in the proposed mixture shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that unit. This certification satisfies the requirement of 10 CFR 503.38(d)(1).

Based upon its review and analysis, the ERA staff has tentatively determined that Foster Wheeler has demonstrated, pursuant to section 212(d) of the Act, that it is eligible for the requested permanent fuels mixture exemption. Therefore, ERA's staff recommends that Foster Wheeler should be granted the requested permanent exemption from the prohibitions of Title II of the Act to enable it to burn a mixture of blast furnace gas and natural gas in Boilers Nos. 1 and 2, provided that the amount of natural gas to be used in the unit does not exceed 25 percent of the total annual Btu heat input of that unit. This tentative analysis also takes into account the purpose for which the minimum percentage of natural gas provided by a fuels mixture exemption is to be used, i.e., to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Accordingly, should this exemption be granted, ERA will not exclude any fuel from the definition of primary energy source for the purposes of unit ignition, start-up, testing, flame stabilization, and control uses for Boilers Nos. 1 and 2.

On August 11, 1980, DOE published in the Federal Register (45 FR 53199) a notice of proposed amendments to the guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). The granting or denial of a permanent fuels mixture exemption under the provisions of 10 CFR § 503.38(c) is one of the actions under FUA which the Department of Energy (DOE) has identified as an action which normally does not require an Environmental Impact Statement or an Environmental assessment (categorical exclusion). Foster Wheeler provided as a part of its petition a duly executed certification that prior to operating Boilers Nos. 1 and 2 under the requested exemption it will secure all applicable environmental permits and approvals. The Environmental Checklist completed and certified to by Foster Wheeler pursuant to 10 CFR § 503.15(b) has been reviewed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and it has been determined that Foster Wheeler's responses to the questions therein indicate that the operation of the boilers will have no impact on those areas regulated by specified laws that impose consultation requirements on DOE, and otherwise affirms the applicability of the categorical exclusion to this FUA action. Therefore, unless substantial questions regarding the categorical exclusion in this instance are raised during the proceeding on Foster Wheeler's petition which would indicate otherwise, no additional environmental review is deemed to be required.

Recommended Terms and Conditions: Section 214(a) of the act gives ERA the authority to attach terms and conditions to any order granting an exemption. Based upon the information submitted by Foster Wheeler, and upon the results of the staff analysis, the ERA staff has tentatively determined and recommends that any order which would grant the exemption described above should, pursuant to section 214(a) of the act, be subject to the following terms and conditions:

1. No petroleum, as that term is defined in section 103(a)(4) of the act, shall be used in these boilers.

2. The amount of natural gas used in these boilers shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources of each of these units.

3. In accordance with the reporting requirement in section 403.38(g) of the act, Foster Wheeler will submit an annual report to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW, Washington, D.C. 20461, each year on the anniversary of the boiler being placed in service. The certified statement should contain the following information and be presented in the format below.

Boiler No.	Fuel type	Amount used (Mcf)	Btu equivalent	Percent of annual fuel consumption
1	Blast furnace gas.			
1	Natural gas			
2	Blast furnace gas.			
2	Natural gas			

The Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with 10 CFR 503.38 of the Final Rules, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

[FR Doc. 81-4274 Filed 2-4-81; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. E-8851]

Alabama Power Co.; Filing

January 30, 1981.

The filing company submits the following:

Take notice that on January 9, 1981, Alabama Power Company submitted for filing a modified cost of service study. Said Study is being submitted pursuant to Commission Opinion No. 54.

A copy of this filing has been served upon all 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 20, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4223 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1933-000]

Arthur V. Dienhart; Filing

January 30, 1981.

Take notice that on January 21, 1981, Arthur V. Dienhart submitted an application, pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—Plant Engineering and Construction, Northern States Power Company (Minnesota) (Public Utility)

Vice President—Plant Engineering and Construction, 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 §§ 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 25, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4224 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3745-000]

Atlantic Power Development Corp.; Application for Preliminary Permit

January 29, 1981.

Take notice that Atlantic Power Development Corporation (Applicant) filed on November 17, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)] for proposed Project No. 3745 to be known as the Cacapon Water Power Project located on the Cacapon River in Morgan County, West Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Attorney Thomas F. Nolan IV, 401 C Street N.E., Washington, D.C. 20002. 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 the following existing works: (1) a concrete dam with a maximum height of 12 feet and a crest length of 370 feet; (2) a reservoir having a surface area of approximately 12 acres at elevation, 440 feet m.s.l., and a storage capacity of 100 acre-feet; (3) a presently unused powerhouse located downstream from the dam on the opposite side of an adjoining ridge; and (4) appurtenant works.

The Applicant proposes to refurbish the existing facilities and install generating equipment having a capacity of 720 kW and an estimated average annual energy output of 3,150,000 kW.

The Cacapon Dam and Reservoir is owned by the State of West Virginia.

Purpose of Project—Project power would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of two years, during which time Applicant would study existing construction plans, topographical surveys, hydrologic studies and the operating history of the development. The environmental impacts involved with the activation of the site will also be studied during the permit period.

Depending upon the outcome of the studies, the Applicant would prepare an application for FERC license. Applicant estimates the cost of studies under the permit would be $60,000.

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 3, 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 2, 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 3, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3745. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4225 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3610-000]

Banister Development Ltd.; Application for Preliminary Permit

January 30, 1981.

Take notice that Banister Development Ltd. (Applicant) filed on October 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3610 to be known as the Banister Dam located on the Banister River in Halifax County, Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Kenneth Lever, 6566 France Avenue South, Minneapolis, Minnesota 55435. 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) an existing dam, approximately 569 feet long having a maximum height of 40 feet; (2) an existing 300-acre reservoir containing 5,000 acre-feet of storage capacity at a normal pool elevation 351 feet m.s.l.; (3) an existing powerhouse with a proposed installed capacity of 1,300 kW; (4) a proposed 300-foot long transmission line to a Virginia Electric Power Company substation; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7,300 MWh.

Purpose of Project—Banister Development Ltd. proposes to develop the hydroelectric potential of the site and to sell the power output to the Virginia Electric Power Company.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, the Applicant intends to submit a license application. The applicant's estimated total cost for performing these studies is $100,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3610. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4226 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3612-000]

Brasfield Development Ltd.; Application for Preliminary Permit

January 29, 1981.

Take notice that Brasfield Development Ltd. (Applicant) filed on October 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3612 to be known as the Brasfield Dam Project located on the Appomattox River in Dinwiddie and Chesterfield Counties, Virginia. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr Kenneth Lever, 6566 France Avenue South, Minneapolis, Minnesota 55435. 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) an existing dam having a height of 55 feet and a length of 1,250 feet; (2) an existing 3,060-acre reservoir containing 35,400 acre-feet of gross storage at normal pool elevation 158.5 feet m.s.l.; (3) a proposed powerhouse with an estimated installed generating capacity of 4,500 kW, and (4) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 24,100 MWh.

Purpose of Project—Brasfield Development Ltd. proposed to develop the hydroelectric potential of the dam and sell the power output to the Appomattox River Water Authority and/or Virginia Electric Power Company.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support the investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $100,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for 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 3, 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 2, 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 3, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3612. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4252 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CI61-1559-000, et al.]

Cabot Oil & Gas Corp. (Formerly Appalachian Exploration and Development, Inc.) (Successor in Interest to Cabot Corp.); Application

January 30, 1981.

Take notice that on November 10, 1980, Cabot Oil & Gas Corporation (Cabot) of One Houston Center, Suite 1000, Houston, Texas 77010, filed an application in Docket Nos. CI61-1559-000, *et al.*, for substitution of assignee as successor in interest for certificates of public convenience and necessity and related rate schedules.

Applicant shows that effective September 30, 1980, Cabot Corporation assigned to Appalachian Exploration & Development, Inc. all its rights, interest, and obligations to certain gas sales and purchase contracts.

By Certificate of Amendment of Certificate of Incorporation, effective October 14, 1980, Appalachian Exploration & Development, Inc., changed its name to Cabot Oil & Gas Corporation.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 10, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirement 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4227 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. TA81-1-21 (PGA81-1, 1PR81-1, LFUT81-1, TT81-1, and AP81-1)]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 30, 1981.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1981, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, as follows:

Sixty-sixth Revised Sheet No. 16
Fourteenth Revised Sheet No. 16A
Sixteenth Revised Sheet No. 64
Fourth Revised Sheet Nos. 64E through 64I

These proposed changes to be effective March 1, 1981, reflect the following:

(1) A PGA rate adjustment, pursuant to Section 20.3 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, to recover an increase in the cost of gas purchased of $99,420,570 based on the six months ending August 31, 1981.

(2) A Commodity Surcharge, pursuant to Section 20.6 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, to recover the deferred purchased gas cost balance of $18,889,143 at December 31, 1980, over the six month period March 1, 1981, through August 31, 1981.

(3) A Louisiana first Use Tax Sales Adjustment (LFUT) of 0.03¢ and a surcharge to recover a deferred balance of $1,291,787 at December 31, 1980. Such sales adjustment and surcharge is being filed pursuant to Section 22 of Columbia's FERC Gas Tariff, original Volume No. 1.

(4) A Transportation Adjustment and Surcharge filed pursuant to Article XI of the Stipulation and Agreement in Docket No. RP78-19, *et al.*, approved by Commission Order issued July 3, 1979. The transportation adjustment provides for an annual increase of $7,656,822 while the surcharge provides for the flow through of the Deferred Transportation Cost Credit Balance at November 30, 1980, of $12,867,357 over the six month period March 1, 1981, through August 31, 1981.

(5) An Advance Payment Adjustment, pursuant to Article IX of the Stipulation and Agreement in Docket No. RP76-94, *et al.*, approved by Commission Letter Order issued March 16, 1978. Such Advance Payment Adjustment provides for an annual reduction of $1,165,163.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 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 17, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4228 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3846-000]

Continental Hydro Corp.; Application for Preliminary Permit

January 30, 1981.

Take notice that Continental Hydro Corporation (Applicant) filed on December 9, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3846 to be known as the Sly Park Project located on Sly Park Creek in El Dorado County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. 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) a penstock, 850 feet long, located within the existing outlet conduit of the Water and Power Resources Service's Sly Park Dam; (2) a powerhouse containing one generating unit with a rated capacity of 570 kW; and (3) a short transmission line. The Applicant estimates that the average annual energy output would be a maximum of 2,120 MWh.

Purpose of Project—Project power would be sold to the Sacramento Municipal Utility District or other power purchaser.

Proposed Scope and Cost of Studies under Permit—The Applicant would conduct a detailed feasibility study. This study would include data acquisition and analysis, technical studies, potential energy production and capacity evaluation, project layout and design, construction options and financial and economic examinations. There would also be investigations of environmental, recreational and historic aspects. The cost of this study has been estimated to be $41,000 by the Applicant.

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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3846. 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 Commission, 825 North Capital 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4229 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3673-000]

Dam Two Development Ltd.; Application for Preliminary Permit

January 30, 1981.

Take notice that Dam Two Development Ltd. (Applicant) filed on November 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3673 to be known as Green River Lock and Dam No. 2 located at the U.S. Army Corps of Engineers' Green River Lock and Dam No. 2 on the Green River in McLean County, near the towns of Calhoun and Rumsey, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the applicant should be directed to: Mr. Kenneth Lever, 6566 France Avenue South, Minneapolis, Minnesota 55435. 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 utilize a U.S. Army Corps of Engineers' lock and dam. Project No. 3673 would consist of: (1) a proposed powerhouse consisting of four generating units located on the south bank of the river and with an estimated installed capacity of 5.5 MW; (2) a proposed 6,000-foot 13.8kV transmission line to interconnect with a 69 kV transmission line owned by Kentucky Utility Company; and (3) appurtenant facilities. The proposed project is located on Federal lands. The Applicant estimates that the average annual energy output would be 19.8 GWh.

Purpose of Project—The Applicant intends to sell the generated output of energy to Kentucky Utility Company.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibililty of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agenices for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $100,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be 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," "PROTESTS," or "PETITION TO INTERVENE," as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3673. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4230 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3863-000]

Mr. Floyd N. Bidwell; Application for Preliminary Permit

January 30, 1981.

Take notice that Mr. Floyd N. Bidwell (Applicant) filed on December 9, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3863 to be known as the Lost Creek Hydroelectric Project located on Lost Creek in Shasta County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Joseph E. Patten, CH2M HILL, P.O. Box 2088, Redding, California 96099. 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: (a) an existing 6-foot high, 26-foot long concrete gravity diversion dam; (b) a 42-inch diameter, 4,000-foot long, penstock; (c) a powerhouse containing a single generating unit with a rated capacity of 2,600 kW; and (d) a 2-mile long transmission line connecting the powerhouse with an existing Pacific Gas and Electric Company's (PG&E) transmission line southwest of the powerhouse. The Applicant estimates that the average annual energy output would be 20,000,000 kWh.

Purpose of Project—Project energy would be sold to PG&E.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 18-month permit to prepare a project report including preliminary designs, results of environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $35,000.

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 3, 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 2, 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 3, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3863. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4231 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3592-000]

Fluid Energy Systems, Inc.; Application for Preliminary Permit

January 30, 1981.

Take notice that Fluid Energy Systems, Inc. (Applicant) filed on October 20, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3592 to be known as Onyx Diversion Project located on the South Fork Kern River in Kern County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: K. Thomas Miller, President, 2210 Wilshire Boulevard, No. 699, Santa Monica, California 90403. 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) a 16-foot high, rock-and-earthfilled diversion dam, with a 17-acre impoundment; (2) an intake structure; (3) a 15,000-foot long pressurized pipeline and tunnel; (4) a surge tank; (5) two 500-foot long penstocks; (6) a powerhouse containing two generating units, each rated at 9,760 kW; and (7) a 3,000-foot long transmission line. The proposed project would affect U.S. lands within Sequoia National Forest and might affect lands within the Dome Lands Wilderness Area.

The Applicant estimates that the average annual energy output would be 42.8 million kWh.

Purpose of Project—The energy output from the project would be sold to the Southern California Edison Company.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct environmental studies, make a feasibility analysis, and prepare an FERC license application. No new roads would be required to conduct the studies. Applicant has filed a work plan for the studies for the new dam construction. The field studies to be performed would consist of surveys, borings, trenches, and visual inspections. All lands disturbed by the studies would be restored.

The estimated cost of the studies to be performed under the preliminary permit is $100,300.

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 necessaary 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 3, 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 that June 2, 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 CFC § 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 3, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3592. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4232 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1752]

Leon E. Maglathlin, Jr.; Filing

January 30, 1981.

Take notice that on January 23, 1981, Leon E. Maglathlin, Jr., pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following positions:

Senior Vice President and Director, Connecticut Light and Power Company (Public Utility)

Senior Vice President and Director, Hartford Electric Light Company (Public Utility)

Senior Vice President and Director, Western Massachusetts Electric Company (Public Utility)

Senior Vice President and Director, Holyoke Water Power Company (Public Utility)

Senior Vice President and Director, Holyoke Power and Electric Company (Public Utility)

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the 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 25, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4233 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3652-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 29, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. Sections 791(a)–825(r)] for the proposed Mississippi Lock and Dam No. 5 Hydroelectric Project, FERC No. 3652, to be located at the U.S. Army Corps of Engineers' Lock and Dam, a navigable waterway project at the mouth of the Ohio River near Winona, Winona County, Minnesota. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. 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 utilize an existing U.S. Army Corps of Engineers' lock and dam. Project No. 3652 would consist of: (1) a proposed powerhouse built below the existing dam structure with generator units having a total capacity of approximately 14 MW; (2) transmission lines; and (3) appurtenant facilities. The project is located on Federal lands. The Applicant estimates that the average annual energy output would be 85,800,000 kWh.

Purpose of Project—Energy produced at the proposed project would be sold to a local utility.

Proposed Scope and Cost of Studies Under Permit—The Applicant has requested a 24 month permit to prepare a definite project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned studies along with the obtainment of agreements from other Federal, State and local agencies is estimated to 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 3, 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 2, 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 3, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3652. 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 Commission, 825 North Capitol Street NE., 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 NW., 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4234 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No.3694-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 30, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3694 to be known as Bartlett Dam Hydroelectric Project located on the Verde River in Maricopa County, Arizona. The application is on file with the

Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. 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 utilize the existing U.S. Army Corps of Engineers' Bartlett Dam and would consist of: (1) a new penstock about 100-feet long extending from the existing 72-inch diameter outlet pipeline to; (2) a new two unit powerhouse containing generating unit(s) having a total rated capacity of 7,199 kW; and (3) appurtenant facilities. Mitchell estimates that the average annual energy output would be 35,000,000 kWh.

Purpose of Project—Project energy would be sold to the Arizona Public Service Company or another local utility.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3694. 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 regualtions to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4235 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3697-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

January 30, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 7, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project Green River Lock and Dam No. Hydroelectric Project, located at the U.S. Army Corps of Engineers' Green River Lock and Dam No. 1, a navigation project on the Green River, in Henderson County, near Spottsville, Kentucky. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02116. 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 utilize an existing U.S. Army Corps of Engineers' lock and dam. Project No. 3697 would consist of: (1) a proposed powerhouse located just below the existing dam; (2) proposed transmission lines; and (3) appurtenant facilities. Applicant estimates the capacity of proposed generator units to be 5 MW. The project is located on Federal lands.

The Applicant estimates that the average annual energy output would be 24,000,000 kWh.

Purpose of Project—Energy produced at the proposed project would be sold to the Kentucky Utility Company and local utilities.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 24 month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies and soil and foundation data. The cost of the aforementioned activities, along with obtaining agreements with other Federal, State,

and local agencies, is estimated to 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 2, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 1, 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 or comment 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 2, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3697. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 4236 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3710-000]

Mitchell Energy Co., Inc.; Application for Preliminary Permit

January 30, 1981.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on November 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3710 to be known as the Jackson Lake Project located on the Snake River in Teton County, Wyoming. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02110. 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 utilize the existing Water and Power Resources Service's Jackson Lake Dam and Reservoir and would consist of: (1) new penstocks; (2) a new powerhouse containing generating units having a total rated capacity of 10,000 kW; (3) a tailrace; (4) a new transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 27,000,000 kWh.

Purpose of Project—Project energy would be sold to a local utility.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of two years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Pacific Northwest Generating Company's application for Project No. 3505 filed on September 26, 1980, under 18 CFR 4.33 (1980). Anyone desiring to file a competing application must submit to the Commission, on or before, either the competing March 13, 1981, application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 12, 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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 13, 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 filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3710. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4237 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CI78-1205, et al.]

Mobil Oil Corporation (Successor to Mobil-GC Corp.; Application

January 30, 1981.

Application to amend certificates of public convenience and necessity, to amend applications, to redesignate rate schedules, and to redesignate pending proceedings.

Take notice that on February 13, 1980, Mobil Oil Corporation (Mobil), of Nine Greenway Plaza—Suite 2700, Houston, Texas 77046, as successor to Mobil-GC Corporation (Mobil-GC), filed an application in Docket Nos. CI78-1205, *et al.*, to amend certain certificates currently held by Mobil-GC, to show Mobil as certificate holder, to redesignate certain rate schedules, and to substitute Mobil for Mobil-GC as a party in any pending proceedings before the Commission.

By conveyance effective December 28, 1979, Mobil-GC transferred and assigned to Mobil all of Mobil-GC's rights, titles, interests, and obligations in those certain gas sales and purchase contracts.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 10, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4238 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CI77-760, et al.]

Mobil Producing Texas & New Mexico Inc. (Formerly Mobil-GC Corp.); Application

January 30, 1981.

Application of Mobil Producing Texas & New Mexico Inc. for certificate of public convenience and necessity to render service previously authorized by the Commission to Mobil-GC Corporation and for substitution in certain pending proceedings.

Take notice that on February 13, 1980, Mobil Producing Texas & New Mexico Inc. (MPTM), of Nine Greenway Plaza—Suite 2700, Houston, Texas 77046, as successor to Mobil-GC Corporation (Mobil-GC), filed an application in Docket Nos. CI77-760, *et al.*, to amend certain certificates currently held by Mobil-GC, to show MPTM as certificate holder, to redesignate certain rate schedules, and substitute MPTM for Mobil-GC as a party in any pending proceedings before the Commission.

By Certificate of Amendment of Certificate of Incorporation effective January 1, 1980, Mobil-GC changed its corporate name to MPTM. This involves those certain gas sales and purchase contracts. These natural gas properties will be operated by and under the name of MPTM.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 10, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4239 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-11870, etc.]

Mobil Producing Texas & New Mexico Inc. (Successor to Mobil Oil Corp.); Application

January 30, 1981.

Application to amend certificates of public convenience and necessity, to amend applications, to redesignate rate schedules, and to redesignate pending proceedings

Take notice that on February 13, 1980, Mobil Producing Texas & New Mexico Inc. (MPTM), of Nine Greenway Plaza-Suite 2700, Houston, Texas 77046, as successor to Mobil Oil Corporation (Mobil), filed an application in Docket Nos. G-11870, *et al.*, to amend certain certificates currently held by Mobil, to show MPTM as certificate holder, to redesignate certain rate schedules, and to substitute MPTM for Mobil in any pending proceedings before the Commission.

By conveyance effective January 1, 1980, Mobil transferred and assigned to MPTM all of Mobil's rights, titles, interests, and obligations in those certain gas sales and purchase contracts. These natural gas properties will be operated by and under the name of MPTM.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 10, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4240 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-141-000]

Natural Gas Pipeline Company of America; Application

January 29, 1981.

Take notice that on January 15, 1981, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81-141-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and transportation of natural gas on a limited-term and interruptible basis to and 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.

Pursuant to a gas sales agreement with United dated January 13, 1981, Applicant proposes to sell and deliver on a best-efforts basis up to 250,000 Mcf of natural gas per day to United to relieve curtailment on United's system. Applicant states it would make gas deliveries at various existing points in Polk County, Texas, and Cameron and Vermilion Parishes, Louisiana. The 120-day agreement is to commence on the date of initial gas deliveries, it is stated. Applicant further asserts that it would sell to United only those volumes not required by its customers.

United would pay Applicant $3.12 per million Btu, a price resulting from arms-length negotiations which reflects the cost of gas and the cost of transporting the gas, it is asserted. Applicant submits the cost of gas component of such price would be escalated monthly, commencing February 1, 1981, pursuant to the escalation provisions of Section 102 of the Natural Gas Policy Act of 1978 and the implementing regulations. It is asserted that the cost of gas component is $2.667 as of January 1, 1981. Applicant submits that the price reflects an onshore transmission cost of 45.5 cents per million Btu. It is stated that during the sales period, Applicant would not purchase gas from United pursuant to a service agreement dated September 5, 1962.

Applicant is concurrently filing the agreement as its initial Rate Schedule X-115 as a part of its F.E.R.C. Gas Tariff Second Revised Volume No. 2 and seeks waiver of the Commission's Regulations to permit the agreement to become effective the date the order issues.

Applicant further proposes that consideration of the issue with respect to the disposition of revenues be deferred to its pending rate case in Docket No. RP80-107.

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 Commissioin 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, futher notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4241 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP80-107, etc.]

Natural Gas Pipe Line Company of America; Rescheduling of Informal Technical and Settlement Conferences

January 29, 1981.

Take notice that the technical conference scheduled to convene on February 3, 1981, at 10:00 a.m., in the above-captioned proceeding has been rescheduled to convene at 10:00 a.m. on February 24, 1981. All interested persons are invited to attend this conference. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Take notice also that the informal settlement conference scheduled to convene on February 4, 1981, at 10:00 a.m., in the above-captioned matter has been rescheduled to convene at 10:00 a.m. on February 25, 1981. All interested persons are invited to attend this conference. The meeting place for this conference will be at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in these proceedings and to make commitments with respect to such issues and to any offers of settlement or stipulation discussed at the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4242 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-184]

Oklahoma Gas and Electric Co.; Filing

January 30, 1981.

The filing company submits the following:

Take notice that on January 21, 1981, Oklahoma Gas and Electric Company submitted for filing a compliance report pursuant to the Commission's letter order, dated December 18, 1980, in the above referenced proceeding.

A copy of this filing has been served upon Gulf States Utilities and the regulatory Commissions of the states of Texas, Louisiana, Oklahoma, and Arkansas.

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 23, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4247 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER77-277 (Phase I)]

Pennsylvania Power Co.; Filing

January 30, 1981.

The filing company submits the following:

Take notice that on January 23, 1981 Pennsylvania Power Company (PPC) submitted for filing a refund compliance report. Said report indicates that PPC, on January 16, 1981, refunded to each of its wholesale customers any amounts due with interest thereon.

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 23, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4246 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2889-001]

San Bernardino Valley Municipal Water District; Application for Exemption for Small Conduit Hydroelectric Facility

January 29, 1981.

Take notice that on December 15, 1980, the San Bernardino Valley Municipal Water District (Applicant) filed an application under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)] for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Lytle Creek and Foothill Pipelines Project (FERC Project No. 2889) would be located at four turnouts to the Lytle Creek and Foothill pipelines in the San Bernardino County, California, the pipelines transport water from the California Aqueduct to recharge nearby percolation basins. Correspondence with the Applicant should be directed to: Mr. G. Louis Fletcher, General Manager, San Bernardino Valley Municipal Water District, P.O. Box 5906, the San Bernardino, California 92412.

Purpose of Project—Project energy would be sold.

Project Description—The proposed project would consist of four powerplants as follows: (1) Lytle Creek Powerplant would consist of 1,100 feet of 30-inch diameter penstock leading to a powerhouse containing a single 1,300-kW generating unit and an adjacent switchyard; (2) Sweetwater Powerplant would consist of a 60-foot long, 30-inch diameter penstock leading to a powerhouse containing a single 1,250-kW generating unit and an adjacent switchyard; (3) Waterman Canyon Powerplant would consist of a 160-foot long, 36-inch diameter penstock leading to a powerhouse containing a single 4,000-kW generating unit and an adjacent switchyard; and (4) Santa Ana Low Powerplant would consist of a 1,700-kW generating unit located within an existing dissipation vault and an adjacent switchyard. The Applicant estimates that the average annual energy output of the four developments would be 23,400 MWh.

Agency Comments—The U.S. Fish and Wildlife Service and the California Department of Fish and Game are requested, pursuant to Section 30 of the Act, to submit appropriate terms and conditions to protect any fish and

wildlife resources. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments, they may have in accordance with their duties and responsibilities. (A copy of the application may be obtained directly from the Applicant.) No other formal requests for comment, will be made.

Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within the time set below, it will be presumed to have no comments.

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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 12, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4249 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3799-000]

Sequoia Energy Corp.; Application for Preliminary Permit

January 30, 1981.

Take notice that Sequoia Energy Corporation (Applicant) filed on December 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3799 to be known as the Heron Hydro Project located on Willow Creek in Rio Arriba County, New Mexico. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lee Trent, President, Sequoia Energy Corporation, 20317 Arminta Street, Canoga Park, California 91306. 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 utilize the existing Water and Power Resources Service's Heron Dam and Reservoir and would consist of: (1) a new penstock, approximately 1,500 feet long, through the existing outlet works tunnel in the left dam abutment; (2) a new powerhouse containing generating units having a total rated capacity between 4,500 kW and 4,900 kW; (3) a tailrace; (4) transmission lines utilizing existing service lines at the site, if feasible; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be between 7,600,000 kWh and 7,800,000 kWh.

Purpose of Project—Project energy would be sold to the Rio Arriba Electric Cooperative. Other alternatives, such as sale to nearby public institutions or industrial users, will be investigated.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $52,000.

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 or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be 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 filing must also state that it is made in response to this notice of application for preliminary permit for Project No. 3799. 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 Commission, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4250 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EF80-3041]

Southeastern Power Administration; Order Confirming and Approving Rate Schedules

January 29, 1981.

By letter filed April 25, 1980, the Assistant Secretary for Resource Applications (AS/RA) of the Department of Energy, on behalf of the Southeastern Power Administration (SEPA), submitted a request for final confirmation and approval of an interim extension of wholesale power rate schedules KP-1-B, KP-2-B, and JHK-1-B for the period July 1, 1980, through September 30, 1981.[1] These rate schedules apply to power marketed by SEPA from the Corps of Engineers' multi-purpose reservoir projects known as the John H. Kerr and Philpott projects. By Rate Order No. SEPA-7, dated April 22, 1980, the AS/RA confirmed and approved the rates on an interim basis.

Notice of this submittal was published in the **Federal Register** on May 8, 1980, with protests or petitions to intervene due on or before June 2, 1980. No responses have been received.

SEPA is a federal power marketing agency responsible for a number of reservoir projects, including the integrated Kerr-Philpott projects in Southern Virginia.[2] The total installed hydroelectric capacity of the projects is 218,000 kilowatts. SEPA owns no transmission facilities, relying, instead, upon the facilities of Virginia Electric and Power Company (VEPCO) and Carolina Power & Light Company (CP&L) to transmit power to its preference customers.

Long-term contracts for the sale of power, which became effective April 1, 1973, were negotiated with CP&L and with 16 customers served by its transmission facilities. In addition, other long-term agreements for the sale of power, which became effective June 30, 1973, were negotiated with VEPCO and with 17 customers served through that company's transmission facilities. All of these contracts expired on June 30, 1980.

The Philpott project is located within the service area of Appalachian Power Company (APPCO). Thus, in order for the Kerr and Philpott projects to operate on an integrated basis, SEPA's agreement with VEPCO provides that APPCO will accept the entire output of the Philpott project into its system for the account of VEPCO which, in turn, receives an equivalent amount of power from APPCO at points of interconnection between the two companies. In effect, SEPA markets the power from Philpott as if it were generated at the Kerr project.

Rate schedule KP-1-B is applicable to public bodies and cooperatives which operate within 150 miles of the Kerr project and receive power through VEPCO's transmission facilities. Rate schedule JHK-1-B governs sales to public bodies and cooperatives operating within 165 miles of the interconnection point for the VEPCO and CP&L systems and which are served by CP&L's transmission facilites. Rate schedule KP-2-B is applicable to power and energy sold to CP&L and VEPCO under contracts between them and SEPA.

Discussion

The Secretary of Energy, in Delegation Order No. 0204-33, delegated to this Commission the authority to confirm and approve on a final basis, or to disapprove, federal power marketing agency rates. In accordance with the standards established in section 5 of the Flood Control Act of 1944, the rates are to "encourage the most widespread use [of project power and energy] at the lowest possible rates to consumers consistent with sound business principles," and to recover "the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years."[3]

The rate schedules which are the subject of this order were approved by the Federal Power Commission in Docket No. E-7002, on February 18, 1976, for the period ending June 30, 1980. According to AS/RA, the interim extension has been requested in order to enable SEPA to develop a new written power marketing policy for the Kerr-Philpott projects and to negotiate superseding contracts consistent with the new policy. Upon completion of these events, the AS/RA states that a new, rate approval presentation will be submitted to the Commission, together with a repayment study and other supporting materials. With respect to the currently effective rates, the AS/RA indicates that 1975 through 1979 expenses associated with the Kerr-Philpott projects were lower than had been estimated, thereby resulting in greater amortization of the capital investment than was anticipated when these SEPA rates were previously approved. The AS/RA has further stated that operating expenses for 1980 and 1981 are projected to essentially equal O&M estimates used for the 1975 through 1979 period and, therefore, the existing rates can be expected to produce revenues during the interim extension period adequate to repay costs associated with the production and transmission of power at the projects.

In light of the foregoing facts and the lack of any protests or petitions to intervene in the present proceeding, the Commission finds it appropriate and in the public interest to approve and confirm the extension of rate schedules KP-1-B, KP-2-B, and JHK-1-B for the period July 1, 1980, through September 30, 1981.

The Commission orders:

(A) The interim extension of rate schedules KP-1-B, KP-2-B, and JHK-1-B for the period July 1, 1980 through September 30, 1981, is hereby confirmed and approved.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-4251 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI68-621-001]

Tenneco Oil Co., Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates[1]

January 20, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 12, 1981, file with the Federal Energy Regulatory Commission,

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[1] This referral was made pursuant to Department of Energy Secretarial Delegation Order No. 0204-33, and the pertinent provisions of the Flood Control Act of 1944

[2] The Kerr and Philpott projects are located on the Roanoke River and Smith River, respectively.

[3] 16 U.S.C. 825s.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein

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 it 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 duty given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [1]	Pressure base
CI68-621-001, A, Dec. 22, 1980	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Tennessee Gas Pipeline Company, South Marsh Island 61 "D" Platform, Offshore Louisiana.	([2])	15.025
CI76-218-000, B, Jan. 5, 1981	Phillips Petroleum Company, 1260 Adams Building, Bartlesville, OK 74004.	Columbia Gas Transmission Corporation, Block 544, West Cameron Area, Offshore Louisiana.	([3])	15.025
CI77-50-002, A, Jan. 12, 1980	Florida Exploration Company, P.O. Office Box 44, Winter Park, Fl. 32790.	Florida Gas Transmission Company, OCS G-3119 Well No. 1, Vermilion, Block 21, Offshore Louisiana.	([4])	15.025
CI77-519-003, A, Dec. 16, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Columbia Gas Transmission Corporation, East Cameron Block 335 Offshore, Louisiana.	([5])	15.025
CI78-1071-001, B, Dec. 19, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.	Transwestern Pipeline Company, Horseshoe Bend Well No. 1, W½, Section 34-T23S-R25E, Eddy County, New Mexico.	([6])	15.025
CI79-129-001, A, Dec. 22, 1980	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120.	Natural Gas Pipeline Company of America OCS-G-2556 No. 7 Well in West Cameron, Block 552, Offshore Louisiana.	([7])	15.025
CI79-406-001, D, Dec. 22, 1980	Amoco Production Company, P.O. Box 5910-A, Chicago, Illinois 60680.	Northern Natural Gas Company, High Island Block 537 Field, Offshore, Texas.	([3])	15.025
CI70-566-000, F, Dec. 10, 1980	Anadarko Production Company, (partial succession, in interest to Louisiana Land and Exploration Company), P.O. Box 1330, Houston, Texas 77001.	Sea Robin Pipeline Company (Successor in interest to United Gas Pipe Line Company and Southern Natural Gas Company), Block 16, South Marsh Island Area, Offshore Louisiana, OCS-G-1164.	([8])	15.025
CI81-86-000, A, Dec. 15, 1980	Freeport Oil Company, P.O. Box 61922, New Orleans, LA 70161.	Transcontinental Gas Pipe Line Corporation/Florida Gas Transmission Company, West Cameron Area, Block 65, Offshore, Louisiana.	([9])	15.025
CI81-87-000, A, Dec. 17, 1980	Mesa Petroleum Company, P.O. Box 2009, Amarillo, TX 79189.	Transcontinental Gas Pipe Line Corporation, West Delta Area, Block 34, Offshore, Louisiana.	([10])	15.025
CI81-88-000, A, Dec. 17, 1980	Mesa Petroleum Company, P.O. Box 2009, Amarillo, TX 79189.	Transcontinental Gas Pipe Line Corporation, High Island Area, Block A-492, Offshore, Texas.	([10])	15.025
CI81-89-000, A, Jan. 18, 1981	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, North Padre Island Area, Block A-42, Field, Offshore Texas.	([10])	15.025
CI81-90-000, A, Dec. 23, 1980	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	El Paso Gas Company, South Marsh Island Area, Block 60, Offshore Louisiana.	([10])	15.025
CI81-91-000, A, Dec. 24, 1980	Texas Gas Exploration Corporation, 3300 First International Plaza, 1100 Louisiana, Houston, Texas 77002.	Texas Gas Transmission Corporation, "D" Platform, Block 248, Ship Shoal Area, Offshore Louisiana.	([10])	15.025
CI81-92-000, A, Dec. 24, 1980	Texas Gas Exploration Corporation, 3300 First International Plaza, 1100 Louisiana, Houston, Texas 77002.	Texas Gas Transmission Corporation, "F" Platform Block 247 Ship Shoal Area, Offshore Louisiana.	([10])	15.025
CI81-93-000, A, Dec. 22, 1980	Union Oil Company of California, Box 7600, Los Angeles, California 90051.	Texas Eastern Transmission Corporation, Block 560, West Cameron Area, Offshore Louisiana.	([10])	15.025
CI81-95-000, A, Dec. 22, 1980	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Natural Gas Pipeline Company of America, Vermilion Area, Vermilion Blocks 369, and 386, Offshore Louisiana.	([10])	15.025
CI81-96-000, A, Dec. 22, 1980	Florida Exploration Company, Post Office Box 44, Winter Park, Florida 32790.	Florida Gas Transmission Company, Sabine Pass Blocks 10 and 17, Offshore Louisiana and Texas.	([10])	15.025
CI81-98-000 (CI73-394), B, Dec. 29, 1980	Texaco Inc., P.O. Box 2420, Tulsa, Oklahoma 74102.	Getty Oil Company, Lone Star Gas Company, Marlow Field, Stephens County, Oklahoma.	([10])	15.025
CI81-99-000, A, Dec. 29, 1980	Cabot Corporation, One Houston Center, Suite 1000, Houston, Texas 77010.	Columbia Gas Transmission Corporation, Block A-143 "B" Platform, South Marsh Island Area, Offshore Louisiana.	([10])	15.025
CI81-100-000, A, Dec. 22, 1980	Amoco Production Company, Post Office Box 50879, New Orleans, Louisiana 70150.	United Gas Pipeline Company, High Island Block 537 "B" Platform, Offshore Texas.	([10])	15.025
CI81-101-000, A, Dec. 30, 1980	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	Southern Natural Gas Company, Natalbany Lumber Company Well No. 1 (John Hauberg Lease No. 5690), St. Gabriel Area, Iberville and Ascension Parishes, Louisiana (Natalbany Lumber Company Well).	([11])	

[1] Gas Sales Contract dated November 1, 1976.
[2] The Federal Lease OCS-G-2011 well No. A-10 is no longer capable of producing gas in paying quantities under normal methods of operation and no further workover possibilities exists.
[3] Applicant is filing under Gas Sale and Purchase Contract dated September 10, 1976.
[4] Applicant is filing under Agreement dated October 30, 1980.
[5] The only well drilled on the lands covered by this Application was plugged because it was no longer economically productive.
[6] Applicant agrees to accept an amendment to its certificate to sell gas at the rates prescribed therein.

[7] Amoco's purchaser, Northern Natural Gas Company has assiged reserves producible for High Island Block 537 "B" Platform to United Gas Pipeline Company. Northern has represented to Amoco that it desires to reduce its exposure to take or pay liability under Rate Schedule No. 807. United has represented to Amoco that it has an immediate need for additional gas supplies and that it has transportation capacity available in the High Island Area. In view of the above, Amoco believes that the present and future public convenience and necessity will be served by approval of the abandonment sought herein.

[8] The rights and interest in the leased acreage in Block 16, South Marsh Island Area, Offshore Louisiana, OCS-G-1184, was assigned by LL&E to Applicant effective October 16, 1979. Said assignment was approved by the Bureau of Land Management on August 22, 1980.

[9] Applicant is filing under Contract dated October 23, 1969, amended by Agreement dated August 18, 1980.

[10] Applicant is filing under Gas Purchase Contract dated November 7, 1980.

[11] Applicant is willing to accept the applicable rate under Section 104 of the Natural Gas Policy Act of 1978.

[12] Applicant is filing under Gas Purchase and Sales Agreement dated December 15, 1980.

[13] Applicant is filing under Gas Purchase Contract dated December 1, 1980.

[14] Applicant is filing under Gas Purchase Contract dated March 25, 1980.

[15] Applicant is filing under Gas Purchase Contract dated June 1, 1980.

[16] Getty abandoned plant operations.

[17] Applicant is filing under Gas Purchase Contract dated December 3, 1980.

[18] Applicant is filing under Gas Purchase Contract dated March 29, 1979.

[19] Applicant is filing under Agreement dated August 12, 1960.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 81-4253 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-226-000]

Vermont Electric Power Co., Inc.; Filing

January 30, 1981.

The filing Company submits the following:

Take notice that on January 19, 1981, Vermont Electric Power Company (Vermont Electric) tendered for filing a Contract between Vermont Electric and the Power Authority of the State of New York (PASNY). Vermont Electric states that this Contract is designated as "Contract For Sale of Power Relating to Purchase and Sale of Power From Niagara Project" for the purchase of 40,000 kilowatts of firm electric power, 10,000 kilowatts of peaking power, and for power of such other classes as may, from time to time, become available and which the State elects to purchase.

Vermont Electric proposes an effective date of January 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 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 17, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4142 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC T WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION						
-OXY PETROLEUM INC			RECEIVED: 01/09/81 JA: CA			
8112158	80-2-0010	0411120987 102	VENTURA REALTY NO 1	LOS ROBLES	3.0	UNION OIL OF CALIFOR
KANSAS CORPORATION COMMISSION						
-DAMSON OIL CORPORATION			RECEIVED: 01/12/81 JA: KS			
8112322	K80-0771	1518920455 102	MAXWELL #1	WIDE AWAKE	0.0	PANHANDLE EASTERN PI
8112323	K80-0772	1518920455 102	MAXWELL #1	WIDE AWAKE	0.0	PANHANDLE EASTERN PI
8112320	K80-0769	1518920437 102	MUDD TRUST #1	WIDE AWAKE	0.0	PANHANDLE EASTERN PI
8112321	K80-0771	1518920450 102	MUDD TRUST NO 2	WIDE AWAKE FIELD	0.0	PANHANDLE EASTERN PI
-RANGE OIL COMPANY INC			RECEIVED: 01/12/81 JA: KS			
8112269	K-80-0704	1503521012 102	1-A ANDREWS	WILDCAT	91.3	CITIES SERVICE GAS C
LOUISIANA OFFICE OF CONSERVATION						
-GULF OIL CORPORATION			RECEIVED: 01/09/81 JA: LA			
8112159	80-4354	1707522437 103	NSLA N-U R4 SU SL 195 QQ #72	NORTH BLACK BAY	35.0	SOUTHERN NATURAL GAS
MONTANA BOARD OF OIL & GAS CONSERVATION						
-MACQUEST PETROLEUM INC			RECEIVED: 01/12/81 JA: MT			
8112317	9-80-209	2503521415 103	MACQUEST #1 WILLIAM STUFFT	LITTLE ROCK GAS FIELD	24.0	FOUREM CO
8112318	9-80-208	2503521440 103	MACQUEST #1 ZIMMERMAN	LITTLE ROCK GAS FIELD	32.0	FOUREM CO
8112319	9-80-210	2503521439 103	MACQUEST #1-23 STUFFT FARMS	LITTLE ROCK GAS FIELD	27.0	FOUREM CO
8112316	9-80-211	2503521449 103	MACQUEST #1-24 SWISHER	LITTLE ROCK GAS FIELD	23.0	FOUREM CO
8112315	9-80-212	2503521438 103	MACQUEST #1-26 TUMA	LITTLE ROCK GAS FIELD	36.0	FOUREM CO
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS						
-AMERADA HESS CORPORATION			RECEIVED: 01/09/81 JA: NM			
8112165		3002526616 103	STATE L M T #9	JALMAT	55.0	NORTHERN NATURAL GAS
8112180		3002526614 103	STATE W #5	EUMONT	135.0	NORTHERN NATURAL GAS
-AMOCO PRODUCTION CO			RECEIVED: 01/09/81 JA: NM			
8112177		3002526589 103	ANDERSON R COM #1	UND WOLFCAMP	150.0	CONOCO INC
8112163		3004524152 103	HUTTON GAS COM NO 1E	BASIN DAKOTA	30.0	EL PASO NATURAL GAS
8112168		3004523727 103	STATE GAS COM A NO 1R	BLANCO MESAVERDE	30.0	EL PASO NATURAL GAS
-CLARENCE FORISTER			RECEIVED: 01/09/81 JA: NM			
8112171		3001500000 103	R E S STATE #1 - K 7-17-28	RED LAKE QUEEN GRAYBURG	7.2	PHILLIPS PETROLEUM C
-DEPCO INC			RECEIVED: 01/09/81 JA: NM			
8112183		3003906490 108	BURNS FEE #1	SOUTH BLANCO PICTURE CLI	14.0	EL PASO NATURAL GAS

JA NO	JA DKT	API NO	SEQ	S WELL NAME	FIELD NAME	PROD	PURCHASER
-DOYLE HARTMAN OIL OPERATOR				RECEIVED: 01/09/81 JA: NM			
8112184		3002526737	103	GUTMAN NO 2	EUMONT	120.0	EL PASO NATURAL GAS
-E L LATHAM JR & ROY G BARTON JR				RECEIVED: 01/09/81 JA: NM			
8112169		3002526721	103	CASH NO 2	FLYING M SAN ANDRES	5.5	WARREN PETROLEUM CO
-EL PASO NATURAL GAS COMPANY				RECEIVED: 01/09/81 JA: NM			
8112182		3004500000	108	HEATON #27	AZTEC PICTURED CLIFFS	0.0	EL PASO NATURAL GAS
8112173		3003906658	108	RINCON UNIT #90	BLANCO SOUTH-PICTURED CL	18.0	EL PASO NATURAL GAS
-ENERGY RESERVES GROUP INC				RECEIVED: 01/09/81 JA: NM			
8112160		3004524491	103	FARMSWORTH GAS COM A #1-E	BASIN DAKOTA	169.0	EL PASO NATURAL GAS
8112161		3004524492	103	MILLER GAS COM #1-E	BASIN DAKOTA	86.4	SOUTHERN UNION GATHE
-ENSERCH EXPLORATION INC				RECEIVED: 01/09/81 JA: NM			
8112175		3004120544	103	AMOCO-STATE NO 2	N PETERSON	43.0	TRANSWESTERN PIPELIN
-GETTY OIL COMPANY				RECEIVED: 01/09/81 JA: NM			
8112157		3002510673	108	SKELLY PENROSE A UNIT NO 56	LANGLIE-MATTIX	1.6	GETTY OIL CO
-HIXON DEVELOPMENT COMPANY				RECEIVED: 01/09/81 JA: NM			
8112172		3004522230	108	MANDANA STATE COM NO 1	WAW-FRUITLAND-PC	14.4	EL PASO NATURAL GAS
-HNG OIL COMPANY				RECEIVED: 01/09/81 JA: NM			
8112178		3001522353	103	WOODS A COM #1	WEST MALAGA (ATOKA)	712.5	EL PASO NATURAL GAS
-MESA PETROLEUM				RECEIVED: 01/09/81 JA: NM			
8112166		3004523745	103	STATE COM AJ 34E	SAN JUAN UNDESIGNATED FR	55.0	SOUTHERN UNION GATHE
-MORRIS R ANTWEIL				RECEIVED: 01/09/81 JA: NM			
8112174		3001521886	108	DINKUS COM #1	UNDESIGNATED ATOKA	0.0	EL PASO NATURAL GAS
-MWJ PRODUCING COMPANY				RECEIVED: 01/09/81 JA: NM			
8112162		3002500000	103	SAUNDERS 28 STATE #1	SAUNDERS PERMO PENN	66.0	WARREN PETROLUEM CO
-ODESSA NATURAL CORPORATION				RECEIVED: 01/09/81 JA: NM			
8112179		3003922340	103	SHIPLEY #3	UNDESIGNATED PICTURED CL	36.0	EL PASO NATURAL GAS
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 01/09/81 JA: NM			
8112170		3002526226	108	E VAC GB/SA UNIT TR 2801 NO 004	VACUUM GB/SA	1.0	EL PASO NATURAL GAS
8112176		3002526683	103	E VAC GB/SA UNIT TRACT 3373 #001	VACUUM GB/SA	69.0	EL PASO NATURAL GAS
-TEXACO INC				RECEIVED: 01/09/81 JA: NM			
8112164		3004524396	103	KEYS COM NO 1E	BASIN DAKOTA	44.0	NORTHWEST PIPELINE C
8112167		3004524397	103	NEW MEXICO COM 1A	BLANCO MESAVERDE	182.5	EL PASO NATURAL GAS
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 01/09/81 JA: NM			
8112181		3002506350	108	HARRY LEONARD (NCT-F) #6	BLINEBRY	1.5	EL PASO NATURAL GAS
**********							
OKLAHOMA CORPORATION COMMISSION							
**********							
-AMERICAN QUASAR PETROLEUM CO OF NEW				RECEIVED: 01/09/81 JA: OK			
8112304	09487	3509520257	107	COWEN 1-12	SOUTH POWELL	0.0	TEXACO INC
-AN-SON CORPORATION				RECEIVED: 01/09/81 JA: OK			
8112307	06687	3515120467	108	BOND A NO 1	WOGAMOTT	9.6	PANHANDLE EASTERN PI
8112306	06688	3515320380	108	JAQUES NO 1		8.4	NORTHERN NATURAL GAS
-AN-SON CORPORATION				RECEIVED: 01/12/81 JA: OK			
8112336	09749	3514920109	107	SPERLE #1	WILDCAT	564.0	
-ARCO OIL AND GAS COMPANY				RECEIVED: 01/12/81 JA: OK			
8112340	06737	3509700000	108	E L RICE #2	MADILL	8.0	PIONEER GAS PRODUCTS
8112342	06735	3509700000	108	G W TALIAFERRO #1	MADILL	8.0	PIONEER GAS PRODUCTS
8112341	06736	3509700000	108	G W TALIAFERRO #2	MADILL	8.0	PIONEER GAS PRODUCTS
-BROWN & BORELLI INC				RECEIVED: 01/12/81 JA: OK			
8112343	06723	3507322386	103	BLAIR #1	SOUTH WEST DOVER	365.0	CITIES SERVICE CO
-EL PASO NATURAL GAS COMPANY				RECEIVED: 01/09/81 JA: OK			
8112310	05392	3500935441	108	FRANCIS #1	ERICK SOUTH-BROWN DOLOMI	32.0	EL PASO NATURAL GAS

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
-ENSERCH EXPLORATION INC					RECEIVED: 01/09/81 JA: OK			
8112311	06394	3514920068	103		W T ROUSE NO 1	BURNS FLAT	9.0	NATURAL GAS PIPELINE
-F B THARPE					RECEIVED: 01/09/81 JA: OK			
8112314	03571	3513700000	108		SAIRD #5	SHO-VEL-TUM	36.0	GETTY OIL
-J L THOMAS ENGINEERING INC					RECEIVED: 01/09/81 JA: OK			
8112298	06690	3509321843	103		BIERIG #1	SOONER TREND	175.0	OKLAHOMA NATURAL GAS
-JACKSON EXPLORATION INC					RECEIVED: 01/09/81 JA: OK			
8112309	03222	3509321519	103		KELLN #1	RINGWOOD	146.0	PIONEER GAS PRODUCTS
-KENNEDY & MITCHELL INC					RECEIVED: 01/12/81 JA: OK			
8112344	06721	3505900000	103		SHUMAN #23-366	N DOBY SPRINGS (C SE SEC	180.0	MICHIGAN WISCONSIN P
-LADD PETROLEUM CORPORATION					RECEIVED: 01/09/81 JA: OK			
8112308	06969	3505120911	102		BRADY NO 1	MINCO WEST	1285.0	MICHIGAN-WISCONSIN P
8112313	06970	3505120905	102		LOCKE NO 1	TONKAWA	1180.0	MICHIGAN-WISCONSIN P
-MACK OIL CO					RECEIVED: 01/12/81 JA: OK			
8112333	05896	3501700000	103		#1 CARROLL	RICHLAND	159.6	OKLAHOMA GAS & ELECT
8112339	05892	3501700000	103		#1 DETERMAN	RICHLAND	379.6	OKLAHOMA GAS & ELECT
8112331	05890	3508100000	103		#1 GESSMAN	RICHLAND	0.0	SUN GAS CO
8112334	05895	3501700000	103		#1 HRDY	RICHLAND	124.6	OKLAHOMA GAS & ELECT
8112330	05902	3501700000	103		#1 HUNT	RICHLAND	127.4	OKLAHOMA GAS & ELECT
8112335	05894	3505300000	103		#1 HUTTON	RICHLAND	220.6	CITIES SERVICE GAS C
8112329	05898	3501700000	103		#1 MASON	RICHLAND	159.3	PHILLIPS PETROLEUM C
8112347	06698	3501700000	103		#1 MERVELDT	RICHLAND	0.0	PHILLIPS PETROLEUM C
8112338	05893	3501700000	103		#1 PALMER	RICHLAND	70.9	OKLAHOMA GAS & ELECT
8112337	05888	3501700000	103		#1 SIBEL	RICHLAND	0.0	PHILLIPS PETROLEUM C
8112332	05899	3501700000	103		#1 SMITH	RICHLAND	160.9	OKLAHOMA GAS & ELECT
-PCX CORP					RECEIVED: 01/09/81 JA: OK			
8112305	09734	3512929498	107		BURKS #1	S REYDON	120.0	
-RAMBLER OIL CO					RECEIVED: 01/09/81 JA: OK			
8112299	06711	3501170963	103		CARTER NO 1-27	N E CARLTON	182.5	DELHI GAS PIPELINE C
8112303	06717	3501121005	103		US GYPSUM NO 1-28	NE CARLTON	91.3	DELHI GAS PIPELINE C
-SENECA OIL COMPANY					RECEIVED: 01/09/81 JA: OK			
8112300	07256	3504321007	102		LUNG NO 1-19	W OAKWOOD	147.0	DELHI GAS PIPELINE C
-SOUTHLAND ROYALTY CO					RECEIVED: 01/09/81 JA: OK			
8112301	06713	3513921135	108		ALBRIGHT #1-33	NORTH HOOKER	17.8	NORTHERN NATURAL GAS
8112302	06714	3513700000	108		MARTIN #2	SHO-VEL-TUM	6.4	GETTY OIL CO
-UNIT DRILLING & EXPLORATION CO					RECEIVED: 01/12/81 JA: OK			
8112345	06716	3507920350	103		JOHNSON #1	KINTA	54.0	ARKANSAS LOUISIANA G
-UNIVERSAL RESOURCES CORPORATION					RECEIVED: 01/12/81 JA: OK			
8112346	06715	3501721415	103		GEORGE 1-16	RICHLAND NW	110.0	OKLAHOMA GAS & ELECT
-WILLIAM MOSS PROPERTIES INC					RECEIVED: 01/09/81 JA: OK			
8112312	06686	3507322367	103		A D RACER 14 NO 2	SOONER TREND	182.5	CITIES SERVICE GAS C
**********								
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES								
**********								
-ADOBE OIL & GAS CORPORATION					RECEIVED: 01/09/81 JA: PA			
8112289	6121	3706325706	103		JOHN BAKER #2	BURNSIDE	36.0	
-BETA 79-S T JOINT VENTURE					RECEIVED: 01/16/81 JA: PA			
8112399	5806	3706521960	103		BASILE-NORTH #1	YOUNG	25.0	CONSOLIDATED GAS SUP
8112397	5804	3706522126	103		BLOSE #2	HENDERSON	25.0	NATIONAL FUEL GAS SU
8112400	5808	3706522096	103		HAUK #2	WINSLOW	25.0	NATIONAL FUEL GAS SU
8112398	5805	3706522082	103		MCCLURE #3	WINSLOW	25.0	NATIONAL FUEL GAS SU
-CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 01/09/81 JA: PA			

JD NO	JA DST	API NO	SEC	J	WELL NAME	FIELD NAME	PROD	PURCHASER
8112274	4003	3703320851	108		RUTH ZEITLIN WN-1710	BIG RUN-ROCHESTER MILLS	16.0	GENERAL SYSTEM PURCH
-CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 01/16/81 JA: PA			
8112396	5327	3706521701	108		GEORGE G SPRAGUE WN-1716	SOLDIERS RUN 664915	11.0	GENERAL SYSTEM PURCH
8112390	4577	3706521703	108		RICHARD LINGENFELTER WN-1715	OLIVEBURG 523959	9.0	GENERAL SYSTEM PURCH
-DELTA 80 S T JOINT VENTURE					RECEIVED: 01/16/81 JA: PA			
8112418	6192	3706522156	103		PAUL KENNIS #1	HENDERSON	25.0	NATIONAL FUEL GAS SU
8112419	6193	3706522157	103		PAUL KENNIS #2	HENDERSON	25.0	NATIONAL FUEL GAS SU
-DORAN & ASSOCIATES INC					RECEIVED: 01/16/81 JA: PA			
8112368	6144	3706325770	103		C BOOTMAN #2 K-A-51	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRANSMI
8112366	6142	3706325751	103		H SCOTT #1 K-A-53	UPPER DEVONIAN SAND	30.0	COLUMBIA GAS TRANSMI
8112365	6141	3706325752	103		H SCOTT #2 K-A-54	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRANSMI
8112369	6145	3706325754	103		H SCOTT #4 K-A-56	UPPER DEVONIAN SANDS	30.0	COLUMBIA GAS TRANSMI
8112367	6143	3706325766	103		J JEFFERSON #1 K-A-36	UPPER DEVONIAN	30.0	COLUMBIA GAS TRANSMI
-ENVIROGAS INC					RECEIVED: 01/09/81 JA: PA			
8112279	5996	3704921109	103		#1 H GLOVER	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS SU
8112278	5995	3704921110	103		#1 H MCINTYRE	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS SU
8112277	5994	3704920945	103		#2 N MORSE	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS SU
8112275	5992	3704921033	103		#5 N MORSE	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS SU
-ENVIROGAS INC					RECEIVED: 01/16/81 JA: PA			
8112360	6102	3704921146	103		#1 R THORNTON	NORTH EAST DEEP	18.0	NATIONAL FUEL GAS SU
-FORTUNE GAS AND OIL INC					RECEIVED: 01/16/81 JA: PA			
8112361		3708338636	103		FORTUNE MCKEAN 007	FORTUNE	0.0	NATIONAL FUEL GAS
8112362	6111	3708338637	103		FORTUNE MCKEAN 008	FORTUNE	0.0	NATIONAL FUEL GAS SU
8112363	6112	3708338638	103		FORTUNE MCKEAN 009	FORTUNE	0.0	NATIONAL FUEL GAS DI
-GAMMA 79-S T JOINT VENTURE					RECEIVED: 01/16/81 JA: PA			
8112401	5809	3706522134	103		DICKEY #1	WINSLOW	25.0	NATIONAL FUEL GAS SU
8112402	5810	3706522135	103		DICKEY #2	WINSLOW	25.0	NATIONAL FUEL GAS SU
-HARRY W BRUNT OPERATOR					RECEIVED: 01/16/81 JA: PA			
8112348	6076	3703320250	108		MALONEY	PUNXSUTAWNEY-DRIFTWOOD (	5.0	CONSOLIDATED GAS SUP
-J & J ENTERPRISES INC					RECEIVED: 01/16/81 JA: PA			
8112392	4841	3703320708	108		H R MCGEE #1	BELL	5.8	CONSOLIDATED GAS SUP
-MID-EAST OIL CO					RECEIVED: 01/09/81 JA: PA			
8112284	6116	3706325370	103		ANNIE HELMAN #1	CLYMER	16.2	UNION DRILLING CO IN
8112283	6115	3706325371	103		ANNIE HELMAN #2	CLYMER	17.5	UNION DRILLING CO IN
8112287	6119	3706325372	103		BIBLE BAPT CH OF CLYMER #1	CLYMER	19.8	UNION DRILLING CO IN
8112288	6120	3706522042	103		JOSEPH D O'HARAH #1 (34.5 ACRE)	REYNOLDSVILLE	22.4	NATIONAL FUEL GAS SU
8112282	6114	3706522041	103		JOSEPH D O'HARAH #1 (14 ACRE)	REYNOLDSVILLE	21.5	NATIONAL FUEL GAS SU
8112285	6117	3706522121	103		LEROY FYE #1	REYNOLDSVILLE	21.2	NATIONAL FUEL GAS SU
8112286	6118	3706325374	103		ROBERT D DOUGLASS #1	CLYMER	16.5	COLUMBIA GAS TRANSMI
-MID-EAST OIL CO					RECEIVED: 01/16/81 JA: PA			
8112408	6169	3712921616	103		AMERICAN SLOVAK SOCIETY #1	BLAIRSVILLE	14.0	PEOPLES NATURAL GAS
8112409	6170	3706522018	103		CRISSIE R LEASURE #1	REYNOLDSVILLE	22.0	CONSOLIDATED GAS SUP
8112407	6168	3706325158	103		E KENNETH KIMMEL ET AL #1	ERNEST	17.3	PEOPLES NATURAL GAS
8112389	6167	3706325159	103		E KENNETH KIMMEL ET AL #2	ERNEST	18.0	PEOPLES NATURAL GAS
8112378	6156	3712921552	103		FREDERICKA PIPER ET AL #1	BLAIRSVILLE	25.0	T W PHILLIPS GAS & O
8112377	6155	3712921553	103		FREDERICKA PIPER ET AL #2	BLAIRSVILLE	22.0	T W PHILLIPS GAS & O
8112376	6154	3712921563	103		FREDERICKA PIPER ET AL #3	BLAIRSVILLE	40.0	T W PHILLIPS GAS & O
8112375	6153	3712921562	103		FREDERICKA PIPER ET AL #4	BLAIRSVILLE	30.0	T W PHILLIPS GAS & O
8112411	6172	3712921585	103		FREDERICKA PIPER ET AL #5	BLAIRSVILLE	43.0	T W PHILLIPS GAS & O
8112388	6166	3706325113	103		HARRY STOEBENER ET AL #1	ERNEST	35.0	PEOPLES NATURAL GAS
8112387	6165	3706325114	103		HARRY STOEBENER ET AL #2	ERNEST	48.0	PEOPLES NATURAL GAS
8112386	6164	3706325141	103		HARRY STOEBENER ET AL #3	ERNEST	32.0	PEOPLES NATURAL GAS
8112385	6163	3706325142	103		HARRY STOEBENER ET AL #4	ERNEST	33.0	PEOPLES NATURAL GAS

JOB NO	JA DKT	API NO	SEC	J	WELL NAME	FIELD NAME	PROD	PURCHASER
8112384	6162	3706325143	103		HARRY STOERENER ET AL #5	INDIANA	20.0	PEOPLES NATURAL GAS
8112374	6152	3706522026	103		JOHN W LOTT #1	REYNOLDSVILLE	15.0	CONSOLIDATED GAS SUP
8112410	6171	3706522022	103		JOHN W LOTT #2	REYNOLDSVILLE	12.0	CONSOLIDATED GAS SUP
8112383	6161	3706325039	103		JOSEPH E HOHMANN ET UX #1	PLUMVILLE	22.4	T W PHILLIPS GAS & O
8112382	6160	3706325040	103		JOSEPH E HOHMANN ET UX #2	PLUMVILLE	23.0	T W PHILLIPS GAS & O
8112381	6159	3706325079	103		MARTHA A KEMP #1	PLUMVILLE	20.4	T W PHILLIPS GAS & O
8112380	6158	3706521996	103		RICHARD H LINGENFELTER #1	VALIER	18.0	HANLEY & BIRD
8112379	6157	3706521997	103		RICHARD H LINGENFELTER #2	VALIER	18.8	HANLEY & BIRD
-NORTH EAST SERVICE PLAZA INC					RECEIVED: 01/16/81 JA: PA			
8112416	6187	3704920821	108		FINCH 1-ERI-20821	LAKESHORE - MEDINA	18.0	NATIONAL FUEL GAS DI
8112415	6186	3704920820	108		HAYNES - 1-ERI-20820	LAKESHORE - MEDINA	10.8	NATIONAL FUEL GAS DI
-NORTHWEST NATURAL GAS CO					RECEIVED: 01/16/81 JA: PA			
8112356	6088	3703920712	103		ANNA NAAS	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112357	6089	3704921090	103		CECIL E DORIS ROBB	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112349	6081	3703920708	103		CHARLES R & REGINA C BROAD	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112359	6091	3703920710	103		JOHN FRANK STEIGERWALD #1	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112352	6084	3703920783	103		JOHN M KAMINSKI	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112354	6086	3703920858	103		MICHAEL A & MARIE B LAVOR	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112355	6087	3703920685	103		PETER E MARGARET MILLER	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112358	6090	3703920711	103		PETER F STAGL #1-2	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112351	6083	3703920684	103		ROGER C HATCHER	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112353	6085	3703920713	103		WILLIAM D & NANCY A KIDD	CONNEAUT	0.0	NATIONAL FUEL DISTRI
8112350	6082	3704921025	103		WILLIAM F & KATHERINE CHERRY	CONNEAUT	0.0	NATIONAL FUEL DISTRI
-PHILLIPS PRODUCTION CO					RECEIVED: 01/16/81 JA: PA			
8112393	5277	3705120199	108		JAMES F VAIL ET UX #1	FRANKLIN	15.0	COLUMBIA GAS TRANSMI
8112395	5279	3705120204	108		KENNETH MILLS ET UX #1	FRANKLIN	16.0	COLUMBIA GAS TRANSMI
8112391	4805	3706324717	106		PETE AND JOHN BARISH #1	WHITE	6.0	COLUMBIA GAS TRANSMI
8112394	5278	3705120202	108		WILLIAM D MILLS ET UX #1	FRANKLIN	15.0	COLUMBIA GAS TRANSMI
-QUAKER STATE OIL REFINING CORP					RECEIVED: 01/16/81 JA: PA			
8112364	6137	3708338689	103		W COYOTE NO 01	ANNIN FIELD OFFSET	3.7	NORTH PENN GAS CO
-ST CHARLES REFRACTORIES					RECEIVED: 01/16/81 JA: PA			
8112372	6149	3700520412	108		CULBERTSON - WELL #2	JOY FIELD	1.3	COLUMBIA GAS TRANSMI
8112373	6150	3700520428	108		CULBERTSON - WELL #3	JOY FIELD	1.3	COLUMBIA GAS TRANSMI
8112370	6147	3700520213	108		CULBERTSON - WELL #41	JOY FIELD	3.1	COLUMBIA GAS TRANSMI
8112371	6148	3700500000	108		CULBERTSON #1	JOY FIELD	1.3	COLUMBIA GAS TRANSMI
-THE MUTUAL OIL & GAS COMPANY					RECEIVED: 01/09/81 JA: PA			
8112296	6135	3704921077	102		DZIESKEWICZ #1	MCKEAN	30.0	COLUMBIA GAS TRANSMI
8112294	6132	3704921096	102		FLAK #1	MCKEAN	30.0	COLUMBIA GAS TRANSMI
8112297	6136	3704921026	102		FULLER #1	MCKEAN	30.0	COLUMBIA GAS TRANSMI
8112295	6134	3704921017	102		TRACY #3	MCKEAN	20.0	COLUMBIA GAS TRANSMI
-THE MUTUAL OIL & GAS COMPANY					RECEIVED: 01/16/81 JA: PA			
8112405	5916	3704920841	102		KOSIENSKI #1	KOSIENSKI #1	35.0	COLUMBIA GAS TRANSMI
8112404	5915	3704920844	102		PAVKOV #1	PAVKOV #1	0.0	COLUMBIA GAS TRANSMI
8112403	5914	3704920840	102		SEKULA #1	SEKULA #1	35.0	COLUMBIA GAS TRANSMI
8112406	5917	3704920845	102		TRACY #1	TRACY #1	35.0	COLUMBIA GAS TRANSMI
-VICTORY DEVELOPMENT CO					RECEIVED: 01/09/81 JA: PA			
8112276	5872	3706325692	103		DEVARMIN #1 IND - 25692	W PA UPPER DEVONIAN SAND	50.4	COLUMBIA GAS TRANSMI
8112281	6011	3706325704	103		MEEKINS #1 IND-25704	W PA UPPER DEVONIAN SAND	0.0	COLUMBIA GAS TRANSMI
8112280	6010	3706325554	103		PAGANO #1 IND-25554	W PA UPPER DEVONIAN SAND	0.0	COLUMBIA GAS TRANSMI
-VINEYARD OIL & GAS CO					RECEIVED: 01/09/81 JA: PA			
8112290	6128	3704920799	103		RINDLEY #1 E-712	RINDLEY #1 NORTH EAST	96.0	NATIONAL FUEL GAS CO
8112271	5564	3704920867	102	D	MAZZA #1 E-793	MAZZA #1-NORTH EAST	14.4	NATIONAL FUEL GAS CO

JA NO	JA PRT	API NO	SEC	J	WELL NAME	FIELD NAME	PROD	PURCHASER
8112292	6130	3704920798	103		MCINTOSH #1 E-711	MCINTOSH #1 - NORTH EAST	5.3	NATIONAL FUEL GAS CO
8112272	5565	3704921042	102	D	MERSKI #1 E-879	MERSKI #1-NORTH EAST	14.4	NATIONAL FUEL GAS CO
8112293	6131	3704921042	103		MERSKI #1-E-879	MERSKI #1 - NORTH EAST	14.4	NATIONAL FUEL GAS CO
8112273	5567	3704920646	102	D	WAGNER #1 E-637	WAGNER #1-NORTH EAST	12.0	NATIONAL FUEL GAS CO
8112291	6129	3704920962	103		WHEELER #1 E-854	WHEELER #1-NORTH EAST	12.0	NATIONAL FUEL GAS CO
-WAINOCO OIL & GAS COMPANY			RECEIVED: 01/16/81 JA: PA					
8112412	6183	3703920735	102		ALBERT F SCOTT NO 1 (W-78)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8112413	6184	3703920729	102		DENNIS A PHILLIPS NO 1 (W-73)	ATHENS	40.0	COLUMBIA GAS TRANSMI
8112414	6185	3703920716	102		SCOTT J PRESTON NO 4 (W-71)	ATHENS	40.0	COLUMBIA GAS TRANSMI
-WATSON & SWANSON INC			RECEIVED: 01/16/81 JA: PA					
8112417	6188	3706325713	103		J D CLARK ET AL NO 7	CHERRY TREE	2.6	COLUMBIA GAS TRANSMI
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WEST VIRGINIA DEPARTMENT OF MINES								
**********								
-APPALACHIAN EXPLORATION & DEVEL INC			RECEIVED: 01/08/81 JA: WV					
8112141		4707900866	107		HARDY HEIRS B-3	UNION	31.0	CABOT CORP
8112153		4707900919	107		HOWARD HILL #1	UNION	35.0	CABOT CORP
8112154		4707900925	107		J L STEPHENS #1	UNION	22.5	CABOT CORP
8112148		4707900933	107		LLOYD BUSH #1	UNION	21.0	
8112147		4707900926	107		MCLEAN HEIRS A-13	UNION	11.0	CABOT CORP
8112144		4707900927	107		MCLEAN HEIRS A-14	UNION	23.0	CABOT CORP
8112145		4707900928	107		MCLEAN HEIRS A-17	UNION	9.3	CABOT CORP
8112149		4707900871	107		MCLEAN HEIRS A-2	UNION	15.0	CABOT CORP
8112151		4707900861	107		MCLEAN HEIRS A-4	UNION	18.6	CABOT CORP
8112150		4707400868	107		PUTNAM LAND B-5	UNION	11.0	CABOT CORP
8112143		4707900874	107		PUTNAM LAND CO B-2	UNION	15.3	CABOT CORP
8112142		4707900865	107		PUTNAM LAND CO B-3	UNION	11.0	CABOT CORP
8112146		4707900867	107		PUTNAM LAND CO B-4	UNION	16.0	CABOT CORP
8112140		4707900869	107		PUTNAM LAND CO B-6	UNION	18.9	CABOT CORP
8112152		4707900870	107		PUTNAM LAND CO B-7	UNION	36.0	CABOT CORP
8112155		4707900904	107		PUTNAM LAND CO B-8	UNION	14.4	CABOT CORP
8112156		4707900922	107		PUTNAM LAND CO B-9	UNION	11.5	CABOT CORP
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** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM								
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-ALPHA TWENTY-ONE PRODUCTION CO			RECEIVED: 01/09/81 JA: NM 4					
8112190	NM-1570-80	3002526727	103		EL PASO TOM FEDERAL NO 4	LANGLIE MATTIX (LOWER SE	180.0	EL PASO NATURAL GAS
-AMERADA HESS CORPORATION			RECEIVED: 01/09/81 JA: NM 4					
8112238	NM-1558-80	3003905892	108		J APACHE A #3 (DUAL-GAS)	OTERO	21.4	EL PASO NATURAL GAS
-AMOCO PRODUCTION CO			RECEIVED: 01/09/81 JA: NM 4					
8112197	NM-1505-80	3004507155	108		ALICE R HURRELL A #1	FULCHER-KUTZ PICTURED CL	19.4	EL PASO NATURAL GAS
8112209	NM-1566-80	3004523991	103		DAVIDSON GAS COM G NO 1E	BASIN DAKOTA	30.0	SOUTHERN UNION GATHE
8112198	NM-1506-80	3004508586	108		FLORANCE GAS COM B #1 (2ND FILING)	BASIN DAKOTA	19.0	EL PASO NATURAL GAS
8112199	NM-1507-80	3004511310	108		J F BELL #1	BASIN DAKOTA	20.6	EL PASO NATURAL GAS
8112222	NM-1491-80	3003906549	108		JICARILLA APACHE 102 #1	TAPACITO-PICTURED CLIFFS	21.0	GAS CO OF NEW MEXICO
8112196	NM-1504-80	3003906003	108		JICARILLA CONTRACT 148 #2 (3RD FIL*	SOUTH BLANCO-PICTURED CL	21.2	NORTHWEST PIPELINE C
8112208	NM-1565-80	3004524205	103		MARTIN GAS COM G NO 1E	BASIN DAKOTA	30.0	EL PASO NATURAL GAS
8112260	NM-1458-80	3003922123	103		ROSA UNIT NO 68	BASIN DAKOTA	300.0	NORTHWEST PIPELINE C
8112201	NM-1509-80	3004510918	108		UTE MTN TRIBAL GAS COM D #1	UTE DOME-PARADOX	18.0	EL PASO NATURAL GAS
8112200	NM-1508-80	3004508409	108		W D HEATH A #8 (3RD FILING)	BASIN DAKOTA	21.0	EL PASO NATURAL GAS
8112210	NM-1567-80	3004524192	103		W D HEATH A NO 3A	BLANCO MESAVERDE	91.0	EL PASO NATURAL GAS
-ARCO OIL AND GAS COMPANY			RECEIVED: 01/09/81 JA: NM 4					

JD NO	JA INIT	API NO	SEC	T	WELL NAME	FIELD NAME	(MCF)	PURCHASER
8112229	NM-0944-80	3004524120	103		KRAUSE WN FEDERAL 1E	BASIN DAKOTA	189.0	EL PASO NATURAL GAS
-BCO INC					RECEIVED: 01/09/81 JA: NM 4			
8112241	NM-1541-80	3003922349	103		DUNN #3	BASIN DAKOTA	300.0	EL PASO NATURAL GAS
-BTA OIL PRODUCERS					RECEIVED: 01/09/81 JA: NM 4			
8112207	NM-1564-80	3002525957	103		7406 JV-S LEA 21 #1	TANSILL-YATES (COMANCHE-	36.7	EL PASO NATL GAS CO
-LEWIS B BURLESON					RECEIVED: 01/09/81 JA: NM 4			
8112192	NM 1587-80	3002526709	103		BERRY-FEDERAL #1	QUERECHO PLAINS YATES GA	125.0	EL PASO NATURAL GAS
-CHAPMAN & SCHNEIDER					RECEIVED: 01/09/81 JA: NM 4			
8112263	NM-1522-80	3002522545	108		I B OGG A NO 6	JALMAT YATES-SEVEN RIVER	7.4	EL PASO NATURAL GAS
-COQUINA OIL CORPORATION					RECEIVED: 01/09/81 JA: NM 4			
8112240	NM-1542-80	3002526901	103		SHELLY FEDERAL COMM #1	UNDES MORROW	730.0	EL PASO NATURAL GAS
-COTTON PETROLEUM CORPORATION					RECEIVED: 01/09/81 JA: NM 4			
8112188	NM-1489-80	3003921839	103		APACHE NO 126	LINDRITH GALLUP - DAKOTA	30.0	NORTHWEST PIPELINE C
8112270	NM-1307-80	3003922215	103		APACHE NO 131	LINDRITH GALLUP-DAKOTA W	20.0	NORTHWEST PIPELINE C
-DAVE M THOMAS JR					RECEIVED: 01/09/81 JA: NM 4			
8112264	NM-1523-80	3003922448	103		AMERADA JICARILLA #2	CHACON JICARILLA	5.0	EL PASO NATURAL GAS
-EL PASO NATURAL GAS COMPANY					RECEIVED: 01/09/81 JA: NM 4			
*8112253	NM-1364-80	3003920306	108		CANYON LARGO UNIT #160	OTERO-CHACRA	21.0	EL PASO NATURAL GAS
8112205	NM-1520-80	3003920542	108		CANYON LARGO UNIT #179	BALLARD-PICTURED CLIFFS	2.0	EL PASO NATURAL GAS
8112255	NM-1391-80	3004506543	108		FLORANCE D #3	BLANCO SOUTH PICTURED CL	23.0	EL PASO NATURAL GAS
8112256	NM-1392-80	3004506398	108		FLORANCE D #8	BLANCO-SOUTH PICTURED CL	22.0	EL PASO NATURAL GAS
8112216	NM-1497-80	3004523817	103		GRAMBLING A #2A	BLANCO MESAVERDE	250.0	EL PASO NATURAL GAS
8112233	NM-0681-80	3003905797	108		JICARILLA 67 #5	BASIN-DAKOTA GAS	22.0	EL PASO NATURAL GAS
8112194	NM-1501-80	3004523640	103		LACKEY B #17R	BASIN DAKOTA	40.0	EL PASO NATURAL GAS
8112195	NM-1502-80	3004523879	103		MICHENER A #6E	BASIN DAKOTA	50.0	EL PASO NATURAL GAS
8112204	NM-1515-80	3004520283	108		MUDGE #29	BLANCO-PICTURED CLIFFS	19.0	EL PASO NATURAL GAS
8112230	NM-0865-80	3004512070	108		NEUDECKER #4	AZTEC - PICTURED CLIFFS	20.0	EL PASO NATURAL GAS
*8112235	NM-0753-80	3004508130	108		SAN JACINTO #6	BASIN DAKOTA GAS	19.0	EL PASO NATURAL GAS
8112266	NM-1534-80	3003921007	108		SAN JUAN 27-4 UNIT #116	TAPACITO PICTURED CLIFFS	18.0	EL PASO NATURAL GAS
8112251	NM-1582-80	3003922376	103		SAN JUAN 27-4 UNIT #137	BLANCO MESAVERDE	150.0	EL PASO NATURAL GAS
8112215	NM-1498-80	3003922377	103		SAN JUAN 27-4 UNIT #36A	BLANCO MESAVERDE	100.0	EL PASO NATURAL GAS
8112324	NM-1199-80	3003906775	108		SAN JUAN 27-4 UNIT #8	TAPACITO-PICTURED CLIFFS	16.0	EL PASO NATURAL GAS
*8112239	NM-1552-80	3003920676	108		SAN JUAN 27-5 UNIT #157	TAPACITO PICTURED CLIFFS	11.0	EL PASO NATURAL GAS
8112234	NM-0667-80	3003907156	108		SAN JUAN 28-6 UNIT #39	BLANCO-MESAVERDE GAS	25.0	EL PASO NATURAL GAS
8112325	NM-1209-80	3003907288	108		SAN JUAN 28-6 UNIT #9	BLANCO-MESAVERDE	15.0	EL PASO NATURAL GAS
8112254	NM-1377-80	3003920961	108		SAN JUAN 29-7 UNIT #201 CHCPC	LARGO-CHACRA & BLANCO PC	20.0	EL PASO NATURAL GAS
8112214	NM-1499-80A	3003921980	103		SAN JUAN 29-7 UNIT #44A (DAKOTA)	BASIN DAKOTA	70.0	EL PASO NATURAL GAS
8112243	NM-1499-80B	3003921980	103		SAN JUAN 29-7 UNIT #44A (MV)	BLANCO MESAVERDE	250.0	EL PASO NATURAL GAS
8112250	NM-1584-80A	3004524297	103		SHEETS #4 (DAKOTA)	BASIN DAKOTA	70.0	EL PASO NATURAL GAS
8112249	NM-1584-80B	3004524297	103		SHEETS #4 (PC)	BLANCO PICTURED CLIFFS	150.0	EL PASO NATURAL GAS
8112202	NM-1513-80	3004513231	108		STOREY B #3	BLANCO-MESAVERDE GAS	20.0	EL PASO NATURAL GAS
8112203	NM-1514-80	3004509601	108		STOREY B #5	AZTEC-PICTURED CLIFFS	16.0	EL PASO NATURAL GAS
-EL RAN INC					RECEIVED: 01/09/81 JA: NM 4			
*8112206	NM-1563-80	3000520756	103		DACHNER #R	CHAVEROO	36.0	TRANSWESTERN PIPELIN
*8112236	NM-1562-80	3004120548	103		U S #4	CHAVEROO	36.0	TRANSWESTERN PIPELIN
-ENERGY RESERVES GROUP INC					RECEIVED: 01/09/81 JA: NM 4			
8112244	NM-1318-80	3004524286	103		GALLEGOS CANYON UNIT #306 (FRUITLA*	KUTZ FRUITLAND WEST	44.6	EL PASO NATURAL GAS
8112245	NM-1319-80	3003922181	103		JICARILLA 35 #12	WEST LINDRITH GALLUP-DAK	3.8	NORTHWEST PIPELINE C
-ENSERCH EXPLORATION INC					RECEIVED: 01/09/81 JA: NM 4			
8112257	NM-1410-80	3004523488	103		FEDERAL 1-31	UTE DOME	126.0	EL PASO NATURAL GAS
-GENERAL AMERICAN OIL COMPANY OF TEX					RECEIVED: 01/09/81 JA: NM 4			
8112248	NM 1246-80	3001523209	102		GREEN B NO 10	SOUTH EMPIRE MORROW	0.0	

VOLUME 357 PAGE 208

JD	JA DKT	API NO	SEQ	WELL NAME	FIELD NAME	RRC ID	PURCHASER
-HIXON DEVELOPMENT COMPANY				RECEIVED: 01/09/81 JA: NM 4			
8112246	NM-1485-80	3004523086	108	PHILLIPS FEDERAL NO 1	WAW-FRUITLAND-PC	4.3	EL PASO NATURAL GAS
8112247	NM-1488-80	3004523087	108	PHILLIPS FEDERAL NO 2	WILDCAT	16.2	EL PASO NATURAL GAS
-JEROME P MCHUGH				RECEIVED: 01/09/81 JA: NM 4			
8112211	NM-1568-80	3003922427	103	JICARILLA #7F	BASIN DAKOTA	289.0	NORTHWEST PIPELINE C
8112189	NM-1569-80	3003922432	103	JICARILLA #8E	BASIN DAKOTA	311.0	NORTHWEST PIPELINE C
-JOHN E SCHALK				RECEIVED: 01/09/81 JA: NM 4			
8112261	NM-1470-80	30C3922390	103	SCHALK-GULF #3	BLANCO MESA VERDE	0.0	EL PASO NATURAL GAS
-MESA PETROLEUM				RECEIVED: 01/09/81 JA: NM 4			
8112228	NM-1091-80	3000560703	102	STANCEL FEDERAL #1	WILDCAT ABO	365.0	
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 01/09/81 JA: NM 4			
8112242	NM-1539-80	3003922424	103	LINDRITH B UNIT NO 6	CHACON-DAKOTA ASSOCIATED	84.3	EL PASO NATURAL GAS
-NATOMAS NORTH AMERICA INC				RECEIVED: 01/09/81 JA: NM 4			
8112224	NM-1490-80A	3002526719	103	SUPRON-FED 14 COM #1 (ATOKA)	ANTELOPE RIDGE	0.0	EL PASO NATURAL GAS
8112223	NM 1490-80B	3002526719	103	SUPRON-FED 14 COM #1 (MORROW)	ANTELOPE RIDGE	0.0	EL PASO NATURAL GAS
-PERRY R BASS				RECEIVED: 01/09/81 JA: NM 4			
8112231	NM-0803-80	3001522945	102	BIG EDDY UNIT #77	WILDCAT MORROW	0.0	NATURAL GAS PIPELINE
8112213	NM-1311-80	3001523004	102	BIG EDDY UNIT NO 71	UNDESIGNATED STRAWN	165.0	NATURAL GAS PIPELINE
8112226	NM-1111-80	3001522859	102	BIG EDDY UNIT NO 72	SAND POINT	730.0	NATURAL GAS PIPELINE
8112225	NM 1112-80	3001522839	102	BIG EDDY UNIT NO 74	INDIAN FLATS	730.0	NATURAL GAS PIPELINE
-PETROLEUM DEVELOPMENT CORP				RECEIVED: 01/09/81 JA: NM 4			
8112193	NM 1500-80	3001522960	103	HANNIFIN FEDERAL #7	UNDESIGNATED MORROW	164.3	LLANO INC
-SOUTHLAND ROYALTY CO				RECEIVED: 01/09/81 JA: NM 4			
8112262	NM-1538-80	3003922116	103	BURNS RANCH #1	CAMPO	94.0	NORTHWEST PIPELINE C
8112191	NM-1571-80	3002526930	103	FEDERAL 21 #1	UNDESIGNATED	98.0	GAS CO OF NEW MEXICO
-SUPERIOR OIL CO				RECEIVED: 01/09/81 JA: NM 4			
8112227	NM-1097-80	3001500000	102	DELTA FEDERAL NO 1	WILDCAT	515.0	
-SUPRON ENERGY CORPORATION				RECEIVED: 01/09/81 JA: NM 4			
8112267	NM-1536-80A	3004523639	103	NAVAJO INDIAN A 5-M (DAKOTA)	BASIN DAKOTA	329.0	EL PASO NATURAL GAS
8112268	NM-1536-80B	3004523639	103	NAVAJO INDIAN A 5-M (MV)	BLANCO MESAVERDE	88.0	EL PASO NATURAL GAS
8112259	NM-1442-80B	3004523586	103	NORDHAUS 2-A (DAKOTA)	BASIN DAKOTA	275.0	SOUTHERN UNION GATHE
8112258	NM-1442-80A	3004523586	103	NORDHAUS 2-A (MV)	BLANCO MESAVERDE	424.0	SOUTHERN UNION GATHE
8112232	NM-1472-80A	3004523536	103	NYE FEDERAL 1-M	BLANCO MESAVERDE	452.0	SOUTHERN UNION GATHE
8112237	NM-1561-80B	3004524362	103	WITT 1-E (CHACRA)	BLOOMFIELD CHACRA	574.0	SOUTHERN UNION GATHE
-TENNECO OIL COMPANY				RECEIVED: 01/09/81 JA: NM 4			
8112187	NM-1167-80	3004523979	103	BARRETT A #1	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112186	NM 1169-80	3004524030	103	BLANCO A #1	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112328	NM-1174-80	3004524099	103	C M MORRIS COM A #1-E	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112219	NM-1493-80	3004524296	103	CALLOW 12-F	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112185	NM 1170-80	3004524086	103	CORNELL D #1-E	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112326	NM1171-80	3004524129	103	DUDLEY CORNELL A 1-E	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112212	NM 1172-80A	3004524161	103	HAMNER 2-A (DAKOTA)	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112265	NM-1524-80	3004524244	103	HORTON 1E	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
8112221	NM-1492-80A	3004522300	103	JICARILLA 9 B-E (DAKOTA)	BASIN DAKOTA/BLANCO MESA	500.0	NORTHWEST PIPELINE C
8112220	NM-1492-80B	3004522300	103	JICARILLA 9 B-E (MV)	BASIN DAKOTA/BLANCO MESA	500.0	NORTHWEST PIPELINE C
8112327	NM-1175-80	3004523951	103	MUDGE A #1	BASIN DAKOTA	500.0	EL PASO NATURAL GAS
-YATES PETROLEUM CORPORATION				RECEIVED: 01/09/81 JA: NM 4			
8112218	NM-1494-80	3001523200	103	FEDERAL CW-B #4	PENASCO DRAW SA-YESO ASS	0.0	TRANSWESTERN PIPELIN
8112217	NM-1495-80	3001523255	103	FEDERAL CW-B #8	PENASCO DRAW SA-YESO ASS	0.0	TRANSWESTERN PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 01/09/81 JA: UT 4			
8112252	UA-1577-80	4303730448	103	RATHERFORD UNIT NO 15-22	GREATER ANETH	10.6	EL PASO NATURAL GAS

OTHER PURCHASERS

8112206	CITIES SERVICE CO
8112235	NORTHWEST P L CORP
8112236	CITIES SERVICE CO
8112239	NORTHWEST P L CORP
8112253	NORTHWEST P L CORP

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 20, 1981.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

Corrections to Previous Notices/Revisions to Prior Determinations

JD No.	JA	Applicant	Well name	Original FERC Vol. No.	Date Published in FEDERAL REGISTER	R: Revision or redetermination by Jurisdictional Agency C: Correction to prior FEDERAL REGISTER notice
81-03965	OK	GHK Company	Baker-Fowler 1-20	317	11-20-80	C: 102 approved (Not 103).
81-18923	OK	Ladd Petroleum Corp	Adkins (Mann)	168	04-10-80	C: 102 Control No. cancelled; filing combined with JD80-07153.
81-06136	OK	May Petroleum Inc	Ross #1	329	12-12-80	C: 103 approved (Not 102).
81-06926	OK	Ricks Exploration Co	Cooper F-A	334	12-17-80	C: 102 and 103 approved.
81-06138	OK	Ricks Exploration Co	Langston #1	329	12-12-80	C: 102 and 103 approved.
81-03974	OK	Samson Resources Co	Ehrdardt Unit #1	317	11-20-80	C: 102 and 103 approved.
81-06124	OK	Seneca Oil Co	Jolliffe Minerals Trust No. 1-24	329	12-12-80	C: 102 and 103 approved.
81-07850	OK	Western Continent Oil Corp	Brazelton 3-26	338	12-31-80	C: 102 approved (Not 103).
81-03405	OK	Western Continent Oil Corp	Carringer 3-21	314	11-14-80	C: 102 approved (Not 103).
81-03401	OK	Western Continent Oil Corp	Courtney 2-30	314	11-14-80	C: 102 approved (Not 103).
81-03404	OK	Western Continent Oil Corp	Johnson 2-23	314	11-14-80	C: 102 approved (Not 103).
81-03403	OL	Western Continent Oil Corp	Smith 1-33	314	11-14-80	C: 102 approved (Not 103).
79-09050	TX	American Petrofina Co of Texas	J B Tubb "A" #17 (McKnight)	42	07-12-79	C: Field Name: Sand Hills (McKnight).
81-01359	TX	Amoco Production Co	Anton Irish Clearfork Unit #374	304	10-31-80	C: Well Name.
81-05823	TX	Federal Energy Development Co	McCaleb #1	327	12-04-80	C: 103 approved (Not 102).
81-03068	TX	J A Leonard	Cooksey #2	313	11-14-80	C: 102 approved (Not 103).
80-59092	WV	Appalachian Exploration & Devel Inc	Shonk Land Co #2	298	10-17-80	C: Correction to JD80-46807; Control No. JD80-59092 cancelled.

[FR Doc. 81-4245 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

BILLING CODE 6450-85-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 30, 1981.

JD NO	JA NAT	API NO	SEC T WELL NAME	FIELD NAME	PROD	PURCHASER
********** TEXAS RAILROAD COMMISSION **********						
-ABERCROMBIE J S MINERAL CO INC			RECEIVED: 01/07/81 JA: TX			
8111676	17549	4240931333 103	MCCANN OLA #2L	TRIPLE A FIELD	400.0	UNITED GAS PIPELINE
-ABTEX INC			RECEIVED: 01/07/81 JA: TX			
8111702	20219	4224900000 108	BANKERS MORTGAGE CO 14741	TOM GRAHAM (3600)	18.3	TENNESSEE GAS PIPELI
-ADOBE OIL & GAS CORPORATION			RECEIVED: 01/07/81 JA: TX			
8111839	25719	4247532027 103	BARSTOW 31 #1	SCOTT (CHERRY CANYON)	20.0	TRANSWESTERN PIPELIN
8111709	21268	4213332068 102	KERR #1	WANGUM NORTH (3200)	69.0	ODESSA NATURAL CORP
-AMERICAN DELTA CORP			RECEIVED: 01/07/81 JA: TX			
8112111	24616	4205130702 102	ESTES #1	GIDDINGS (AUSTIN CHALK)	700.0	UNI OIL INC
-AMOCO PRODUCTION CO			RECEIVED: 01/07/81 JA: TX			
8112139	25042	4220330723 102	BATH GAS UNIT A WELL NO 1	BLOCKER (COTTON VALLEY)	436.0	UNITED GAS PIPE LINE
8112138	25041	4220330735 102	BATH GAS UNIT B NO 1	BLOCKER (COTTON VALLEY)	436.0	UNITED GAS PIPE LINE
8112065	26939	4229530771 103	C L KING A WELL #9	BRADFORD TONKAWA	12.8	PHILLIPS PETROLEUM C
8111706	20916	4236500300 108	CARTHAGE GAS UNIT 14 WELL NO 1-T	CARTHAGE (UPPER PETTIT)	1.3	TENNESSEE GAS PIPELI
8112005	26745	4222732064 103	CORA LEE ECHOLS C #1	IATAN EAST (HOWARD)	0.3	GETTY OIL CO
*8112006	26751	4216730769 103	E KER CADE A R/A A #281	HIGH ISLAND	5.0	JOHN W MECOM
8111830	25657	4234700300 102	H M BARRON GAS UNIT WELL NO 1	NACOGDOCHES E (JAMES LIM	100.0	UNITED GAS PIPE LINE
8111708	21051	4217531026 103	L W OCONNOR A #66	LIVE OAK LAKE/5000/	3.3	AMOCO GAS CO
8111826	25529	4200331801 103	MIDLAND FARMS N GRBG UNIT #67	MIDLAND FARMS NO/GRAYBUR	1.0	PIONEER NATURAL GAS
8111800	25043	4229330478 102	NEIL REENE WELL NO 1	MEXIA JUNCTION/COTTON VA	547.5	AMOCO GAS CO
8111915	26416	4242100000 108	SEWELL GAS UNIT NO 1 (2ND FILING)	TEXAS HUGOTON	16.0	PHILLIPS PETROLEUM C
-ARCO OIL AND GAS COMPANY			RECEIVED: 01/07/81 JA: TX			
8111748	23356	4231131341 102	H C EDRINGTON ESTATE I #32	CAMPANA S 11200 (PROPOSE	1800.0	HOUSTON PIPELINE CO
8111678	17830	4213100000 108	HAGIST RANCH A-11	HAGIST RANCH	16.8	NATURAL GAS PIPELINE
8111835	25705	4221530854 103	J M MORIN #1	DONNA (REICHART) PROPOSE	150.0	TENNESSEE GAS PIPELI
8111701	20145	4236530895 102	OCIE GLASPIE GAS UNIT #3	CARTHAGE	365.0	SOUTHERN NATURAL GAS
8111716	22037	4270830232 103	STATE LEASE #59456 WELL #C-8	HIGH ISLAND BLOCK 24-L	750.0	UNITED TEXAS TRANSMI
8111944	26535	4221530929 103	SWALLOW GAS UNIT #6-LT	DONNA (JANCIK)	0.0	TENNESSEE GAS PIPELI
-ARGONAUT ENERGY CORPORATION			RECEIVED: 01/07/81 JA: TX			
8111846	25854	4243930107 102	BOAZ TRUST UNIT #1 80362	HASLETT (PENN)	1.0	LONE STAR GAS CO
-ATAPCO			RECEIVED: 01/07/81 JA: TX			
8111886	26305	4237132907 102	MCDONALD STATE #1 #26030	ATAK (WOLFCAMP)	6.0	
8111886	26305	4237132907 103	MCDONALD STATE #1 #26030	ATAK (WOLFCAMP)	6.0	
-AUBREY C BLACK			RECEIVED: 01/07/81 JA: TX			
8111827	25563	4224931177 102	LLOYD WELL NO 1	BEN BOLT (5800)	36.0	TRUNKLINE GAS CO
-B & M OPERATING CO INC			RECEIVED: 01/07/81 JA: TX			
8112127	24914	4247932691 103	CAVALES NO 1 ID	NEELY (BRUNI LO)	180.0	VALERO TRANSMISSION
-B D K PRODUCTION CO INC			RECEIVED: 01/07/81 JA: TX			
8111884	26295	4228500000 102	MAE JONES WELL NO 2	KEMPER EAST	55.0	LONE STAR GAS CO
-BEN HOGAN			RECEIVED: 01/07/81 JA: TX			
8112131	24935	4236731173 103	RONALD SMITH NO 1 (85516)	WEATHERFORD SW (ATOKA)	568.0	ALEDO GAS CO LTD

J D NO	JA DKT	API NO	SEC J WELL NAME
-BEN J TAYLOR			RECEIVED: 01/07/81 JA: TX
8112134	24971	4236731601 103	ISRELL-LAMBERT NO 1
8111980	26636	4236731798 103	SAVAGE L NO 1
-BETTIS BOYLE & STOVALL			RECEIVED: 01/07/81 JA: TX
8111859	25978	4223733052 103	SEWELL NORTH 80 #1
-BILBO-ANGELLE PRODUCTION CO			RECEIVED: 01/07/81 JA: TX
8111831	25659	4246931597 103	H FRED BUCKERT #1
-BLADE OIL CO			RECEIVED: 01/07/81 JA: TX
8112110	24604	4223330826 103	J M SANFORD E#24 04570
-BLOCKER EXPLORATION CO			RECEIVED: 01/07/81 JA: TX
8111756	23553	4208931044 102	EARL GRIMES ET AL (487920)
-BOB WALLACE OIL INC			RECEIVED: 01/07/81 JA: TX
8112089	27024	4206500000 103	BURNETT NO 3
-BRAZOS RESOURCES INC			RECEIVED: 01/07/81 JA: TX
8112126	24899	4214900000 103	VERJEAN LAND & CATTLE CO NO 1
-BTA OIL PRODUCERS			RECEIVED: 01/07/81 JA: TX
8111843	25822	4249531111 103	7427 WINKLER 9 #1
-C & K PETROLEUM INC			RECEIVED: 01/07/81 JA: TX
8111909	26390	4223531460 103	NOELKE 14 NO 1 WELL
-C L GAGE JR			RECEIVED: 01/07/81 JA: TX
8112023	26805	4249700000 103	CHLOE HOWARD NO 1
-C W ALCORN JR			RECEIVED: 01/07/81 JA: TX
8112024	26814	4228730111 103	FOX UNIT #1
-CARAWAY OPERATING CO			RECEIVED: 01/07/81 JA: TX
8111845	25845	4241330849 103	MRS A R THIMERSON #1 ID-08222
-CARTER ENERGY CORP			RECEIVED: 01/07/81 JA: TX
8112017	26790	4249731701 103	PAULINE RICE PATTERSON #1
-CENTEX OIL & GAS INC			RECEIVED: 01/07/81 JA: TX
8111777	24235	4270830248 103	STATE TRACT 10-L SW/4 12853
-CHAMPLIN EXPLORATION INC			RECEIVED: 01/07/81 JA: TX
8111946	26539	4214930384 103	RAYMOND SCHULZ #1
8111947	26540	4214930491 103	ROSENHAIN #1
8111753	23521	4205130517 103	STEGMUELLER #1
-CHAMPLIN PETROLEUM COMPANY			RECEIVED: 01/07/81 JA: TX
8111703	20246	4240130764 102	BAILEY SHEPPARD #2
8111703	20246	4240130764 103	BAILEY SHEPPARD #2
8111767	24037	4235531452 103	DONALD INGRAM NO 12
*8111766	24036	4235500000 103	G P WARDNER NO 143
*8111769	24092	4235500000 103	G P WARDNER NO 146
*8111948	26543	4235531449 103	IRENE WALTON NO 2
-CHARLES L WALKER			RECEIVED: 01/07/81 JA: TX
*8111739	23160	4200332163 102	UNDERWOOD C #3
-CHARLES M CHILDERS			RECEIVED: 01/07/81 JA: TX
8111853	25888	4239931467 103	BRADEN #1
8111852	25887	4239931452 103	EGGEMEYER #1 (08201)
8111782	24358	4205931911 103	GENE HARRIS #2 ID-14375
8112118	24753	4205932117 103	GENE HARRIS A #A-1 ID-14750
8111783	24359	4205900000 103	J R BLACK #1 ID-14588
8111851	25886	4239931447 103	ROACH WELL #1
8111793	24431	4208331954 103	TOM WOOD #1 ID-87076
-CHEVRON U S A INC			RECEIVED: 01/07/81 JA: TX
8111711	21542	4249531050 103	W E BAIRD 18-44E

FIELD NAME	PROD	PURCHASER
DICEY (CONGLOMERATE)	100.0	LONE STAR GAS CO
MOBY DICK (CONGL)	0.0	BUCKNER GAS CO
JACKSBORO WEST CONGLOMER	18.2	LONE STAR GAS CO
VICTORIA (4800)	200.0	VALERO TRANSMISSION
PANHANDLE	0.0	PHILLIPS PETROLEUM C
FRELSBURG (Z-20 UP)	258.0	INTRATEX GAS CO
PANHANDLE CARSON COUNTY	120.0	PANHANDLE EASTERN PI
GIDDINGS (AUSTIN CHALK)	0.0	PHILLIPS PETROLEUM C
DELSTRAT (BRUSHY CANYON)	94.0	VALERO TRANSMISSION
TAOS (CANYON)	7.3	
BOONSVILLE (BEND CONGL)	264.0	NATURAL GAS PIPELINE
GIDDINGS (AUSTIN CHALK)	32.0	PGP GAS PRODUCTS INC
TOE NAIL (STRAWN)	45.0	ARCO OIL & GAS CO
BOONSVILLE (BEND CONGLOM	219.0	TEXAS UTILITIES FUEL
HIGH ISLAND 10-L GULF (A	1000.0	TRANSCONTINENTAL GAS
GIDDINGS (AUSTIN CHALK)	14.6	PHILLIPS PETROLEUM C
GIDDINGS BUDA	73.0	RESERVE GAS SYSTEMS
GIDDINGS (AUSTIN CHALK)	720.0	CLAJON GAS CO
E EASON (COTTON VALLEY)	362.0	HYDROCARBON TRANSFER
E EASON (COTTON VALLEY)	362.0	HYDROCARBON TRANSFER
AGUA DULCE (8100)	72.5	TENNESSEE GAS PIPELI
STRATTON (F-31)	575.6	TENNESSEE GAS PIPELI
STRATTON (F-31)	654.1	TENNESSEE GAS PIPELI
AGUA DULCE (7500)	485.5	TENNESSEE GAS PIPELI
BLOCK A-34 (SAN ANDRES)	8.6	PHILLIPS PETROLEUM C
URBAN MILES	91.0	LONE STAR GAS CO
URBAN MILES	14.0	LONE STAR GAS CO
MCCURDY-BLAIR E (MISS)	49.0	CENTURY NATURAL GAS
MCCURDY-BLAIR E (MISS)	36.0	CENTURY NATURAL GAS
MCCURDY-BLAIR E (MISS)	730.0	CENTURY NATURAL GAS
URBAN MILES	14.0	LONE STAR GAS CO
GLEN COVE (MORRIS)	275.0	LONE STAR GAS CO
KERMIT	0.3	TRANSWESTERN PIPELIN

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
-CHRISTIE ENERGY CO INC				RECEIVED: 01/07/81 JA: TX			
8111757	23573	4214330416	103	LITTLE GAS UNIT WELL NO 1 ID#85544	LITTLE (DUFFER LIME) FIE	69.0	CORONADO TRANSMISSIO
-CIMMARON OIL CO INC				RECEIVED: 01/07/81 JA: TX			
8111905	26376	4222130614	102	NUTT GAS UNIT #3	GRANBURY NE (MARBLE FALL	38.3	EMPIRE PIPE LINE COR
8111906	26378	4222130611	102	SWENSON GAS UNIT #1	GRANBURY NE (MARBLE FALL	182.5	EMPIRE PIPE LINE COR
-CIRCLE SEVEN PRODUCTION CO				RECEIVED: 01/07/81 JA: TX			
8111817	25389	4223700000	103	TOM CHERRYHOMES NO 1 ID #80685	LUNA-MAG (BEND CONGL) FI	0.0	LONE STAR GAS CO
-CITIES SERVICE COMPANY				RECEIVED: 01/07/81 JA: TX			
8111816	25380	4214930534	103	RODGERS A #1 OIL UNIT	GIDDINGS (AUSTIN CHALK)	0.0	
-CLAYTON-KEY OIL & GAS CO				RECEIVED: 01/07/81 JA: TX			
8111897	26343	4217900000	108	E-KEY (00245) #1	PANHANDLE GRAY COUNTY	3.2	COLTEXO CORP
8111896	26342	4217900000	108	E-KEY (00245) #2	PANHANDLE GRAY COUNTY	2.5	COLTEXO CORP
8111895	26341	4217900000	108	E-KEY (00245) #3	PANHANDLE GRAY COUNTY	2.7	COLTEXO CORP
8111894	26340	4217900000	108	E-KEY (00245) #4	PANHANDLE GRAY COUNTY	2.5	COLTEXO CORP
-CLEMCO INC				RECEIVED: 01/07/81 JA: TX			
8111730	22705	4220330596	102	CLEMENTS GAS UNIT NO 2 WELL NO 2	LANSING NORTH (TRAVIS PE	550.0	ARKANSAS LOUISIANA G
-CLOVER ENERGY CORP				RECEIVED: 01/07/81 JA: TX			
8111700	20135	4228531279	102	KITTIE CLARK ESTATE #2 78985	CLARK (FRIO 3050)	75.0	TEXAS EASTERN TRANSM
-CMC ENERGY INC				RECEIVED: 01/07/81 JA: TX			
8112135	25006	4213100000	108	SOUTHLAND LIFE NO 9 14334	SOUTHLAND (TEDLIE)	20.1	TRANSCONTINENTAL GAS
-COASTAL OIL & GAS CORP				RECEIVED: 01/07/81 JA: TX			
8111981	26641	4237530718	103	BIVINS 35-55	PANHANDLE (RED CAVE)	5.0	COLORADO INTERSTATE
8111982	26642	4237530720	103	BIVINS 40-35	PANHANDLE (RED CAVE)	1.0	COLORADO INTERSTATE
-COLA PETROLEUM INC				RECEIVED: 01/07/81 JA: TX			
8112002	26730	4217930725	103	ALMA #1	EAST PANHANDLE	14.4	PHILLIPS PETROLEUM C
8111914	26410	4217930734	103	ALMA #2	EAST PANHANDLE	10.8	PHILLIPS PETROLEUM C
*8112001	26729	4238331531	103	ROACH 138 #2	CALVIN (DEAN)	33.8	UNION TEXAS PETROLEU
-COLUMBIA GAS DEVELOPMENT CORP				RECEIVED: 01/07/81 JA: TX			
*8112109	24596	4205130640	102	DAVIS ET AL UNIT WELL NO 1	GIDDINGS (AUSTIN CHALK)	12.0	FERGUSON CROSSING PI
-CONOCO INC				RECEIVED: 01/07/81 JA: TX			
8111953	26560	4211500000	108	EAST ACKERLY DEAN UNIT #24	ACKERLY	36.5	TEXACO INC
8111951	26557	4238900000	108	FORD GERALDINE UNIT #171	GERALDINE FORD	2.1	EL PASO NATURAL GAS
8111952	26558	4238900000	108	FORD GERALDINE UNIT #193	GERALDINE FORD	1.0	EL PASO NATURAL GAS
8111683	18538	4238900000	108	FORD GERALDINE UNIT #68 ID #21021	GERALDINE FORD	0.1	EL PASO NATURAL GASO
8111964	26572	4238900000	108	FORD GERALDINE UNIT #89	GERALDINE FORD	7.3	EL PASO NATURAL GAS
8111963	26571	4238900000	108	FORD GERALDINE UNIT #93	GERALDINE FORD	7.3	EL PASO NATURAL GAS
8112040	26869	4222732159	103	G O CHALK B #16 ID #18988	HOWARD - GLASSCOCK	0.3	PHILLIPS PETROLEUM C
8112039	26868	4222732184	103	G O CHALK C #23 ID #18989	HOWARD - GLASSCOCK	0.3	PHILLIPS PETROLEUM C
8112038	26867	4222732183	103	G O CHALK C #24 ID #18989	HOWARD - GLASSCOCK	0.3	PHILLIPS PETROLEUM C
8111960	26567	4222730261	108	G O CHALK D #16	HOWARD GLASSCOCK	1.0	PHILLIPS PETROLEUM C
8112042	26873	4222732187	103	G O CHALK D #21 ID #18990	HOWARD - GLASSCOCK	0.3	PHILLIPS PETROLEUM C
8112041	26872	4222732189	103	G O CHALK E #19 ID #18991	HOWARD - GLASSCOCK	0.3	PHILLIPS PETROLEUM C
8111961	26568	4243300000	108	GUEST CANYON SAND #25	GUEST	1.0	CITIES SERVICE OIL C
8111956	26563	4222700000	108	H R CLAY G #2	HOWARD-GLASSCOCK	3.7	PHILLIPS PETROLEUM C
8111869	26137	4200332181	103	J W ROBER B #30 ID #71664	FUHRMAN-MASCHO	30.6	PHILLIPS PETROLEUM C
8111943	26533	4238300000	108	MERCHANT ESTATE #7	CALVIN	4.5	EL PASO NATURAL GAS
8111942	26532	4238300000	108	MERCHANT ESTATE #8	CALVIN	5.3	EL PASO NATURAL GAS
8111667	17129	4248330472	107	MILLS RANCH NO 1-21	TEXOLA	296.6	MICHIGAN WISCONSIN P
8111954	26561	4247531724	108	NED WILSON 133 #3	RHODA WALKER	0.0	CLAJON GATHERING CO
8111955	26562	4215130343	108	NORMA F CONWAY #3	ROUND TOP	7.3	LONE STAR GAS CO
8112037	26866	4215131105	103	ROUND TOP PALO PINTO UNIT #163 ID *	ROUND TOP	0.1	LONE STAR GAS CO
8112036	26865	4215131104	103	ROUND TOP PALO PINTO UNIT #164 ID *	ROUND TOP	0.0	LONE STAR GAS CO

JD NO	DOCKET	API NO	SEC	WELL NAME	FIELD NAME	PRICE	PURCHASER
8112035	26864	4200332304	103	W H ROMER A #32 ID #01663	FUHRMAN-MASCHO	16.7	PHILLIPS PETROLEUM C
8112034	26863	4200332305	103	W H ROMER A #33 ID #01663	FUHRMAN-MASCHO	29.2	PHILLIPS PETROLEUM C
8112049	26895	4200332216	103	W T FORD #57 ID #01665	FUHRMAN - MASCHO	16.4	PHILLIPS PETROLEUM C
8111950	26556	4243300000	108	WEST FLOWERS UNIT #39	FLOWERS W	1.0	CITIES SERVICE OIL C
8111949	26555	4243300000	108	WEST FLOWERS UNIT #53	WEST FLOWERS	1.0	CITIES SERVICE CO
8111962	26570	4200300000	108	WEST FUHRMAN MASCHO #15	FUHRMAN-MASCHO	3.3	PHILLIPS PETROLEUM C
8111941	26531	4213500000	108	WIGHT UNIT #129	COWDEN NORTH	3.0	AMOCO PRODUCTION CO
-CORNELL OIL CO				RECEIVED: 01/07/81 JA: TX			
8111888	26318	4250100000	103	CORNELL UNIT NO 3037	WASSON FIELD/SAN ANDRES	30.0	SHELL OIL CO
8111889	26320	4250100000	103	CORNELL UNIT NO 3038	WASSON FIELD/SAN ANDRES	30.0	SHELL OIL CO
-COTTON PETROLEUM CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111898	26348	4232130971	103	BYNUM NO 1	ALLENTOWN (GLEN ROSE UP)	260.0	UNITED GAS PIPE LINE
8111728	22586	4249530900	107	UNIVERSITY 38 #1	WINK SOUTH	200.0	WARREN PETROLEUM CO
-CPC EXPLORATION INC				RECEIVED: 01/07/81 JA: TX			
8111647	12368	4205130354	102	RATCLIFFE JR #1 RRC #12046	CALDWELL (AUSTIN CHALK)	150.0	MAYNARD/CPC PIPELINE
-CROWN EXPLORATION CO				RECEIVED: 01/07/81 JA: TX			
8112114	24690	4205932343	102	BROWN A - WELL NO 2 (87478)	BAIRD EAST (STRAWN SAND)	313.9	LONE STAR GAS CO
-D K G INC				RECEIVED: 01/07/81 JA: TX			
8111812	25305	4248131852	103	IRVIN CHURCHAL NO 1	SPANISH CAMP (STRAY 2800	720.0	LONE STAR GAS CO
-DAVID A SCHLACHTER OIL & GAS				RECEIVED: 01/07/81 JA: TX			
8111729	22639	4242300000	108	J C JONES #15947	CHAPEL HILL	12.6	ETEXAS PRODUCERS GAS
-DELRAY OIL INC				RECEIVED: 01/07/81 JA: TX			
8111698	19553	4208331824	103	GUY A MCDANIEL WELL NO 2	WILDCAT	70.0	LONE STAR GAS CO
-DIAMOND SHAMROCK CORPORATION				RECEIVED: 01/07/81 JA: TX			
8112012	26775	4235700000	108	ALLAN DENNISON NO 1	FARNSWORTH-CONNER	6.0	
8112014	26777	4229500000	108	BASIL DUKE 1-727	BRADFORD NW	4.0	
8112043	26877	4229500000	108	BASIL DUKE 2-727	BRADFORD	7.0	
8112061	26927	4221932892	103	BEATRICE WARREN NO 1-1	HAMILTON	0.3	
8112011	26773	4242100000	108	BIVINS ESTATE NO 2-36	TEXAS HUGOTON	8.0	
8112054	26911	4229500000	108	CITIZENS NATIONAL BANK TR REM NO 1	CNB	0.0	
8112053	26910	4229500000	108	CITIZENS NATIONAL BANK TR REM NO 2	CNB	0.0	
8112015	26778	4229500000	108	GUSSIE SHUTTERLY D NO 1	MAMMOTH CREEK N	7.0	
8111903	26364	4229530792	103	J R MARTIN NO 2	BRADFORD	165.0	SOUTHWESTERN PUBLIC
8112013	26776	4229500000	108	J G BUSSARD NO 1	HIGGINS WEST	4.0	
-DISCOVERY OPERATING INC				RECEIVED: 01/07/81 JA: TX			
8111721	22464	4241330707	103	BEARCE #1	JKT (CANYON) FIELD	180.0	NORTHERN NATURAL GAS
-EL PASO NATURAL GAS COMPANY				RECEIVED: 01/07/81 JA: TX			
8112019	26795	4208726069	108	EMMERT A #2	PANHANDLE EAST BROWN DOL	17.0	EL PASO NATURAL GAS
8111761	23814	4248333400	108	GOOCH # 1-A	PANHANDLE EAST-BROWN DOL	19.0	EL PASO NATURAL GAS
-ENERGY RESERVES GROUP INC				RECEIVED: 01/07/81 JA: TX			
8111979	26633	4223531459	103	ELA C SUGG 59 A #2-L	ELA SUGG (WOLFCAMP)	90.4	NORTHERN NATURAL GAS
-ENERGY TREATING INC				RECEIVED: 01/07/81 JA: TX			
8111662	16498	4223931402	103	W W MOORE ET AL ID 88390	WILDCAT (FOSS-BROWN 3800	128.0	LOVACA GATHERING CO
-ENSERCH EXPLORATION INC				RECEIVED: 01/07/81 JA: TX			
8112026	26834	4249731796	103	C L SHIELDS NO 2	BOONSVILLE	876.0	LONE STAR GAS CO
8112027		4223733110	103	L H YATES D NO 2	BOONSVILLE	237.0	LONE STAR GAS CO
8112132	24936	4249731795	103	LOLA BEVILLE NO 2	BOONSVILLE	132.0	LONE STAR GAS CO
-ESENJAY PETROLEUM CORP				RECEIVED: 01/07/81 JA: TX			
8111978	26632	4214930610	103	FRANKLIN C YOUNG NO 1	GIDDINGS (AUSTIN CHALK)	182.0	PHILLIPS PETROLEUM C
-ESTATE OIL & GAS CORP				RECEIVED: 01/07/81 JA: TX			
8111681	18189	4220330665	102	HORACE BIRDSONG GAS UNIT #1 84219	LANSING NORTH (TRAVIS-PE	1000.0	TEJAS GAS CORP
8111833	25691	4220330722	102	JOHN K KEASLER G U NO 2 87910	LANSING NORTH (COTTON VA	219.0	TEJAS GAS CORP

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8111736	23003	4220330694	102	LENA TAYLOR GAS UNIT NO 1-T	LANSING NORTH (TRAVIS PE	54.8	TEJAS GAS CORP
-EXXON CORPORATION				RECEIVED: 01/07/81 JA: TX			
8112069	26943	4245930446	103	BARREE GAS UNIT 1 #1	ROSEWOOD (HOSSTON-COTTON	322.0	WESTERN GAS CORP
8112066	26940	4245930416	103	BOGEL GAS UNIT 1 #1	ROSEWOOD (HOSSTON-COTTON	614.0	WESTERN GAS CORP
8112067	26941	4245930421	103	BOGEL GAS UNIT 2 #1	ROSEWOOD (HOSSTON-COTTON	104.0	WESTERN GAS CORP
8111907	26383	4235700000	108	C R GARRETT #1	PERRYTON WEST (MARMATON)	7.5	PHILLIPS PETROLEUM C
*8112117	24733	4233930462	103	CONROE FIELD UNIT #1625	CONROE	164.0	MORAN UTILITIES
*8112128	24915	4233930475	103	CONROE FIELD UNIT #2812	CONROE	220.0	MORAN UTILITIES
8112129	24916	4233930476	103	CONROE FIELD UNIT #3907	CONROE	128.0	MORAN UTILITIES
8112063	26930	4210332042	103	CORDONA LAKE UNIT #59	CORDONA LAKE	15.0	ODESSA NATURAL CORP
8112064	26931	4210332041	103	CORDONA LAKE UNIT #61	CORDONA LAKE	0.2	ODESSA NATURAL CORP
8111969	26580	4237133100	103	FORT STOCKTON UNIT #614	FORT STOCKTON (LOWER YAT	9.3	NUECES CO
*8112032	26860	4200332295	103	FULLERTON CLEARFORK UNIT #1019	FULLERTON	24.0	PHILLIPS PETROLEUM C
*8112033	26861	4200332294	103	FULLERTON CLEARFORK UNIT #1927	FULLERTON	53.0	PHILLIPS PETROLEUM C
*8112031	26859	4200332293	103	FULLERTON CLEARFORK UNIT #2143	FULLERTON	19.0	PHILLIPS PETROLEUM C
*8111970	26581	4200332190	103	FULLERTON CLEARFORK UNIT #4267	FULLERTON	25.0	PHILLIPS PETROLEUM C
8111727	22571	4207130795	103	H A GRIPON A/C 1 #30	ANAHUAC	28.0	HOUSTON PIPELINE
8112062	26929	4210332299	103	J R TURR A/C 1 #220L	SAND HILLS (TURR)	11.0	EL PASO NATURAL GAS
8111842	25814	4210332299	103	J R TURR A/C 1 #220U	SAND HILLS (MCKNIGHT)	56.0	EL PASO NATURAL GAS
8111968	26579	4210332300	103	J R TURR A/C 1 #221U	SAND HILLS (MCKNIGHT)	34.0	EL PASO NATURAL GAS
8111971	26582	4210332237	103	J R TURR R #23L	SAND HILLS (TUBB)	11.0	EL PASO NATURAL GAS
8111731	22802	4226130542	102	K R BARENO R (86645)	SAN JOSE SOUTH (G-35 T)	900.0	
8112007	26757	4201530450	103	R W THOMPSON #32	RACCOON BEND (COCKFIELD	12.0	TEXAS SOUTHEASTERN G
8111985	26647	4216531753	103	ROBERTSON (CLEARFORK) UNIT #2350	ROBERTSON N (CLEARFORK 7	2.0	PHILLIPS PETROLEUM C
8111984	26646	4216531722	103	ROBERTSON (CLEARFORK) UNIT #9002	ROBERTSON N (CLEARFORK 7	21.0	PHILLIPS PETROLEUM C
8111973	26596	4216531751	103	ROBERTSON CLFK UNIT #602	ROBERTSON N (CLFK 7100)	16.0	PHILLIPS PETROLEUM C
*8112025	26832	4245930459	103	W F SMITH GAS UNIT 1 #2	GILMER (JURASSIC)	490.0	ARKANSAS LOUISIANA G
8112068	26942	4245930405	103	YOUNG GAS UNIT 1 #1	ROSEWOOD (HOSSTON-COTTON	588.0	WESTERN GAS CORP
-F WILLIAM CARR				RECEIVED: 01/07/81 JA: TX			
8111664	16771	4248101633	103	G A DUFFY NO 26	DUFFY (5370) (PROPOSED)	110.0	TENNESSEE GAS PIPELI
-FOREST OIL CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111776	24227	4204730727	102	MURPHY-BROOKS GAS UNIT NO 1	PITA NW (VICKSBURG 10350	550.0	CHANNEL INDUSTRIES G
-GALAXY OIL COMPANY				RECEIVED: 01/07/81 JA: TX			
8111658	15916	4223300000	108	HURER PRITCHARD #8-01590	PANHANDLE FIELD	0.6	J M HUBER CORP
8111659	15924	4223300000	108	HURER PRITCHARD A #6-01744	PANHANDLE FIELD	5.0	J M HUBER CORP
8111660	15926	4223300000	108	HURER PRITCHARD A #8-01744	PANHANDLE FIELD	5.0	J M HUBER CORP
-GENERAL PRODUCTION CORP				RECEIVED: 01/07/81 JA: TX			
8112084	26994	4205130530	103	CHARLES IMPORDINO ET AL NO 1	INEZ JAMISON (NAVARRO) F	15.0	FERGUSON CROSSING PI
8112083	26993	4205130838	103	CHARLES IMPORDINO NO 2	INEZ JAMISON (NAVARRO) F	47.0	FERGUSON CROSSING PI
8112081	26991	4205130775	103	CORSICANA NATIONAL BANK NO 1	WILLARD (NAVARRO) FIELD	60.0	FERGUSON CROSSING PI
8112082	26992	4205130776	103	DORIS LEDNICKY NO 1	WILLARD (NAVARRO) FIELD	58.0	FERGUSON CROSSING PI
8112045	26880	4205130536	103	JAMES W HARGROVE NO 1	WILLARD (NAVARRO) FIELD	1.0	FERGUSON CROSSING PI
8112044	26879	4205130523	103	MARK CARRTON NO 1	INEZ JAMISON (NAVARRO) F	24.0	FERGUSON CROSSING PI
8112074	26975	4205130498	103	R E SEAY ET AL NO 1	INEZ JAMISON (NAVARRO) F	33.0	FERGUSON CROSSING PI
8112086	26999	4205130623	103	R E SEAY NO 2	INEZ JAMISON (NAVARRO) F	44.0	FERGUSON CROSSING PI
-GEORGE S GALBRAITH				RECEIVED: 01/07/81 JA: TX			
8112072	26949	4242932406	103	FOUR J CATTLE CO 2021	FOUR J (DUFFER UP)	48.0	GULF OIL CO
-GETTY OIL COMPANY				RECEIVED: 01/07/81 JA: TX			
8111749	23367	4216130496	102	ARCO FEE WELL #1	NEAL (SMACKOVER)	586.0	LONE STAR GAS CO
8111752	23408	4248100000	103	F R DUNCAN ET AL #5	WEST BERNARD	0.0	NATURAL GAS PIPELINE
8111795	24458	4237100000	102	MENDEL 26 #2U	GOMEZ (WOLFCAMP UPPER)	148.0	VALERO TRANSMISSION
8112122	24840	4217900000	108	SCHAFER RANCH NO 57	PANHANDLE CARSON COUNTY	2.3	NORTHERN NATURAL GAS

JD NO	JA DOC	API NO	SEC	WELL NAME	FIELD NAME	DEPTH	PURCHASER
8112123	24841	4217900000	108	SCHAFER RANCH NO 59	PANHANDLE CARSON COUNTY	5.5	NORTHERN NATURAL GAS
8112124	24842	4217900000	108	SCHAFER RANCH NO 63	PANHANDLE CARSON COUNTY	0.4	NORTHERN NATURAL GAS
8111881	26281	4249531084	107	UNIVERSITY 32-21 #1L	LITTLE JOE (ELLENBURGER)	1320.0	INTRATEX GAS CO
8111806	25118	4236500000	103	W G ANDERSON WELL #2	CARTHAGE (COTTON VALLEY)	0.0	DELHI GAS PIPELINE C
8111803	25076	4236500000	103	WALLACE UNIT WELL #2	CARTHAGE (COTTON VALLEY)	0.0	DELHI GAS PIPELINE C
8111885	26304	4208331891	103	ZEISKE #5	SANTA ANNA E	8.2	LONE STAR GAS CO
-GIBSON DRILLING CO				RECEIVED: 01/07/81 JA: TX			
8111668	17159	4218330408	103	L L MELTON ET AL NO 1	WILDCAT (TRAVIS PEAK)	274.0	WESTERN GAS CORP
8111669	17161	4220330538	103	MARTIN GAS UNIT NO 1	WILDCAT (TRAVIS PEAK)	292.0	DELHI GAS PIPELINE C
-GIFFORD MITCHELL & WISENBAKER				RECEIVED: 01/07/81 JA: TX			
8112096	27335	4249530914	107	A G HILL WELL NO 1-L	CHEYENNE (RUSSELMAN)	730.0	LONE STAR GAS CO
-GLEN H MCCARTHY				RECEIVED: 01/07/81 JA: TX			
8111733	22840	4215731070	102	BLACKWOOD #1	ROSENBERG (FRIO 5600) FI	730.0	HOUSTON PIPE LINE CO
8111733	22840	4215731070	103	BLACKWOOD #1	ROSENBERG (FRIO 5600) FI	730.0	HOUSTON PIPE LINE CO
-GOLDEN ENGINEERING INC				RECEIVED: 01/07/81 JA: TX			
8111994	26687	4212331030	103	KASPER WIRE WELL NO 1	WILDCAT	162.0	VALERO TRANSMISSION
-GRACE PETROLEUM CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111722	22519	4218130631	103	J REID ET AL #1	DENNISON S (WOODLAKE)	360.0	
8111723	22521	4216130455	103	NEYLAND NO 1	WEST TEAGUE TRAVIS PEAK	3880.0	LONE STAR GAS CO
-GRAND BANKS ENERGY CO				RECEIVED: 01/07/81 JA: TX			
8111908	26388	4237133118	102	E R CHALKLEY #1	S E G (WICHITA-ALBANY)	90.0	EL PASO NATURAL GAS
8111908	26388	4237133118	103	E R CHALKLEY #1	S E G (WICHITA-ALBANY)	90.0	EL PASO NATURAL GAS
-GUADALUPE EXPLORATION CORP				RECEIVED: 01/07/81 JA: TX			
8111913	26409	4208730127	103	BRUTON A #1	EAST PANHANDLE	72.0	EL PASO NATURAL GAS
-GULF OIL CORPORATION				RECEIVED: 01/07/81 JA: TX			
8112008	26768	4250530378	108	DEFLORES JOSEFA G ETAL 72509	EXSUN (WILCOX) 9400	20.0	TENNESSEE GAS PIPELI
8111892	26332	4213500000	108	GOLDSMITH SAN ANDRES UNIT NO 276	GOLDSMITH	19.0	PHILLIPS PETROLEUM C
8111862	26036	4247532053	103	HUTCHINGS STOCK ASSN WELL NO 1274-D	WAGON WHEEL (PENN)	77.0	CABOT CORP
8111928	26473	4247532054	103	HUTCHINGS STOCK ASSN WELL NO 1275	WAGON WHEEL (PENN)	71.4	CABOT CORP
8111929	26475	4247532050	103	HUTCHINGS STOCK ASSN WELL NO 1277	WAGON WHEEL (PENN)	4.0	CABOT CORP
8111926	26459	4237133080	103	MARIE LAURENCE ET AL NO 1	U S M (QUEEN)	9.0	NORTHERN NATURAL GAS
8111838	25716	4237133069	103	PEGGY WEAKLEY ET AL NO 1	U S M (QUEEN)	2.0	NORTHERN NATURAL GAS
-GUS EDWARDS CO				RECEIVED: 01/07/81 JA: TX			
8111810	25282	4205130611	102	SIMS UNIT WELL NO 1	GIDDINGS (AUSTIN CHALK)	400.0	CLAJON GAS CO
-H & L OPERATING COMPANY				RECEIVED: 01/07/81 JA: TX			
8111821	25449	4235700000	102	PSHIGODA #2-T		280.0	TRANSWESTERN PIPELIN
-H P PINNELL TRUSTEE				RECEIVED: 01/07/81 JA: TX			
8111864	26077	4248930583	103	EL SAUZ RANCH NOPAL #1	ARROYO COLORADO (F-1)	135.0	NATURAL GAS PIPELINE
8111865	026078	4248930595	103	EL SAUZ RANCH NOPAL #2	ARROYO COLORADO (F-3)	135.0	NATURAL GAS PIPELINE
8111866	026079	4248930594	103	EL SAUZ RANCH NOPAL #3	ARROYO COLORADO (F-5)	135.0	NATURAL GAS PIPELINE
8111867	26080	4248930593	103	EL SAUZ RANCH NOPAL #4	ARROYO COLORADO (F-1)	135.0	NATURAL GAS PIPELINE
-H V RISIEN				RECEIVED: 01/07/81 JA: TX			
8111710	21528	4212331012	102	DIERFL #1 TO #85700	ARNECKEVILLE (FRIO 2950)	90.0	VALERO ENERGY CORP
8112120	24768	4212331038	102	DIERFL #2		215.0	VALERO ENERGY CORP
8112119	24767	4212331054	102	JACOB PURCELL #3 RRC #88244	ARNECKEVILLE (FRIO 2100)	115.0	VALERO ENERGY CORP
-HAILEY OIL CO INC				RECEIVED: 01/07/81 JA: TX			
8111663	16504	4213331824	103	JIM WRIGHT #1 - (83301)	EASTLAND NORTH (CONGL)	9.5	WEST-CEN TEX GAS CO
-HARKEN OIL & GAS INCORP				RECEIVED: 01/07/81 JA: TX			
8111912	26406	4214330418	103	QUARLES A #1	SAP OAK (DUFFER)	32.0	NORTHERN GAS PRODUCT
-HARRISON INTERESTS LTD				RECEIVED: 01/07/81 JA: TX			
8111734	22893	4210532541	102	NO 18 A UNIVERSITY LAND 3-32	HOWARDS CREEK (CANYON)	70.0	INTRATEX GAS CO
8111734	22893	4210532541	103	NO 18 A UNIVERSITY LAND 3-32	HOWARDS CREEK (CANYON)	70.0	INTRATEX GAS CO
-HENRY PETROLEUM CORP				RECEIVED: 01/07/81 JA: TX			

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8111901	26360	4211500000	103	SMITH A #1	TEX-HAMON (DEAN)	0.0	
-HILLIARD OIL & GAS INC				RECEIVED: 01/07/81 JA: TX			
8111815	25327	4217531319	102	FRANKE #1	GOTTSCHALT WEST (PETTUS)	140.0	UNITED GAS PIPE LINE
-HINTON PRODUCTION COMPANY				RECEIVED: 01/07/81 JA: TX			
8111848	25865	4237330438	102	ANICO NO 1 85877	DAMASCUS (WOODBINE 9330)	959.0	ST REGIS PAPER CO
8111847	25864	4237330425	102	LILLEY NO 1 83221	DAMASCUS (WOODBINE 9380)	917.0	ST REGIS PAPER CO
-HNG OIL COMPANY				RECEIVED: 01/07/81 JA: TX			
8112087	27919	4241330679	103	JOHNSTON 104 #1 76209	ELDORADO (CANYON)	134.0	NORTHERN NATURAL GAS
8112088	27022	4241330702	103	KEENEY 80 #1 79256	ELDORADO (CANYON)	290.0	NORTHERN NATURAL GAS
8111677	17817	4243530784	108	PFLUGER 86 #2 60072	SAWYER (CANYON)	13.0	INTRATEX GAS CO
-HOLLY ENERGY INC				RECEIVED: 01/07/81 JA: TX			
8111682	18489	4217531098	102	A L ROLF NO 1	DALLAS HUSKY NE (MACHANK	550.0	TRANSCONTINENTAL GAS
8111682	18489	4217531098	103	A L ROLF NO 1	DALLAS HUSKY NE (MACHANK	550.0	TRANSCONTINENTAL GAS
-HONDO DRILLING COMPANY				RECEIVED: 01/07/81 JA: TX			
8112046	26894	4238300000	108	WEDDELL SADIE - #1 LEASE #01693	SPRABERRY (TREND AREA)	19.2	UNION TEXAS PETROLEU
8112060	26926	4238300000	108	WEDDELL SADIE #2 LEASE #01693	SPRABERRY (TREND AREA)	19.2	UNION TEXAS PETROLEU
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED: 01/07/81 JA: TX			
8112030	26856	4238331618	103	BOOK #2	CALVIN (DEAN)	73.0	UNION TEXAS PETROLEU
-HUBERT SMITH				RECEIVED: 01/07/81 JA: TX			
*8111707	20992	4229500000	108	L A PUNDT 1-A 02837	KELLN (TONKAWA-OIL)	3.2	PHILLIPS PETROLEUM C
-HUNT OIL COMPANY				RECEIVED: 01/07/81 JA: TX			
*8111732	22816	4246131485	103	V T AMACKER 61 #7	AMACKER-TIPPETT (WOLFCAM	190.0	EL PASO NATURAL GAS
-HURLEY PETROLEUM CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111737	23133	4236531055	103	ALLIE M HOGG UNIT WELL NO 4	BETHANY (COTTON VALLEY)	0.0	TENNESSEE GAS PIPELI
-INDEPENDENT EXPLORATION CO				RECEIVED: 01/07/81 JA: TX			
8111983	26643	4236731542	102	LAGRONE #1 84689	BUCKNER (STRAWN	0.0	JAMES P DUNIGAN INC
-INTEGRAL ENERGY CORP				RECEIVED: 01/07/81 JA: TX			
8111657	15888	4205730913	102	STATE TRACT 10 #1	E PORT LAVACA FIELD	0.0	
8111648	13213	4232130895	103	STATE TRACT 179 #1 RRC ID #82060	MATAGORDA BAY BLK 193 26	540.0	
-J B PRODUCTION CO				RECEIVED: 01/07/81 JA: TX			
8111936	26512	4239900000	103	GEISTMAN NO 1	URBAN (MILES)	0.0	ODESSA NATURAL CORP
8111938	26514	4239930659	103	HOHENSEE C NO 1	URBAN (MILES)	0.0	ODESSA NATURAL CORP
8111937	26513	4239930665	103	HOHENSEE ESTATE NO 1	URBAN (MILES)	0.0	ODESSA NATURAL CORP
8111940	26524	4245130475	103	JESCHKE NO 1	URBAN (MILES)	0.0	ODESSA NATURAL CORP
8111934	26509	4245130584	103	JESCHKE NO 2	URBAN (MILES)	0.0	ODESSA NATURAL CORP
8111935	26510	4239931329	103	WALLACE BOWNDS A NO 2	URBAN (MILES)	0.0	ODESSA NATURAL CORP
-J D PICKETT				RECEIVED: 01/07/81 JA: TX			
8111784	24395	4205932251	103	J A YARBROUGH NO 1	PUTNAM NE (CONGLOMERATE)	216.0	LONE STAR GAS CO
8111785	24397	4205932252	103	J A YARBROUGH NO 2 WELL #1	PUTNAM NE (CONGLOMERATE)	288.0	LONE STAR GAS CO
-J H ROBISON & ASSOCIATES LTD				RECEIVED: 01/07/81 JA: TX			
8111725	22536	4235531420	103	ELLA HERRING NO 1	MINNIE BOCK N (8000)	219.0	TENNESSEE GAS PIPELI
-J O BRUMMETT				RECEIVED: 01/07/81 JA: TX			
8111671	17271	4246900000	102	CHARLES MILLER #1 ID #81110	VICTORIA (1550)	3.8	VALERO TRANS CO
8111840	25792	4246900003	103	GONZALES-WYATT #1 ID #88410	VICTORIA 4600	4.5	VALERO TRANSMISSION
-JAKE L HAMON				RECEIVED: 01/07/81 JA: TX			
*8111765	24010	4219931406	102	A R & S BRADLEY FEE #2	BRADLEY S	300.0	SOUTHWEST GATHERING
-JAMES G FREEMAN				RECEIVED: 01/07/81 JA: TX			
8111738	23134	4235300000	102	HENRY V SHAW NO 1	WOODSBORO SOUTH (5950)	100.0	UNITED GAS PIPE LINE
-JOHN H HENDRIX CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111679	17865	4219331925	103	PENNZOIL-TURR #1	CRAWAR SOUTH (DEVONIAN)	360.0	TRANSWESTERN PIPELIN
8111704	20260	4237132699	103	ROXIE NEAL #1	GOMEZ (ELLENBURGER)	112.5	EL PASO NATURAL GAS
-JOHN R THOMPSON OPERATING INC				RECEIVED: 01/07/81 JA: TX			

JD NO	DOCKET	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8112071	26948	4239100000	103	JOHN F WELDER HEIRS #A-1	VIDAURI (5400)	91.3	TRANSCONTINENTAL GAS
-J3 OIL CO INC				RECEIVED: 01/07/81 JA: TX			
8111927	26471	4239131313	103	HYNES MINERAL TRUST #1	REFUGIO-FOX (1950)	0.0	UNITED GAS PIPELINE
-K L H OIL & GAS INC				RECEIVED: 01/07/81 JA: TX			
8111899	26350	4204932336	103	C A BARR NO 2 (88494)	BBBEC BLK 3 (MARBLE FALL	700.0	ODESSA NATURAL CORP
-K S ADAMS JR				RECEIVED: 01/07/81 JA: TX			
8111673	17392	4206500000	108	JACKSON-MCCASLAND #24570	WEST PANHANDLE	5.2	PHILLIPS PETROLEUM C
8111672	17380	4234100000	108	W D APPLING #1 24566	WEST PANHANDLE	11.7	PHILLIPS PETROLEUM C
-KA-HUGH INTERNATIONAL INC				RECEIVED: 01/07/81 JA: TX			
8111720	22428	4223931487	102	LIONEL PASTOR ET AL NO 2	WILDCAT-PROPOSED LAWARD	365.0	UNITED GAS PIPELINE
8111805	25083	4223931408	103	LIONEL PASTOR NO 1-T	LAWARD NE (6630)	60.0	UNITED GAS PIPELINE
-KEITH D GRAHAM				RECEIVED: 01/07/81 JA: TX			
8111778	24316	4205100000	102	HOW #2: ID-12918	GIDDINGS (AUSTIN CHALK)	178.0	CLAJON GAS CO
8111986	26654	4205130747	102	HOW #3 ID-12918	GIDDINGS (AUSTIN CHALK)	86.8	CLAJON GAS CO
8111824	25477	4205130597	102	HUDSON FEE #1 ID-12983	GIDDINGS (AUSTIN CHALK)	135.0	CHAMPLIN PETROLEUM C
8112125	24891	4205130650	102	LACINA UNIT A #1	GIDDINGS (AUSTIN CHALK)	197.0	CHAMPLIN PETROLEUM C
8111779	24317	4205130615	102	OSCAR F TELG #2 ID-12870	GIDDINGS (AUSTIN CHALK)	251.0	CHAMPLIN PETROLEUM C
8111780	24318	4205100300	102	SCHULTZ UNIT #1 ID-12846	GIDDINGS (AUSTIN CHALK)	115.0	CHAMPLIN PETROLEUM C
-KEN PETROLEUM CORP				RECEIVED: 01/07/81 JA: TX			
8112070	26946	4223931500	103	DENFEFE UNIT #1	EL TORO (5400)	120.0	UNITED TEXAS TRANSMI
8112004	26740	4223931525	103	HEROLD WELL NO 1	STERLING (4800)	0.0	UNITED TEXAS TRANSMI
8112003	26739	4223931520	103	SRURAR WELL NO 1	STERLING (4800)	0.0	UNITED TEXAS TRANSMI
-KENAI OIL AND GAS INC				RECEIVED: 01/07/81 JA: TX			
8111646	12178	4232331185	102	MAVERICK COUNTY WATER BOARD #1 7554	SERBAN (CRETACEOUS LO)	500.0	SUNGAS GATHERING CO
-KERR-MCGEE CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111945	26538	4234305860	103	EMMA MCDOWELL NO 7	PANHANDLE (MOORE) FIELD	50.0	PHILLIPS PETROLEUM C
-L & B OIL CO INC				RECEIVED: 01/07/81 JA: TX			
8111828	25596	4240730423	102	ROBERTS NO 1	SHEPHERD S (WILCOX 8250)	300.0	TENNESSEE GAS PIPELI
8111858	25976	4217531191	103	W D DOBBINS	ANGEL CITY (SLICK WILCOX	300.0	TEXAS EASTERN TRANSM
-L & L PETROLEUM CORP				RECEIVED: 01/07/81 JA: TX			
8111997	26711	4223931351	103	J B LITTLETON #2	EL TORO SW	35.0	NATURAL GAS PIPELINE
-L H ARMER ESTATE				RECEIVED: 01/07/81 JA: TX			
8112058	26924	4242932066	103	WHITTENBURG WF #3-A RRC #15399	STEPHENS COUNTY REGULAR	15.0	SUN GAS GATHERING CO
-LAMBERT HOLLUB DRILLING CO				RECEIVED: 01/07/81 JA: TX			
8111965	26573	4205130470	103	FRED POOLE #2 - RRC 12416	WILLIARD FIELD	25.0	
8111966	26574	4205130575	103	FRED POOLE #3 RRC #12416	WILLIARD FIELD	25.0	
8111967	26575	4205130756	103	FRED POOLE #4 RRC #12416	WILLIARD FIELD	25.0	
-LEAR PETROLEUM CORPORATION				RECEIVED: 01/07/81 JA: TX			
*8111654	15096	4229500000	102	SCHULTZ B #1	LEAR (MORROW UPPER)	0.0	NORTHERN NATURAL GAS
-LOGUE AND PATTERSON INC				RECEIVED: 01/07/81 JA: TX			
8111665	16886	4229700000	102	B M W LTD II #1	SWARTZ FIELD	180.0	HOUSTON PIPELINE CO
8111857	25953	4240900000	103	C SMITH #1	ODEM (2000)	126.0	UNITED GAS PIPELINE
-LONDON & WAGGONER				RECEIVED: 01/07/81 JA: TX			
8112021	26803	4249700000	103	JIMMY CUNNIUS NO 1	BOONSVILLE (BOS) FIELD	255.0	SOUTHWEST GAS PIPELI
-LOUIS A NEWITT				RECEIVED: 01/07/81 JA: TX			
8111666	17040	4208931040	103	#3 JUSTINE KORENEK	LYDIA FIELD 3575 SAND	100.0	LONE STAR GAS CO
-M-T OIL & GAS CO				RECEIVED: 01/07/81 JA: TX			
8111917	26419	4237133070	103	OLIX #1	PAYTON	45.0	EL PASO NATURAL GAS
8111916	26418	4237133083	103	OLIX #5	PAYTON	100.0	EL PASO NATURAL GAS
8111918	26420	4237133084	103	OLIX #6	PAYTON	30.6	EL PASO NATURAL GAS
-MAGNUM RESOURCES INC				RECEIVED: 01/07/81 JA: TX			
8111832	25690	4250333759	103	WRAGG C 1 APPLIED FOR	KNOX	36.0	SUN GAS GATHERING CO

JD XX	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
-MAMIE AXELROD ESTATE					RECEIVED: 01/07/81 JA: TX			
8111661	16102	4217900000	108		BACK & AXELROD -B- NO 2 26457	PANHANDLE EAST	18.3	PHILLIPS PETROLEUM C
-MARATHON OIL COMPANY					RECEIVED: 01/07/81 JA: TX			
8112073	26952	4238331672	103		UNIVERSITY L WELL NO 7	AMIGO (SAN ANDRES)	28.0	BIG LAKE GAS CORP
-MCGOLDRICK OIL COMPANY					RECEIVED: 01/07/81 JA: TX			
8111904	26375	4236531074	103		MARKEY GAS UNIT WELL NO 1 PERMIT ##	BECKVILLE W (COTTON VALL	876.0	UNITED GAS PIPE LINE
-MCMORAN EXPLORATION CO					RECEIVED: 01/07/81 JA: TX			
8111809	25273	4221531017	102		BROWN #1	MCALLEN SO (FALLEN SD)	350.0	TRANSCONTINENTAL GAS
-MEDDERS OIL COMPANY					RECEIVED: 01/07/81 JA: TX			
8112116	24724	4246931512	102		KEERAN RANCH NO 2	ARENOSA CREEK (FRIO 6300	75.0	FLORIDA GAS TRANSMIS
-MESA PETROLEUM					RECEIVED: 01/07/81 JA: TX			
8111841	25811	4243130851	103		MCENTIRE 33 #1	W A M (FUSSELMAN)	94.0	ESPERANZA PIPELINE C
-MEWBOURNE OIL COMPANY					RECEIVED: 01/07/81 JA: TX			
8112105	24581	4219530721	103		JACKSON 1-A	HANSFORD (UPPER MORROW)	210.0	DIAMOND SHAMROCK COR
8111786	24399	4235730993	102		JUDICE #3	HARDY (MORROW UPPER)	120.0	TRANSWESTERN PIPELIN
8111998	26712	4229530807	103		TUBB 423 NO 2	S W LIPSCOMB (CLEVE)	15.0	NORTHERN NATURAL GAS
-MGF OIL CORP					RECEIVED: 01/07/81 JA: TX			
8111768	24089	4231732122	103		NAIL WELL NO 2	SPRABERRY (TREND AREA)	17.2	NORTHERN NATURAL GAS
8111802	25065	4247500000	102		UNIVERSITY 31E #1	WAR-WINK (CHERRY CANYON	8.4	LONE STAR GAS CO
-MITCHELL ENERGY CORPORATION					RECEIVED: 01/07/81 JA: TX			
8111760	23801	4243500000	103		D GENINI 39 #2	SHIRLEY RANCH (CANYON)	100.0	
8111771	24118	4249731492	103		J A RAY #2	ALVORD (ATOKA CONGL)	34.0	NATURAL GAS PIPELINE
8111823	25463	4223733029	103		J W LOVING EST #1	JERMYN WEST (CADDO)	6.2	
8111735	22946	4229330477	103		MUSE TUCKER GAS UNIT #1	PERSONVILLE N (COTTON VA	243.3	SOUTHWESTERN GAS PIP
8111758	23713	4249700000	106		T L DICKENSON #2 28627	BOONESVILLE (BEND CONGL	14.5	NATURAL GAS PIPELINE
8111770	24116	4249731766	103		TRUITTE ELAM #3	BOONESVILLE (BEND CONGL	620.0	NATURAL GAS PIPELINE
-MOBIL PRDG TEXAS & NEW MEXICO INC					RECEIVED: 01/07/81 JA: TX			
8112046	26881	4213133441	108		DCRC SEC 95 NO 29	PIEDRE LUMARE	6.2	TENNESSEE GAS PIPELI
8112051	26907	4238931102	103		GOLENTERNEK-RUDMAN UNIT NO 2	WORSHAM E (CHERRY CANYON	691.0	
8111863	26041	4244330242	103		GOODE ESTATE B UNIT #2	BROWN-BASSETT (STRAWN)	0.0	EL PASO NATURAL GAS
*8111871	26153	4247900000	102		GUILLERMO GARZA NO 1	DOS PAYASOS (WILCOX 5100	280.2	UNITED TEXAS TRANSMI
8112052	26908	4216531826	103		H & J SEC 127 NO 2	SEMINOLE EAST (SAN ANDRE	12.0	
*8112050	26906	4250131630	103		H O MAHONEY NO 54-A	WASSON	53.7	SHELL OIL CO
8111714	22030	4219931337	102		KIRBY LUMBER CORPORATION NO 3	SOUR LAKE E (YEGUA)	1137.0	
8111957	26564	4221932864	103		MAPLE WILSON NO 101	SLAUGHTER SA	5.8	AMOCO PRODUCTION CO
*8111958	26565	4221932854	103		MAPLE WILSON NO 88	SLAUGHTER	2.6	AMOCO PRODUCTION CO
8112090	27030	4232000000	108		PEGASUS SAN AND ROYALTY UNIT #23	PEGASUS (SAN ANDRES)	1.7	EL PASO NATURAL GAS
8112091	27031	4241600000	108		PEGASUS SPRABERRY UNIT NO 23-5	PEGASUS/SPRABERRY	0.5	EL PASO NATURAL GAS
8112092	27032	4241600000	108		PEGASUS SPRABERRY UNIT NO 41-1	PEGASUS (SPRABERRY)	1.8	EL PASO NATURAL GAS
8111715	22032	4219931370	102		PICA INVESTMENT B NO 1	ARRIOLA S (YEGUA 11060)	640.0	TRANCONTINENTAL GAS
8111878	26207	4247931920	102		SOUTH GALLAGHAN RANCH NO 4	RECERRO CREEK (WILCOX LO	983.0	UNITED TEXAS TRANSMI
*8111746	23303	4247541978	103		STATE AG NO 4	CAPRITO DELAWARE MIDDLE	14.0	LONE STAR GAS CO
8111844	25823	4221131189	103		URSCHEL ESTATE NO 1	CANADIAN NE (DOUGLAS)	620.0	PIONEER NATURAL GAS
*8111854	25890	4224931145	102		W C HORNSBY NO 2	LA GLORIA (7050)	61.0	NATURAL GAS PIPELINE
-MONSANTO COMPANY					RECEIVED: 01/07/81 JA: TX			
8111976	26626	4207931162	103		BANK #53-15	LEVELLAND	2.3	CITIES SERVICE CO
8111975	26625	4207931161	103		BANK #53-16	LEVELLAND	2.3	CITIES SERVICE CO
8111995	26697	4207931203	103		RITA #52-2	LEVELLAND	1.1	CITIES SERVICE CO
8111974	26619	4207931158	103		WRIGHT NO 45-12	LEVELLAND	2.3	CITIES SERVICE CO
-MOORE MCCORMACK OIL & GAS CORP					RECEIVED: 01/07/81 JA: TX			
8111876	26164	4247932644	102		HUBBERD HH #1	LIZ EAST (9600) FIELD	985.0	TENNESSEE GAS PIPELI
8111772	24163	4247932643	102		HUBBERD K #1	LIZ EAST (9370)	657.0	TENNESSEE GAS PIPELI

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
-MORAN EXPLORATION INC					RECEIVED: 01/07/81 JA: TX			
8111764	23938	4223531503	103		ROCKER B 64 #2	ELA SUGG (WOLFCAMP)	0.0	NORTHERN NATURAL GAS
-MORGAS					RECEIVED: 01/07/81 JA: TX			
8111680	18064	4249300000	103		SHANNON #1	PANHANDLE EAST	72.0	EL PASO NATURAL GAS
-MOTE RESOURCES INC					RECEIVED: 01/07/81 JA: TX			
8111820	25442	4249700000	103		F M COLLINS NO 2	ALVORD (ATOKA 6400)	55.0	NATURAL GAS PIPE LIN
8111837	25708	4249700000	103		J B BARNES NO 1	SUNSET CONGLOMERATE	62.0	TEXAS UTILITIES FUEL
8111836	25707	4249700000	103		J W PRUITT NO 1	SUNSET (CONGLOMERATE)	91.3	TEXAS UTILITIES FUEL
8111655	15785	4249700000	103		SENSIBAUGH NO 2	BOONSVILLE (BEND CONGL G	151.0	LONE STAR GAS CO
-MURPHY H BAXTER					RECEIVED: 01/07/81 JA: TX			
8111891	26330	4223931505	102		STANFORD NO 2 RRC NO 88960	STANFORD (FRIO 6650) FIE	180.0	UNITED TEXAS TRANSMI
-MWJ PRODUCING COMPANY					RECEIVED: 01/07/81 JA: TX			
8112085	26996	4238331623	103		VERLIS #2	SPRABERRY TREND AREA	800.0	EL PASO NATURAL GAS
-NATURAL GAS ANADARKO INC					RECEIVED: 01/07/81 JA: TX			
8111999	26716	4235730990	102		MEKEEL #1-228	TURNER S E (MORROW UPPER	325.0	TRANSWESTERN PIPELIN
-NEV-TEX OIL & GAS INC					RECEIVED: 01/07/81 JA: TX			
8112020	26801	4208332004	103		ANABELLE NO 1 (87516)	BERRYMAN (KICHI CREEK LI	225.0	ODESSA NATURAL CORP
-NICO ENERGY CORP					RECEIVED: 01/07/81 JA: TX			
8111879	26217	4205130739	102		LINDA NO 1 WELL	GIDDINGS (AUSTIN CHALK)	365.0	CLAJON GAS CO
8111879	26217	4205130739	103		LINDA NO 1 WELL	GIDDINGS (AUSTIN CHALK)	365.0	CLAJON GAS CO
-NORMAN P VANVALKENBURGH					RECEIVED: 01/07/81 JA: TX			
8111804	25084	4213332247	103		W J BRITAIN #1 (16034)	MANGUM WEST (3100)	55.0	ODESSA NATURAL CORP
-NORTH CENTRAL OIL CORPORATION					RECEIVED: 01/07/81 JA: TX			
8112047	26883	4249700000	108		E L BLACK #1	BOONESVILLE (BEND CONGLO	15.0	NATURAL GAS PIPELINE
8111993	26686	4249700000	108		M T MCCLURE #1	BRIDGEPORT (5300 ATOKA C	2.0	MITCHELL ENERGY & DE
-NRM PETROLEUM CORPORATION					RECEIVED: 01/07/81 JA: TX			
8112112	24618	4245130428	102		XQZ RANCH #1 UNIT	XQZ (PALO PINTO)	9.0	CRA INC
8112113	24619	4245130540	102		XQZ RANCH C #1	XQZ (PALO PINTO)	30.0	CRA INC
-NUCORP ENERGY COMPANY					RECEIVED: 01/07/81 JA: TX			
8111775	24198	4228730562	103		GIDDINGS A UNIT #2	GIDDINGS (AUSTIN CHALK)	33.9	CLAJON GAS CO
-PANHANDLE PRODUCING COMPANY					RECEIVED: 01/07/81 JA: TX			
8111790	24425	4223300000	108		ALAMOSA-SANFORD #10 (02787)	PANHANDLE	14.9	COLORADO INTERSTATE
8111789	24424	4223300000	108		ALAMOSA-SANFORD #11 (02787)	PANHANDLE	14.9	COLORADO INTERSTATE
8111792	24428	4223300000	108		ALAMOSA-SANFORD #13 (02787)	PANHANDLE	14.9	COLORADO INTERSTATE
8111791	24427	4223300000	108		ANTELOPE CREEK #7 (01598)	PANHANDLE	8.6	COLORADO INTERSTATE
8111788	24423	4223300000	108		ANTELOPE CREEK #9 (01598)	PANHANDLE	8.6	COLORADO INTERSTATE
-PARAFFINE OIL CORP					RECEIVED: 01/07/81 JA: TX			
8111808	25203	4205700000	102		P H WELDER 9 NO 7-L	KATIE WELDER (N-9)	70.0	FLORIDA GAS TRANSMIS
-PAUL DE CLEVA					RECEIVED: 01/07/81 JA: TX			
8111874	26161	4209330695	103		COTTIER NO 1	BEATTIE N (MARBLE FALLS)	145.0	SOUTHWESTERN GAS PIP
-PAUL E CAMERON JR INC					RECEIVED: 01/07/81 JA: TX			
8111751	23396	4217500000	102		JOSEPH FELLS ESTATE #1	BERCLAIR E (1550)	109.0	UNITED TEXAS TRANSMI
-PENINSULA RESOURCES CORPORATION					RECEIVED: 01/07/81 JA: TX			
8111819	25437	4232130958	102		ROYDER GAS UNIT #1	SUGAR VALLEY SW (FRIO 10	650.0	VALERO TRANSMISSION
-PENNZOIL PRODUCING COMPANY					RECEIVED: 01/07/81 JA: TX			
8111860	25987	4221500000	103		ADERHOLD UNIT NO 5-D	SAN CARLOS (FF-10)	146.0	TRUNKLINE GAS CO
8111781	24353	4236530824	102		ALLISON UNIT NO 2-C	CARTHAGE (TRAVIS PEAK-AL	182.0	UNITED GAS PIPE LINE
8111822	25450	4221500000	102		WALLACE NO 1	EDINBURG EAST	61.0	TRUNKLINE GAS CO
-PETRO-SEARCH INC					RECEIVED: 01/07/81 JA: TX			
8111649	13245	4223300000	108		WHITTENBURG L #29 (1-117-012599)	PANHANDLE	1.7	PHILLIPS PETROLEUM C
8111650	13259	4223300000	108		WHITTENBURG L #35 (1-117-01259-9)	PANHANDLE	1.7	PHILLIPS PETROLEUM C
-PETROLEUM CORPORATION OF TEXAS					RECEIVED: 01/07/81 JA: TX			

JD NO	JA DST	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8111656	15871	4204130323	102		C R SAXON WELL NO 11676	KURTEN (WOODBINE)	89.0	PRODUCERS GAS CO
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 01/07/81 JA: TX			
8111713	21917	4200332019	103		(01796) TEXAS UNIVERSITY-M NO 25	FULLERTON (8500)	83.0	EL PASO NATURAL GAS
8112055	26921	4246101410	108		(03913) N PEMBROOK SPRA NO 39-02	SPRABERRY (TREND AREA)	3.0	NORTHERN NATURAL GAS
8112094	27034	4246101398	108		(03913) N PEMBROOK SPRA NO 5-24	SPRABERRY (TREND AREA)	4.0	NORTHERN NATURAL GAS
8112057	26923	4236330240	108		(04921) WEATHERBY-A NO 06	SPRABERRY (TREND AREA)	8.0	NORTHERN NATURAL GAS
8111972	26595	4238931088	103		(06884) TXL-U NO 2	TUNSTILL	3.0	EL PASO NATURAL GAS
8112093	27033	4213500370	108		(12239) CUMMINS-A NO 15	GOLDSMITH (CLEARFORK)	15.0	EL PASO NATURAL GAS
8112095	27035	4200330164	108		(19710) EMBAR-B NO 38	GOLDSMITH N (SAN ANDRES-	11.0	EL PASO NATURAL GAS
8112056	26922	4200304738	108		(20149) BLOCK 11 DEVONIAN NO 2-11	BLOCK 11 (DEVONIAN)	5.0	EL PASO NATURAL GAS
8111880	26235	4213500170	108		(21193) GLDS ANDECTOR UNIT NO F-14	GOLDSMITH (CLEARFORK)	10.0	EL PASO NATURAL GAS
8112010	26770	4219530611	103		ALEX NO 2	TEXAS HUGOTON	0.0	MICHIGAN WISCONSIN P
8111992	26685	4248300000	108		BUS #2	PANHANDLE WHEELER	0.7	
-PITCOCK INC					RECEIVED: 01/07/81 JA: TX			
8111801	25062	4236332283	103		HOOPER #1	MINERAL WELLS S (GEORGIA	75.0	INTRASTATE GATHERING
-PLACID OIL COMPANY					RECEIVED: 01/07/81 JA: TX			
8111773	24171	4237330446	102		ELMER SEAMANS WELL #1	DAMASCUS (SEAMANS)	475.0	UNITED GAS PIPE LINE
-POGO PRODUCING COMPANY					RECEIVED: 01/07/81 JA: TX			
8111717	22194	4224500000	102		J F GAULDING NO 2	FRENCH ISLAND (HACKBERRY	365.0	UNITED TEXAS TRANSMI
-POLK & PATTON INC					RECEIVED: 01/07/81 JA: TX			
8112028	26848	4236731820	103		BUD #1	BOONSVILLE (BEND CONGL G	547.5	SOUTHWESTERN GAS PIP
8111987	26657	4236731890	103		ELOISE MORRISON UNIT #1-C	BOONSVILLE (BEND CONGL)	693.5	SOUTHWESTERN GAS PIP
-RAIDER OIL CORP					RECEIVED: 01/07/81 JA: TX			
8111825	25478	4246931582	103		MARY K POTH NO 1	HELEN GOHLKE (1700)	100.0	DELHI GAS PIPELINE C
-REALITOS III EXPLORATION PROGRAM					RECEIVED: 01/07/81 JA: TX			
8111939	26523	4223931438	103		GUADALUPE SANCHEZ NO 1	MORALES (4200)	200.0	TENNESSEE GAS PIPELI
-REMUDA OIL & GAS CO					RECEIVED: 01/07/81 JA: TX			
8111870	26142	4200303237	103		UNIVERSITY SEC 13 BLK 14 WELL #1	SHAFTER LAKE (YATES)	686.0	EL PASO NATURAL GAS
-ROADRUNNER OIL CO					RECEIVED: 01/07/81 JA: TX			
8111875	26162	4209330652	103		BIBBY NO 1	BEATTIE N (MARBLE FALLS)	12.0	SOUTHWESTERN GAS PIP
8111873	26160	4209330714	103		LEE NO 1	BEATTIE N (MARBLE FALLS)	152.0	SOUTHWESTERN GAS PIP
8111872	26159	4209330715	103		MATTHEWS NO 1	BEATTIE N (MARBLE FALLS)	50.0	SOUTHWESTERN GAS PIP
-ROBERT M WYNNE					RECEIVED: 01/07/81 JA: TX			
8111705	20539	4236300000	103		CONE #1	WILDCAT	70.0	SOUTHWESTERN NATURAL
-ROCKWOOD RESOURCES INC					RECEIVED: 01/07/81 JA: TX			
8111796	24486	4223931413	102		A J SCOTT ET AL NO 1 RRC #87457	S C A R (5320) FIELD	0.0	DELHI GAS PIPELINE C
-ROWE PRODUCTION CO					RECEIVED: 01/07/81 JA: TX			
8111890	26329	4223931245	102		FLETCHER WELL NO 1L 78301	WEEDHAVEN (9450)	142.0	VALERO TRANSMISSION
8111902	26361	4223931245	102		FLETCHER WELL NO 1U	WEEDHAVEN (9300)	204.0	VALERO TRANSMISSION
-ROY G NIVENS					RECEIVED: 01/07/81 JA: TX			
8111818	25406	4223300000	108		HERRING #3	WEST PANHANDLE FIELD	12.0	PANHANDLE PRODUCING
-S & J OPERATING CO					RECEIVED: 01/07/81 JA: TX			
8112133	24950	4250531102	102		ALDA SCHROEDER A-2-84055	ALWORTH (QUEEN CITY)	45.0	TEJAS GAS CORP
-SAGE ENERGY CO					RECEIVED: 01/07/81 JA: TX			
8111911	26404	4211531352	103		BARKOWSKY #1 RRC#62781	ACKERLY (DEAN SAND)	76.0	GETTY OIL CO
-SANCHEZ-OBRIEN MINERALS CORP					RECEIVED: 01/07/81 JA: TX			
8111724	22535	4247932579	102		J C MARTIN III WELL NO 5	DELORES CREEK	500.0	UNITED TEXAS TRANSMI
8111763	23839	4247932508	102		SOPHIE J MARTIN NO 3	DOLORES CREEK (9200 WILC	0.0	VALERO TRANSMISSION
-SEAGULL OPERATING CO INC					RECEIVED: 01/07/81 JA: TX			
8111690	19178	4233100000	103		COFFIELD R-10 (T-469) NO 1-A	MILBUR WILDCAT	20.0	FERGUSON CROSSING PI
8111689	19177	4233100000	103		COFFIELD R-10 NO 2	MILBUR EAST (3110) FIELD	20.0	FERGUSON CROSSING PI
8111684	19104	4205100000	103		COFFIELD R-7A NO 3	WILDCAT FIELD	20.0	FERGUSON CROSSING PI

JA NO	JA DKT	API NO	SEC	BLK	WELL NAME	FIELD NAME	PROD	PURCHASER
8111686	19106	4205100000	103		COFFIELD R-7A NO 4-A	NOACK COWHERD NE (3400)	33.0	FERGUSON CROSSING PI
8111685	19105	4205100000	103		COFFIELD R-7A NO 5	NOACK COWHERD NE (3400)	139.0	FERGUSON CROSSING PI
8111687	19109	4233100000	103		COFFIELD M-10 NO 1	JORDAN (NAVARRO) FIELD	32.5	FERGUSON CROSSING PI
8111688	19110	4233100000	103		COFFIELD M-11 NO 1	JORDAN (NAVARRO B) FIELD	12.4	FERGUSON CROSSING PI
8111693	19197	4205100000	103		ELSIE SPECKMAN NO 2	CHAMBERS (NAVARRO) FIELD	20.0	FERGUSON CROSSING PI
8111694	19198	4205100000	103		ELSIE SPECKMAN NO 3	CHAMBERS (NAVARRO)	20.0	FERGUSON CROSSING PI
8111695	19199	4205100000	103		ELSIE SPECKMAN NO 4	CHAMBERS (NAVARRO)	20.0	FERGUSON CROSSING PI
8111696	19200	4205100000	103		ELSIE SPECKMAN NO 5	CHAMBERS (NAVARRO)	51.0	FERGUSON CROSSING PI
8111691	19183	4233100000	103		W A KRUEGER NO 1	MILBUR (NAVARRO) FIELD	97.0	FERGUSON CROSSING PI
8111692	19184	4233100000	103		W T PEARSON JR NO 1	MILBUR (NAVARRO) FIELD	0.0	FERGUSON CROSSING PI
-SHELL OIL CO					RECEIVED: 01/07/81 JA: TX			
8111861	25996	4246131578	103		COWDEN 30 1 A	SPRABERRY (TREND AREA)	0.2	PHILLIPS PETROLEUM C
8111910	26393	4249531153	103		SEALY SMITH FOUNDATION #175A	MONAHANS (CLEAR FORK)	2.0	EL PASO NATURAL GAS
-SOHIO NATURAL RESOURCES CO					RECEIVED: 01/07/81 JA: TX			
8112029	26851	4246131566	103		F G KEELE WELL NO 2	SPRABERRY TREND AREA	13.0	EL PASO NATURAL GAS
-SOUTHLAND ROYALTY CO					RECEIVED: 01/07/81 JA: TX			
8111893	26336	4210500000	108		UNIVERSITY LANDS A #1	OZONA WEST	9.4	EL PASO NATURAL GAS
8112121	24815	4246131510	103		WOOLRIDGE 11 #1	SPRABERRY TREND	60.0	PHILLIPS PETROLEUM C
-SOUTHWESTERN ENERGY CORP					RECEIVED: 01/07/81 JA: TX			
8111745	23276	4223732467	103		CRAFT-JONES #1	ALLEN-SIX (4800)	42.0	
8111741	23230	4236731068	103		D G TALBOT #5	BUCK RANCH (STRAWN)	79.3	SOUTHWESTERN GAS PIP
8111740	23208	4250332783	103		NORMAN D STOVALL #3	YOUNG COUNTY REGULAR (OI	0.0	SOUTHWESTERN GAS PIP
8111744	23239	4214330479	103		PARKEY RANCH #10	MORGAN MILL (MARBLE FALL	44.6	ENERGY PIPELINE
8111743	23238	4214330481	103		PARKEY RANCH #9	MORGAN MILL (MARBLE FALL	81.9	ENERGY PIPELINE
8111718	22210	4249731454	103		R E AUSTIN #1	BOONSVILLE (BEND CONG GA	230.0	
8111742	23231	4236731062	103		WADE MOORE #1	BUCK RANCH (STRAWN)	0.0	SOUTHWESTERN GAS PIP
-STRATA ENERGY INC					RECEIVED: 01/07/81 JA: TX			
8111882	26290	4205130809	102		E W DAVIS #2	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
8111883	26291	4205130774	102		GRANDJEAN-SCHULZE #2	GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
-STRINGER OIL & GAS					RECEIVED: 01/07/81 JA: TX			
8111787	24417	4202531118	102		GEORGE A SHINN NO 1	TULETA EAST	540.0	
-SUN OIL COMPANY (DELAWARE)					RECEIVED: 01/07/81 JA: TX			
8111920	26425	4212731634	103		BIG WELLS UNIT WELL NO 2129	BIG WELLS	36.0	HOUSTON PIPE LINE CO
8111922	26427	4212731633	103		BIG WELLS UNIT WELL NO 3119	BIG WELLS	11.0	HOUSTON PIPE LINE CO
8111921	26426	4212731632	103		BIG WELLS UNIT WELL NO 3120	BIG WELLS	22.0	HOUSTON PIPE LINE CO
8111919	26424	4212700000	103		BIG WELLS UNIT WELL NO 4712	BIG WELLS	97.0	HOUSTON PIPE LINE CO
8111923	26428	4212731630	103		BIG WELLS UNIT WELL NO 4713	BIG WELLS	29.0	HOUSTON PIPE LINE CO
8111924	26429	4212731629	103		BIG WELLS UNIT WELL NO 4715	BIG WELLS	22.0	HOUSTON PIPE LINE CO
8111989	26675	4212732017	103		BIG WELLS UNIT WELL NO 5002	BIG WELLS	22.0	HOUSTON PIPE LINE CO
8111807	25141	4208100000	108		CENTRAL NATIONAL BANK -A- NO 6	JAMESON (STRAWN)	9.5	LONE STAR GAS CO
8111834	25701	4204730770	102		D J SULLIVAN NO 11	FLOWELLA	0.0	
8111988	26667	4213500000	108		EAST GOLDSMITH SAN ANDRES 16-3	EAST GOLDSMITH	0.5	PHILLIPS PETROLEUM C
8111653	14568	4213100000	108		L WIEDERKEHR NO 135	NORTH GOVERNMENT WELLS	11.0	TENNESSEE GAS PIPELI
8111925	26440	4246931566	102		MCFADDIN A NO 56	MCFADDIN NORTH FIELD	45.0	UNITED GAS PIPE LINE
-SUPERIOR OIL CO					RECEIVED: 01/07/81 JA: TX			
8111977	26631	4228531425	103		DELORES A PALRANG WELL NO 1	WORD (EDWARDS)	1438.0	UNITED TEXAS TRANSMI
8111750	23388	4201530414	107		ROBERT SPIESS WELL NO 1	NEW ULM	0.0	
-T M ALLEN					RECEIVED: 01/07/81 JA: TX			
8111670	17233	4235531403	103		W C VETTERS NO 4 - 84574	TURKEY CREEK	35.0	VALERO TRANS CO
-TAYLOR OPERATING COMPANY					RECEIVED: 01/07/81 JA: TX			
8112009	26769	4207700000	103		L G EDWARDS #1 (20930)	HEARD (ELLENBURGER)	29.0	NATURAL GAS PIPELINE
-TENNECO OIL COMPANY					RECEIVED: 01/07/81 JA: TX			

JA NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8111877	26190	4248300000	108	BEAR #1	PANHANDLE EAST	5.0	ASHLAND OIL INC
8111675	17465	4212330991	103	D R KRUEGER NO 1	SO COTTONWOOD CREEK	18.0	LONE STAR GAS CO
8111996	26709	4207931217	103	MALLETT LAND CATTLE CO #16	SLAUGHTER	1.5	AMOCO PRODUCTION CO
8111644	08457	4237132681	103	MENDEL ESTATE #3	GOMEZ UPPER WOLFCAMP	0.0	
8111712	21761	4242731376	102	T B SLICK ESTATE NO 71	HINDE (VICKSBURG 21)	1000.0	TENNESSEE GAS PIPELI
*8111651	13769	4235531392	102	W W BOGEL NO 1	AGUA DULCE	145.0	
-TERRA RESOURCES INC				RECEIVED: 01/07/81 JA: TX			
8112080	26993	4248100000	108	E C ALLENSON #2	LOUISE NORTH (3800)	13.0	TENNESSEE GAS PIPELI
8111811	25298	4248131768	102	PIERCE RANCH ESTATE #1	WHARTON WEST	113.0	NATURAL GAS PIPELINE
-TEXACO INC				RECEIVED: 01/07/81 JA: TX			
8112079	26989	4213533369	103	ECTOR BA FEE #1	COWDEN NORTH	6.9	
8111747	23324	4222732013	103	HOWARD F FEE #2	COAHOMA (MISS)	27.0	PHILLIPS PETROLEUM C
8111759	23725	4235531476	103	J O CHAPMAN #123	MOBIL DAVID (8800)	219.0	TEXAS EASTERN TRANSM
8112022	26804	4216531696	103	SOUTHLAND ROYALTY #4	JENKINS (SAN ANDRES)	2.6	PHILLIPS PETROLEUM C
8112000	26721	4247522132	103	STATE GAS UNIT 9 #2	CAPRITO (DELAWARE MIDDLE	154.0	PIONEER NATURAL GAS
-TEXAS OIL & GAS CORP				RECEIVED: 01/07/81 JA: TX			
8111697	19379	4207330296	102	MILLER J #1	SCOOBER CREEK	0.0	
8111697	19379	4207330296	103	MILLER J #1	SCOOBER CREEK	0.0	
8111645	09264	4223931382	102	MOLINA GAS UNIT #1	ANITA (6700)	0.0	UNITED GAS PIPELINE
8111652	14308	4239900000	102	ZAPPE A #1	ZAPPE (GARDNER LIME)	300.0	LONE STAR GAS CO
-TEXAS PACIFIC OIL COMPANY INC				RECEIVED: 01/07/81 JA: TX			
8111855	25894	4246131509	102	DAMRON B NO 1	HELUMA SE (DEVONIAN)	0.0	PHILLIPS PETROLEUM C
8111856	25895	4213332190	102	E GAILEY #1 (LOWER)	GAILEY (CADDO)	73.0	SOUTHWESTERN GAS PIP
-TEXLAND-RECTOR & SCHUMACHER				RECEIVED: 01/07/81 JA: TX			
8112059	26925	4236730885	103	EL CHICO ESTATES NO 1	DICEY (CONGLOMERATE)	73.0	TEXAS UTILITIES FUEL
-TOM BROWN INC				RECEIVED: 01/07/81 JA: TX			
8111754	23542	4241330580	108	MARY COUPE NO 2	HENRY SPECK (CANYON)	89.3	NORTHERN NATURAL GAS
8111755	23545	4241330584	108	W T PARKER ESTATE #1	HENRY SPECK (CANYON)	111.8	PRODUCERS GAS CO
-TOWNSEND GAS CO				RECEIVED: 01/07/81 JA: TX			
8111990	26680	4239900000	103	CHARLES MATSCHEK NO 3-L	ROWENA (GARDNER LIME)	25.0	LONE STAR GAS CO
8111991	26682	4239900000	103	CHARLES MATSCHEK NO 6	ROWENA N (GARDNER LIME)	25.0	LONE STAR GAS CO
-TRANSCONTINENTAL OIL CORPORATION				RECEIVED: 01/07/81 JA: TX			
8111814	25323	4236530940	103	J A EDGE A NO 1 88513	CARTHAGE (COTTON VALLEY)	255.0	SOUTHWESTERN ELECTRI
*8111794	24454	4241330855	102	UNIVERSITY 15 #1	UNIVERSITY 54 (CANYON)	180.0	CRA INC
-TRAVELERS OIL CO				RECEIVED: 01/07/81 JA: TX			
8111643	08091	4217900000	108	HAYNES #17 03776	PANHANDLE - GRAY COUNTY	3.5	PHILLIPS PETROLEUM C
8111642	08088	4217900000	108	HUSELBY #14 03631	PANHANDLE - GRAY COUNTY	4.7	PHILLIPS PETROLEUM C
-TREND RESOURCES LTD				RECEIVED: 01/07/81 JA: TX			
8111813	25320	4208931132	102	DAVID WINTERMANN 1 NO 88174	WYLIE (WILCOX)	912.0	SEAGULL PIPELINE COR
-TRI-MOR PRODUCTION CO				RECEIVED: 01/07/81 JA: TX			
8112078	26986	4242932444	103	J M FAMBRO B #2 (88386)	WAYLAND NE (STRAWN)	91.3	SOUTHWESTERN GAS PIP
8112075	26976	4242932442	103	J M FAMBRO C #3 (88387)	WAYLAND NE (STRAWN)	91.3	SOUTHWESTERN GAS PIP
8112076	26983	4242932364	103	J W HOPE #1 (15904)	BRECKENRIDGE SE (DUFFER)	91.3	WARREN PETROLEUM CO
8112077	26984	4242932462	103	J W HOPE B #1 (16055)	BRECKENRIDGE SE (DUFFER)	91.3	WARREN PETROLEUM CO
-U S OPERATING INC				RECEIVED: 01/07/81 JA: TX			
8112115	24708	4228730551	102	BARBARA #1 ID 85419	GIDDINGS (AUSTIN CHALK G	0.0	PGP GAS PRODUCTS INC
-UNC TEXAS INC				RECEIVED: 01/07/81 JA: TX			
8111959	26566	4249731615	103	RUSSELL #1 RRC OIL LSE #20297	ALVORD (ATOKA CONGL)	40.0	TEXAS UTILITIES FUEL
-UNION EXPLORATION				RECEIVED: 01/07/81 JA: TX			
8111900	26351	4205932343	103	LUTHER ROGERS NO 3 (97915)	PUTNAM NE (CONGLOMERATE)	250.0	LONE STAR GAS CO
-UNION OIL COMPANY OF CALIF				RECEIVED: 01/07/81 JA: TX			
8111726	22554	4216130529	103	J A WRIGHT GAS UNIT WELL NO 2	TEAGUE WEST (HAYNESVILLE	730.0	LONE STAR GAS CO

JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8111868	26113	4213533315	103	MOSS UNIT #1-8	COWDEN SOUTH	12.0	ODESSA NATURAL CORP
-UPHAM OIL & GAS CO				RECEIVED: 01/07/81 JA: TX			
8112137	25018	4249700000	108	WM ORR A RRC#12800	MORRIS (STRAWN)	6.0	LONE STAR GAS CO
-VARN PETROLEUM CO				RECEIVED: 01/07/81 JA: TX			
8112130	24934	4240931329	103	OMA E HILL #1 MORGAN (5940 FRIO)	MORGAN (5940 FRIO)	0.0	TRANSCONTINENTAL GAS
-VAUGHN PETROLEUM INC				RECEIVED: 01/07/81 JA: TX			
8112108	24591	4217531285	102	ABRAMEIT HUGO 86435	WEBER SW (3180)	36.5	DELHI GAS PIPELINE C
-VERNON GREENE & V H FUNK				RECEIVED: 01/07/81 JA: TX			
8111762	23835	4207900000	103	SEABOARD-WRIGHT #5	LEVELLAND	34.0	CITIES SERVICE CO
-W CARLTON WEAVER				RECEIVED: 01/07/81 JA: TX			
8112018	26791	4248300000	108	POPE-CHAPA-SAENZ WELL NO 2 54249	INDEPENDENCE SOUTH (FRIO	0.0	TENNESSEE GAS PIPELI
-W L PENNINGTON INC				RECEIVED: 01/07/81 JA: TX			
8111640	00785	4208730098	103	EMMERT 1-99 ID #76463	PANHANDLE EAST	36.5	EL PASO NATURAL GAS
8111639	00784	4208730099	103	EMMERT 2-2 ID #75865	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111850	25877	4208730099	108	EMMERT 2-2 ID #75865	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111932	26478	4208730151	103	EMMERT 2-82 ID #88953	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111931	26477	4208730150	103	EMMERT 2-99 ID #88918	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111641	00790	4208730100	103	EMMERT 3-2 ID #76464	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111930	26476	4208730153	103	EMMERT 3-99 ID #88917	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8112136	25016	4208730100	108	EMMERT 302 ID #76464	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
8111849	25874	4208730149	103	MCFARLAND 3-1 ID #88520	PANHANDLE EAST	20.0	EL PASO NATURAL GAS
-W WALDO LYNCH				RECEIVED: 01/07/81 JA: TX			
8111774	24185	4250700000	102	W WALDO LYNCH LAMANTIA NO 1	LA MANTIA (SAN MIGUEL)	144.0	VALERO TRANSMISSION
-WARRIOR RESOURCES INC				RECEIVED: 01/07/81 JA: TX			
8111796	24576	4229300000	108	BARRON GAS WELL NO 64572	COIT/(NACATOCH)	16.0	GULFTIDE GAS CORP
8111797	24575	4229300000	108	GUNTER (01963) OIL WELL NO 1	COIT (NACATOCH)	1.0	GULFTIDE GAS CORP
8112107	24583	4229300000	108	GUNTER (01963) OIL WELL NO 3	COIT (NACATOCH)	1.0	GULFTIDE GAS CORP
8112106	24582	4229300000	108	GUNTER (01963) OIL WELL NO 4	COIT (NACATOCH)	1.0	GULFTIDE GAS CORP
8111799	24577	4229300000	108	LONG GAS WELL NO 72366	COIT (NACATOCH)	6.0	GULFTIDE GAS CORP
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED: 01/07/81 JA: TX			
8112016	26787	4200331176	103	UNIVERSITY 6-18 NO 1	BLOCK 6 NE (SPRABERRY)	2.0	PHILLIPS PETROLEUM C
-WILLIAM MOSS PROPERTIES INC				RECEIVED: 01/07/81 JA: TX			
8111829	25609	4237130280	108	E O REED A WELL NO 1	MPF (YATES) FIELD	5.2	NORTHERN NATURAL GAS
-WILLIAM PERLMAN				RECEIVED: 01/07/81 JA: TX			
8112101	27769	4242100000	108	DAN CAUTHORN 1-E	WINDSOR (CANYON)	20.0	EL PASO NATURAL GAS
8112102	27778	4242100000	108	DAN CAUTHORN 134 NO 1	SHURLEY RANCH (CANYON)	0.0	EL PASO NATURAL GAS
8112103	27786	4242100000	108	GEO BROCKMAN 37 NO 2	SAWYER (CANYON)	20.0	EL PASO GAS TRANSPOR
8112097	27759	4242100000	108	HAZEL E REAM NO 1	SAWYER (CANYON)	20.0	EL PASO GAS TRANSPOR
8112099	27767	4242100000	108	HUNT ESTATE TRUST NO 1	SAWYER (CANYON)	0.0	EL PASO GAS TRANSPOR
8112100	27768	4242100000	108	HUNT ESTATE TRUST NO 2	SAWYER (CANYON)	0.0	EL PASO GAS TRANSPOR
8112098	27766	4242100000	108	MAYER NO 34-1	SAWYER (CANYON)	20.0	VALERO GAS TRANSMISS
8112104	28573	4243532144	108	WARD 18-1 87670	SHIRLEY RANCH (CANYON)	0.0	EL PASO NATURAL GAS
-WILLIAMS-GIEGER RESOURCES INC				RECEIVED: 01/07/81 JA: TX			
8111699	20055	4220330668	103	JOBE-TRAMMEL #1	WASKOM (COTTON VALLEY LO	365.0	EAST TEXAS INDUSTRIA
-WORLDWIDE ENERGY CORPORATION				RECEIVED: 01/07/81 JA: TX			
*8111719	22284	4242330394	102	DENMAN NO 1	SUNSHINE	150.0	SEMCO GAS INC
-WTG EXPLORATION INC				RECEIVED: 01/07/81 JA: TX			
8111674	17444	4210500000	103	UNIVERSITY 2036	HOWARD DRAW (SHALLOW)	114.0	EL PASO NATURAL GAS
-WY-VEL CORP				RECEIVED: 01/07/81 JA: TX			
8111933	26488	4206530777	103	BURNETT #5 (04270)	PANHANDLE CARSON COUNTY	55.0	PHILLIPS PETROLEUM C
-WYNN D MILLER				RECEIVED: 01/07/81 JA: TX			
8111887	26310	4202531272	103	J R SCOTT RANCH NO 1	NORMANNA S (2050)	60.0	FERGUSON CROSSING PI

OTHER PURCHASERS VOLUME NO 1356

8111651	TENNESSEE GAS PIPELINE
8111654	RAEL GAS COMPANY
8111707	WESTERN CRUDE OIL INC
8111719	UNITED GAS P L CO
8111732	PECOS CO
8111739	EL PASO NATURAL GAS CO
8111746	INTRATEX GAS CO
8111765	COLUMBIA GAS TRANS
8111766	COLUMBIA GAS TRANS
8111769	COLUMBIA GAS TRANS
8111794	LONE STAR GAS COMPANY
8111854	TRANSCONTINENTAL PIPELINE CORP
8111871	TRANSCONTINENTAL GAS P/L CO
8111948	COLUMBIA GAS TRANSMISSION
8111958	EL PASO NATURAL GAS CO
8111970	AMOCO
8112001	EL PASO NATURAL GAS CO
8112006	WINNIE PIPELINE CO
8112025	DELHI GAS PIPELINE CORP
8112031	AMOCO PRODUCTION CO
8112032	AMOCO PRODUCTION CO
8112033	AMOCO PRODUCTION CO
8112050	COLTRAN CORP
8112109	CHAMPLIN PETROLEUM CO
8112117	CHAMPLIN PETROLEUM CO
8112128	CHAMPLIN PETROLEUM 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 20, 1981.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-4246 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Cases Filed Week of January 9 Through January 16, 1981

During the week of January 9 through January 16, 1981, 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 CFR 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.

Dated: February 2, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Jan. 9 through Jan. 16, 1981]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 9, 1981	Exxon Company, Houston, Texas	BEX-0152	Supplemental Order. If granted: The March 20, 1979 Decision and Order (Case No. FEX-0184) issued to Exxon Company by the Office of Hearings and Appeals would be rescinded.
Jan. 9, 1981	Good Hope Refineries, Inc., Washington, D.C.	BEA-0583	Appeal of ERA Decision and Order. If granted: The December 22, 1980 Decision and Order issued by the Economic Regulatory Administration to Good Hope Refineries, Inc. regarding the firm's participation in the Crude Oil Buy/Sell Program would be modified.
Jan. 9, 1981	Office of Special Counsel, Washington, D.C.	BRZ-0079	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an order to the Standard Oil Company of California requiring the firm to file a Statement of Factual Objections in Case No. DRO-0196.
Jan. 12, 1981	Bear Lake S.W.D. System, Bear Lake, Michigan	BEE-1589	Price Exception. If granted: Bear Lake S.W.D. System would be permitted to sell at market prices the crude oil produced from its Salt Water Disposal Well.
Jan. 12, 1981	Energy Cooperative, Inc./Kerr-McGee Corporation, Washington, D.C.	BEJ-0178	Motion for Protective Order. If granted: Kerr-McGee Corporation and Energy Cooperative, Inc. would enter into a Protective Order regarding the exchange of proprietary information in connection with Energy Cooperative, Inc.'s Application for Exception (Case Nos. BEE-0508 and BEE-1298).
Jan. 12, 1981	Good Hope Refineries, Inc., Washington, D.C.	BEE-1593	Exception from the Buy/Sell Program. If granted: Good Hope Refineries, Inc. would receive an exception from the provisions of 10 C.F.R. § 211.65, regarding the firm's participation in the Crude Oil Buy/Sell Program.
Jan. 12, 1981	Hibbard Oil Company, Orlando, Florida	BEX-0151	Supplemental Order. If granted: The February 26, 1980 Decision and Order (Case No. DEA-0618) issued by the Office of Hearings and Appeals to Hibbard Oil Company would be modified.
Jan. 12, 1981	Thriftway Company, Washington, D.C.	BER-0086, BES-0129.	Request for Stay and Request for Modification. If granted: The December 19, 1980 Decision and Order (Case Nos. BES-0078 and BST-0078) issued to Thriftway Company regarding the firm's entitlements purchase obligations would be modified. The December 19 Decision and Order would be stayed pending a determination on Thriftway's Request for Modification.
Jan. 12, 1981	Total Petroleum Corp., Wichita, Kansas	BST-1225, BES-1255.	Request for Stay and Temporary Stay. If granted: Total Petroleum Corporation would receive a temporary stay and stay of the September 3, 1980 Interim Decision and Order issued to American Agri-Fuels Corporation by the Office of Hearings and Appeals pending a determination on the Statements of Objections submitted by several firms in response to the September 3, 1980 Proposed Decision and Order issued to American Agri-Fuels (Case No. BXE-1255).
Jan. 12, 1981	Warrior Asphalt Company of Alabama, Inc., Washington, D.C.	BEX-0150	Supplemental Order. If granted: The December 16, 1980 Decision and Order (Case No. BXE-1477) issued by the Office of Hearings and Appeals to Warrior Asphalt Company of Alabama, Inc. would be modified.
Jan. 12, 1981	West Coast Oil Company, Los Angeles, California	BEE-1587	Exception from the Entitlements Program. If granted: West Coast Oil Company would receive an exception from the provisions of 10 C.F.R. § 211.67 with respect to its entitlements purchase obligations.
Jan. 13, 1981	Asamera Oil (U.S.), Inc., Washington, D.C.	BEL-0075	Request for Temporary Exception. If granted: Asamera Oil (U.S.), Inc. would receive a temporary exception from the provisions of 10 CFR § 211.67 which would modify its entitlements purchase obligations.
Jan. 13, 1981	Big S Oil Company, Inc., Sullivan County, New York	BEE-1591	Exception from Reporting Requirements. If granted: Big S Oil Company, Inc. would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Jan. 9, 1981	Instrument Control Service, Pensacola, Florida	BFA-0584	Appeal of Information Request Denial. If granted: The December 9, 1980 Information Request Denial issued by the Strategic Petroleum Reserve Management Office would be rescinded and Instrument Control Service would receive access to (i) a copy of the minutes of the June 1, 1978 meeting between the firm and DOE and (ii) a related Memorandum of Negotiations.
Jan. 13, 1981	National Oil & Supply Company, Inc., Springfield, Missouri.	BEE-1390	Exception from Reporting Requirements. If granted: National Oil & Supply Company, Inc. would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Jan. 13, 1981	Office of Special Counsel, Washington, D.C.	BRZ-0080	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an order to Atlantic Richfield Co. requiring the firm to file a Statement of Factual Objections in Case No. DRO-0192.
Jan. 13, 1981	Plateau, Inc., Washington, D.C.	BES-0128	Request for Stay. If granted: Plateau, Inc. would receive a stay of the December 16, 1980 Proposed Decision and Order (Case No. BEE-1480) issued to the firm, pending a final determination on its Application for Exception.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Jan. 9 through Jan. 16, 1981]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 13, 1981	Ross Oil Company, Holden, Missouri	BEE-1592	Exception from Reporting Requirements. If granted: Ross Oil Company would not be required to file Form EIA-173 ("Sales of Fuel Oil & Kerosene").
Jan. 14, 1981	Missouri Terminal Oil, St. Louis, Missouri	BES-0130	Request for Stay. If granted: Missouri Terminal Oil would receive a stay of its obligation to file a response to the September 10, 1980 Notice of Probable Violation issued to the firm by the Central Enforcement District of the Economic Regulatory Administration.
Jan. 14, 1981	Natural Resources Defense Council, Inc., Washington, D.C.	BFA-0586	Appeal of Information Request Denial. If granted: The December 10, 1980 Information Request Denial issued by the Office of International Security Affairs would be rescinded and the Natural Resources Defense Council, Inc. would receive access to a document entitled "A Study on Government Control of ICF Research."
Jan. 15, 1981	Campbell Point Boat Dock, Shell Knob, Montana	BRW-0073	Proposed Remedial Order Finalization. If granted: A Proposed Remedial Order issued to Campbell Point Boat Dock on August 27, 1980 would be issued as a final Remedial Order.
Jan. 15, 1981	Cities Service Co./Little America Refining Company, Washington, D.C.	BEJ-0166, BED-0089	Motion for Discovery and Protective Order. If granted: Discovery would be granted to Cities Service Company and the firm would enter into a Protective Order with Little America Refining Company regarding the release of proprietary information to Cities Service in connection with Little America Refining Company's Application for Exception (Case No. BEE-1064).
Jan. 15, 1981	John Gray Shell, St. Louis, Missouri	BRW-0076	Proposed Remedial Order Finalization. If granted: A Proposed Remedial Order issued to John Gray Shell on January 21, 1980 would be issued as a final Remedial Order.
Jan. 15, 1981	Missouri Terminal Oil, Washington, D.C.	BET-0014	Request for Temporary Stay. If granted: Missouri Terminal Oil would receive a temporary stay of its obligation to respond to the September 10, 1980 Notice of Probable Violation issued to the firm by the Central Enforcement District of the Economic Regulatory Administration pending a final determination on its Application for Stay (Case No. BES-0130).
Jan. 15, 1981	Moore Holding, Inc., Vineland, New Jersey	BEE-1594	Exception from Reporting Requirements. If granted: Moore Holding, Inc. would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Jan. 15, 1981	Rovina Marina, Ltd., Hampton Bays, New York	BRW-0074	Proposed Remedial Order Finalization. If granted: The November 10, 1980 Proposed Remedial Order issued to Rovina Marina, Ltd. would be issued as a final Remedial Order.
Jan. 15, 1981	Southland Oil Co./VGS Corp., Washington, D.C.	BXE-1595	Exception from the Entitlements Program. If granted: Southland Oil Company would receive an exception from the provisions of 10 CFR § 211.67 which would modify its entitlements purchase obligations.
Jan. 15, 1981	Thriftway Company, Washington, D.C.	BEA-0585	Appeal of ERA Decision and Order. If granted: The December 10, 1980 Decision and Order issued by the Economic Regulatory Administration to Thriftway Company regarding the firm's participation in the Crude Oil Buy/Sell Program would be modified.
Jan. 15, 1981	Viola Boat Dock, Shell Knob, Montana	BRW-0075	Proposed Remedial Order Finalization. If granted: The August 26, 1980 Proposed Remedial Order issued to Viola Boat Dock would be issued as a final Remedial Order.
Jan. 15, 1981	Westwood Car Wash, Washington, D.C.	BCX-0153	Supplemental Order. If granted: Westwood Car Wash would be granted exception relief on an interim basis pending a final determination on its appeal to the Federal Energy Regulatory Commission (Case No. RA80-78) of the April 22, 1980 Decision and Order issued by the Office of Hearings and Appeals (Case No. BEO-0225), as remanded in the January 6, 1981 FERC Order Granting in Part Request for Interim Relief.
Jan. 16, 1981	Alabama River Pulp Company, Washington, D.C.	BEA-0588, BES-0588, BRT-0588.	Appeal of Entitlements Notice; Request for Stay and Temporary Stay. If granted: Alabama River Pulp Company requests that it be designated as a producer of a petroleum substitute and that it be permitted to participate in the Entitlements Program.
Jan. 16, 1981	Lawrence G. Spielvogel, Inc., Wyncote, Pennsylvania.	BFA-0587	Appeal of Information Request Denial. If granted: The Information Request Denial issued to Lawrence G. Spielvogel, Inc. would be rescinded and the firm would receive access to certain DOE information.
Jan. 16, 1981	Young Refining Company, Washington, D.C.	BED-0090	Motion for Discovery. If granted: Discovery would be granted to Young Refining Company in connection with the Statement of Objections submitted by Exxon Company U.S.A. in response to the December 27, 1979 Proposed Decision and Order (Case No. BXE-0005) issued to Young Refining Company.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

[Week of Jan. 9, 1981 to Jan. 16, 1981].

If granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

Name	Case No.	Date	State
Ludwig Service Center	BEE-1588	Jan. 12, 1981	Indiana.

[FR Doc. 81-4279 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders, Week of January 12 Through January 16, 1981

During the week of January 12 through January 16, 1981, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will

be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 2, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Asamera Oil (U.S.) Inc., Washington, D.C., BEE-1491, crude oil

Asamera Oil (U.S.) Inc., filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would result in an increase in the firm's entitlement sales obligations in order to bring Asamera's average crude oil acquisition costs into substantial parity with those of other domestic refiners. On January 15, 1981, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

MAPCO, Inc., Tulsa, Oklahoma, BEE-1321, crude oil

MAPCO, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced and sold for the benefit of the working interest owners from the Carman 1-7 Lease located in Duchesne County, Utah. On January 12, 1981, the DOE issued a Proposed Decision and Order in which it tentatively determined that exception relief should be granted.

MAPCO, Inc., Tulsa, Oklahoma, BEE-1322, crude oil

MAPCO, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced and sold for the benefit of the working interest owners from the Dennie Ralphs 1-5 Lease located in Duchesne County, Utah. On January 12, 1981, the DOE issued a Proposed Decision and Order in which it tentatively determined that exception relief should be denied.

MAPCO, Inc., Tulsa, Oklahoma, BEE-1362, crude oil

MAPCO, Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit the firm to sell at market prices a certain portion of the crude oil produced and sold for the benefit of the working interest owners from the Sorensen 1-8 Lease located in Duchesne County, Utah. On January 16, 1981, the DOE issued a Proposed Decision and Order in which it tentatively determined that exception relief should be granted.

Mobile Bay Refining Company, Chicksaw, Alabama, DPI-0023, crude oil

Mobile Bay Refining Company filed an application for Exception from the provisions of Section 213.35 of the Mandatory Oil Import Program. The exception request, if granted, would result in the return to Mobile of $75,886 in license fees paid by the firm in connection with crude oil imported during the period October 1977 through April 1978. On January 12, 1981, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

Mohawk Petroleum Corporation, Inc., Tulsa, Oklahoma, DXE-3714, crude oil

In accordance with Decisions and Orders issued to Mohawk Petroleum Corporation, Inc. granting the firm exception relief from the provisions of 10 CFR § 211.67 (the Entitlements Program), the firm submitted actual financial data for the fiscal year ended December 31, 1978. After reviewing the level of exception relief granted to Mohawk under the applicable standards, the DOE on January 14, 1981 issued a Proposed Decision and Order in which it tentatively determined that Mohawk should return $275,932 of the entitlements exception relief previously granted to the firm.

Pennzoil Company, Houston, Texas, BEE-1024, motor gasoline

Pennzoil Company filed an Application for Exception from the provisions of 10 CFR §§ 211.12 and 211.102. The exception request, if granted, would relieve Pennzoil of its obligation to sell motor gasoline to seven firms which purchased fuel from Pennzoil during the November 1977-October 1978 base period and would allow Pennzoil to substitute its adjusted 1972 base period allocation for its Novembver 1977-October 1978 base period allocation when purchasing motor gasoline. On January 16, 1981, the DOE issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

York Division Unitary Products, York, Pennsylvania, BEE-1338, testing procedures

York Division Unitary Products filed an Application for Exception from the provisions of 10 CFR Part 430. The exception request, if granted, would permit the applicant to employ a modified test procedure to determine the energy efficiency of its new air-to-air heat pump system. On January 13, 1981, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Petition Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Proposed Decision and Order which determined that the exception request be denied:

Company Name, Location, and Case No.

White Petroleum, Inc., Washington, D.C., DEE-7395

[FR Doc. 81-4281 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed Week of January 16 Through January 23, 1981

During the week of January 16 through January 23, 1981, 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 CFR 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.

Dated: February 2, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearing and Appeals

[Week of Jan. 16 through Jan. 23, 1981]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 16, 1981	J. E. DeWitt, Inc., South El Monte, California	BEE-1596	Exception from Reporting Requirements. If granted: J. E. DeWitt, Inc. would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").

List of Cases Received by the Office of Hearing and Appeals—Continued

[Week of Jan. 16 through Jan. 23, 1981]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 16, 1981	Little America Refining Company, Washington, D.C.	BEZ-0081	Motion for Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an Order disqualifying the law firm of Ginsburg, Feldman, Weil and Bress from further representation of Wyoming Refining Company in connection with Little America Refining Company's Application for Excepton (Case No. BEE-1064).
Jan. 16, 1981	Milder Oil Company, Washington, D.C.	BFA-0589	Appeal of Information Request Denial. If granted: The December 15, 1980 Information Request Denial issued by the Central Enforcement District, Economic Regulatory Administration, would be rescinded, and Milder Oil Company would receive access to DOE information regarding the December 12, 1977 Consent Order (Case No. 733H06002) into which Milder Oil Company had entered.
Jan. 19, 1981	Asamera Oil (U.S.) Inc., Denver Colorado	BEE-1599, BXE-1600, BXE-1601.	Price Exception (Section 212.73). If granted: Asamera Oil (U.S.) Inc. would be permitted to sell at market prices the crude oil produced from the Dustin, K. W. Carrell and Myrin Ranch leases located in the Altamont Field, Duchesne County, Utah.
Jan. 19, 1981	Atlantic Richfield Company, Los Angeles, California	BES-0131	Request for Stay. If granted: Atlantic Richfield Company would receive a stay of the December 31, 1980 Interim Decision and Order (Case No. BEN-0076) issued to the 341 Tract Unit of the Citronelle Field by the Office of Hearings and Appeals.
Jan. 19, 1981	Atlantic Richfield Company, *et al.*, Washington, D.C.	BER-0092 through BER-0098.	Request for Modification. If granted: The December 18, 1980 Decision and Order issued to Getty Refining and Marketing Company, Marathon Oil Company, Mobil Oil Corporation, Chevron U.S.A. Inc., Atlantic Richfield Company, Exxon Company, U.S.A., and Conoco, Inc. would be modified regarding the discovery of certain information in connection with the Application for Exception filed by Union Oil Company of California (Case No. DEE-5748).
Jan. 19, 1981	Energy Cooperative, Inc., Washington, D.C.	BEN-0079	Request for Interim Order. If granted: Energy Cooperative, Inc. would receive on an interim basis exception relief which would permit the firm to sell $9.7 million in entitlements pending a final determination on its Application for Exception (Case No. BEE.1298).
Jan. 19, 1981	Fletcher Oil & Refining Company, Torrance, California.	BEE-1611	Exception from the Entitlements Program. If granted: Fletcher Oil & Refining Company would receive an exception from the provisions of 10 C.F.R. § 211.67 regarding the firm's entitlements purchase obligations.
Jan. 19, 1981	Fuel Oil Supply & Terminaling, Inc., Bay City, Texas	BEN-0080	Request for Interim Order. If granted: Fuel Oil Supply & Terminaling, Inc. would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. DEE-6388).
Jan. 19, 1981	Independent Refining Corporation, Houston, Texas	BEE-1596	Exception from the Entitlements Program. If granted: Independent Refining Corporation would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify the firm's entitlements sales obligations.
Jan. 19, 1981	Koch Exploration Company, Wichita, Kansas	BXE-1597	Price Exeption (Section 212.73). If granted: Koch Exploration Company would be permitted to continue to sell at market prices the crude oil produced from the Sink Draw #1 Lease located in Duchesne County, Utah.
Jan. 19, 1981	National Consumer Law Center, Inc., Washington, D.C.	BFA-0591	Appeal of Information Request Denial. If granted: The December 31, 1980 Information Request Denial issued by the Office of Special Counsel for Compliance would be rescinded, and National Consumer Law Center, Inc. would receive access to certain documents relating to the settlement of crude oil overcharge claims made by DOE against Getty Oil Comapny.
Jan. 19, 1981	Ryder Truck Rentals, Inc., Houston, Texas	BFA-0592	Appeal of Information Request Denial. If granted: The December 18, 1980 Information Request Denial issued by the Economic Regulatory Administration would be rescinded, and Ryder Truck Rentals, Inc. would receive access to certain DOE materials.
Jan. 19, 1981	State of Minnesota, St. Paul, Minnesota	BFA-0590	Appeal of Information Request Denial. If granted: The December 30, 1980 Information Request Denial issued by the Office of Special Counsel for Compliance would be rescinded, and the State of Minnesota would receive access to certain DOE information.
Jan. 21, 1981	Dow Chemical U.S.A./Chevron U.S.A. Inc., Freeport, Texas.	BEJ-0179	Motion for Protective Order. If granted: Dow Chemical U.S.A. would enter into a Protective Order with Chevron U.S.A Inc. regarding the exchange of proprietary information in connection with Dow Chemical's Application for Exception (Case No. BXE-1520).
Jan. 21, 1981	National Center for Appropriate Technology, Washington, D.C.	BEG-0043,BEE-1607.	Request for Special Redress and Exception from the Entitlements Program. If granted: National Center for Appropriate Technology would be permitted to submit an application for inclusion in the Entitlements Program, 10 C.F.R. § 211.67. In addition, solar catchers and wood stoves would qualify as petroleum substitutes under Section 211.62.
Jan. 21, 1981	Scott's Service, Oklahoma City, Oklahoma	BRW-0077	Request for Proposed Remedial Order finalization. If granted: A Proposed Remedial Order issued to Scott's Service on December 28, 1979 would be issued as a final Remedial Order.
Jan. 21, 1981	Stephen M. Shaw, La Jolla, California	BFA-0594	Appeal of Information Request Denial. If granted: The December 30, 1980 Information Request Denial issued by the Freedom of Information Officer of the Chicago Operations and Regional Office would be rescinded and Stephen M. Shaw would receive access to certain DOE materials.
Jan. 22, 1981	American Motohol Supply Corporation, Washington, D.C.	BER-0099	Request for Rescission. If granted: The September 5, 1980 Decision and Order (Case No. DEE-7203) issued to American Motohol Supply Corporation by the Office of Hearings and Appeals would be rescinded.
Jan. 22, 1981	County Sanitation Districts, Fountain Valley, California.	BEE-1605	Exception from the Entitlements Program. If granted: County Sanitation Districts would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations.
Jan. 22, 1981	Duncan, Weinberg & Miller, Washington, D.C.	BFA-0595	Appeal of Information Request Denial. If granted: The January 15, 1981 Information Request Denial issued by the Western Area Power Administration would be rescinded and Duncan, Weinberg & Miller would receive access to certain DOE materials.
Jan. 22, 1981	Gas 'N Sav, Inc., Orlando, Florida	BEE-1606	Allocation Exception. If granted: Gas 'N Sav, Inc. would receive an exception from the provisions of 10 C.F.R. Part 211 which would permit the firm to receive an allocation of unleaded motor gasoline for the purpose of blending gasohol.
Jan. 22, 1981	Marlex Oil and Refining, Inc. Los Angeles, California.	BEL-0076	Request for Temporary Exception from the Entitlements Program. If granted: Marlex Oil and Refining, Inc. would receive a temporary exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements obligations.
Jan. 22, 1981	McClure Oil Company, Alma, Michigan	BEE1602 through BEE-1604.	Price Exception. If granted: McClure Oil Company would be permitted to sell at upper tier ceiling prices the crude oil produced from the Ward #1 & 2 Lease, Tetlow #3 Lease, and Donato #1 Lease located in St. Clair County, Michigan.
Jan. 22, 1981	Texaco, Inc. White Plains, New York	BES-0132	Request for Stay. If granted: Texaco, Inc. would receive a stay of the December 31, 1980 Interim Decision and order issued to the 341 Tract Unit of the Citronelle field by the Office of Hearings and Appeals.

Notice of Objection Received

[WEEK OF JAN. 16 THROUGH JAN. 23, 1981]

Date	Name and location of applicant	Case No.
Jan. 19, 1981	Wright & Company, Newport Beach, CA	BEE-1324.
Jan. 19, 1981	J & W Refining Company, Houston, TX	DEX-0010
Jan. 19, 1981	J & W Refining Company, Houston, TX	FEX-0172.
Jan. 23, 1981	Brazoria County, Angleton, TX	DEE-7645.

[FR Doc. 81-4280 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed Period of December 29, 1980, Through January 16, 1981

During the period of December 29, 1980, through January 16, 1981, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 by February 25, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: February 2, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Atkins Brothers, Union 76, Northridge, California, BRO-1361, motor gasoline

On January 16, 1981, Atkins Brothers Union 76, 8658 Balboa Blvd., Northridge, California, filed a Notice of Objection to a Proposed Remedial Order which the DOE Western Enforcement District of the Economic Regulatory Administration issued to the firm on December 31, 1980. In the Proposed Remedial Order the Western District found that during the period December 29, 1978 through April 24, 1980, Atkins Brothers Union 76 committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order, the firm's violations resulted in $33,304.75 of overcharges to its customers. This Notice of Objection has been transferred to the Western Regional Center of the Office of Hearings and Appeals for analysis.

Crow Brothers, Inc., Slidell, Louisiana, BRO-1360, motor gasoline

On January 13, 1981, Crow Brothers, Inc., 1340 Gouse Blvd., Slidell, Louisiana 70458, filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest Enforcement District of the Economic Regulatory Administration issued to the firm on December 8, 1980. In the Proposed Remedial Order the Southwest District found that during the period August 1, 1979 through June 28, 1980, Crow Brothers, Inc. committed pricing violations in its sales of motor gasoline. According to the Proposed Remedial Order, the firm's violations resulted in $12,397.72 of overcharges to its customers. This Notice of Objection has been transferred to the Southwestern Regional Center of the Office of Hearings and Appeals for analysis.

[FR Doc. 81-4282 Filed 2-4-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50519]

Carbofuran; Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued an experimental use permit to Weyerhaeuser Co. to use carbofuran (2-3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate) on pine seedlings to evaluate control of pales weevil and pine tipmoth in Southern plantings.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Progams, Environmental Protection Agency, Rm. 400, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7024).

SUPPLEMENTARY INFORMATION: EPA has issued an experimental use permit to Weyerhaeuser Co., 505 N. Pearl St., Centralia, WA 98531. This experimental use permit No. 10464-EUP-6 allows the use of 10,000 pounds of the active ingredient of carbofuran (2-3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate) on pine seedlings to evaluate control of pales weevil and pine tipmoth in Southern plantings. A total of 1,000 acres are involved. The program is authorized only in the States of Alabama, Arkansas, Mississippi, North Carolina, and Oklahoma. This experimental use permit is effective from December 17, 1980 to December 17, 1981.

Persons wishing to review the experimental use permits are referred to the product manager. Inquiries regarding this permit should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-4192 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-505020; PH-FRC 1745-8]

Cypermethrin; Application for an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An experimental use permit application has been received from FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA, to use the insecticide cypermethrin (±) cyano (3-phenoxyphenyl)methyl(+) *cis-trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate to evaluate control of insects on cole vegetables, field crops, and nuts.

ADDRESS: Written comments in response to this application may be submitted to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee (703-755-7028).

SUPPLEMENTARY INFORMATION: FMC Corp. has applied for an experimental use permit. This experimental use permit, file symbol number 279-EUP-IA, proposes the use of 2591.8 pounds of the insecticide cypermethrin (±) cyano (3-phenoxyphenyl) methyl (±) *cis-trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate to evaluate control of insects on cole vegetables, field crops, and nuts. It is proposed that testing be conducted in the States of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-4193 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51199; TSH-FRL 1745-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by: PMN 80-347, February 21, 1981. PMN 80-355, February 24, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel Diamond, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances complied by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Intitial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commerical purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identify or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitiled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51199]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: January 23, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-347

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. March 4, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Metal amine propanol complex.

Use. Additive for petroleum well injection fluid formulation.

Production Estimates.

	Kilograms per year	
	Minimum	Maximum
First year	570	5,700
Second year	570	5,700
Third year	5,700	57,000

Physical/Chemical Properties.

Description—Pale yellow liquid.

Flash point (Seta Open Cup)—77°F.

Specific gravity (60°F)—0.837.

Refractive index (77°F)—1.395.

Coefficient of expansion—100×10^{-5}.

Toxicity Data.

Acute oral toxicity LD_{50} (male rats)—>10,000 mg/kg.

Acute oral toxicity LD_{50} (female rats)—4,588 mg/kg.

Eye Irritation—Moderate to severe.

Skin Irritation (rabbits intact and abraded skin)—Primary irritation score: 1.29 out of a possible 8.0

Acute percutaneous absorption LD_{50} (rabbits)—>4,000 mg/kg.

Exposure.

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration	
		Hours/day	Days/years	Average	Peak
Manufacture: Dermal	2	2	20	(1)	(1)
Use: Dermal	240	6	1	(1)	(1)

(1) No data provided.

Environmental Release/Disposal. Manufacturer states that the new substance is low in acute toxicity and shows little potential to cause any adverse environmental impact. Any minimal waste product disposal will be by incineration.

PMN 80-355

The following information is taken from data submitted by the importer in the PMN.

Close of Review Period. March 10, 1981.

Importer's Identity. Claimed confidential business information. Organizational description provided:

Annual sales—In excess of $500 million.

Importer's site—Middle Atlantic region, U.S.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: (*p*-Dialkylamino phenyl)-diaryl heterocycle.

Use. Dyestuff for printing ink.

Import Estimates.

	Kilograms per year	
	Minimum	Maximum
1st year	1,000	3,000
2d year	1,000	3,000
3d year	1,300	4,000

Physical/Chemical Properties.

Appearance—Yellow powder.

Solubility—Insoluble in water.

Volatiles (1 hr at 105°C)—<0.5%.

Odor—No characteristic odor.

Melting point—>120°C.

Ash content (30 min. at 650°C)—<0.2%.

Specific gravity—1.57.

Toxicity Data.

Oral LD_{50} (rat)—>10 g/kg.

Oral LD_{50} (mouse)—>6,810 mg/kg.

Skin irritation—Non-irritating.

Eye irritation—Slightly irritating.

Exposure. The submitter states that there will be no occupational exposure to the new substance since the material will be imported in drums and shipped to U.S. customers without repackaging.

Environmental Release/Disposal. Claimed confidential business information.

[FR Doc. 81-4198 Filed 2-4-81; 8:45 am]

BILLING CODE 6560-31-M

[WH-FRL 1744-5]

Drinking Water; Appalachian Research and Defense Fund, Inc.; W. Va.; Notice of Petition

AGENCY: Environmental Protection Agency.

ACTION: Notice of petition.

SUMMARY: Request for Environmental Protection Agency Determination that Aquifers in the Vicinity of Griffithsville and Yawkey, West Virginia are the Sole and Principal Source of Drinking Water.

A petition has been received from the Appalachian Research and Defense Fund, Inc., Charleston, West Virginia to determine that aquifers in the vicinity of Griffithsville and Yawkey, West Virginia are the sole and principal source of drinking water for that area.

Section 1424(a) of the Safe Drinking Water Act (Pub. L. 93-523) allows any person to petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator. The Administrator may so designate an area within a State if he finds that the area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

[The petition is reprinted as received.]

Douglas Costle,

Environmental Protection Agency, Washington, DC

Dear Mr. Costle: Pursuant to section 1424(a) of the Safe Drinking Water Act, we are petitioning you to designate an area in the vicinity of Griffithsville and Yawkey, West Virginia as requiring special protection from underground injection.

The boundary of the area is defined by the 1218 acre Pennzoil Corporation Griffithsville Unit #1 and the Guyan Oil 2750 acre Griffithsville Unit enhanced oil recovery projects. As identified in permits issued by the West Virginia Oil and Gas Commission, brine water and carbon dioxide have been injected into underground wells in this area whose operation was not approved prior to passage of the Safe Drinking Water Act. Also, numerous new injection wells are anticipated in the near future.

The fresh water aquifer in the designated areas is the principal drinking water source for numerous rural residents who are served by individual wells.

Underground injection in the Pennzoil project, which apparently commenced December, 1977, is strongly implicated in the degradation of drinking water quality of

certain Bear Fork residents in 1978 and persisting to the present time.

Elevated levels of chloride, sodium, natural gas, and possibly radiation, in the drinking water could pose a health hazard. Lack of suitable water for drinking and bathing could lead to public health problems in the area.

Under separate cover to Mr. Russ Wright of EPA, we are enclosing additional details and requesting EPA assistance in further surveillance of the situation.

If the desegregation is granted, we trust EPA will not grant any permits for underground injection pursuant to section 1424(a)(3) unless the oil companies can prove that fresh ground-water contamination will not result from migration through the many old, inadequately cased wells in the area of possible natural fissures.

We look forward to a timely response to this urgent matter.

Sincerely,

Richard E. Hitt,

Staff Attorney.

David R. Wooley,

Staff Attorney.

Ed Light,

Staff Scientist.

Comment period

Interested persons shall submit written comments, data, views or arguments to the EPA Administrator on or before March 2, 1981. The Administrator shall either make the designation for which the petition is submitted or deny the petition no later than March 9, 1981.

ADDRESS: Administrator, U.S. Environmental Protection Agency, 4th & M Streets, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Platt, U.S., Environmental Protection Agency, Region III, Philadelphia, PA, (215) 597–9017.

Dated: January 29, 1981.

Alan Levin,

Director, State Programs Division, Office of Drinking Water WH–550

[FR Doc. 81–4191 Filed 2–4–81; 8:45 am]

BILLING CODE 6560–29–M

[PF–161A; PH–FRL 1746–2]

E. I. du Pont de Nemours and Co., Inc.; Filing of Pesticide Petition; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours and Co., Inc. has submitted an amendment to pesticide petition OF2288. This amendment proposes to increase the proposed tolerance for oxamyl [methyl *N'N'*-dimethyl-*N*-(methylcarbamoyl)oxy)-1-thiooxamimidate] on cucurbits including cantaloupe, cucumber, honeydew, summer squash, winter squash, and watermelon from 1.5. part per million (ppm) to 2.0 ppm.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF–161A]" and the petition number OF2288. All written comments filed pursuant to this notice will be available for public inspection in the office of Jay S. Ellenberger from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (703–557–7024).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of January 8, 1980 (45 FR 1873) that E. I. du Pont de Nemours and Co., had filed pesticide petition OF2288 proposing that tolerances be established for residues of the insecticide oxamyl [methyl *N'N'*-dimethyl-*N*-(methylcarbamoyl)oxy)-1-thiooxamimidate] in or on the raw agricultural commodity cucurbits at 1.5 part per million.

E. I. du Pont de Nemours and Co., has submitted an amendment to the petition proposing that the tolernace be increased from 1.5. ppm to 2.0 ppm.

(Sec. 408(d)(1) 68 Stat. 512, (7 U.S.C. 135))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81–4194 Filed 2–4–81; 8:45 am]

BILLING CODE 6560–32–M

[OPP–50473B; PH–FRL 1745–6]

ICI Americas, Inc.; Extension of Experimental Use Permit; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: ICI Americas, Inc. has requested an amendment to an experimental use permit which allows the use of permethrin on various crops to control insects be amended to include the States of Montana, Nevada, Rhode Island, and Utah.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7028).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of May 9, 1980 (45 FR 30686) that ICI Americas, Inc., Wilmington, DE 19897 had been issued an extension of an experimental use permit for use of the insecticide permethrin on varous crops to control various insects. ICI Americas, Inc., has requested that experimental use permit 10182–EUP–6 be amended to include the States of Montana, Nevada, Rhode Island, and Utah. The experimental use permit is effective from April 7, 1980 to April 7, 1982. The permit is extended under the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review the experimental use permit are referred to the product manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81–4196 Filed 2–4–81; 8:45 am]

BILLING CODE 6560–32–M

[OPP–50516; PH–FRL–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The designated product manager given in each permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

10182–EUP–21. ICI Americas Inc., Concord Pike & Murphy Road,

Wilmington, DE 19897. This experimental use permit allows the use of .04 pounds of the rodenticide, Brodifacoum on dormant apple orchards to evaluate the potential hazard to nontarget animals. A total of 175 acres are involved. The program is authorized only in the State of Virginia. The experimental use permit is effective from November 21, 1980 to November 21, 1981. (PM 16, William H. Miller, Rm. 403, 703–557–7040).

707–EUP–96. Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 150 pounds of the herbicide acifluorfen, sodium salt (Sodium (5-[2-chloro-4-(trifluoromethyl)-phenoxy]–2–nitrobenzoate) on rice to evaluate control of weeds. A total of 1,200 acres are involved. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The program is effective from March 15, 1981 to March 15, 1982. A temporary tolerance has been established for acifluorfen on rice. (PM 23, Richard F. Mountfort, Rm. 412D, 703–557–7070).

Persons wishing to review the experimental use permits are referred to the designated product manager cited in each permit. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Divison, Office of Pesticide Programs.

[FR Doc. 81–4197 Filed 2–4–81; 8:45 am]

BILLING CODE 6560–32–M

[PF–32A; PH–FRL–1746–1]

Rhone-Poulenc Inc.; Filing of Pesticide Petition; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Rhone-Poulenc Inc. requested that the EPA amend pesticide petition 6F1753 for the insecticide phosalone by adding tolerances to cover residues in or on poultry at 0.7 part per million (ppm); eggs at 0.35 ppm; the meat, fat, and meat byproducts of cattle and poultry at 0.25 ppm; and in milk at 0.06 ppm.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while the petition is pending before the agency. The comments are to be identified by the document control number "[PF–32A]" and the petition number 6F1753. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (703–557–7024).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of April 1, 1976 (41 FR 13984) that Rhone-Poulenc Inc., Somerset, NJ 08873 had filed a request with EPA to amend 40 CFR 180.263 by establishing tolerances for residues of phosalone (*S*-[6-chloro-3-(mercaptomethyl)-2-benzoxazolinone] *O,O*-diethyl phosphorodithioate) including its oxygen analog *S*-[6-chloro-3-(mercaptomethyl)-2-benzoxazolinone] *O,O*-diethyl phosphorothioate in or on the raw agricultural commodity alfalfa at 100 ppm.

Rhone-Poulenc Inc. has submitted an amendment to the petition to establish tolerances for phosalone in or on poultry at 0.7 ppm; eggs at 0.35 ppm; the meat, fat, and meat byproducts of cattle and poultry at 0.25 ppm; and in milk at 0.06 ppm.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: January 22, 1981.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81–4199 Filed 2–4–81; 8:45 am]

BILLING CODE 6560–32–M

[Report No. A–24]

AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: February 3, 1981.

Cut-Off Date: March 9, 1981.

Notice is hereby given that the applications listed in the attached appendix below are hereby accepted for filing. They will be considered to be ready and available for processing after March 9, 1981. An application, in order to be considered with any application appearing on the attached list or with any other on file by the close of business on March 9, 1981, which involves a conflict necessitating a hearing with any application on this list must be substantially complete and tendered for filing at the close of business on March 9, 1981.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on March 9, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

BP–790510AB:
WADK, Newport, Rhode Island
Key Stations, Inc.
Has: 1540 kHz, 1 kW, D
Req: 1540 kHz, 2.5 kW, DA–N, U

BP–800321AB:
WMEL, Melbourne, Florida
Elyria–Lorain Broadcasting Co.
Has: 920 kHz, 1 kW, DA–N, U
Req: 920 kHz, 1kW, 5kW–LS, DA–2, U

BP–800401AE:
WKEX, Blacksburg, Virginia
Radiomedia Corporation
Has: 1430 kHz, 1 kW, D
Req: 1430 kHz, 5kW, DA–2, U

BP–800410AB:
WQIO, Canal Fulton, Ohio
Douglas Properties Corporation
Has: 1060 kHz, 5 kW, DA–D (Canton)
Req: 1070 kHz, 500 W, 1 kW, DA–2, U (Canal Fulton)

BP–800801AA:
WJBY, Rainbow City, Alabama
Gadsden Broadcasting Co., Inc.
Has: 930 kHz, 5 kW, D (Gadsden)
Req: 930 kHz, 500 W, 5 kW–LS, DA–N, U (Rainbow City)

BP–800808AE:
KDOM, Windom, Minnesota
Windom Radio Corporation
Has: 1580 kHz, 250 W, DA–D
Req: 1580 kHz, 1 kW, DA–D

BP–800827AC:
KISD, Phoenix, Oregon
CBF Broadcasting Co.
Has: 860 kHz, 1 kW, D (Medford)
Req: 880 kHz, 1 kW, U (Phoenix)

BP–800904AE:
KIEV, Glendale, California
Southern California Broadcasting Company
Has: 870 kHz, 5 kW, D
Req: 870 kHz, 1 kW, 5 kW–LS, DA–N, U

BP–801012AD:
NEW, Lafayette, Louisiana
Jackson & Chaisson Broadcasting Systems, Inc.
Req: 770 kHz, 0.5 kW, 1 kW–LS, DA–N, U

BP–801113AD:
NEW, Portland, Oregon
Northwest Indian Women Broadcasters, Inc.
Req: 660 kHz, 1 kW, 50 kW–LS, U

BP–801219AA:
KYST, Texas City, Texas
Henderson Broadcasting Corp.
Has: 920 kHz, 1 kW, D
Req: 920 kHz, 1 kW, 5 kW–LS, DA–2, U

BP–801231AB:
NEW, Simi Valley, California
Manuel A. Cabranes
Req: 670 kHz, 1 kW, DA–1, U

[FR Doc. 81–4206 Filed 2–4–81; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 81-21, et al.; File No. 2851-CM-P-79, et at.]

Microband Corporation of America, et al.; Applications for Construction Permits for New Station at Agana, Guam; Hearing Designation Order

In the matter of applications of Microband Corporation of America (CC Docket No. 81-21, File No. 2851-CM-P-79), Pacific Home Theaters (CC Docket No. 81-22, File No. 3838-CM-P-79), Guam Television Broadcasting Corporation (CC Docket No. 81-23, File No. 3925-CM-P-79) and Telecommunications Systems, Inc. (CC Docket No. 81-24, File No. 3956-CM-P-79) for construction permits in the multipoint distribution service for a new station at Agana, Guam: Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues.

Adopted: January 5, 1981.

Released: February 2, 1981.

By the Deputy Chief, Common Carrier Bureau.

1. The Commission has before it the above-referenced application of Microband Corporation of America, filed on May 9, 1979 (accepted on Public Notice of May 21, 1979), the application of Pacific Home Theaters, filed on July 12, 1979 (accepted on Public Notice of July 23, 1979), the application of Guam Television Broadcasting Corporation, filed on July 19, 1979 (accepted on Public Notice of July 30, 1979) and the application of Telecommunications Systems, Inc., filed on July 20, 1979 (accepted on Public Notice August 13, 1979). These applictions are for a construction permit in the Multipoint Distribution Service and they propose to operate on Channel 1 in the Agana, Guam area. The applictions are therefore mutually exclusive under present procedures and require comparative consideration. These applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, IT IS HEREBY ORDERED, That pursuant to Section 309(e) of th Communications Act of 1934, as amended, 47 CFR 309(e) and § 0.291 are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Pacific Home Theaters, Guam Television Broadcasting Corporation, Telecommunications Systems, Inc. and the Chief, Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations Common Carrier Bureau.

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[FCC 80-778; CC Docket No. 80-766; Transmittal No. 191]

RCA American Communications, Inc., Revisions to Tariff F.C.C. Nos. 1 and 2; Memorandum Opinion and Order Instituting Investigation

Adopted: December 19, 1980.

Released: December 31, 1980.

By the Commission: Commissioner Fogarty dissenting and issuing a statement; Commissioners Quello and Jones absent; Commissioner Brown not participating.

1. Before the Commission are several petitions requesting rejection or, alternatively, suspension and investigation of proposed revisions to Tariff F.C.C. Nos. 1 and 2 filed by RCA American Communications, Inc. (RCA Americom) to become effective December 26, 1980.[1] The revisions seek to restructure RCA American's present satellite service offerings as well as to substantially increase current rates. For reasons to be explained, we are denying the petitions for rejection and suspending the proposed tariff revisions for the full statutory period while we undertake a two-stage investigation. We expect to complete the first stage of this investigation within the suspension period.

I. Background

2. RCA Americom, a separate, wholly owned subsidiary of RCA Corporation, is a common carrier engaged in the provision of domestic communications through a domestic satellite system and associated earth stations. It was originally authorized to construct three satellites for its SATCOM system, two of which were to be operational in-orbit satellites, with the third as an on-the-ground space. Each SATCOM satellite was designed to carry 24 transponders.

3. RCA Americom launched SATCOM F-1 in December 1975 and SATCOM F-2 in March 1976. SATCOM F-3, which had been the on-the-ground spare, was launched on December 6, 1979, but contact was lost on December 12, 1979 and has not been reestablished. The F-2 satellite presently provides private line services for commercial, government and broadcast uses, as well as for the service offerings of Alascam, Inc. The F-1 satellite is utilized almost entirely by the cable television (CATV) distributors through a network of receive-only earth stations. Since the transponder capacity in F-1 is used primarily by cable entities, access to that satellite is particularly important because it gives cable distributors ready access to all antennas directed at that satellite for distribution to local cable companies.[2]

[1] Consideration of these factors shall be in light of the Commissions discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] Petitions to reject and/or suspend have been filed by the Christian Broadcast Network, Inc. (CBN) which included a request for issuance of an accounting order; Eastern Microwave, Inc. (EMI); Southern Satellite Systems, Inc. (SSS); and the Spanish International Network (SIN). Home Box Office, Inc. (HBO) has filed only a petition to reject. Showtime Entertainment Inc. (Showtime) has filed separate petitions to reject and suspend. Also before us are RCA Americom's opposition to the petitions and reply comments filed by HBO, Showtime and SSS. RCA American responded to several specific questions posed by Commission staff by supplementing its initial filing with additional cost support material. Comments on the additional information have been filed by EMI, Showtime, and SSS, to which RCA Americom has responded.

[2] See *Spanish International Network v. RCA American Communications, Inc.*, 78 FCC 2d 1451 (1980); *Cable News Network, Inc.*, 78 FCC 2d 1200 (1980).

4. By September 1978, RCA Americom perceived that demand for transponders was increasing to a point that more orders were likely to be placed than there were transponders available. On September 13, RCA American informed its existing and known potential customers of the demand for transponders, and indicated that the remaining transponders on F–1 would be leased on a first come, first served basis to those entities submitting firm orders by September 29, 1978.[3] In December 1978, RCA Americom announced its proposal to launch SATCOM F–3, its on-the-ground spare, and to shift the existing cable customers on F–1 to F–3. By that time, F–1 was fully leased and a number of additional firm orders were on file. The loss of F–3 exacerbated the shortfall of transponders to meet current market demand for satellite video transponders, particularly for service on RCA Americom's primary cable satellite. Currently, RCA Americom apparently has numerous cable distributor orders for transponders which it cannot fill, and even the replacement for SATCOM F–3, which is scheduled for launch in mid-1981, will not meet the growing demand.[4]

II. Description of Services

5. Before discussing the issues raised by petitioners, it will be helpful to briefly describe the services involved and the proposed tariff revisions. (These are more fully described in the attached Appendix.) RCA Americom currently provides the following fixed term transponder services: (1) full-time non-preemptible unprotected service with a 1988 term and an option to upgrade to protected service;[5] (2) full-time preemptible service with either a one year or a 1983 term; and (3) part-time daily service with a 1988 term which includes use of a transmit earth station and an option for protection channels and full-time service. These services are offered to the general public under Tariff F.C.C. No. 1. Additionally, full-time non-preemptible and preemptible services are offered to other common carriers upon identical terms under Tariff F.C.C. No. 2.

6. The proposed revisions would, among other things: (a) replace the 1988 and 1983 term transponder services with 1986 and 1982 term services respectively; (b) eliminate the one year term service; (c) eliminate the unprotected and preemptible grade services under the 1986 term when facilities are available to provide fully protected service; (d) increase the rate of return on investments from 12 to 15 percent by increasing rates up to 17 percent for protected service and by over 50 percent for preemptible service; and (e) eliminate the termination charge currently imposed on the premature cancellation of service and instead offer non-cancellable service, thereby holding the customer liable for the full amount of the monthly charges for the entire term. In the explanation of its methodology, RCA Americom also states that it intends to distribute the gain it has realized associated with insurance proceeds from the loss of SATCOM F–3 to RCA Americom's shareholder, the parent corporation, rather than to its customers.

Discussion

7. We must initially note that our current regulatory treatment of domestic satellite carriers (domsats) is undergoing significant review and analysis in *Competitive Carrier Rulemaking*, Docket No. 79–252, 77 FCC 2d 308 (1979). In our *First Report and Order* there, FCC 80–629, released November 28, 1980, we have found these carriers, including RCA Americom, to be dominant and therefore subject to full Title II regulation under our Rules. However, in a further analysis in the *Second Report and Further Notice of Proposed Rulemaking*, FCC 80–742, adopted December 16, 1980, we have questioned whether the domsats should be considered dominant. There we approached the telecommunications industry on a market-specific basis, defining markets by analyzing substitution possibilities on both the supply and demand side, rather than looking at the industry on a facilities basis only. For current purposes, RCA Americom is considered dominant pursuant to our *First Report and Order*.[6]

8. RCA Americom's filing proposes to restructure substantially its satellite service offerings. The services affected are of increasing importance to many customers, especially CATV subscribers, operators, and program distributors. Because so many changes in the tariff are proposed, the filing presents a variety of important issues. Basically, these issues can be grouped into two essentially distinct clusters. First, certain issues relate to the reasonableness of proposals to restructure the period of service, type of service, termination charges, notice periods, and other regulations. In this context, reasonableness under Section 201(b) of the Act, 47 U.S.C. 201(b),[7] involves considerations of fairness to carrier and customer alike.

9. A second related group of issues has to do with the levels of RCA Americom's proposed rates and expected rate of return, as well as the relationship between rates for different services. Ancillary to those are questions concerning RCA Americom's treatment of such costs and revenues as the insurance gain which resulted from the loss of SATCOM F–3.

I. Proposed Alteration of Long Term Service Tariffs

10. One fundamental issue is common to both tariff structure and rate issues, and is touched on in a general way by several petitioners. This is the basic issue of the circumstances under which a carrier may reasonably alter a long term service tariff prior to expiration of the terms set out in the tariff.

11. The long term service arrangement found in RCA Americom's current tariff bear similarities to service contracts often entered into by unregulated frims. The carrier offers definite terms for a fixed period, most likely after negotiations with potential customers; the customers then decide whether to accept the offer based upon whether the

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[3] *RCA American Communications, Inc.*, 79 FCC 2d 331 (1980). RCA American has proposed to alter this arrangement in its pending Transmittal No. 242.

[4] It is highly likely that this situation is simply a short-run phenomenon. Because of the dynamism of this industry it could change in the near future. Indeed, other firms have been granted authority to launch satellites which could compete with RCA American (see, *Hughes Communications, Inc.*, FCC 80–712 (adopted December 4, 1980); *Southern Pacific Communications Co.*, FCC 80–713 (adopted December 4, 1980); *Communications Satellite Corp.*, FCC 80–714 (adopted December 4, 1980); *Western Union Telegraph Co.*, FCC 80–716 (adopted December 4, 1980); *Satellite Business Systems*, FCC 80–717 (adopted December 4, 1980); and *GTE Satellite Corp.*, FCC 80–718 (adopted December 4, 1980)), and new satellites are likely to use additional, higher frequencies in the spectrum which will increase capacity. Techniques are also being developed to transmit several acceptable video signals on a single transponder. Reductions in the cost of antennas have also encouraged CATV systems and other users to acquire additional antennas oriented to receive transmissions from other satellites.

[5] Protected transponder service is one in which a replacement transponder has been designated in the event of a failure or interruption of the primary transponder.

Unprotected, non-preemptible transponder service is one without a reserve or backup transponder for use in the event of transponder failure, but which uses a transponder which is not itself designated as a backup for other services.

Preemptible service is provided over transponders which are subject to interruption or delayed transmission at any time by the carrier to restore protected service.

[6] It should be noted that this Memorandum Opinion and Order intends neither to anticipate nor to prejudge the *Competitive Carrier Rulemaking*, Docket No. 79–252, 77 FCC 2d 308 (1979).

[7] Section 201(b) provides in pertinent part that: All charges, practices, classifications, and regulations for and in connection with such communication service shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful.

offering meets their needs at a price they are willing to pay. The rates and the length of the service term would of course be among the most important terms for customers. In this case, the question is raised as to whether customers have chosen RCA Americom's service because of those terms, and relied upon its terms in contracting with their our customers, as well as in making investments and other business decisions. CRN, for example, argues that there is no lawful basis under RCA Americom's current tariff for altering the fixed nature of the terms and conditions of service. It cites passages in the tariff binding customers to the monthly charges "for a fixed period terminating on July 31, 1988,"[8] and reasons that since customers are bound for the full term, the carrier should be similarly bound. It views as significant the absence of any provision in RCA Americom's tariff reserving the carrier's right to unilaterally change its service term.

12. CBN also argues that numerous customers have relied upon the fixed nature of the current tariff in making business plans and commitments. According to CBN, many business decisions concerning such diverse subjects as the construction of earth station facilities and programming choices have been made on the assumption that service would be available through July 1988. A similar theme is expressed in many of the other petitions questioning the justification for altering other tariff provisions in the middle of the term.

13. RCA Americom responds that the regulatory framework established by the Act permits carriers unilaterally to change tariffs which they have filed on their own initiative. Therefore, it argues, the shortening of a term of service by tariff change in no way conflicts with the letter or the spirit of the Act. RCA Americom also points out that the current tariff accords customers the right to terminate service without liability if RCA Americom increases its rates for services at any time during the term.

14. We have considered similar issues in *Western Union Telegraph Co.*, 76 FCC 2d 372 (1980). In that case, we declined to reject proposed changes in rates and terms of a long term satellite tariff, although we questioned the reasonableness of certain proposed revisions and set several specific issues for inclusion in the investigation in Docket No. 87–99.[9] At the same time, we reserved the possibility of delving into other features of those revisions if necessary. Docket No. 78–99 was deferred pending completion of our rulemaking investigation in the *Competitive Carrier Rulemaking*, Docket No. 79–252, 77 FCC 2d 308(1979).

15. Even though RCA Americom's filing has some similarities to Western Union's, it is clear that the proposed changes are far more extensive than those in the Western Union case. The changes before us now touch upon virtually every significant term and condition of this service. We have thus concluded that the issues which this filing uniquely presents justify immediate investigation rather than a deferred one as was the case in *Western Union*. This investigation will allow us to consider the particular issues raised by RCA Americom's proposed revisions in light of the inquiry in Docket No. 79–252, and specifically the policy issues applicable to the reasonableness of changing long term service tariffs.

16. We adhere to the view that a carrier's proposal to change a long term service tariff is not necessarily unlawful such that rejection is warranted. As RCA Americom rightly contends, the framework of the tariff filing process presupposes that carriers be permitted to initiate changes in their tariffs subject to certain statutorily imposed obligations. *AT&T v. FCC*, 487 F. 2d 864 (2d Cir. 1973). For example, carriers are required by Section 201 of the Act, 47 U.S.C 201, to maintain just and reasonable rates and regulations. Moreover, a carrier may be liable for damages under Sections 206–209, 47 U.S.C. 206–209, if it maintains a rate or practice which is found unjust, unreasonable or otherwise unlawful. *Carterphone*, 14 FCC 2d 571 (1968).

17. At the same time, a carrier's proposal to modify extensively a long term service tariff may present signficant issues of reasonableness under Section 201(b) of the Act which are not ordinarily raised in other tariff filings. In our judgment, the right of a carrier to change its tariff unilaterally should be viewed in a different light when the tariff itself represents, in large measure, a quasi-contractual agreement between the carrier and the customer. We have recognized in the *Competitive Carrier Rulemaking* the benefits which contracts bring to the carrier-customer relationship. The private negotiation process will generally, in the absence of market power, conclude in a more efficient bargain than that which our regulatory process would artifically impose. Contracts also lend certainty to the process. In contrast, any commitment reflected in a tariff would be fully binding on the customer as a matter of law (Section 203, 47 USC § 203) yet the carrier would remain free to change the terms of the service offering at any time. It strikes us as anomalous that a carrier could use the tariff filing process to prevent any of its service terms from being enforced against it by customers, while at the same time bind customers to all the tariff provisions for as long as the carrier wishes until expiration of the terms by operation of the tariff itself. In effect, then, the result would be an agreement that only one of the contracting parties could enforce.

18. If long term commitment provisions are subject to revision by the carrier at any time without cause, the continued reasonableness for rate differentials between classes of service is also called into question. The issue is raised, for example, why a long term customer should pay a lower rate than a short term customer if the carrier can change either the rates or any of the conditions of service at any time. RCA Americom would defend its proposed rates and the differential between 1982 and 1986 term rates on the basis of projections over the length of those terms. Significantly, though the current long term tariffs were purported to be reasonable just two years ago, no change of circumstances is offered as justification for revising them now.

19. RCA Americom urges that its tariff provision which allows customers to terminate service without liability if the rates are increased is adequate grounds for RCA Americom to change the tariff at any time, but we find this questionable. The tariff does not specifically provide for changes without cause, and as CBN points out, the usual rule is that tariff ambiguities are to be resolved against the carrier. Also, the customer's right to terminate service in RCA Americom's tariff applies only to rate increases, not to other changes in the tariff. Here, RCA Americom has proposed to change the termination liability, the terms of services, the availability of some grades of service, the length of several periods, and other terms. Even if the increase in rates might be otherwise justified based upon the tariff provision involved by RCA Americom, it is difficult to see at this juncture what basis there is for rewriting all of these other terms which are ostensibly applicable for the length of the present service terms.

20. Because of the importance of these issues to evaluation of the lawfulness of this tariff filing, we think this filing provides an appropriate occasion to

[8] RCA Americom Tariff F.C.C. No. 1, para. 4.6.1(A).

[9] RCA American Communications, Inc. 69 FCC 2d 426 (1978).

investigate the legal and policy questions presented by a carrier's proposal to change a long term service tariff, and in particular, to consider when such changes are reasonable under Section 201(b) of the Act. Because the proposed changes here are so sweeping and would substantially affect customers, we also believe that suspension of their effectiveness for the full five-month statutory period is warranted. As we explain further below, we plan to conduct and conclude within the suspension period a notice and comment investigation on the general and specific questions raised by RCA Americom's tariff structure changes.

II. Tariff Structure Issues

21. In addition to the general issues of when changes in a long term services tariff are justifiable, petitioners have also urged that a number of the specific tariff provisions here proposed by RCA Americom are unreasonable.

A. Reductions in Length of Term

22. Under RCA Americom's proposal, 1988 Term service, which now is to terminate on July 31, 1988, would be replaced by so-called 1986 Term service, which would terminate on December 31, 1986. The corresponding replacement of 1983 Term service by a 1982 Term would amount to a seven month reduction. RCA Americom gives no specific reason for proposing this change. CBN argues that customers have relied on the current tariff in making business decisions. Because RCA Americom presents neither an explanation nor justification for why the changes have been made, we will set it for investigation.

B. Elimination of Unprotected and Preemptible Grades of Service

23. RCA Americom proposes to eliminate the unprotected and preemptible grades of service when facilities become available under its 1986 Term and offer subscribers only the protected grade of service. Protected service is the most costly grade offered, and petitioners FMI and SIN view RCA Americom's justification for this change as inadequate.

24. Here again, RCA Americom is proposing to significantly alter the long term arrangement with its customers. By way of justification, RCA Americom states that its customers demand protected service and that its proposed plan for an in-orbit spare satellite will provide protection to all customers for which all should pay. It may well be that all customers desire protected service or that an offering limited to only protected service is the most efficient way for RCA Americom to offer its service. However, there is nothing in the record to support these arguments. In light of our question as to whether customers initially subscribing to long term service under certain terms and conditions have some fair interest in the stability of those terms and conditions, we will include this issue in our investigation.

C. Prohibition Upon Customer Termination of Service

25. Another of RCA Americom's proposed tariff revisions would eliminate the termination charge currently imposed on the premature cancellation of service and instead prohibit the customer from cancelling service prior to the end of the subscribed term. The current termination charge presumably is assessed to reimburse the company for administrative and other costs resulting from premature cancellation. The charge decreases with the passage of each year of the service term. After a point, no charge would be imposed for early termination. For example, a subscriber to the 1988 Term service would not be liable for any termination charge after July 31, 1984.

26. Under the proposed revisions, customers cancelling prematurely would be liable for all charges remaining in the balance of the term. Although the proposed tariff revision makes no mention of it, RCA Americom states that the customer will have the right to sublease its transponder, or to assign it if the customer is able to find a financially qualified entity willing to accept all obligations of the tariff.

27. This proposed revision has generated the largest number of requests to reject or suspend. These protests, lodged by EMI, HBO, SIN, and SSS, center on the inherent unreasonableness in binding a customer to a service term—without similarly binding the carrier—manner which petitioners claim is unrelated to the carrier's legitimate interest in assuring a reasonable return on its investment. Petitioners emphasize the current heavy demand for video transponders[10] in claiming that the proposed cancellation liability far exceeds the administrative and other costs RCA Americom would incur in finding a replacement customer. Petitioners especially oppose this scheme because the cancelling customer, rather than the carrier, would have the burden of finding an alternative customer. This last aspect of the tariff is particularly unsettling to the petitioners since the carrier is not obligated to deduct any payments obtained from the replacement customer from the charges owed by the first customer. As a consequence, they point out, RCA Americom could enjoy a double recovery for each premature cancellation. It is also urged that the non-cancellation provision effectively hampers competition during a time when several new domestic satellite entrants may be offering more attractive services to suppliers of the cable television industry, since the cost of moving to a new satellite carrier is greatly increased.

28. In reply, RCA Americom argues that its proposed scheme most effectively allows the company to protect itself against catastrophic losses as a result of placing an enormously expensive satellite into orbit and only later finding the satellite to be non-revenue producing because of unused transponder space. RCA Americom concedes that one objective is to prevent a situation in which it has launched a satellite on the basis of long term leases, and finds that its customers have terminated service because of new satellite entrants. It argues, however, that extraordinary risk justifies a tariff provision such as the one it proposes. The company adds that customers should have the right not to commit to a lengthy term, and that the customer has this right because it may sublease or assign the transponder. Since there is such demand for transponder service, RCA Americom argues that the cancelling customer will have little or no trouble securing a suitable replacement.

29. Addressing charges that the proposed termination liability is not cost supported, RCA Americom states that transponder costs are the same as the monthly lease rate since that rate is detemined by the revenue requirement. Therefore, the company reasons, a customer's premature cancellation liability is only equal to the costs incurred by RCA Americom.

30. The possible unreasonableness of allowing carriers to alter long term service tariffs without cause is apparent. RCA Americom argues that it is entitled to rely upon its customers' long term leases in building and launching satellites, and should be entitled to shift any risk that the satellite may become competitively obsolete to its customers, who would either have to continue to pay for the service or to find another customer. Yet at the same time RCA

[10] In its reply to a specific staff inquiry, RCA Americom stated that it had received approximately 104 transponder orders. It noted, however, that many of these "orders" were conditional or merely notification of interest rather than binding formal orders. See Letter from RCA Americom to Chief, Tariff Division, Common Carrier Bureau at 35 (September 15, 1980).

Americom proposes in effect to radically rewrite those long term leases for its own benefit while ignoring its customers' need for the same certainty and stability. We also are troubled by the possibility of double payments for the same transponder and the lack of reasoned justification as to why RCA Americom's current termination provisions are inadequate. For these reasons we will include this issue in our investigation.

D. Notice of Renewal Periods

31. We also will set for investigation RCA Americom's proposed requirements that 1986 Term customers give two years notice of their intent to renew, and 1983 Term customers one year. These requirements would bind customers far in advance of any apparent need on the part of the carrier and are not significantly justified by RCA Americom.

III. Rate Issues

32. The petitions, particularly that of Showtime, raise numerous issues relating to the increases in the rates and rate of return, the structure of the rates, and the cost and revenue accounting. A particular concern was RCA Americom's treatment of the insurance gain it realized from the loss of the F-3 satellite. Because of the combination of rate increases and elimination of less expensive service offerings, they say, some customers may have greatly increased bills.[11] Some of these issues appear to be significant, while others concern fairly minor details of RCA Americom's proposal, with little impact on rates.

33. Our tentative plan is to take up significant rate issues at a later time. The first state of our investigation as well as future proceedings in the *Competitive Carrier Rulemaking* may moot some of these rate issues and will certainly provide us with more guidance as to which issues require further examination. We therefore will not designate any of the rate issues for investigation at this time, but will defer such action until after the conclusion of the first stage.

IV. Conclusions and Investigation Procedure

34. Various petitioners seek rejection of RCA Americom's proposed revisions on grounds that the support information is defective and the proposed changes unlawful. Our examination of the filing leads us to the conclusion that while RCA Americom has not established the lawfulness and reasonableness of its proposed revisions, RCA Americom has substantially complied with the requirements in our Rules for support information, and, as discussed above, that its proposal to change these tariffs is not clearly unlawful. We thus find no clear basis for rejection and will deny these petitions. We do, however, consider the issues raised to be significant, and for that reason are setting this filing for investigation. As discussed, this investigation will first consider the legal and policy issues presented by the proposed changes in the structure of this long term tariff, and second, if warranted, consider significant issues relevant to the proposed changes in rates. This investigation should provide an adequate record, and since we expect to conclude at least the first set of issues during the suspension period, customers' right will be adequately protected. We will also consider imposing an accounting order at the end of the first stage of the investigation if there appears to be good cause.

35. In the first round, we shall ask for comments on the burden which a carrier should meet to justify alterations of a long term service tariff. We will specifically request RCA Americom to state its views on this issue as a part of its direct case. Also, in order to focus the discussion of this issue, we will require RCA Americom to justify the changes it proposes under the following legal theory: a carrier may not alter a long term service tariff, except as provided in the tariff itself, or if the carrier establishes both that its proposed modification is just and reasonable and that substantial cause exists for a departure from the original tariff terms. RCA Americom may also submit justification for any other standard or proof which it believes is lawful, but this possible standard should provide a starting point for the comments from which the record may be structured. RCA Americom should also provide any further justification for its proposed tariff modifications on which it wishes to rely.

36. Finally, although we recognize that there is some overlap between this investigation and that in Docket No. 78-99, we will for the present keep this proceeding apart from that one. The change RCA Americom proposes are, as explained, substantial and questionable in various aspects. After the first stage of the investigation we will be in a better position to consider what effect this proceeding might have on other cases, without delaying the present matter.[12]

V. Ordering Clauses

37. Accordingly, IT IS ORDERED, pursuant to Sections 4(i)-(j), 201-205, and 403 of the Communications Act, 47 U.S.C. 154(i)-(j), 201-205, and 403, That an investigation is instituted into the following issues:

(1) What justification should be submitted by a dominant carrier proposing to alter a long term service tariff.

(2) Whether the changes proposed by RCA Americom in Transmittal 191 in the structure of its Tariffs F.C.C. Nos. 1 and 2, including the proposed changes in the length of the service terms, the termination liability, the elimination of certain grades of service, the requirement that certain customers upgrade their service, and the increase in the length of the renewal notice periods, would be just and reasonable and otherwise lawful under the tentative standard that a carrier may alter a long term service tariff only in accordance with the tariff itself or if it demonstrates that substantial cause exists to change the existing tariff terms.

(3) Whether the charges proposed by RCA American in its tariff structure are just and reasonable and otherwise lawful.

38. It is further ordered, That, with respect to issues 2 and 3 above, the burden of introduction of evidence and burden of proof are placed upon RCA American.

39. It is further ordered, That RCA American, CBN, EMI, SSS, SIN, HBO, and Showtime shall be named parties to this proceeding. Any other interested persons who wish to participate as parties may file a notice with the Commission within 30 days of the release of this order, or by filing comments in response to RCA American's direct case.

40. It is further ordered, That RCA American shall submit its direct case within 45 days of the release of this order. Other parties may file their reply cases or comments within 30 days thereafter. RCA American may file its response within 15 days there after.

41. It is further ordered, that the Chief, Common Carrier Bureau IS DELEGATED authority to require the submission of additional information, to make further inquiries, to modify issues, dates, and procedures, and if necessary.

[11] For example, a customer for the current unprotected, non-preemptible grade service would pay $85,233 in 1984. Under the proposed 1986 term, the same customer would pay $137,500 for protected service.

[12] The present inquiry may also establish useful preliminary policy guidelines for the Docket No. 78-99 investigation. For example, it is obviously important in evaluating the reasonableness of long term tariff provisions to know exactly how binding such tariffs are upon the carrier.

to provide for a fuller record and more efficient proceeding.

42. It is further ordered, that the tariff revisions proposed in RCA American's Transmittal 191 are suspended for a period of five months.

42. It is further ordered, That the petitions to reject, or in the alternative, to suspend and investigate filed by CBN, EMI, SSS, and SIN ARE GRANTED to the extent indicated and otherwise ARE DENIED.

44. It is further ordered, That the petitions to reject filed by HBO and Showtime ARE DENIED.

45. It is further ordered, that the petition to suspend and investigate filed by Showtime is granted to the extent indicated and otherwise IS DENIED.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix—Comparison of Present and Proposed RCA Americom Fixed Term Transponder Services

(1) *Full-Time Protected Transponder Service.*

(A) Present 1988 term [1]		Proposed 1986 term		
Period of servcice	Monthly charge	Period of service	Monthly charge	Percentage increase
7/1/80-12/31/80	$96,791	7/1/80-12/31/80	$97,833.67	1
1/1/81-12/31/81	102,631	1/1/81-12/31/81	112,500.00	9.6
1/1/82-12/31/82	112,500	1/1/82-12/31/82	120,833.33	7.4
1/1/83-12/31/83	116,588	1/1/83-12/31/83	129,166.66	10.8
1/1/84-12/31/84	118,318	1/1/84-12/31/84	137,500.00	16.2
1/1/85-12/31/85	120,749	1/1/85-12/31/85	141,666.66	17.3
1/1/86-12/31/86	120,749	1/1/86-12/31/86	141,666.66	17.3
1/1/87-12/31/87	120,749			
1/1/88-07/31/88	120,749			

(B) Present 1983 term	Proposed 1982 term	
	Period of service	Monthly charge
Not available	7/1/80-12/31/80	$150,000.00
	1/1/81-12/31/81	150,000.00
	1/1/82-12/31/82	150,000.00

(2) *Full-Time Unprotected, Non-preemptible Transponder Service.*

(A) Present 1988 term		Proposed 1986 term		
Period of service	Monthly charge [2]	Period of service	Monthly charge	Percentage increase
7/1/80-12/31/80	$63,706	7/1/80-12/31/80	$69,250.00	0.8
1/1/81-12/31/81	69,548	1/1/81-12/31/81	79,166.67	13.8
1/1/82-12/31/82	79,416	1/1/82-12/31/82	87,500.00	10.2
1/1/83-12/31/83	83,500	1/1/83-12/31/83	95,833.33	14.8
1/1/84-12/31/84	85,233	1/1/84-12/31/84	[3] NA	
1/1/85-12/31/85	87,667	1/1/85-12/31/85	NA	
1/1/86-12/31/86	87,667	1/1/86-12/31/86	NA	
1/1/87-12/31/87	87,667			
1/1/88-07/31/88	87,667			

(B) Present 1983 term	Proposed 1982 term	
	Period of service	Monthly charge
Not available	7/1/80-12/31/80	$108,333.33
	1/1/81-12/31/81	108,333.33
	1/1/82-12/31/82	108,333.33

(3) *Full-Time Unprotected, Preemptible Transponder Service.*

(B) Present 1988 term	Proposed 1986 term [4]	
	Period of service	Monthly charge
Not available	7/1/80-7/31/80	$38,333.00
	8/1/80-3/31/81	42,917.00
	4/1/81-12/31/81	54,136.78
	1/1/82-12/31/82	58,333.33
	1/1/83-12/31/83	NA

Appendix—Comparison of Present and Proposed RCA Americom Fixed Term Transponder Services—Continued

(B) Present 1988 term	Proposed 1986 term [4]	
	Period of service	Monthly charge
	1/1/84–12/31/84	NA
	1/1/85–12/31/85	NA
	1/1/86–12/31/86	NA

(B) Present 1-yr term	
$50,000 per month	No 1-yr service exists under the proposed tariff.

(C) Present 1983 term		Proposed 1982 term		Percentage increase
Period of service	Monthly charge	Period of service	Monthly charge	
8/1/80–12/31/80	$42,917.00	7/1/80–12/31/80	$66,666.67	55.3
1/1/81–12/31/81	45,000.33	1/1/81–12/31/81	66,666.67	48.2
1/1/82–12/31/32	50,347.61	1/1/82–12/31/82	66,666.67	32.4
1/1/83–7/31/83	53,750.00			

[1] All existing rates have been restated on a calendar-year basis for comparison to the proposed rates. RCA Americom's existing tariff uses periods of service from August 1 to July 31.

[2] Additionally, a discount of between 10.6 to 11.3 percent is provided to customers leasing two transponders. This discount is eliminated in the proposed tariff.

[3] RCA Americom estimates that facility availability will have enabled all customers subscribing to the 1986 term of service to automatically upgrade to a protected grade of service prior to 1/1/84.

[4] RCA Americom estimates that facility availability will have enabled all customers subscribing to the 1986 term of service to automatically upgrade to a protected grade of service prior to 1/1/84.

(4) *Termination Liability.*

(A) *Present 1988 Term.*

The customer may cancel full-time non-preemptible transponder service during the final period without reason, on 90 days' written notice based on the following termination liability:

Period during which termination occurs	Charge for 1 transponder[1]
7/28/78 to 7/31/79	$492,000
8/1/79 to 7/31/80	403,000
8/1/80 to 7/31/81	277,000
8/1/81 to 7/31/82	134,000
8/1/82 to 7/31/83	50,000
8/1/83 to 7/31/84	50,000
8/1/84 to 7/31/88	0

[1] Additionally, a discount of between 10.8 to 11.1 percent is provided to customers cancelling two transponders.

(B) *Proposed 1986 Term.*

The cancelling customer is liable for all charges remaining for the balance of the leased term. RCA Americom indicates that the cancelling customer has the right to sublease or assign its transponder space to a qualified replacement for the remainder of the lease term, but no such provision is stated anywhere in the proposed tariff.

(C) *Present 1983 Term.*

The customer may cancel full-time preemptible service without reason, on 90 days written notice, on payment of the following amount for the period during which termination occurs:

Period during which termination occurs	Termination charge
8/1/80 to 7/31/81	$178,000
8/1/81 to 7/31/82	120,000
8/1/82 to 7/31/83	65,000

(D) *Proposed 1982 Term.*

The cancelling customer is liable for all charges remaining for the balance of the leased term. RCA Americom indicates that the cancelling customer has the right to sublease or assign its transponder space to a qualified replacement for the remainder of the leased term, but no such provision is stated anywhere in the proposed tariff.

(5) *Altering Length of Service Term.*

(A) *Present 1988 Term.*

(I) Full-time non-preemptible service is provided for a fixed period beginning with the commencement of service and terminating on July 31, 1988.

(B) *Proposed 1986 Term.*

(I) Full-time protected service is provided for a fixed period beginning with the commencement of service and terminating on December 31, 1986.

(II) Customers subscribing to the 1986 term of service have the option to renew this service for an additional term of six years upon written notice two years prior to the end of the current six year term.

(C) *Present 1983 Term.*

(I) Full-time preemptible service is provided for a fixed period beginning with the commencement of service and terminating on July 31, 1983.

(D) *Proposed 1982 Term.*

(I) Full-time protected service is provided for a fixed period beginning with the commencement of service and terminating on December 31, 1982.

(II) Customers subscribing to the two year (1982) service term have the option to change the term of service to the six year (1986) service upon termination of their original two year service term. The customer must give written notice of this change to the Company one year prior to the end of the current two year term.

(III) Those customers subscribing to the 1982 term of service have the option to renew this service for an additional term of two years upon written one year prior to the end of the current two year term.

Dissenting Statement of Commissioner Joseph R. Fogarty

In Re: RCA American Communications Inc., Revisions to Tariff FCC Nos. 1 and 2.

I dissent to the continuing inconsistency in the Commission's regulatory stance toward the domestic satellite carriers (Domsats). By this decision, we are suspending for the full five-month statutory period RCA Americom's proposed tariff revisions and designating for investigation certain practices proposed by RCA Americom which would appear to have a predatory effect, if implemented. Less than one week ago, however, this Commission adopted a Further Notice of Proposed Rulemaking in the *Competitive Carrier* proceeding (Further Notice) which embraced the theory that Domsats are not dominant and therefore could not engage in predatory practices because of so-called "marketplace forces."[1] The Commission now attempts to reconcile these two actions with the argument that Domsats are, indeed, non-dominant, but that the present tariff-based regulatory structure somehow affords them the opportunity to act in a predatory fashion which would not be possible in a deregulated market. According to this argument, in a deregulated marketplace, customers of a Domsat would have civil causes of action and remedies to deter predatory actions by a Domsat.[2] This reasoning is specious. It is a curious economic theory that permits a carrier in the short run to prey upon a customer by predatory practices because, in principle, if the

[1] *Further Notice of Proposed Rulemaking*, CC Docket No. 79-252,——FCC 2d——(Adopted December 16, 1980).

[2] See, Para. 17 *supra*.

customer survives, the marketplace will make him stronger for it in the long run.

Domsats clearly are dominant carriers which should continue to be regulated.[3] Moreover, Domsats have the ability to price their services substantially above costs as their services and facilities are scarce. In an attempt to maintain consistency between this order and the *Further Notice*, the majority refused to directly confront the dilemma before us in this proceeding—that RCA may be engaging in the type of predatory pricing and practices which should not occur if the economic analysis underlying the proposal to deregulate Domsats is correct.

This order and the *Further Notice* are not distinguishable based on the argument that in a deregulated market a Domsat's customer would have sufficient contractual rights to deter predatory activity. A Domsat's customer has at least as many substantive rights and remedies under the tariff-based regulatory structure as it does in a civil court. I cannot agree that the tariff structure results in an agreement which only one of the contracting parties could enforce. A carrier is bound by its tariffs.[4] Until such time as a tariff is revised, a customer can enforce the tariff against the carrier who may be subject to monetary damages for the violation of its tariff.[5] A tariff of a dominant carrier, such as a Domsat, cannot be revised "except after ninety days notice to the Commission and the public."[6] The Commission may reject a tariff unlawful on its face.[7] Furthermore, the Commission upon complaint or its own initiative may suspend a tariff for five months [8] as well as prescribe just and reasonable charges and practices.[9] This proceeding, in which we are suspending and investigating RCA's proposed tariff revisions, is an excellent example of a customer's substantial rights and remedies under Title II of the Communications Act.

The issues raised in this proceeding amply demonstrate the fallacy of the argument that Domsat's are not dominant and should not be regulated. The concern here is that because of its market power a Domsat, such as RCA Americom, will be able to engage in predatory activity. In a contractual situation users would have less rights and remedies than they do under Title II. Pursuant to Title II the Commission can intervene to prescribe a just and reasonable tariff whereas in a contractual situation, because of a Domsat's market power, a user would possess very few options other than agreeing to the Domsat's terms. Clearly then, Commission surveillance under Title II is necessary in order to protect users.

As an additional point of concern, I am troubled by the fact that the Commission has deferred investigation of what are admittedly "significant rate issues."[10] In some instances the rates will increase by over 50 percent. Instead of investigating the reasonableness of the major rate increases, the Commission will investigate various proposed practices which, based on the analysis in this order, do not necessarily appear to be unjust or unreasonable. In all probability, these sizeable rate increases will go into effect before the Commission will have a chance to investigate them. The fact that an accounting order may be imposed at some point in the future does not allay my concern.[11] By the time that the Commission might order any refund, the economic dislocations caused by the rate increases will have already occurred and their effect may be irreparable. I believe that the Commission should immediately designate the rate increases for investigation and, after this investigation is concluded, if necessary, designate the proposed practices for investigation.

[FR Doc. 81-4221 Filed 2-4-81; 8:45 am]
BILLING CODE 6712-01-M

[3] See, Separate Statement of Commissioner Joseph R. Fogarty, *Further Notice of Proposed Rulemaking*, CC Docket No. 79-252.
[4] *Ambassador, Inc. v. U.S.*, 35 U.S. 317 (1945).
[5] See, e.g., 47 U.S. 206-209.
[6] 47 U.S.C. 203(b)(1).
[7] See, e.g., *AT&T Company*, 67 FCC 2d 1134, 1157-58 [1977], *recon. den.* 70 FCC 2d 2031 (1979).
[8] 47 U.S.C. 204(a).
[9] 47 U.S.C. 205.
[10] See, para. 33, *supra*.
[11] See, para. 34, *supra*.

FEDERAL MARITIME COMMISSION

[Docket No. 81-7]

Ingersoll-Rand Co. v. South African Marine Corp. Filing of Complaint and Assignment

Notice is given that a complaint filed by Ingersoll-Rand Company against South African Marine Corporation was served January 28, 1981. Complainant alleges that respondent has subjected it to payment of rates for ocean transportation in violation of section 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[FR Doc. 81-4216 Filed 2-4-81; 8:45 am]
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[Docket No. 81-8]

Rohm and Haas Co. v. Italian Line Filing of Complaint and Assignment

Notice is given that a complaint filed by Rohm and Haas Company against Italian Line was served January 29, 1981. Complainant alleges that respondent has subjected it to payment of rates for ocean transportation in violation of section 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[FR Doc. 81-4217 Filed 2-4-81; 8:45 am]
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[Docket No. 81-10]

Sea-Land Service, Inc., et al., Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades; Order of Investigation

On November 26, 1980, Sea-Land Service, Inc. filed amendments to its Tariffs FMC-F No. 34 and FMC-F No. 53, covering its services in the Puerto Rico Trade, proposing an 18 percent general rate increase, effective February 10, 1981.* On November 28, 1980, Gulf

* Sea-Land's original filing stated an effective date of January 25, 1981. However, Sea-Land subsequently requested and was granted special permission to extend the effective date of its tariff

Caribbean Marine Lines, Inc. (GCML) filed amendments to its Tariff FMC–F No. 2, covering its services in the Puerto Rico Trade, proposing a 16 percent general rate increase, effective January 29, 1981. On December 1, 1980, Trailer Marine Transport Corporation (TMT) filed amendments to its Tariffs FMC–F No. 5 and FMC–F No. 7, covering its services in the Puerto Rico Trade and the Virgin Islands Trade, proposing a 16 percent general rate increase, effective February 10, 1981.**

The amendment to Sea-Land's Tariff FMC–F No. 34, which applies between U.S. Atlantic and Gulf ports and ports in Puerto Rico, would increase all ocean freight rates, per container or per trailer rates or maximum charges, minimum charges for exclusive use of trailer, and charges for the return of empty pallets, tarpaulins, tote bins, etc. The amendment to Sea-Land's Tariff FMC–F No. 53, which applies between San Juan, Puerto Rico and Canadian ports via Elizabeth, New Jersey, would increase all through rates and the ocean portion of through rates.

The amendment to GCML's Tariff FMC–F No. 2, which applies to local, joint and proportional rates between U.S. Atlantic and Gulf ports, and ports in Puerto Rico, would increase all ocean freight rates and minimum bill of lading charges.

The amendments to TMT's Tariff FMC–F No. 5, which applies between U.S. Atlantic and Gulf ports and ports in Puerto Rico and the Virgin Islands, would increase all ocean freight rates, minimum charge per bill of lading, per trailer rates, and minimum charge when in twenty-foot equipment. The amendment to TMT's Tariff FMC–F No. 7, which applies between San Juan, Puerto Rico and ports in the Virgin Islands, would increase all ocean freight rates and minimum charge per bill of lading.

Protests to all the proposed rate increases were filed by the Government of the Virgin Islands, Puerto Rico Manufacturers Association, and the Chamber of Commerce of Puerto Rico. The Drug and Toilet Preparation Traffic Conference, Inc. protested only Sea-Land's and TMT's proposed rate increases. Letters opposing Sea-Land's proposed rate increases were also received from Heinz U.S.A., Continental Foods, Inc., S.A., Life Savers, Inc., Beech-Nut Foods Corporation, Trio Hnos., Inc. and Southwire Company. Letters opposing TMT's proposed rate increases were filed by Life Savers, Inc., Southwire Company and Virco Mfg. Corporation. A letter opposing GCML's proposed rate increases was received from Southwire Company.

The combined Protests of the Government of the Virgin Islands, Puerto Rico Manufacturers Association and Chamber of Commerce of Puerto Rico urge that all of the increases be suspended and made subject of an investigation. Emphasis is placed upon the serious adverse impact these rate increases will have upon the economies of Puerto Rico and the Virgin Islands. It is also alleged that the supporting materials provided by the carriers are speculative, putting into question their accuracy and reliability, particularly with respect to the proper allocation of rate base and expenses, the reasonableness of projections of cargo volume/revenue, and the reasonableness of the rate of return.

The Drug and Toilet Preparation Traffic Conference, Inc. also challenges numerous aspects of the submission of Sea-Land and TMT concerning allocations, projections and the reasonableness of the projected rate of return. Suspension and investigation of all of Sea-Land's and TMT's tariff amendments and supporting data is urged.

The letters received in opposition to the rate increases generally stress the adverse impact of the rate increases on the business operations of the firms and the apparent excessiveness of the increases when compared to current inflation rates.

Sea-Land, in its Reply to the protests, essentially defends the reasonableness of its allocations, projections and rate of return as being supported by Commission case law and regulations and accepted practice. Sea-Land also challenges the assertions of the Government of the Virgin Islands as to the alleged adverse effect of the rate increases on its economy on the basis that its proposed rate increases do not affect the rates on through movements of cargo and direct service to the Virgin Islands.

TMT and GCML filed a joint reply to the protests, also defending the reasonableness of their allocations, projections and rate of return. These carriers recognize that the increases will raise the cost of commodities in the islands but submit that the benefits of reliable service can only be provided by financially healthy carriers.

The proposed rate increases would, according to the carriers, give Sea-Land a rate of return of 15.94 percent, GCML a rate of return of 16.10 percent and TMT a rate of return of 13.01 percent for its Puerto Rico service and an operating ratio of 114 percent (negative rate of return) for its Virgin Islands service. Important considerations now before the Commission warrant an investigation into these rate increases with the exception, as discussed below, of TMT's increases in its Puerto Rico/Virgin Islands rates.

In any investigation into the reasonableness of a general rate increase, consideration must be given to what constitutes a just and reasonable rate of return for the carrier. In addressing this issue, the Commission generally takes into account: (a) the average rate of return earned by U.S. corporations, and (b) the risks faced by the individual carrier that may warrant a different rate of return. This analysis must also necessarily consider the group of U.S. corporations that should be used to derive an average, the time span examined in this regard and the criteria to be applied in determining whether a risk factor adjustment should be made, and, if so, the degree of such an adjustment. Such an inquiry will be made in this case.

The protests to the rate increases raise a substantial number of specific issues regarding the carriers' calculations in projecting their operational results. Additionally, a general allegation is made that the financial submissions are overly speculative and therefore unreliable. Accordingly, the Commission will include in this proceeding issues dealing with the reliability of the carriers' calculations in projecting operational results. Specifically, a great deal of discussion in the submissions concerns the matter of allegedly faulty predictions of cargo volume/mix and the resulting revenues to be derived therefrom.

Also raised are issues concerning the major cost projections of the carriers. Specifically, the projected labor costs, fuel costs, vessel maintenance costs and administrative and general expenses are challenged by Protestants. These matters will be made an issue in this proceeding to provide Protestants opportunity to sustain their objections.

Finally, past concentration on a strict comparative analysis of the reasonableness of a carrier's rate of return with other U.S. corporations may, in some extreme situations, fail to take into account other important public interests. While carriers are as a general matter entitled to the average rate of return earned by U.S. corporations, when, as in this case, consideration is given to allowing rates of return exceeding a national average because of

supplements to February 10, 1981. Special Permission No. 6483.

** TMT's original filing stated an effective date of January 29, 1981. However, TMT subsequently requested and was granted special permission to extend the effective date of its tariff supplements to February 10, 1981. Special Permission No. 6484.

the particular risks facing the carriers in serving a trade, such considerations must be balanced against the economic hardships that such rate increases may impose on the affected domestic offshore economies and commercial interests.

Accordingly, a hearing is necessary to resolve the issues specified below in order to determine whether the general rate increases here are unjust, unreasonable, or otherwise unlawful under section 18(a) of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933. However, TMT's Puerto Rico/Virgin Islands operation appears to be operating at a loss even with the proposed rate increases and, accordingly, its Tariff FMC–F No. 7 will not be investigated. Moreover, on the basis of the information submitted, the Commission does not believe that suspension of any portion of these increases is warranted. The statutorily imposed time limitations combined with the refund provisions of the Intercoastal Shipping Act, 1933 as amended, however, should substantially protect the opponents' interests in this matter.

Finally, pursuant to Rule 67(b)(1) of the Commission's Rules of Practice and Procedure (46 CFR 502.67(b)(1)) only those parties filing formal protests have been named Protestants in this proceeding. However, any interested party wishing to participate in this proceeding should promptly file a Petition for Intervention pursuant to Rule 72 of the Commission's Rules (46 CFR 502.72). Such petitions will be considered on their individual merits under the requirements of that rule. For purposes of this proceeding, any limitation Rule 67(h) may place on intervention beyond the strictures of Rule 72 is waived pursuant to Rule 10 (46 CFR 502.10).

Therefore, it is ordered, That pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916 and sections 3 and 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. sections 817, 821, 845, 845(a)), an investigation is hereby instituted into the justness and reasonableness of the tariff matter listed in Appendix A for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That the ultimate issue to be determined is whether or not the tariff matter listed in Appendix A is just and reasonable as required by Section 18(a) of the Shipping Act, 1916, and Sections 3 and 4 of the Intercoastal Shipping Act, 1933;

It is further ordered, That Sea-Land Service, Inc., Trailer Marine Transport Corporation and Gulf Caribbean Marine Lines, Inc. be named Respondents in this proceeding;

It is further ordered, That the Government of the Virgin Islands, Puerto Rico Manufacturers Association, Chamber of Commerce of Puerto Rico and The Drug and Toilet Preparation Traffic Conference, Inc. be named Protestants in this proceeding;

It is further ordered, That, notwithstanding any discussion of the contents of protests in this Order, the proceeding is hereby limited to the following specific issues bearing on the ultimate issue:

(1) What is an appropriate rate of return for the carriers named as Respondents? In addressing this question consideration should be given to the average rate of return earned by other U.S. corporations and the inherent risks, if any, in operating in the affected trades.

(2) Is the methodology used by Respondents in making revenue and cargo volume projections appropriate?

(3) Are Respondents' revenue and cargo volume projections sufficiently accurate, and, if not, what are the appropriate projections?

(4) Have Respondents properly calculated their cost projections covering labor, fuel, vessel maintenance and administrative and general expenses, and, if not, what are the proper calculations?

(5) Do the proposed rate increases impose an economic hardship on the affected interests represented by Protestants and Intervenors, and, if so, to what extent should this factor be considered in determining a reasonable rate of return for the carriers?

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Bureau of Investigation and Enforcement is made a party to this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge;

It is further ordered, That parties opposing Respondent's rate changes will serve testimony and exhibits constituting their direct case, together with underlying workpapers, on all parties and lodge copies of testimony and exhibits with the Administrative Law Judge no later than seven (7) days after the latest effective date shown on the various tariff filings under investigation;

It is further ordered, That subsequent to the exchange of testimony, exhibits, underlying data and prehearing statements by all parties, the Administrative Law Judge shall, at his discretion, direct all parties to attend a prehearing conference.

It is further ordered, That after considering the procedural recommendations of the parties, the Administrative Law Judge shall limit the issues to the extent possible and establish a procedure for their resolution;

It is further ordered, That any hearing in this proceeding shall be completed within sixty (60) days of the latest effective date shown on the various tariff filings under investigation;

It is further ordered, That the initial decision of the Presiding Administrative Law Judge shall be submitted in writing to the Commission within one hundred and twenty (120) days of the latest effective date shown on the various tariff filings under investigation;

It is further ordered, That during the pendency of this investigation, Respondents will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record;

It is further ordered, That any person other than parties of record having an interest and desiring to pariticpate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That any limitation on intervention resulting from Rule 67(h) of the Commission's Rules of Practice and Procedure (46 CFR 502.67(h)) beyond that resulting from Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) are waived pursuant to Rule 10 of the Commission's Rules of Practice and Procedure (46 CFR 502.10);

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as

being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix A

Sea-Land Service, Inc.

FMC–F No. 34 (Applying Between U.S. Atlantic Ports and Ports in Puerto Rico) Supplement No. 23

FMC–F No. 53 (Applying Between San Juan, Puerto Rico and Canadian Ports With Interchange at New Jersey—Intermodal Tariff) Supplement No. 14

Trailer Marine Transport Corporation

FMC–F No. 5 (Applying Between U.S. Atlantic Ports and Gulf Ports and Ports in Puerto Rico and the Virgin Islands) Supplement No. 12

Gulf Caribbean Marine Lines, Inc.

FMC–F No. 2 (Applying Between U.S. Atlantic and Gulf Ports and Ports in Puerto Rico) Supplement No. 14

[FR Doc. 81–4219 Filed 2–4–81; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than March 1, 1981.

A. *Federal Reserve Bank of Boston* (Richard E. Randall, Vice President) 30 Pearl Street, Boston, Massachusetts 02106:

Worcester Bancorp, Inc., Worcester, Massachusetts (insurance activities; Massachusetts): to engage *de novo*, through its wholly owned subsidiary, Wornat Insurance Agency, Inc., in the sale of credit life insurance, credit accident and health insurance, and mortgage redemption insurance in connection with extensions of credit made by two bank subsidiaries of Worcester Bancorp, Inc. These activities would be conducted from the existing offices of one of the bank holding company's subsidiary banks, which offices are located in Chatham, Falmouth, Hyannis, Orleans, Provincetown, Wellfleet, and West Harwich and from an approved but as yet unopened office of another subsidiary bank located in Worcester, Massachusetts, serving the Commonwealth of Massachusetts. Comments on this application must be received by February 27, 1981.

B. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. Citicorp, New York, New York (consumer and commercial finance and insurance activities; Florida): to engage through its indirect subsidiary, Citicorp Person-to-Person Financial Center of Florida, 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 of Florida, Inc. These activities would be conducted from a *de novo* office in Orlando, Florida serving the entire state of Florida.

2. Manufacturers Hanover Corporation, New York, New York (relocation of office; North Carolina): to engage in consumer finance and sales finance activities and in the sale of insurance related to such lending activities at 342 South College Road, College Square Shopping Center, Wilmington, North Carolina 28403. Manufacturers Hanover Corporation has received the approval of the Federal Reserve to engage in these activities at 119 Princess Street, Wilmington, North Carolina 28401. The application is only to engage in activities at a different location; the application does not involve the commencement of any new activities at the new location that have not been approved by the Federal Reserve for the old location. The new office will continue to serve customers in New Hanover County and parts of Pender and Brunswick Counties. Comments on this application must be received by February 27, 1981.

3. Manufacturers Hanover Corporation, New York, New York (commercial leasing and financing activities; Florida): to engage, through its subsidiary Manufacturers Hanover Leasing Corporation in leasing real and personal property on a full payout basis, acting as agent, broker or adviser in leasing such property, making or acquiring for its own account or for the account of others loans and other extensions of credit, such as would be made by a commercial finance or commercial mortgage company, with respect to real and/or personal property, and servicing such leases, loans and other extensions of credit. These activities would be conducted from a *de novo* office of Manufacturers Hanover Leasing Corporation to be located at 100 North Biscayne Boulevard, Miami, Florida 33132, serving the State of Florida.

C. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

Florida Commercial Banks, Inc., Miami, Florida (data processing activities; Florida): Applicant proposes to engage *de novo* in providing data processing services for an unaffiliated bank in Verto Beach, Florida. Such services consist of functions in an on-line environment including central information file processing. The services will be provided from an office of Applicant in Miami, Florida. Comments on this application must be received by February 23, 1981.

D. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

Western Kentucky Bancshares, Inc., Livermore, Kentucky (credit-related insurance activities; Kentucky): to

engage, through its subsidiary, Big Rivers Insurance Agency, Inc., in the activities of acting as insurance agent or broker with respect to the sale of accident and health, and property and casualty insurance, which is directly related to extensions of credit by Bancshares' subsidiary bank, Farmers & Merchants Bank. These activities would be conducted from offices in Livermore, Kentucky, serving McLean County, Daviess County, Hopkins County, Webster County, Ohio County, and Muhlenberg County, all in Kentucky. Comments on this application must be received by February 28, 1981.

E. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Western Bancorporation, Los Angeles, California (mortgage banking and insurance agency activities; United States): to engage, through its subsidiary Western Bancorp Mortgage Company, in making, acquiring, and servicing loans and other extensions of credit secured by real estate mortgages for its own account or for the account of others and in acting as agent or broker with respect to (a) credit life and credit accident and health insurance, and (b) mortgage disability and mortgage redemption insurance, directly related to extensions of credit or the provision of other financial services by Western Bancorporation or its subsidiaries; from a new office to be located in Albuquerque, New Mexico. These activities will be conducted in Colorado, Montana, New Mexico, Wyoming, Idaho, Utah, Arizona, Nevada, California, Oregon and Washington, with respect to making or acquiring 1–4 family residential loans and insurance agent or broker activities; and nationwide, with respect to making or acquiring construction loans and loans on income producing properties, and selling real estate and construction loans. Comments on this application must be received by February, 27, 1981.

F. *Other Federal Reserve Banks: None.*

Board of Governors of the Federal Reserve System, January 29, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR DOC. 81-4183 Filed 2-4-81; 8:45 am]

BILLING CODE 6210-01-M

The Bank of New York International Corp.; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval under section 25(a) of the Federal Reserve Act ("Edge Act"), by The Bank of New York International Corporation, New York, New York, to relocate its home office to Miami, Florida. The Bank of New York International Corporation operates as a subsidiary of Bank of New York, New York, New York. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than February 27, 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, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, February 2, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-4293 Filed 2-4-81; 8:45 am]

BILLING CODE 6210-01-M

Heritage Financial Corporation; Formation of Bank Holding Company

Heritage Financial Corporation, Loudon, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 81 percent of the voting shares of First Heritage National Bank, Loudon, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 2, 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 30, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-4262 Filed 2-4-81; 8:45 am]

BILLING CODE 6210-01-M

Lansing Bancshares, Inc; Formation of Bank Holding Company

Lansing Bancshares, Inc., Lansing, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Bank of Lansing, Lansing, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later that February 28, 1981. Any comment on an application that request 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 summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-4186 Filed 2-4-81; 8:45 am]

BILLING CODE 6210-01-M

National Detroit Corp.; Acquisition of Bank

National Detroit Corporation, Detroit, Michigan, 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 80 percent or more of the voting shares of the successor by merger to National Ann Arbor Corporation, Ann Arbor, Michigan, and to indirectly acquire 100 percent (less directors'qualifying shares) of the voting shares of National Bank and Trust Company of Ann Arbor, Ann Arbor, Michigan, and Monroe County Bank, Dundee, Michigan. The factors that are

considered in acting on the application are set forth in section 3(c) of the Act [12 U.S.C. 1842(c)].

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 28, 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 29, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-4184 Filed 2-4-81; 8:45 am]

BILLING CODE 62-10-01-M

Republic of Texas Corp.; Acquistition of Bank

Republic of Texas Corporation, Dallas, Texas, 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 per cent of the voting shares, less directors' qualifying shares, of Spring Branch Bank, Houston, Texas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 28, 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 29, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc 81-4185 Filed 2-4-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI-41]

Intended Environmental Impact Statement, Foxfire, Ann Arbor, Mich.; and of the Withdrawal of a Previous Notice, Wellington Hill Housing, Manchester, N.H.

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the first appendix to this Notice: Foxfire, Ann Arbor, Michigan. This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Also, as described in the second appendix HUD is withdrawing the Notice that was published in the **Federal Register** on Wellington Hill Housing in Manchester, New Hampshire.

Issued at Washington, D.C., January 16, 1981.

Francis G. Haas,

Deputy Director, Office of Environmental Quality.

Appendix—EIS on Foxfire, Ann Arbor, Michigan

The HUD Area Office in Detroit, Michigan intends to prepare an EIS on Foxfire Subdivision, Ann Arbor, Michigan, as proposed for Title X Mortgage Insurance for Land Development under the Housing and Urban Development Act 1965, Public Law 89-117 as amended. The project is described below and information and comments for consideration in the EIS are requested.

Description: A parcel of 206 acres in Ann Arbor, Michigan, specifically north of Traver Road and east of Nixon Road, bounded adjacently by U.S. 23 on the north and Ann Arbor Railroad on the west is proposed for the development of streets and infrastructure serving sites for approximately 926 residential units in single and multifamily housing with neighborhood commercial facilities and open space in a plan of harmonious land use.

Need: An EIS is required because the total number of dwelling units exceeds a HUD established threshold of significance based on the 1970 SMSA census.

Alternatives Perceived: The alternates are HUD participation in the development as proposed; participation in the development with modifications by the developer as identified in the EIS, or reject HUD participation in the development.

Scoping: A scoping meeting will not be held. HUD has previously requested comments from appropriate governmental and service agencies in the same proposal known as Traver Lakes.

Comments: Comments should be forwarded within 21 days of the publication of this Notice in the **Federal Register** to: Mr. Wesley Furton, Area Environmental Officer, U.S. Department of Housing and Urban Development, Area Office, 477 Michigan Avenue, Detroit, Michigan 48226.

Appendix—Withdrawal of Notice on Wellington Hill Housing, Manchester, New Hampshire

Notice was published in the **Federal Register**, Volume 44, No. 229 on November 27, 1979 that the Department of Housing and Urban Development proposed to conduct an EIS on Wellington Hill Housing in Manchester, New Hampshire.

This notice is intended to advise that the EIS process for this project is being terminated. The reason for HUD's decision to terminate is that the project is no longer active in processing since it has been withdrawn by the sponsor.

Additional information may be obtained by writing to the Acting Supervisor, Mr. Joseph P. Garaffa, Manchester Service Office, 275 Chestnut Street, Manchester, NH 03103, or by calling commercial (603) 666-7687, or FTS 834-7687, 88.

[FR Doc. 81-4182 Filed 2-4-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified

activity with the indicated Endangered Species:

PRT 2-7530

Applicant: Dr. Buris R. Boshell, Birmingham, Alabama 35210

The applicant requests a permit to purchase in interstate commerce captive-bred masked bobwhite quail (*Colinus virginianus ridgwayi*) from Mr. Vito Bucco, Waverly, Massachusetts for enhancement of propagation and survival.

PRT 2-7491

Applicant: Robert Baudy, Rare Feline Breeding Compound, Center Hill, FL 33514

The applicant requests a permit to import in foreign commerce one leopard (*Panthera pardus*) and to purchase one leopard located at the San Diego Zoo from the Metropolitan Toronto Zoo, Toronto, Ontario, Canada for enhancement of propagation and survival.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours on Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: January 30, 1981.

Donald G. Donahoo,

Chief, Permit Branch, U.S. Fish and Wildlife Service.

[FR Doc. 81-4243 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Roman P. Schmitt, 318 Howell Pl., Sarasota, Florida

The applicant requests a permit to export and re-import between Canada and the U.S., two Asian elephants (*Elephas maximus*) ages 8½ and 13 years, for the purpose of conservation exhibition. Both elephants have been in the U.S. since the fall of 1973.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7466. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: February 2, 1981.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 81-4244 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-55-M

Intent To Prepare an Environmental Impact Statement for the Preservation and Restoration of Diked Tidelands to Wetlands for Wintering Waterfowl in Northern San Pablo Bay, Calif.

AGENCY: U.S. Fish and Wildlife Service, Department of Interior

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the preservation and restoration of diked tidelands to wetlands for wintering waterfowl in northern San Pablo Bay, California. Public participation will be sought regarding this proposal and during preparation of the EIS. This notice is being furnished as required by the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comment should be received by March 9, 1981.

ADDRESSES: Comments should be addressed to: Area Manager, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room 2740, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT:

Dave Paullin, Wildlife Biologist, U.S. Fish and Wildlife Service, P.O. Box 1041, Burns, Oregon 97720, Phone: (503) 573-7043 Commercial; NO FTS, or

Bob Clark, Land Acquisition Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room 2740, Sacramento, California 95825, Phone: (916) 484-4958 Commercial, 468-4958 FTS

SUPPLEMENTAL INFORMATION: Dave Paullin is the primary author of this document.

Purpose and Need for Action

The U.S. Fish and Wildlife Service has major responsibilities for conservation of the Nation's waterfowl resources. To help meet this responsibility a continuing effort is being made to assure wetlands essential to waterfowl are protected. In areas where widespread habitat loss has already occurred this responsibility can include enhancement and restoration of former wetland areas.

Wintering habitats along the coastal areas of California are a special concern. Historically, the coastal bays, estuaries, and tidal marshes of California were a major wintering area for waterfowl. The largest and most important coastal waterfowl area in the state is the San Francisco Bay estuary including San Pablo Bay.

Unfortunately, 70 percent of the coastal wetlands of California have been lost or altered through diking, draining, filling, development, and other forms of degradation. In San Francisco Bay this loss has reached 80 percent. The remaining coastal wetlands of California, which now cover a little over 100,000 acres, are in short supply and are rapidly becoming a limiting factor for the numerous waterfowl and other organisms that are dependent upon these aquatic habitats for their continued existence.

Recently, five individual areas along the northern shore of San Pablo Bay were identified by the U.S. Fish and Wildlife Service as sites which could potentially be restored to wetlands suitable for wintering waterfowl (Figure 1). These sites are known as the San Rafael, Gallinas Creek, Novato Creek, Petaluma, and Napa Marshes.

These areas, which lie in Marin, Sonoma, Napa, and Solano Counties, once covered nearly 70,000 acres of tidal marsh, sloughs, and mud flats of major importance to wintering waterfowl. Today over 75 percent of these former marshes have been diked with the predominant land use being agriculture (hay production, pasture) and salt evaporation ponds. These areas represent over half of the potentially restorable tidal wetlands in the San Francisco Basin. The U.S. Fish and Wildlife Service, in an effort to assure the continued well being of wintering waterfowl populations in California, plans to consider alternative ways of preserving and restoring and improving these former wetlands.

Principal Identified Alternatives

Prior to issuing this Notice of Intent, the U.S. Fish and Wildlife Service completed two documents relative to the subject. The first was a Concept Plan for

Waterfowl Wintering Habitat Preservation (California Coast), February 1979. This covered the entire coast from Oregon to Mexico. It discussed existing wetland resources, threats, methods of protection, and identified sites for wetland restoration.

The second document was a Protection Strategy Study completed in early 1980. The purpose of this study was to identify threats to the existing wetlands and to make a preliminary determination of the feasibility of restoring former wetlands. The study concluded: (1) Existing tidal wetlands are adequately protected for the near future by existing legislation, regulations, and local zoning. (2) Contacts with landowners and local officials also led to the determination that an effort by the Service to restore wetlands would be feasible. This led to the recommendation that an EIS, or some form of Service acquisition be prepared.

Alternatives to be considered in the EIS include: (1) No Action; (2) Conservation Easement; and (3) Fee Acquisition. These are briefly discussed in the following:

1. *No Action.* Under a no action alternative the U.S. Fish and Wildlife Service would not have the opportunity to preserve or restore wetlands in the San Pablo Bay Area. Incremental losses of diked tidelands would continue. These include draining and/or filling for agricultural, municipal, industrial, residential, recreational, transportation, and military uses.

2. *Conservation Easements.* This alternative would involve the U.S. Fish and Wildlife Service acquiring certain rights from landowners. These would include the right to drain, fill, develop or in other ways impact wetlands. Easements could include existing wetlands or diked lands which were restored by the landowners. Easements represent an actual interest in the land, may be for any length of time, but are usually longer-term than leases and may not be cancelled before they expire.

3. *Free Acquisition.* Complete purchase of diked tidelands would be considered with this alternative. Landowners would actually be selling all of their rights to the property. As with the lease and easement alternatives, landowners would be paid fair market value for rights acquired and the program would be on a voluntary basis. Purchased lands would be restored to wetlands and managed primarily for wintering waterfowl.

Preferred Alternative

Of the alternatives identified, the U.S. Fish and Wildlife Service, at this time, prefers the acquisition of conservation easements. Under this alternative, the wetlands would remain in private ownership but the landowners would essentially be selling their right to adversely impact them. Landowners would be paid fair market value for any right acquired and the program would be on a voluntary basis.

Environmental Impacts of Preferred Alternative

The primary consequence of the proposed action will be the restoration and enhancement of wetlands important to wintering waterfowl. Numerous other wildlife species such as marsh birds and shorebirds will also benefit. In addition, the proposal will preserve and restore the open space and aesthetic values that wetlands add to an area.

Restoration of wetlands for waterfowl purposes will preclude most economic uses. Among these are: (1) removal of agricultural lands from production, and (2) loss of building sites for urban development.

Significant Issues To Be Covered During Scoping and Planning

The scope of the proposal involves the restoration of wetlands in the northern San Pablo Bay area of California and examination of alternative ways to accomplish this. Public and other agency involvement will be part of the process and comments are sought to: (1) clarify the problem and identify significant issues that need to be addressed, (2) identify all interests who may be directly or indirectly affected by the proposed action, (3) identify how each interest will be impacted, (4) identify issues that do not need to be addressed, (5) generate alternative solutions, and (6) identify other requirements of projects, e.g., consultation and coordination with affected interests.

As part of the Protection Strategy Study already completed, the U.S. Fish and Wildlife Service made numerous personal contacts which were considered part of the scoping process. These included contacts with other state and federal agencies, landowners, county supervisors, mayors, state legislative aides, and federal congressional field offices. It is planned to continue contacts of this type until it is concluded all significant issues have been identified.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act, Council on Environmental Quality Regulations, other appropriate regulations, and U.S. Fish and Wildlife Service procedures for compliance with those regulations.

It is estimated the draft Environmental Impact Statement will be made available to the public by July, 1981.

Dated: January 26, 1981.

Lawrence W. DeBates,

Regional Director.

Notice of Direct Federal Development Project

To: Office of the Governor, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814.

The U.S. Fish and Wildlife Service of the Department of the Interior is planning to undertake the direct Federal project, described below, on or about Fiscal Year 1981.

Project Description: The U.S. Fish and Wildlife Service is initiating an Evironmental Impact Statement for the Preservation and Restoration of Wetlands in Northern San Pablo Bay. Five sites covering nearly 70,000 acres are involved. The Fish and Wildlife Service plans to consider alternative ways of preserving and restoring diked tidelands to wetland habitats, primarily for wintering waterfowl. The study area includes the floodplains of several drainages. A map of general wetland locations is attached. In accordance with Section 401 of the Intergovernmental Cooperation Act of 1968 we wish to assure that this Department of the Interior action is consistent or compatible with State, regional and local development plans and programs.

If you wish to make any comments or initiate any discussion regarding this action please contact us at the below address within thirty days of receipt of this notice.

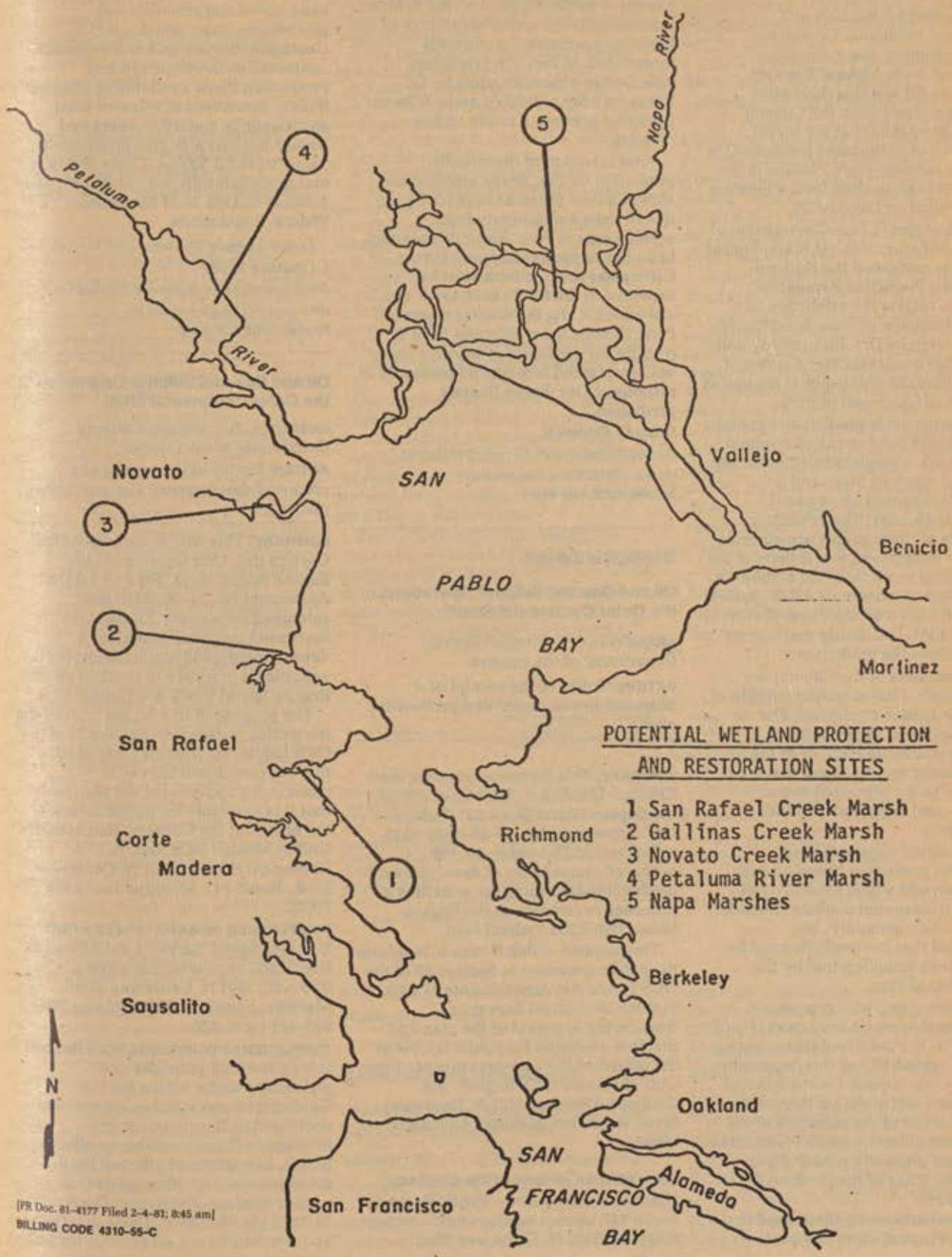
Date: January 26, 1981.

Lawrence W. De Bates

Acting Regional Director.

BILLING CODE 4310-55-M

Figure 1. Wetland Study Areas- San Pablo Bay, California



[FR Doc. 81-4177 Filed 2-4-81; 8:45 am]
BILLING CODE 4310-55-C

Statement by the National Earthquake Prediction Evaluation Council, January 27, 1981

The charter for the National Earthquake Prediction Evaluation Council, requires that a notice be "published in the **Federal Register** within nine (9) working days after receiving a report from the Council advising the public that the report (evaluation of earthquake prediction) is available for inspection." Below is the evaluation that resulted from a meeting of the Council on January 27:

"At the request of the Government of Peru, the Director of the U.S. Geological Survey has convened the National Earthquake Prediction Evaluation Council to review the prediction of a major earthquake in Peru. Specifically, the prediction by Drs. Brian Brady and William Spence states that a series of large earthquake will begin at the end of June 1981, off the coast of Peru.

"The sequence is predicted to contain a magnitude 7.5–8.0 event on or about June 28, 1981, a magnitude 9.2 event on or about August 10, 1981, and a magnitude 9.9 event on or about September 16, 1981. The predicted epicenters of these events are all near Lima. We understand that if there is not a substantial increase in the number of earthquakes of magnitude 4.5 or greater in a specific area off the coast of Peru by mid-May 1981, Drs. Brady and Spence will withdraw the prediction.

"The members of the Council are unconvinced of the scientific validity of the Brady-Spence prediction. The Council has been shown nothing in the observed seismicity data, or in the theory insofar as presented, that lends substance to the predicted times, locations, and magnitudes of the earthquakes.

"The Council regrets that an earthquake prediction based on such speculative and vague evidence has received widespread credence outside the scientific community. We recommend that the prediction not be given serious consideration by the government of Peru.

"We cannot say with complete confidence that major earthquakes will not occur at the predicted times, but we judge the probability of this happening to be very low indeed. On the basis of the data and interpetation currently available, none of the members of the Council would have serious reservations about being presently personally in Lima at the times of the predicted earthquakes.

"We are particularly distressed that although this prediction has been publicized in various forms for several years, nothing in the scientific literature or in other written form has been made available to this Council on the detailed theoretical basis and methodology of the Peruvian prediction as currently formulated. In fact, the prediction specified in a memorandum by Dr. Brady on May 1, 1980, is quite different from that presented orally at this meeting.

"Our rejection of the specific prediction by Drs. Brady and Spence should not be taken as minimizing the risk to lives and property from earthquakes in Peru. Since its founding, Lima has experienced many strong earthquakes, and others must be expected in the future both there and elsewhere along the coastal regions of Peru. Despite the continuing need to prepare for earthquakes in Peru, we do not recommend any special measures in response to the Brady-Spence prediction."

Doyle G. Frederick,

Acting Director, U.S. Geological Survey.

[FR Doc. 81-4172 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-31-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Eugene Island Block 231 Federal Unit Agreement No. 14–08–0001–8813, submitted on December 30, 1980, a proposed annual plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 231 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 27, 1981.

J. Courtney Reed,

Staff Assistant for Resource Evaluation.

[FR Doc. 81-4167 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the Eugene Island Block 266 Federal Unit Agreement No. 14–08–0001–8640, submitted on January 13, 1981, the fourteenth supplemental plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 266 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised

§ 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 27, 1981.

J. Courtney Reed,

Staff Assistant for Resource Evaluation.

[FR Doc. 81-4108 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-31-M

Southern Appalachian Coal Region; Alabama Subregion; Request for Public Comments on Maximum Economic Recovery and Fair Market Value

The U.S. Geological Survey has identified 5 tracts as candidates for possible lease sale in the Warrior Basin Coal Area in Alabama. The 5 tracts are those currently under consideration by the Alabama Subregion of the Southern Appalachian Regional Coal Team and are the subject of an ongoing environmental analysis.

Description of these tracts is contained in the Table. More complete geologic data on these tracts are available in the "economic recovery potential analysis reports" prepared for each tract. These reports are available for public inspection at the Office of the Eastern Region Conservation Manager, Conservation Division, U.S. Geological Survey, 1725 K St. N.W., Suite 204, Washington, DC, and at the Bureau of Land Management, Tuscaloosa Office, 1315 McFarland Blvd., Tuscaloosa, Alabama 35405. Additional data on these tracts are available from the Final Environmental Impact Statement (FEIS). Copies of the FEIS are available from Bob Todd, EIS Team Leader, Bureau of Land Management, Tuscaloosa Office.

The U.S. Geological Survey will accept public comments on the maximum economic recovery attainable for each of the tracts listed in the Table. The comments should focus on the following considerations:

1. The mining method which should be employed on each of the tracts;
2. The number and extent of coal seams that can be mined consistent with maximum economic recovery as defined in 30 CFR 211.2;
3. The total recoverable reserves on each of the tracts taking into account items (1) and (2) above; and,
4. Alternative mining methods on each of the tracts.

In addition, the public is invited to submit to the U.S. Geological Survey written comments which will be used in estimating fair market vaule of the coal resources in the listed tracts. Comments should address specific factors related to fair market value, including but not limited to, the following:

1. The quality and quantity of the coal resources;
2. Which of the tracts, if any, should be evaluated as part of a larger mining unit (those tracts which do not in themselves form a logical mining unit);
3. The configuration of the larger mining unit of which the tract may be a part;
4. Relative location of potential markets and available or proposed transportation and loading facilities;
5. The price that the mined coal would bring in the marketplace;
6. The cost of producing the coal;
7. The most desirable timing and rate of production;
8. Depreciation and other accounting considerations;
9. The minimum rate of return that would be desired by a coal company in the absence of inflation (real rate of return);
10. The value of the surface estate if privately held; and
11. Royalty rates currently being assessed by private surface owners in the leasing area.

Documented information on recent lease transactions for coal properties in the area should also be submitted at this time. This information should include location of the property, terms of the transactions, and any major conditions specified in the contract.

The data should not be limited to transactions involving private property; assignments of Federal and State leases should also be included. Information submitted will be evaluated on its own merits. Commenters are encouraged, however, to supply technical justification to support their assertions. If information submitted is considered to be proprietary, the information should be so labeled in the first page of the written comment.

The U.S. Geological Survey will treat this information as confidential if authorized by the exemption provisions of the Freedom of Information Act. Comments should be sent to Eastern Region Conservation Manager, Conservation Division, U.S. Geological Survey, 1725 K St. N.W., Suite 204, Washington, DC 20006. Comments should be received no later than 30 days after publication of this notice.

Departmental policy calls for release of all nonproprietary data which is used as input in the discounted cash flow evaluation model. Under this policy, this economic and geologic information would be released for public comment and review several months prior to the lease sale. However, because of the accelerated time schedule for the first sale in the Southern Appalachian Coal Region, Alabama Subregion, these data will be released with the notice of the lease sale. The sale notice will therefore include these data as well as the minimum acceptable bid.

Dated: January 23, 1981.

Richard B. Krahl,

Acting Conservation Manager, Eastern Region.

Tract name	County, township and range, (Huntsville P.M.)	Acreage total/FMO [1]	In-place coal reserve estimate (thousand tons) total/FMO [1]	Probable type of mine	Btu per pound	Sulfur content (percent)	Ash content (percent)
Upper North River (Bypass)	Fayette;T16S,R10W	40/40	287.6/287.6	Underground	11,908	2.0	13.8
North River	Fayette;T17S,R10W	9600/1240	44,754.9/6,139.6	Underground	12,225	2.4	13.0
Harris Cemetery (SBA)	Walker;T14S,R10W	160/40	44.3/23.0	Surface	14,250	1.4	6.4
Upper Sulfur Springs Church (SBA)	Fayette;T15S,R9W	520/40	1,256.6/48.9	Surface	14,005	1.6	5.1
Goodwin Creek	Walker;T12S,R10W	680/280	1,100.4/446.2	Surface	14,257	1.2	3.2

[1] Federal Mineral Ownership.

[FR Doc. 81-4273 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

California Desert District; Santa Rosa Habitat Management Plan

AGENCY: Bureau of Land Management.

ACTION: Proposed vehicle closures.

SUMMARY: The proposed vehicle closures have been developed to restore conflicts between the use of vehicles and Peninsular bighorn sheep in support of the Santa Rosa Mountains Habitat Management Plan.

DATE: Effective February 1, 1981.

ADDRESS: Copies of the Santa Rosa Mountains Habitat Management Plan and further information on these designations are available at the Indio Resource Area, 3623 H101 Canyon Crest Drive, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Faye Davis, at the Indio Resource Area

address or call (714) 787–1630 or FTS 796–1630.

Notice is hereby given relating to the use of vehicles on public lands in accordance with the authority and requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Endangered Species Act (16 U.S.C. 1531 et seq.), Executive Order 11644, Section 9, Sikes Act (Pub. L. 93–452) and regulations contained in 43 CFR Part 8340, 8342, and 8364. The following described lands under administration of the Bureau of Land Management are designated as closed to motorized vehicle use. These designations do not affect vehicle use on adjacent privately owned land.

The areas affected by these designations are in and/or adjacent to the Santa Rose Mountains located south and west of the Coachella Valley. These designations are a result of the land use decisions developed with public involvement in the Santa Rosa Mountains Habitat Management Plan finalized in September 1980. The habitat management plan and these closures provide for the protection and management of Peninsular bighorn sheep, which is listed by the State of California as rare as well as other wildlife and wilderness values.

The areas designated as closed are:

1. *Dead Indian Creek and Carrizo Canyons*—Access to these canyons is located approximately three miles south of Palm Desert on State Highway 74. Dead Indian Creek Canyon runs due west from the highway and Carrizo Canyon runs due south. The mouths of both of these canyons will be closed to motorized vehicles. The closure affects all of Section 12, Township 6 South, Range 5 East, San Bernaridino Meridian. Closure of these canyons is necessary to provide protection for bighorn sheep habitat and a native fan palm grove.

2. *Guadalupe Canyon*—Guadalupe Canyon is located approximately two and one half miles southeast of La Quinta. It includes all of Section 32, Township 6 South, Range 7 East, San Bernardino Meridian. The closure will protect a bighorn sheep water source and lambing area and restrict access in an area which is being used for garbage dumping and unauthorized decorative rock collection.

4. *Martinez Canyon*—Martinez Canyon is located approximately four miles southwest of the town of Valerie. The closure includes Section 9, Township 8 South, Range 7 East, San Bernardino Meridian. This closure provides vehicle access to but not beyond the boundary of the proposed Wilderness Area No. 341 and protects bighorn sheep and other wildlife values.

These designations become effective and will remain in effect until rescinded or modified by the California Desert District Manager. An environmental assessment which describes the impact of these designations is available for inspection.

Dated: January 27, 1981.

Bruce Ottenfeld,

Acting District Manager.

[FR Doc. 81-4263 Filed 2-4-81; 8:45 am]

BILLING CODE 4410-84-M

Casper District Office; Public Hearing and Availability of Draft Land Use Plan Amendment/Environmental Assessment for the Wyoming Big Horn Coal Company's Emergency Lease Application

The Casper District Office of the Bureau of Land Management announces that a public hearing will be held on April 15, 1981 at 7:00 p.m. in the Mountain View Room, Student Commons Building, Sheridan College, Sheridan, Wyoming. The hearing pertains to Big Horn Coal Company's emergency federal coal lease application W–69981. The purpose of the hearing is to obtain public comment on the following items:

(1) a draft amendment to the Western Powder River Basin Management Framework Plan incorporating the emergency coal lease;

(2) a draft environmental assessment of the impact of mining the federal coal included in the lease application;

(3) methods of mining to obtain maximum economic recovery of the coal; and

(4) methods of determining the fair market value of the coal to be offered for lease.

The draft land use plan amendment and draft environmental assessment are available for review at the Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601. Single copies are available for distribution at the same address.

The coal resource to be offered would be mined by surface mining methods from the Dietz and Monarch coal seams in the Fort Union formation, located in:

T. 57 N., R. 84 W.:
Sec. 14. SW¼; NE¼;
Sec. 23. S½; NE¼;
Sec. 24. W½; W½;
Sec. 25. W½; NW¼.

And containing approximately 390 acres. The estimated strippable federal reserves are 19 million tons.

Commenting

Oral and written comments will be received at the public hearing. Written comments may also be submitted to Bob Wilber, District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601. The comment period will end 90 days after issuance of this notice. Substantive comments, both oral and written, will be considered prior to any lease offering.

Fair Market Value—Comments pertinent to fair market value of the coal may include the following information: 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, and the value of the surface estate. These comments will be considered in the final determination of fair market value in accordance with 30 CFR 211.63 and 43 CFR 3422.1–2.

Copies of these comments will be forwarded to the Wyoming State Director, Bureau of Land Management, and the Regional Conservation Manager, Geological Survey. Should any information submitted as comments be considered to be proprietary by the commentor, the information should be labeled as such and stated in the first page of the submission.

FURTHER INFORMATION: For further information, contact Glenn Bessinger, Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601, phone (307) 265–5550, ext. 5101. Documents relevant to the land use planning process are available for review at the above address.

Robert E. Wilber,

District Manager.

[FR Doc. 81-4264 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-84-M

Coeur D'Alene District Office, Idaho; Preparation of Amendment to Management Framework Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Management Framework Plan Amendment Preparation.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1601.3(g) that the Coeur d'Alene District Office is beginning the process to amend its Management Framework Plans. The amendment will be prepared using Resource Management Plan procedures.

The amendment will cover 53,452 acres of public land scattered throughout the district in ten tracts ranging in size from 170 acres to 10,339

acres. The district is located in the northern panhandle of Idaho, extending from the Canadian border on the north to the Payette National Forest on the south. These tracts of land were previously designated as roadless areas and were not included in the allocation determination phase of previous land use plans. Of the total acreage involved, 38,468 acres have been identified by BLM as Wilderness Study Areas while 14,984 acres have been identified as not containing wilderness characteristics. The analysis obtained through the amendment process and associated environmental impact statement will aid the decision maker in the preparation of land use allocation decisions.

General land use issues such as timber management, livestock grazing, mineral development, wildlife habitat, recreation use, wilderness, scenic quality, cultural resources, watershed, and economics will be addressed in the amendment.

An interdisciplinary team consisting of a Planning Coordinator, Forester, Wildlife Biologist, Soil Scientist, Hydrologist, Outdoor Recreation Planner, Wilderness Coordinator, Archaeologist, Realty Specialist, Geologist, Economist, Range Conservationist, and Public Information Specialist will develop the amendment.

Public participation will occur throughout the amendment process. Activities will include letters, comment sheets, issue solicitations, public meetings, interagency coordination meetings, and Multiple Use Advisory Council meetings. These activities will be announced through local newspapers, radio stations, and individual letters.

Coeur d'Alene Planning Coordinator Ted Graf or Acting District Manager Wayne Zinne can be contacted at the Coeur d'Alene District Office, 1808 North Third Street (P.O. Box 1889), Coeur d'Alene, Idaho 83814, telephone (208) 667–2561, extension 356 for further information. All documents relevant to district land use planning are available for public review at that address.

Dated: January 28, 1981.

Wayne W. Zinne,

Acting District Manager.

[FR Doc. 81–4368 Filed 2–4–81; 8:45 am]

BILLING CODE 4310–84–M

Carson City District Advisory Council Meeting

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Carson City District Multiple Use Advisory Council.

DATE: March 13, 1981—10:00 a.m.

ADDRESS: 1050 E. William Street, Suite 335, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Stephen A. Weiss, Public Affairs Officer, Carson City District, Bureau of Land Management, 1050 East William Street, Suite 335, Carson City, Nevada 89701, (702) 882–1631.

SUPPLEMENTARY INFORMATION: The Council is chartered to provide citizen counsel and advice to the Carson City District Manager regarding planning and management of the public lands and resources within the District.

The agenda for the meeting includes further consideration of wilderness, the Desatoya Wilderness Study Area, and subcommittee reports.

The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Council at 3:00 p.m.

[FR Doc 81–4173 Filed 2–4–81; 8:45 am]

BILLING CODE 4310–84–M

National Outer Continental Shelf Advisory Board, Pacific States Regional Technical Working Group Committee; Notice and Agenda for Meeting

AGENCY: Department of the Interior, Bureau of Land Management, Pacific Outer Continental Shelf Office.

ACTION: National Outer Continental Shelf Advisory Board, Pacific States Regional Technical Working Group Committee; Notice and Agenda of Meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463.

The Pacific States Regional Technical Working Group Committee of the Advisory Board will meet during the period 9:30 am to 12:30 pm, March 13, 1981 in the Federal Building, Room 224, 1340 West 6th Street, Los Angeles, California.

The agenda for the meeting will cover (a) Tract Selection for Sale 73 and (b) 1983 Regional Environmental Studies Plan.

The meeting is open to the public. Interested persons may make oral or written presentations to the committee. Such requests should be made no later than February 27, 1981 to: Ellen Aronson, Pacific OCS Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017, (213/688–6758). Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying at the following locations:

Pacific OCS Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017; and

Bureau of Land Management, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: January 28, 1981.

John F. Fields,

Acting Manager, Pacific Outer Continental Shelf Office.

[FR Doc. 81–4174 Filed 2–4–81; 8:45 am]

BILLING CODE 4310–84–M

Wilderness Study Areas; Henry Mountain Planning Area Management Framework Plan

January 27, 1981.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1601.3 that the Bureau of Land Management, Richfield District, intends to incorporate the wilderness study of eight wilderness study areas (WSA) into the Henry Mountain Planning Area Management Framework Plan. These WSA's are:

UT–050–236: Dirty Devil
UT–050–237: Horshoe Canyon
UT–050–238: Blue Hills-Mt. Ellen
UT–050–241: Fiddler Butte
UT–050–242: Bull Mountain
UT–050–247: Little Rockies
UT–050–248: Mt. Pennell
UT–050–248: Mt. Hilliers

These WSA's are located in the Bureau of Land Management's Henry Mountain Resource Area.

The general issues related to the wilderness study which have been identified at this time include (1) Impacts to the social and economic structures of local communities, (2) Proximity of the wilderness study area to population centers, (3) Multiple Use trade-offs which would occur if the area were designated as a Wilderness Area, (4) Quality of the area's wilderness values, (5) Manageability of the area as wilderness.

Planning criteria have been identified to resolve issues and to guide the collection and use of data for the wilderness study and MFP amendment. The criteria will be used by BLM to analyze alternatives and recommend the eight wilderness study areas as suitable or unsuitable for wilderness designation. The criteria include (1) the extent to which the benefits of wilderness designation would outweigh the resource benefits and uses which could be obtained without wilderness designation, (2) how effectively the area can be managed to retain its wilderness

character and related multiple use values and uses, (3) public support at local, state, regional, and national levels, (4) social and economic impacts to the surrounding areas, (5) proximity to other designated or recommended wilderness areas, (6) the extent to which wilderness designation would enhance related features and opportunities in the region, (7) the extent to which wilderness would enhance other multiple use values and uses, (8) consideration of alternate uses of the area if wilderness is not recommended, (9) the degree of BLM control over subsurface and surface uses and, (10) the degree of supplemental wilderness related values.

The recommendation and alternatives for designation of UT-050-236, UT-050-237, UT-050-238, UT-050-241, UT-050-242, UT-050-247, UT-050-248, and UT-050-249 will be incorporated into an Environmental Impact Statement for all wilderness study areas in the Henry Mountain Resource Area.

Disciplines to be represented on the interdisciplinary team to complete the MFP and EIS are: Range Conservationist, Botanist, Minerals Specialist, Biologist, Wildlife Specialist, Archaeologist, Land Use Planner, Sociologist, Economist, Hydrology/Watershed Specialist, and Recreation Planner/Forester.

Notice is also hereby given that issues related to the suitability for tar sands development will also be incorporated into the Henry Mountain Planning Area Management Framework Plan. General issues related to tar sands development which have been identified at this time are: (1) Threatened/Endangered/Sensitive Plant and Animal Species, (2) Water quality and quantity, (3) Air quality, (4) Cultural Resources, (5) Surface disturbance (6) Economic feasibility of development, (7) social and economic impacts, (8) Visual resources, (9) Potential big horn sheep habitat, (10) Land use conflicts, and (11) access and utility corridors.

Public input is invited to identify additional issues related to the wilderness study areas and/or the suitability for tar sands development within the Henry Mountain Planning Area. The Richfield District, Bureau of Land Management, will distribute issue briefing materials for wilderness study and tar sands development to those persons included on the mailing list and to others upon request. Comments will be accepted until March 11, 1981. Other public participation activities will be conducted in accordance with the Wilderness Act (Pub. L. 88-577) and with 43 CFR 1601. Dates, time, and locations will be announced through local media and mailings to interested parties.

Carl Thurgood, Chief of Planning Section, may be contacted for further information at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701 or (801) 896-8221. Documents relevant to the MFP/EIS process and wilderness study may be reviewed at the Richfield District Office during regular office hours 8:00 a.m. to 5:00 p.m.

Donald L. Pendleton,

District Manager.

[FR Doc. 81-4175 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-84-M

Wilderness Study; Parker Mountain Management Framework Plan

January 26, 1981.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1601.3 that the Bureau of Land Management, Richfield District, intends to amend the Parker Mountain Management Framework Plan (MFP). The purpose of the amendment is to incorporate the Wilderness Study of Wilderness Study Area (WSA,) #UT-050-221, Fremont Gorge in the plan. The WSA includes 2,540 acres of public land located in western Wayne County, Utah. The WSA is within the Bureau of Land Management's Henry Mountain Resource Area.

The General Issues related to the wilderness study which have been identified at this time include (1) Impacts to the social and economic structures of local communities, (2) Proximity of the wilderness study area to population centers, (3) Multiple Use trade-offs which would occur if the area were designated as a Wilderness Area, (4) Quality of the area's wilderness values, (5) Manageability of the area as wilderness.

Planning criteria have been identified to resolve issues and to guide the collection and use of data for the wilderness study and MFP amendment. The criteria will be used by BLM to analyze alternatives and recommend the Fremont Gorge Wilderness Study area as suitable or unsuitable for wilderness designation. The criteria include (1) the extent to which the benefits of wilderness designation would outweigh the resource benefits and uses which could be obtained without wilderness designation, (2) how effectively the area can be managed to retain its wilderness character and related multiple use values and uses, (3) public support at local, state, regional, and national levels, (4) socioeconomic impacts to the surrounding areas, (5) proximity to other designated or recommended wilderness areas, (6) the extent to which wilderness designation would enhance related features and opportunities in the region, (7) the extent to which wilderness would enhance other multiple use values and uses, (8) consideration of alternate uses of the area if wilderness is not recommended, (9) the degree of BLM control over subsurface and surface uses and, (10) the degree of supplemental wilderness related values.

The recommendations and alternatives for designation of UT-050-221 will be incorporated into an Environmental Impact Statement (EIS) for all wilderness study areas in the Henry Mountain Resource Area. Preparation of the EIS is scheduled to begin in fiscal year 1982.

Disciplines to be represented on the interdisciplinary team to complete the MFP amendment and EIS are: Range Conservationist, Botanist, Minerals Specialist, Biologist, Wildlife Specialist, Archaeologist, Land Use Planner, Sociologist, Economist, Hydrology/Watershed Specialist, and Recreation Planner/Forester.

Notice is also hereby given that the public is invited to comment on the identified issues and planning criteria related to the wilderness study of the Fremont Gorge Wilderness Study Area. The Richfield District, Bureau of Land Management, will distribute issue briefing materials for the Parker Mountain MFP amendment to those persons included on the mailing list and to others upon request. Comments will be accepted until March 11, 1981. Other public participation activities will be conducted in accordance with 43 CFR 1601 and Pub. L. 88-577 (Wilderness Act). Dates, times, and locations will be announced through local media and mailings to interested parties.

Carl Thurgood, Chief of Planning Section, may be contacted for further information at the Richfield District Office, 150 East 900 North, Richfield Utah 84701 or (801) 896-8221. Documents relevant to the MFP amendment/EIS process and wilderness study phase may be reviewed at the Richfield District office during regular office hours 8:00 a.m. to 5:00 p.m.

Donald L. Pendleton,

District Manager.

[FR Doc. 81-4176 Filed 2-4-81; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Finance Applications; Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). 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). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. 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. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed on or before March 23, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. On or before April 6, 1981 an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

Dated: January 29, 1981.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC 4966 (Sub-25) (supplemental), filed November 10, 1980. Applicant: JONES TRANSFER COMPANY (Jones) (300 Jones Avenue, Monroe, MI 48161). Representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48031. Authority is sought to convert Certificates of Registration MC 28811 (Sub 5, 7, 8 and 9), authorizing the transportation of *general commodities* (except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and commdities which because of size or weight require the use of special equipment),

1. Between Detroit and Mackinaw City, MI, from Detroit over US Hwy 10 to jct. US Hwy 23, then over US Hwy 23 to Mackinaw City and return over the same route.

2. Between Saginaw, MI and Standish, MI, from Saginaw, MI over MI Hwy 13 to Standish and return over the same route.

3. Between Saginaw, MI and Bay City, MI, from Saginaw, MI over MI Hwy 84 to Bay City and return over the same route.

4. Between the jct. MI Hwy 65 and US Hwy 23 north of Standish, MI and the jct. MI Hwy 65 and US Hwy 23 south of Roger City, from the jct. MI Hwy 65 and US Hwy 23 north of Standish, MI over MI Hwy 65 to the jct. MI Hwy 65 and US Hwy 23 south of Rogers City, MI and return over the same route.

5. Between Alpena, MI and Gaylord, MI, from Alpena, MI over MI Hwy 32 to Gaylord, MI and return over the same route.

6. Between Rogers City, MI and Cheboygan, MI, from Rogers City, MI over MI Hwy 68 to jct. MI Hwy 33, then over MI Hwy 33 to Cheboygan, MI and return over the same route.

7. Between jct. MI Hwy 33 and MI Hwy 68 and Afton, MI, from the jct. MI Hwy 33 and MI Hwy 68 over MI Hwy 68 to Afton, MI and return over the same route.

8. Between Atlanta, MI and Onaway, MI, from Atlanta, MI over MI Hwy 33 to Onaway, MI and return over the same route.

9. Between jct. US Hwy 23 and County Road F–41, North of Oscoda MI and jct. US Hwy 23 and County Road F–41 North of Alcona, MI, from jct. US Hwy 23 and County Road F–41, north of Oscoda, MI over County Road F–41 through Mikado and Lincoln to jct. US Hwy 23, north of Alcona, MI and return over the same route.

10. Between Harrisville, MI and jct. MI Hwy 65 and MI Hwy 72, from Harrisville, MI over MI Hwy 72 to jct. with MI Hwy 65 and return over the same route.

11. Between Curtisville, MI and Glennie, MI and return over the same route, from Curtisville, MI over Bamfield Road to Glennie, MI and return over the same route.

12. Between Huron Beach, MI and Onaway, MI, from Huron Beach, MI over Presque Isle County Road 646 Hwy to jct. MI Hwy 211, then over MI Hwy 211 on Onaway, MI and return over the same route.

13. Between East Tawas, MI and Whittemore, MI, from East Tawas, MI over Hwy 55 to jct. Sand Lake Road, then over Sand Lake Road to McIver then over Whittemore Road to Whittemore, MI and return over the same route.

14. Between Oscoda, MI and jct. MI Hwy 65 and Iosco County Road (River Road), from Oscoda, MI over River Road to jct. MI Hwy 65 and return over the same route.

15. Between East Tawas, MI and jct. Iosco County Roads (Monument Road and River Road), from East Tawas, MI over Monument Road to jct. with River Road and return over the same route.

16. Between Alpena, MI and jct. Presque Isle County Road (Millersburg Road) and MI Hwy 68, from Alpena, MI over Alpena and Presque Isle County Roads as follows: Long Rapids Road to jct. Bolton Road, then over Bolton Road to Bolton, MI, also from jct. Long Rapids Road and Cathro Road over Cathro Road to jct. Lacomb Road then over Lacomb Road to jct. Bolton Road, then over Bolton Road to Bolton, MI, then over Bolton Road to jct. with Long Lake Hwy, then over Long Lake Hwy to jct. Polaski Road; then over Polaski Road to jct. with 634 Hwy, then over 634 Hwy to 441 Road, then over 441 Road to Hawks

Road, then over Hawks Road to Hawks, MI, then over W 638 Hwy to jct. Millersburg Road, then over Millersburg Road to jct. MI Hwy 68 and return over the same route.

17. Between Hillman, MI and Hawks, MI, from Hillman, MI over County Road 451 to Hawks, MI and return over the same route.

18. Between Lincoln, MI and Hubbard Lake, MI, from jct. MI Hwy 72 and Hubbard Lake Road over Hubbard Lake Road to Hubbard Lake, MI and return over the same route; from Lincoln, MI over Trash Lake Road to jct. Hubbard Lake Road and return over the same route; from jct Hubbard Lake Road and Mt. Maria Road over Mt. Maria Road to jct. Hubert Road then over Hubert Road to jct. Hubbard Lake Road and return over the same route.

19. Between jct. US Hwy 23 and Alcona County Road (Spruce Road) and Hubbard Lake, MI, from US Hwy 23 and Spruce Road over Spruce Road to jct. Hubbard Lake Road and return over the same route.

20. Between jct. MI Hwy 65 and Alpena County Road (Werth Road) and Hubbard Road, MI, from jct. MI Hwy 65 and Werth Road over Werth Road to jct. Hubbard Lake Road, then over Hubbard Lake Road, to Hubbard Lake, MI and return over the same route.

21. Between the jct. US Hwy 23 and Presque Isle County Road (Schubert Rayburn Road) South of Grand Lake and the jct. US Hwy 23 and Presque Isle County Road (638 Hwy) North of Grand Lake. From the jct. US Hwy 23 and Schubert Rayburn Road over Schubert Rayburn Road to jct. Grand Lake Road, then over Grand Lake Road to jct. 638 Hwy, then over 638 Hwy to jct. US Hwy 23 and return over the same route. Service is authorized in routes 1–21 above at the off-route point of Lewiston, MI and at all intermediate points and all points in Alcona, Alpena, Iosco and Presque Isle Counties, MI and those points in Montmorency County on and north of MI Hwy 32; Cheboygan County on and East and North of MI Hwy 33 and Arenac County on and East of US Hwy 23 and MI Hwy 65.

22. Between Gaylord, MI and Afton, MI from Gaylord over I–75 to jct. with MI Hwy 68 then over MI Hwy 68 to Afton and return over the same route, serving no intermediate points.

23. Between Detroit, MI and jct. of US Hwy 23 with I–75, from Detroit, MI over I–96 to jct. with US Hwy 23 and then over US Hwy 23 to jct. with I–75 and return over the same route, serving only those points otherwise authorized.

(B) Irregular routes: *Artistic Fencing*, Between Alpena, MI and Greenbush, MI, on the one hand, and, on the other, points in MI. *Paper Mill Supplies and Empty Containers*, Between Alpena, MI, on the one hand, and, on the other, points in MI. *Paper*, Between Alpena, MI on the one hand, and, on the other, points in MI. *Household Goods, Store Fixtures, and Office Furniture*, Between points in MI. (Hearing site: Washington, D.C.).

Note.—This notice is a republication of authority sought in this proceeding and published at 45 FR 83338 (December 18, 1980) and also embraces the authority sought to be purchased in No. MC–F–14507, published in the same **Federal Register** issue. It is in conformity with standard language used. This application is directly related to a finance proceeding entitled *Jones Transfer Company—Control and Merger—Mulvena Truck Lines, Inc.*, Docket No. MC–F–14507. Issuance of this certificate is subject to coincidental cancellation of all outstanding authorities of Mulvena Truck Line, Inc. issued in certificates of public convenience and necessity MC–28817, Sub-No. 1 and Sub-No. 3 together with certificates of registration in MC–28817, Sub-No. 5, Sub-No. 7, Sub-No. 8 and Sub-No. 9.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-4289 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 12]

Restriction Removals; Decision-Notice

Decided: January 30, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 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 within 25 days of publication of this decision-notice, 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 2960 (Sub-42X), filed January 26, 1981. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, INC., P.O. Box 4362, Houston, TX 77210. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245. Applicant seeks to remove restrictions in its Sub-No. 18 certificate by deleting from the general commodity description all exceptions except "classes A and B explosives," and by eliminating the restriction limiting the transportation to traffic having a subsequent movement by water.

MC 30240 (Sub-44X), filed January 26, 1981. Applicant: HEMINGWAY TRANSPORT, INC., 438 Dartmouth Street, New Bedford, MA 02740. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Applicant seeks to remove restrictions in the irregular-route portion of its Sub-No. 40F certificate to broaden the territorial description from one-way authority to radial authority between Johnstown, PA, and points in PA within 45 miles of Johnstown, PA.

MC 48221 (Sub-31)X, filed January 19, 1981. Applicant: W. N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Ave., Omaha, NE 68107. Representative: Donald Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Applicant seeks to modify certificates in its lead certificate and Sub-Nos. 2, 3, 4, 6, 8, 11, 15, 17, 18, 22, and 23, by (1) broadening the commodity description (a) in the certificate from fresh meats, packinghouse products and supplies, dairy products, feathers, fruits and vegetables, to "food and related products;" and (b) in Sub-Nos. 2, 3, 4, 6, 8, and 22 from meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), to "food and related products;" (2) replacing its one way authority with radial authority (a) between various combinations of Omaha, NE, Chicago, IL, Sioux City, IA and Denver CO; between Denver, CO and Omaha, NE; and between points in CO and points in NE, in its lead certificate, (b) between Mills, County, IA in place of a facility at Glenwood, IA and points in CO, IL, MI, NE, and Kansas City, MO, in Sub-No. 2, (c) between Saline County, MO, in place of

a facility at Marshall, MO and points in CO, IL, IN, KS, MI, NE, OH, and UT, in Sub-No. 3, (d) between Saline County, NE, in place of a facility at Crete, NE and points in AZ, CA, ID, CO, MT, NV, NM, OR, UT, WA, and WY, in Sub-No. 4 (e) between Denver, CO and points in Morgan and Logan Counties, CO, in place of Sterling and Fort Morgan, CO and points in IL, IN, IA, MI, MO, OH, and WI, in Sub-No. 6, (f) between Denver, CO and points in Morgan and Logan Counties in place of Sterling and Fort Morgan, CO, and points in AZ, CA, ID, NV, OR, UT, and WA, in Sub-No. 8, (g) between points in the Denver, CO commercial zone in place of Golden, CO and points in NE, in Sub-No. 11, (h) between Milwaukee, WI, and Douglas County, NE in place of facilities at Omaha in Sub-No. 15F, (i) between points in the Denver, CO, commercial zone in place of Golden, CO and points in IA, in Sub-No. 17F, (j) between Milwaukee, WI, and Dodge County, NE in place of Fremont, NE in Sub-No. 18F, (k) between points in IA (except Glenwood and Sioux City) and Denver, CO, Sub-No. 22F, (l) beteen Chicago, IL and Omaha, NE, in Sub-No. 23F and (3) eliminating the restrictions limiting transportation to shipments and/or traffic originating at the named origins and destined to the named destination points in Sub-Nos. 2, 3, 4, 6, 8, and 15.

MC 111473 (Sub-2)X, filed: January 23, 1981. Applicant: INTER-STATE TRUCK LINE, INC., 555 South 16th St., Columbia, PA 17512. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW, Washington, DC 20005. Applicant seeks to remove restrictions in its lead certificate, Sub-No. 1, and Sub-No. 2 certificates by (1) broadening the commodity description from wearing apparel, in boxes and cases, materials and supplies used in or useful in the manufacture of wearing apparel, ladies wearing apparel, loose, on hangers or racks, hangers for the above-specified commodities, and wearing apparel in boxes and cases to "textile mill products", and (2) broadening the territorial description from one-way authority to radial authority between New York, NY, and named points in a described area in PA.

MC 113908 (Sub-519)X, filed January 26, 1981. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 10068 G. S., Springfield, MO 65804. Representative: John E. Jandera, Jandera, Gregg & Barker, P.O. Box 1979, Topeka, KS 66601. Applicant seeks to remove restrictions in its Sub-Nos. 226, 229, and 391 certificates to (1) broaden the commodity descriptions from liquid concrete admixtures, in bulk, in tank vehicles to "clay, concrete, glass or stone products," (2) broaden the territorial description from Springfield, MO to Greene County, MO, in Sub. Nos. 226 and 229 and, (3) broaden the territorial description from one-way authority to radial authority between Greene County, MO, and points in the United States (except AK, AZ, CA, HI, ID, MT, NV, OR, UT, and WA, and in Sub-Nos. 226 and 229 and between points in Tarrant County, TX and points in 29 States in Sub-No. 391.

MC 133591 (Sub-119)X, filed January 26, 1981. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, Jr., 58 South Main Street, Winchester, KY 40391. Applicant seeks to remove restrictions in its Sub-No. 28 certificate to (1) broaden one of two commodity descriptions from candy and confectioneries to "food and related products", (2) eliminate originating at and destined to plantsite restrictions in St. Louis, MO, Robinson, Danville and Itasca, IL, for country-wide authority in Crawford, Vermillion, and DuPage Counties, IL, and the commercial zone of St. Louis, MO, (3) authorize radial authority in lieu of existing one-way authority between St. Louis, MO, and its commercial zone, Crawford, Vermillion, and DuPage Counties, IL, and named Western States.

MC 133591 (Sub-123)X, filed January 26, 1981. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, Jr., 58 South Main Street, Winchester, KY 40391. Applicant seeks to remove restrictions in its Sub-No. 15 certificate to (1) broaden the commodity description from electric motors, grinders, buffers and cast iron pedestals to "such commodities as are manufactured, dealt in or used by manufactures of electrical appliances and equipment," (2) broaden the territorial authority to substitute counties and a commercial zone for specified facilities: Sebastin County, AR (for Fort Smith, AR), Adair County, OK (for Westville, OK), Lowndes County, MS (for Columbus, MS), and St. Louis, MO, and (3) replacing one-way authority with radial authority between the points named in (2) and 9 Western States.

MC 133591 (Sub-125)X, filed January 26, 1981. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, Jr., 58 South Main Street, Winchester, KY 40391. Applicant seeks to remove the restrictions from its Sub-No. 49F certificate to (a) broaden the commodity description from (1) pesticides and agricultural chemicals, (except commodities in bulk) and (2) applicators for the commodities in (1) above to "chemicals and allied products," and (b) authorize radial authority in lieu of one-way authority between Alameda, Contra Costa, and Solano Counties, CA, and points in the United States in and east of ND, SD, NE, KS, OK, and TX.

MC 133591 (Sub-126)X, filed January 26, 1981. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, MO 65712. Representative: Harry Ross, Jr., 58 South Main Street, Winchester, KY 40391. Applicant seeks to remove restrictions in its Sub-No. 40F certificate to (1) broaden the commodity description from confectioneries to "food and related products," (2) remove plantsite restrictions at Belmont, San Francisco, and Los Angeles, CA, (3) replace Robinson, IL, with country-wide authority in Crawford County, IL and (4) and authorize radial service for existing one-way authority between Belmont, San Francisco, and Los Angeles, CA, on the one hand, and, on the other and Denver, CO, Kansas City, MO and Crawford County, IL.

MC 135316 (Sub-7)X, filed January 23, 1981. Applicant: AIR TRUCK SERVICE, INC., d.b.a. KANAWHA VALLEY AIR FREIGHT, Kanawha Airport, Charleston, WV 25305. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. Applicant seeks to remove restrictions in its Sub-Nos. 1, 4, 5, certificates to (1) broaden the commodity description from general commodities (with exceptions) to "general commodities (except Classes A & B explosives)" in Sub-Nos. 1, 4, and 5, (2) eliminate the restriction limiting transportation to traffic having a prior or subsequent movement by air in all referenced Sub-Nos., and (3) substitute the base point of airports located at or near Charleston and Huntington, WV, for county-wide authority of Kanawha and Cabell Counties, WV, in Sub-No. 1; and replace Kanawha County Airport for Kanawha County authority in Sub-No. 5.

MC 135989 (Sub-19)X, filed January 23, 1981. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Ave., Chino, CA 91710. Representative: William J. Lippman, Suite 330, Steele Park, 50 S. Steele St., Denver, CO 80209. Applicant seeks to remove restrictions in its Sub-Nos. 1, 2, 5, 6, 11, 12, 14, 15, 16, and 17 permits in order to (1) remove the facilities limitations in Sub-No. 1, and (2) broaden the territorial description in each to authorize "between points in the United States" under contract(s) with named shippers.

MC 136246 (Sub-45)X, filed January 23, 1981. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Road, Omaha, NE 68114. Applicant seeks to remove restrictions in its Sub-Nos. 23, 34F and 35F certificates to (1) broaden the commodity description in Sub-Nos. 23 and 34F from iron and steel articles to "metal products" and in Sub-No. 35F from knocked down metal buildings and accessories, and materials, equipment, and supplies used in the construction and manufacture of metal buildings to "metal products and building materials," (2) broaden the territorial authority from a named plantsite facility in Sub-No. 34F at Chicago, IL to Chicago, IL, and in Sub-No. 23 at Portage, IN to Portage, IN, (3) in Sub-No. 35F remove restriction to transportation of traffic originating at or destined to plantsite facility, (4) broaden the point of York, NE to York County, NE, and (5) replace one-way authority with radial authority in Sub-Nos. 23 and 34F between Portage and Chicago and points in IA, KS, and NE.

MC 138157 (Sub-259)X, filed January 27, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). Applicant seeks to remove restrictions in its Sub-No. 12 permit to (1) broaden the commodity description from medical, dental, and consumer care products and materials, equipment, and supplies used in the manufacture, production, and distribution to "such commodities as are dealt in by medical, dental, and consumer care products manufacturers;" (2) broaden the territorial scope of the named authorities to between points in the United States, under continuing contract(s) with the named shipper; (3) remove the restrictions against the transportation of blood and derivatives of blood, and commodities in bulk, in tank vehicles; and (4) remove the restriction limiting service to the transportation of traffic originating at or destined to named facilities.

MC 145743 (Sub-22)X, filed January 22, 1981. Applicant: T.F.S., INC., RR 2, Box 126, Grand Island, NE 68801. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101. Applicant seeks to remove restrictions in its Sub-Nos. 5F, 10F, and 13F certificates to (1) broaden the commodity description from meat, meat products, meat by-products, and articles distributed by meat packing houses to "food and related products," (2) broaden the one-way authority to radial authority, (3) restrictions limiting in Sub-Nos. 5F and 10F the authority to traffic originating at named origins and destined to named destinations and (4) broaden the territorial authority by substituting specific counties for the specified plantsite facilities and cities and authorize radial service in place of its one-way authority: between Carrol County, IA (for Carroll, IA), Cherokee County, IA (for Cherokee, IA), Crawford County, IA (for Denison, IA), Webster County, IA (for Ft. Dodge, IA), Hardin County, IA (for Iowa Falls, IA), Saline County, NE (for Crete, NE) and Lancaster County, NE (for Lincoln, NE), Des Moines, IA and Omaha, NE and points in 18 states in Sub-No. 10F; between York County, NE (for York, NE) and points in CA in Sub-No. 5F, and between Osborne County, KS and CA, MO, and NE in Sub-No. 13F.

MC 147400 (Sub-5)X, filed January 23, 1981. Applicant: RAEARC, INC., 1903 Chicory Road, Racine, WI 53403. Representative: William D. Brejcha, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. Applicant seeks to remove restrictions in its Permit No. MC–139360 and Sub-Nos. 2, 4, 7, 10, and 11F as follows: (1) in its lead and Sub-Nos. 2 and 7, it seeks to broaden the commodity description from materials used in the manufacture of agricultural, industrial, and construction machinery and equipment, to "such commodities as are manufactured by, used by, dealt in or distributed by manufacturers of agricultural, industrial, and construction machinery and equipment," (2) in it Sub-No. 4, it seeks to broaden the commodity description from cleaning, waxing, and polishing compounds, insecticides, insect repellents, and deodorants, to "such commodities are used, dealt in, or distributed by manufacturers of personal and household care products," (3) in its lead and Sub-Nos. 2 and 7, it seeks to remove the "except commodities in bulk" restrictions, and (4) in each permit it seeks to remove named facilities limitations and broaden the territorial description to authorize service to between points in the United States under continuing contract(s) with named shippers.

[FR Doc. 81-4294 Filed 2-4-81; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP3-147]

Motor Carriers; Decision-Notice

Decided: January 19, 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** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendents to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.gs., unresolved common control; fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant 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 23, 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. On or before April 6, 1981 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, Eaton, and Liberman.

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 3854 (Sub-60), filed January 13, 1981. Applicant: BURTON LINES, INC., 815 Ellis Rd., P.O. Box 11306, East Durham Station, Durham, NC 27703. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. and 13th St., NW., Washington, DC 20004. Transporting *general commodities* (except classes A and B explosives), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 89684 (Sub-117F), filed December 16, 1980. Applicant: WYCOFF COMPANY, INCORPORATED, P.O. Box 366, Salt Lake City, UT 84410. Representative: John J. Morrell (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), between Reno, NV, and Salt Lake City, UT, over Interstate Hwy 80, serving the intermediate points of Lovelock, Battle Mountain, Winnemucca, Elko, Wendover, Fallon, Wells, and Fernley, NV, and the off-route points of Carson City, Ely, Tonopah, and Hawthorne, NV.

Note.—Applicant currently serves this area with an aggregate shipment restriction not to exceed 500 pounds per shipment, and a piece restriction of 100 pounds per piece, and is requesting that these restriction be removed.

MC 95304 (Sub-30), filed January 2, 1981. Applicant: NORTHERN NECK TRANSFER, INC., Box 168, King George, VA 22485. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *general commodities* (except classes A and B explosives), between points in that part of VA on, north, and east of a line beginning at the NC–VA state boundary line, and extending over U.S. Hwy 15, to junction U.S. Hwy 60, then over U.S. Hwy 60 to the VA–WV boundary line and points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, VT, WV, and DC.

MC 106674 (Sub-519), filed January 2, 1981. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *pulp, paper and related products, lumber and wood products,* between the facilities used by Champion International Corporation in the U.S., on the one hand, and, on the other, points in the U.S.

MC 107515 (Sub-1409), filed January 5, 1981. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers of plastic and textile products, between points in Schuylkill County, PA, Chesterfield County, VA, Baldwin County, GA, Chatham and Union Counties, NC, and Lexington County, SC, on the one hand, and, on the other, points in the U.S.

MC 111545 (Sub-306), filed January 5, 1981. Applicant: HOME TRANSPORTATION CO., INC., 1425 Franklin Rd., S.E., Marietta, GA 30067. Representative: J. Michael May (same address as applicant). Transporting (1) *commodities,* the transportation of which because of size or weight require the use of special equipment, (2) *self-propelled articles,* (3) *construction materials and supplies,* (4) *agricultural equipment and implements,* (5) *machinery, equipment, and supplies* used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, petroleum and sulphur and their products and by-products, and (6) *materials, equipment, and supplies* used in the manufacture, installation, or distribution of the commodities named in (1) through (5) above, between points in the U.S. (except HI but including AK).

MC 114274 (Sub-73), filed January 5, 1981. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th Street Place, Des Moines, IA 50306. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Transporting *food and related products,* between Memphis, TN, on the one hand, and, on the other, points in the U.S.

MC 114604 (Sub-127), filed January 12, 1981. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market #33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as applicant).. Transporting *food and related products,* between Suffolk and Chesapeake, VA, on the one hand, and, on the other, points in DE, MD, NJ, PA, NC, SC, WV, and DC.

MC 124154 (Sub-107), filed January 12, 1981. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31702. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 126244 (Sub-8), filed January 13, 1981. Applicant: ADAMS CARTAGE COMPANY, INC., P.O. Box 3043, Macon, GA 31205. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Armstrong World Industries, Inc., of Lancaster, PA.

MC 134105 (Sub-556), filed January 6, 1981. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossville Ave., Chattanooga, TN 37408. Representative: James E. Elgin (same address as applicant). Transporting *such merchandise* as is dealt in or used by food business houses, between points in OH and SC on the one hand, and, on the other, points in DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, OH, PA, RI, SC, TN, VA, VT, and WV.

MC 140665 (Sub-129F), filed December 29, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in TN east of the Tennessee River, on the one hand, and, on the other, points in AZ, CA, ID, NV, OR, UT and WA, restricted to traffic moving from or to the facilities of Mid South Shippers Association, Inc., their members and affiliates.

MC 144645 (Sub-10), filed January 5, 1981. Applicant: ROBERT HANSEN TRUCKING, INC., Route 2, Box 125, Delavan, WI 53115. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 52303. Transporting *pet food,* between points in the U.S., under continuing contract(s) with Landon Company, Inc., of Delavan, WI.

MC 145935 (Sub-9), filed January 12, 1981. Applicant: ALL STATES TRANSPORTATION, INC., Rt. 1, Box 27, Fort Worth, TX 76179. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses,* between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, of Chicago, IL.

MC 148604 (Sub-4F), filed December 31, 1980. Applicant: FALCON MOTOR TRANSPORT, INC., 1250 Kelly Ave., Akron, OH 44306. Representative: Paul A. Englehart (same address as applicant). Transporting (1) *containers, container ends, and closures,* (2) *commodities* manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, and (3)

materials, equipment, and supplies used in the manufacture and distribution of commodities in (1) above, between points in Cuyahoga, Stark, and Summit Counties, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 149095 (Sub-4), filed January 5, 1981. Applicant: EAGLE EXPEDITING, INC., 5215 N. Grand River, P.O. Box 15103, Lansing, MI 48901. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. Transporting *automobile parts and materials, equipment and supplies used in the manufacture of motor vehicles*, between points in the Lower Peninsula of MI.

MC 151094, filed January 6, 1981. Applicant: I-GO VAN & STORAGE, INC., 3747 Gilmore Ave., Bakersfield, CA 93308. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting *machinery*, between points in Kern County, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY.

MC 151095, filed January 5, 1981. Applicant: BLUE & WHITE EXPRESS, INC., Route 1, Box 27BD, Richmond, KY 40475. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. Transporting *malt beverages*, between points in OH, WI, IL, IN, NC, MI, and GA, on the one hand, and, on the other, points in KY on and east of U.S. Hwy 17.

MC 151454 (Sub-1), filed January 2, 1981. Applicant: TOURVISION INC., 3125 N.E. 69th, Portland, OR 97213. Representative: Gregory R. Matthews (same address as applicant). Transporting *passengers and their baggage*, in round trip charter and special operations, between Portland, OR and points in Clark, Cowlitz and Skamania Counties, WA.

MC 151875 (Sub-1), filed January 2, 1981. Applicant: EAST COAST TRUCKING, INC., 130 Sunview Drive, Beaver Falls, PA 15010. Representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. Transporting *metal products, clay, concrete, glass or stone products, machinery* and *lumber and wood products*, between points in AL, CT, IL, IN, KY, MA, MD, MI, NC, NJ, NY, OH, PA, SC, TN, VA, WI, WV, and DC.

MC 151894 (Sub-2F), filed December 30, 1980. Applicant: VENTURE EXPRESS, INC., P.O. Box 100300, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *general commodities* (except classes A and B explosives), between points in Davidson County, TN, on the one hand, and, on the other, points in the U.S.

MC 153434 filed January 6, 1981. Applicant: LEONARD C. MILLARD, d./b./a. MILLARD TRUCKING, P.O. Box 606, St. Charles, MN 55972. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *food and related products*, between points in the U.S., under continuing contracts(s) with North Star Foods, Inc., of St. Charles, MN.

MC 153494F, filed December 29, 1980. Applicant: PORTS INTERNATIONAL, INC., 3730 NW 54th St., Miami, FL 33142. Representative: Richard B. Austin, 320 Rochester Bldg., 8390 NW 53rd St., Miami, FL 33166. Transporting *trailers and containers*, between points in FL, restricted to traffic having a prior or subsequent movement by water.

MC 153524, filed January 2, 1981. Applicant: BABSON BROS. TRUCKING CO., 2100 S. York Rd., Oak Brook, IL 60521. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Babson Bros. Co., of Oak Brook, IL.

MC 135524 (Sub-139F), filed June 16, 1980, previously noticed in **Federal Register** on August 7, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Road, Youngstown, OH 44509. Transporting (1) *lumber, particleboard, composition board, poles, piling, pallets, timbers, crossties, and wallboard*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NC, NE, NY, OH, OK, PA, SC, TN, TX, VA, WV, and WI.

Note.—This republication corrects the territorial description by including the State of MS.

MC 140294 (Sub-18F), filed November 18, 1980, previously noticed in the **Federal Register** issue of December 10, 1980 as MC 140292 (Sub-18F). Applicant: GENERAL FREIGHTS, INC., P.O. Box 1946, Middleburg Pike, Hagerstown, MD 21740. Representative: Dixie C. Newhouse, P.O. Box 1417, 1329 Pennsylvania Ave., Hagerstown, MD 21740.

Note.—This republication indicates the correct docket number, MC 140294 Sub 18, which was previously and erroneously published as MC 140292 Sub 18 on December 10, 1980.

[FR Doc. 81-4292 Filed 2-4-81; 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 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.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service and 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 23, 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.

On or before April 6, 1981 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. OP1–026

Decided: January 29, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 153631, filed January 16, 1981. Applicant: CHRISCO, INC., P.O. Box 152, New Richland, MN 56072. Representative: Stanley C. Olsen, Jr., Suite 307, 5200 Wilson Road, Minneapolis, MN 55424. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 153720F, filed December 30, 1980. Applicant: INTERSTATE TRUCK TERMINALS, INC., 3320 North Casa Grande Highway, Tucson, AZ 85705. Representative: Peter C. Seagle, 6245 East Broadway, Suite 510, Tucson, AZ 85711. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP1–024

Decided: January 28, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 153621, filed January 14, 1981. Applicant: RUSSELL C. MUSE AND ROY D. WISDOM, a partnership, d.b.a. TRANSPORT MANAGEMENT, P.O. Box 594, Kingsburg, CA 93631. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW, Washington, DC 20005. As a *broker*, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 153640F, filed January 6, 1981. Applicant: TIMELY TOURS INC., 2213 N.E. Catawba Rd., Port Clinton, OH. Representative: Ralph Burnstine (same address as applicant). As a *broker*, at Port Clinton, OH, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in Ottawa, Erie, and Sandusky Counties, OH, on the one hand, and, on the other, points in the U.S.

MC 153641, filed January 12, 1981. Applicant: JOHN D. WALKER d.b.a. RED LABEL EXPRESS, W. 910 Lacy Ave., Hayden, ID 83835. Representative: John D. Walker (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 153650 filed January 13, 1981. Applicant: MIKE MEADORS TRUCKING, P.O. Box 496, Alma, AR 72921. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. 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. OP2–168

Decided: January 29, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

MC 146743 (Sub-5), filed January 16, 1981. Applicant: YAGER TRUCKING, INC., 1116 Gum Ave., Woodland, CA 95695. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211, (213) 655–3573. 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 151632 (Sub-4), filed January 9, 1981. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Rd., Westfield, MA 01085. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781–8205. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 151632 (Sub-5), filed January 9, 1981. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Rd., Westfield, MA 01085. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781–8205. 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 153532, filed January 5, 1981. Applicant: COLUMBIA SHIPPING INC., 138–01 Springfield Blvd., Jamaica, NY 11413. Representative: Lawrence F. Bauer (same address as applicant). (212) 276–3300. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 153593, filed January 2, 1981. Applicant: RICHARD ARNOLD BENNETT, 5286 Ervin Ct., Newark, CA 94560. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953, (408) 373–1510. 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 138882 (Sub-377F), filed December 4, 1980 (correction), previously published in the **Federal Register** issue of January 7, 1981, and republished this issue. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same address as applicant). Transporting (1) *railroad/highway grade crossings, precast reinforced concrete crossing slabs, and pre-stressed concrete articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Szarka Enterprises, Inc.

Note.—This republication is to correct the commodity description in (1) above.

Volume No. OP4–224

Decided: January 28, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 153617, filed January 14, 1981. Applicant: RONALD MARINA, d.b.a. F & M TRUCKING, 24 S. Owasso Blvd., St. Paul, MN 55117. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. 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. OP5–33

Decided: January 26, 1981.

By the Commission, Review Board No. 1. Members Carleton, Joyce, and Jones.

MC 55889 (Sub-65), filed January 2, 1981. Applicant: AAA COOPER TRANSPORTATION, a corporation, P.O. Box 6827, Dothan, AL 36302. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20014. Transporting *general commodities* (except classes A and B explosives), between Shelby, AL, on the one hand, and, on the other, points in the U.S.

Note No. 1.—Applicant intends to tack this authority with existing regular-route authority.

Note No. 2.—The purpose of this application is to substitute motor carrier service for completely abandoned rail carrier service.

MC 119988 (Sub-272), filed January 6, 1981. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Larry Norwood (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between Ft. Calhoun, NE, Arbyrd, Hornersville, and Whitewater, MO, Gosnell, AR, Roseville, IL, Randolph, IA, Clayton, Commerce, and Talihina, OK, Treece, KS, Griffith and Merrillville, IN, Ballston and Milton, NY, on the one hand, and, on the other, points in the United States.

Note.—The purpose of this application is to substitute motor carrier service for completely abandoned rail service.

MC 144899 (Sub-2F), filed December 12, 1980. Applicant: B. T. OILFIELD TRANSPORT, INC., Davisville Rd. North Kingstown, RI 02854. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. To arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 153549, filed January 6, 1981. Applicant: AUTHUR C. HOELZER, JR., d.b.a. TOTAL DISTRIBUTION SERVICE, 40 Spring Lane, West Hartford, CT 06107. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP5–35

Decided: January 27, 1981.

By the Commission, Review Board No. 1. Members Carleton, Joyce, and Jones.

MC 153178F, filed December 9, 1980. Applicant: CLARENCE WESLEY WISMER d.b.a. WISMER TRUCKING, 10050 Chance Rd., Tillamook, OR 97141. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. 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 153569F, filed December 29, 1980. Applicant: R. L. BROOKINS, P.O. Box 84, Mt. Vernon, WA 98273. Representative: R. L. Brookins (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.

MC 153639F, filed January 6, 1981. Applicant: DAVID F. HARRIS and RICHARD J. DIKEMAN, d.b.a. TRAFFIC BROKERS, P.O. Box 404, LaVerne, CA 91750. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. As a broker of *general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-4291 Filed 2-4-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the

Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before March 9, 1981, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 404

Decided: January 23, 1981.

By the Commission, Review Board No. 1, members Carleton, Joyce, and Jones.

MC 200 (Sub-241F), filed June 20, 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 *such commodities* as are dealt in or used by a manufacturer, processor, or distributor of cleaning products, soaps, softeners, starch, toiletries, pharmaceuticals, and foodstuffs (except frozen and commodities in bulk), between the facilities of The Procter and Gamble Company, at or near (a) Cincinnati, OH, (b) Kansas City and St. Louis, MO, (c) Chicago, IL, (d) Pt. Ivory, NY, (e) Quincy, MA, (f) Baltimore, MD, (g) Lima, OH, (h) Dallas and Sherman, TX, and (i) Oxnard, Sacramento, San Francisco, Long Beach, and Modesto, CA, on the one hand, and, on the other, points in IA, restricted to traffic originating at or destined to the indicated origins or destinations.

MC 200 (Sub-540F), filed June 18, 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 *cheese imitations, shortening, vegetable oils, salad dressings, and oleomargarine,* from the facilities of Anderson-Clayton Foods at or near Jacksonville, IL, to points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, and TX.

MC 200 (Sub-542F), filed June 18, 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 *plastic bottles and plastic pails,* from the facilities of Del Kay Plastics, Inc., at or near Englewood, CA, to Phoenix, AZ, and Salt Lake City, UT, restricted to traffic originating at the named origin and destined to the indicated destinations.

MC 200 (Sub-543F), filed December 23, 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 *fibreglass homes, disassembled, and wood panels covered with fibreglass,* from the facilities used by American Solartron Corporation at or near Centralia, IL, to points in the U.S., restricted to traffic originating at the named origin.

MC 200 (Sub-544F), filed June 18, 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) *recordings, sound, or sound recording blanks and tapes, radio receiving sets, phonographs, sound recorders, television sets,* and (2) *materials and supplies* used in the distribution of the commodities in (1) above, between Pitman, NJ, Terre Haute, IN, Dallas, TX, and Santa Maria, CA, restricted to traffic originating at and destined to the facilities of CBS Records.

MC 105461 (Sub-119F), filed June 26, 1980. Applicant: HERR'S MOTOR EXPRESS, INC., P.O. Box 8, Quarryville, PA 17566. Representative: Robert R. Herr (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers of containers, between points in ME, NH, VT, CT, MA, RI, NY, NC, PA, OH, IN, WV, VA, MD, DE, NJ, SD, GA, FL, and DC, restricted to traffic originating at or destined to the facilities used by Ball Corporation.

MC 108651 (Sub-27F), filed October 16, 1979, and previously noticed **Federal Register** issue of March 18, 1980. Applicant: ROY B. MOORE, INC., P.O. Box 628, Kingsport, TN 37662. Representative: Daniel H. Moore (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 Rochester, NY, Kingsport and Cleveland, TN, and Chamblee and Doraville, GA.

Note.—Applicant intends to tack this authority with its existing regular-route authority. The purpose of this republication is to show applicant's intention to tack.

MC 114211 (Sub-497F), filed March 31, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers, distributors, or dealers of fabricated articles, and contractor's equipment and supplies, between Wamego, KS, on the one hand, and, on the other, points in the U.S.

MC 144370 (Sub-8F), filed June 18, 1980. Applicant: DON NASS TRUCKING, INC., 210 Front St., Box 299, Clinton, WI 53525. Representative:

Nancy J. Johnson, 103 East Washington St., box 218, Crandon, WI 54520. Transporting *malt beverages* (1) from Minneapolis-St. Paul, MN, and La Crosse, WI, to Rockford, IL, and (2) from Minneapolis-St. Paul, MN, to Beloit, WI.

MC 148490 (Sub-10F), filed June 12, 1980. Applicant: C & N EVANS TRUCKING CO., INC., Route 2, Box 398, Stoneville, NC 27048. Representative: Clarence B. Evans (same address as applicant). Transporting (1) *containers, and container closures*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except aluminum sheet and commodities in bulk), between points in AL, DE, FL, GA, MD, NY, NJ, NC, SC, PA, VA, WV, and DC.

MC 143140 (Sub-5F), filed April 25, 1980. Applicant: SEYMOUR BUS LINES, INC., Route 3, Maynardville, TN 37807. Representative: Lewis S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Davison and Hamilton Counties, TN, Bell, Clay, Harlan, Knox, Laurel, Leslie, Letcher, and Whitley Counties, KY, and Lee, Wise, and Scott Counties, VA, and extending to points in the U.S. (including AK, but excluding HI).

Volume No. OR9–403

Decided: January 29, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 124846 (Sub-6F), filed May 25, 1979. Applicant: KALLMEYER BROS. ENTERPRISE, INC., Hwy 100 East (P.O. Box 223), Herman, MO 65041. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102. Transporting *malt beverages*, in containers, between points in the U.S., under continuing contract(s) with Calvin's Distributing Co., of Herman, MO.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-4290 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

Office of Proceedings

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 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 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 23, 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.

On or before April 6, 1981 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Volume No. OPI–025

Decided: January 29, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 38320 (Sub-35), filed January 19, 1981. Applicant: CENTRAL MOTOR EXPRESS, INC., PO Drawer C, Campbellsville, KY 42718. Representative: Louis J. Amato, PO Box E, Bowling Green, KY 42101. Transporting *general commodities* (except classes A and B explosives), between the facilities used by Union Camp Corporation and its subsidiaries in the U.S. on the one hand, and, on the other, points in the U.S.

MC 38921 (Sub-19), filed January 15, 1981. Applicant: KMA LEASING, INC. DBA WM. H.P., INC., 1342 North Howard Street, Pennsylvania, PA 19122. Representative: Michael R. Werner, PO Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Transporting *food and related products*, between points in Cuyahoga County, OH, and Philadelphia County, PA, on the one hand, and, on the other, points in AL, IL, IN, KY, LA, MS, TN, and WI.

MC 47171 (Sub-200), filed January 19, 1981. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between the facilities used by Container Corporation of America, its divisions and subsidiaries at those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, 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 48441 (Sub-68), filed January 16, 1981. Applicant: R.M.E. INC., 1820 North Bloomington St., P.O. Box 418, Streator, IL 61364. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. Transporting *such commodities* as are dealt in or used by manufacturers and converters of paper, paper products, and plastic articles, between the facilities of James River Corporation of Virginia or its subsidiaries in the U.S., on the one hand, and, on the other, points in the U.S.

MC 58851 (Sub-7), filed January 19, 1981. Applicant: RUDOLF EXPRESS CO., a corporation, 1650 Armour Road, Bourbonnais, IL 60914. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.,

under continuing contract(s) with Texize, Division of Morton Norwich, of Greenville, SC.

MC 76191 (Sub-1), filed January 13, 1981. Applicant: WM. PENN HIGHWAY EXPRESS, INC., 225 W. Howard St., Stowe, PA 19464. Representative: Jerry Hugo (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in Montgomery County, PA, on the one hand, and, on the other, New York, NY.

MC 106920 (Sub-120), filed January 13, 1981. Applicant: RIGGS FOOD EXPRESS, INC., West Monroe Street, P.O. Box 28, New Bremen, OH 45869. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. Transporting *food and related products*, between the facilities used by Hiram Walker & Sons, Inc., at those points in the U.S. in and east of ND, SD, WY, CO, and NM, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, WY, CO, and NM.

MC 108341 (Sub-195), filed January 14, 1981. Applicant: MOSS TRUCKING COMPANY, INC., 3027 North Tryon St., P.O. Box 26215, Charlotte, NC 28213. Representative: Jack F. Counts (same address as applicant). Transporting *metal products and machinery*, between points in York County, SC, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 111651 (Sub-16), filed January 19, 1981. Applicant: MIDDLEWEST FREIGHTWAYS, INC., 6810 Prescott Ave., St. Louis, MO 63147. Representative: Rudy Yessin, 113 West Main St., Frankfort, KY 40601. *Over regular routes* transporting *general commodities* (except classes A and B explosives), (1) between Chicago, IL and Louisville, KY, from Chicago over Interstate Hwy 94 (also over Interstate Hwy 80) to junction Interstate Hwy 65, then over Interstate Hwy 65 to Louisville, and return over the same route, (2) between Louisville and Mt. Sterling, KY, (a) over U.S. Hwy 60, and (b) from Louisville over Interstate Hwy 64 to junction U.S. Hwy 460, then over U.S. Hwy 460 to Mt. Sterling, and return over the same route, (3) between Frankfort, KY, and junction U.S. Hwy 460 and Interstate Hwy 64, over U.S. Hwy 460, (4) between Berea and Georgetown, KY, over U.S. Hwy 25, (5) between Berea, KY, and junction Interstate Hwy 75 and U.S. Hwy 460, from Berea over KY Hwy 595 to junction Interstate Hwy 75, then over Interstate Hwy 75 to junction U.S. Hwy 460, and return over the same route, (6) between junction U.S. Hwy 25 and KY Hwy 627 and Paris, KY, over KY Hwy 627, (7) between Frankfort and Danville, KY, over U.S. Hwy 127, (8) between Lawrenceburg and Cynthiana, KY, over U.S. Hwy 62, (9) between Cynthiana and Stanford, KY, over U.S. Hwy 27, (10) between Danville and Richmond, KY, over KY Hwy 52, (11) between Lexington and Harrodsburg, KY, over U.S. Hwy 68, serving Wilmore, KY, as an off-route point, (12) between Danville, KY, and junction KY Hwy 33 and U.S. Hwy 68, over KY Hwy 33, (13) between Nicholasville, KY, and junction KY Hwy 29 and U.S. Hwy 68, over KY Hwy 29, (14) between Danville and Stanford, KY, over U.S. Hwy 150, (15) between junction U.S. Hwy 127 and KY Hwy 151 and junction Interstate Hwy 64 and KY Hwy 151, over KY Hwy 151; serving all intermediate points in routes (1) through (15) above.

Note.—Applicant intends to tack this authority with its existing regular- and irregular-route authority.

MC 113651 (Sub-347), filed January 14, 1981. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Rd., Suite 4, Omaha, NE 68154. Representative: James F. Crosby, 7363 Pacific St., Oak Park Office Bldg., Suite 210B, Omaha, NE 68114. Transporting *stoves*, between points in Columbia County, PA, 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 119741 (Sub-289), filed January 12, 1981. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave. NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *food and related products*, between points in IA, and Saline and Douglas Counties, NE, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WY, and DC, and (b) between points in Lancaster County, NE, and Webster County, IA, on the one hand, and, on the other, points in AL, AZ, AR, CA, CT, DE, FL, GA, ID, KY, LA, ME, MD, MA, MS, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, WA, VA, WY, WV, and DC.

MC 120981 (Sub-33), filed January 14, 1981. Applicant: BESTWAY EXPRESS, INC., 905 Visco Drive, Nashville, TN 37210. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601. Transporting *general commodities* (except classes A and B explosives), between points in Boyle County, KY, on the one hand, and, on the other, points in Macon County, TN.

MC 138750 (Sub-12), filed January 12, 1980. Applicant: W. F. BARTHELME, d.b.a. W. F. BARTHELME DIST. CO., 1602 North Broadway, Pittsburg, KS 66762. Representative: Laurel D. McClellan, 401 North Sixth, P.O. Box 478, Fredonia, KS 66736. Transporting *clay, concrete, glass or stone products*, between points in the U.S., under continuing contract(s) with W. S. Dickey Clay Manufacturing Co., of Pittsburg, KS.

MC 138951 (Sub-2), filed January 16, 1981. Applicant: W.R. MEEKER, INC., P.O. Box 186, 602 New Market Ave., South Plainfield, NJ 07080. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Rolled Alloys, Inc., of South River, NJ, (b) Steel Corp., of Trenton, NJ, and (c) David Smith Steel Co., and Imperial Bolt and Manufacturing, Inc., both of South Plainfield, NJ.

MC 143271 (Sub-2), filed January 14, 1980. Applicant: CAPITAL CITY TRUCK GARAGE & TRUCKING COMPANY, INC., 3017 Trawick Road, Raleigh, NC 27604. Representative: Nicholas J. Dombalis, II, 3700 Computer Drive, P.O. Box 18237, Raleigh, NC 27619. Transporting *food and related products*, between points in Charleston County, SC, New Castle County, DE, Baltimore, MD, and New York, NY, on the one hand, and, on the other, points in VA and WV.

MC 143550 (Sub-3F), filed December 15, 1980. Applicant: GARY PARISH, d.b.a. G & C FREIGHT SERVICE, 647 S. W. 143, Seattle, WA 98166. Representative: Gary Parish (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in WA, OR, CA, NV, UT, ID, and MT.

MC 146231 (Sub-1F), filed December 22, 1980. Applicant: SEATON SMITHSON FLEGEL AND JERRY DEAN FLEGEL, d.b.a. S. S. FLEGEL TRUCKING, Rt 1 B 867, Prineville, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting (1) *building materials* and (2) *lumber and wood products*, between points in OR, WA, ID, CA, NV, and MT.

MC 146601 (Sub-7), filed January 19, 1981. Applicant: POTEAT MOTOR LINES, INC., 522 12th Ave., S.W., Hickory, NC 28601. Representative: Robert D. Hoagland, 1204 Cameron

Brown Bldg., 301 South McDowell St., Charlotte, NC 28204. Transporting *equipment, materials, and supplies* used in the manufacture and distribution of metal and foam products, between points in MA, RI, CT, NJ, DE, those in NY on and east of NY Hwy 12, those in PA on and east of U.S. Hwy 219, those in WV and MD on and east of U.S. Hwy 220, and those in VA on and east of Interstate Hwy 77, on the one hand, and, on the other, those points in NC on and west of Interstate Hwy 95.

MC 148311 (Sub-3), filed January 19, 1981. Applicant: DELIVERY SERVICES, INC., 503 W. Watkins St., Phoenix, AZ 85003. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *general commodities* (except classes A and B explosives), between points in AZ.

MC 150231 (Sub-7), filed January 16, 1981. Applicant: MAVERICK TRANSPORTATION, INC., 1803 E. Broad St., Texarkana, AR 75501. Representative: Steve Williams (same address as applicant). Transporting *lumber and wood products*, between points in AL, AR, CO, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, ND, NE, NM, OH, OK, SD, TN, TX, and WI.

MC 150290 (Sub-2), filed January 16, 1981. Applicant: MIDLAND TRANSPORTATION CO., INC., 801 West Artesia Blvd., Compton, CA 90220. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *general commodities* (except classes A and B explosives), between the facilities used by K Mart Corporation in the U.S., on the one hand, and, on the other, points in the U.S.

MC 153050 (Sub-1), filed January 13, 1981. Applicant: RIVER BEND TRANSPORT COMPANY, Sunset Ave., North Bend, OH 45052. Representative: David F. Boehm, 2208 Central Trust Tower, Cincinnati, OH 45202. Transporting *commodities in bulk*, between points in Hamilton County, OH, on the one hand, and, on the other, points in OH.

MC 153371F, filed December 30, 1980. Applicant: ELBERT J. ROBERSON AUTO COLLISION CO., INC. 1115 East 2nd Ave., Rome, GA 30161. Representative: Elbert J. Roberson (same address as applicant). Transporting *passenger automobiles and trucks*, between points in Floyd County, GA, on the one hand, and, on the other, points in Hamilton County, TN.

Vol. No. OP2-001

Decided: January 30, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill. (Member Hill not participating.)

MC 682 (Sub-22), filed January 12, 1981. Applicant: BURNHAM VAN SERVICE, INC., 5000 Burnham Blvd., Columbus, GA 31907. Representative: Wade H. Tomlinson, 3027 Sue Mack Drive, Columbus, GA 31907. Transporting *furniture and fixtures*, between Denver, CO, and points in the U.S.

MC 1222 (Sub-50), filed January 19, 1981. Applicant: THE REINHARDT TRANSFER COMPANY, INC., 1410 Tenth St., Portsmouth, OH 45662. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603 (312) 236-0548. Transporting *such commodities* as are manufactured, or distributed by manufacturers of mining equipment and machinery, and materials handling machinery and equipment, between points in Cook County, IL, on the one hand, and, on the other, points in IN, KY, OH, TN and WV.

MC 2202 (Sub-643) (correction), filed November 18, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20014. 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.

Note.—Applicant intends to tack those authority with its existing authority. The purpose of this republication is to correct address of applicant's attorney and identify intention to *tack*.

MC 14702 (Sub-87), filed January 6, 1981. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, 614-228-8575. Transporting *general commodities* (except classes A and B explosives), between points in Allegheny, Cumberland, Bucks, Fayette, and Washington Counties, PA, Passaic County, NJ, Wayne County, MI, Aiken County, SC, Chatham County, GA, Davidson County, TN, Cook County, IL, Jackson County, MO, Dallas County, TX, Denver County, CO, Los Angeles County, CA, Multnomah County, OR, San Francisco County, CA, Milwaukee County, WI, and Hennepin County, MN. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 58852 (Sub-3F), filed November 7, 1980, published in the **Federal Register** issue of December 10, 1980, and republished, as corrected, this issue. Applicant: SALEM MOTOR TRANS., INC., 121 Webster Ave., Chelsea, MA 02150. Representative: Wesley S. Chused, 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 Boston, MA, on the one hand, and, on the other, points in ME. The purpose of this republication is to correct the territorial description.

MC 77972 (Sub-37F) (Correction), filed December 18, 1980, published in the **Federal Register** issue of January 15, 1981, and republished, as corrected, this issue. Applicant: MERCHANTS TRUCK LINE, INC., P.O. Box 908, New Albany, MS 38652. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting (1) *electrical amplification systems*, and, (2) component parts and *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between points in Lauderdale and Scott Counties, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MO, NC, SC, TN, and TX.

Note.—The purpose of this republication is to correct territorial description to read * * * points in Lauderdale and Scott Counties, MS.

MC 109443 (Sub-32), filed January 12, 1981. Applicant: SEABOARD TANK LINES, INC., Monahan Ave., Dunmore, PA 18512. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, 717-344-8030. Transporting *petroleum and petroleum products*, between Baltimore, MD and Lycoming County, PA.

MC 113362 (Sub-407F), filed November 12, 1980, published in the **Federal Register**, Issue of December 10, 1980, and republish, as corrected, this issue. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting (1) *ice machines* and *refrigerators*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Albert Lea, MN, and Fairfax, SC, on the one hand, and, on the other, those points in the U.S., in and east of ND, SD, WY, CO, and NM.

Note.—The purpose of this republication is to correct the territorial description.

MC 115162 (Sub-552), filed December 29, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *tractors* (except those with vehicle beds, bed frames and fifth wheels), (2) *equipment* for tractors, (3) *agricultural, industrial and construction equipment*, and (4) *attachments* for the commodities in (2) and (3), between the facilities used by J. I. Case Company, at (a) Racine and Wausaw, WI, (b) Terre Haute, IN, (c) Burlington and Bettendorf, IA, and (d) Wichita, KS, on the one hand, and, on the other, points in the U.S.

MC 119573 (Sub-18), filed January 5, 1981. Applicant: WATKINS TRUCKING, INC., 203–207 Trenton Ave., Uhrichsville, OH 44683. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017, (614) 889–2531. Transporting *building materials*, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 125533 (Sub-47), filed January 5, 1981. Applicant: GEORGE W. KUGLER, INC., 2800 E. Waterloo Rd., Akron, OH 44312. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *rubber and plastic products*, between points in Guilford County, NC, and Gwinnet County, GA, 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 135953 (Sub-19), filed January 14, 1981. Applicant: CHEROKEE LINES, INC., 1113 North Little Street, Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392–1220. Transporting *meats, meat products and meat byproducts, dairy products, articles distributed by meat-packing houses, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers*, between points in the U.S., under continuing contract(s) with Wilson Foods Corporation of Oklahoma City, OK.

MC 136123 (Sub-11), filed January 19, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: Raymond P. Keigher, 401 E. Jefferson Street, Suite 102, Rockville, MD 20850, (301) 424–2420. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of cleansing, purifying and household products, between points in the U.S., under continuing contract(s) with Blue Cross Laboratories, of Saugus, CA.

MC 144303 (Sub-26), (Correction), filed November 5, 1980, Published in the **Federal Register**, issue of December 10, 1980, and republished, as corrected, this issue. 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 Franklin Chemical Industries, Inc., of Columbus, OH, and its subsidiaries and affiliates. The purpose of this republication is to correct the territorial description by adding "and its subsidiaries and affiliates". This application was originally published under sub 23, which has been re-numbered to sub 26 this publication.

MC 147213 (Sub-4), filed January 12, 1981. Applicant: T & T TRUCKING, INC., 11603–8th S., Seattle, WA 98163. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, 206–228–3807. Transporting (1) *those commodities which because of their size or weight require the use of special handling or equipment*, between points in OR, WA, ID, MT, and CA, and (2) *metal products*, between points in OR, WA, CA, NV, AZ, UT, WY, CO, MT, and ID.

MC 150103 (Sub-10), filed January 12, 1981. Applicant: SCHWEIGER INDUSTRIES, INC., 116 W. Washington St., Jefferson, WI 53549. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. Transporting *pulp, paper and related products*, between points in the U.S., under continuing contract(s) with Jiffy Packaging Corporation, of Somerset, NJ.

MC 151283 (Sub-1F), filed October 21, 1980. Applicant: MOBY DICK, INC., 815 Max Avenue, Lansing, MI 48915. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), in trailers having an immediately prior or subsequent movement by rail, between Chicago, IL, on the one hand, and, on the other, Lansing and Grand Rapids, MI. Common control: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidvit indicating why such approval is unnecessary.

MC 152123F, filed January 19, 1981. Applicant: JAMES L. BUSCHBOM, P.O. Box 927, Livingston, MT 59047. Representative: Alma Lea Longmire, P.O. Box 30351, Billings, MT 59107. Transporting *lumber and wood products*, between points in the U.S., under continuing contract(s) with Plum Creek Lumber Company, of Pablo, MT.

MC 153123 (Sub-1), filed December 16, 1980. Applicant: W. P. JOHNSON, d./b./a. W. P. JOHNSON EQUIPMENT AND MATERIALS, Star Route 24 E (Bedford County), Vinton, VA 24179. Representative: David Earl Tinker, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036, (202) 887–5868. Transporting *chemicals, and materials, equipment, and supplies used in the manufacture and distribution of chemicals*, between points in the U.S., under continuing contract(s) with Wen-Don Corporation, of Roanoke, VA.

MC 153133 (Sub-2), filed January 5, 1981. Applicant: TRANS AMERICAN TRANSPORTATION SYSTEM, INC., Highway 59 South, P.O. Box 422, Stafford, TX 77477. Representative: Patricia L. Altman, 2523 Ave. H, Rosenberg, TX 77471, 713–342–1133. Transporting *metal products* (1) between points in OK, NM, AZ, CO, and CA, and (2) between points in TX, on the one hand, and, on the other, points in OK, NM, AZ, CO, and CA.

MC 153172 (Sub-1), filed January 12, 1981. Applicant: ROY MULLINS, d./b./a. M & M TRANSFER COMPANY, P.O. Box 176, Clintwood, VA 24228. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, 703–629–2818. Transporting *household goods*, between points in Buchanan, Dickenson, Lee, Russell, and Wise Counties, VA, on the one hand, and, on the other, points in AL, GA, DE, FL, KY, IL, IN, MD, MI, NC, NJ, OH, PA, SC, TN, WV, and DC.

MC 153513, filed January 5, 1981. Applicant: ROY YOUNG, INC., P.O. Box 670, Abbeville, LA 70510. Representative: Janet Boles Chambers, 8211 Goodwood Blvd., Baton Rouge, LA 70806, 504–924–2686. Transporting *mercer commodities*, between points in TX, OK, AR, LA, and MS.

MC 153562, filed January 12, 1981. Applicant: EMMETT BOND, d./b./a. KTA TRANSPORTATION, 295 Orange St., Mansfield, OH 44902. Representative: Thomas M. Mulroy, 1500 Bank Tower, 307 4th Ave., Pittsburgh, PA 15222, 412–471–3300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with C & P Metals, Inc., and Artesian Industries, of Mansfield, OH.

MC 153582, filed January 2, 1981. Applicant: ALLEN PANCOST

TRUCKING, 815 Beattie Circle, Sterling, CO 80751. Representative: Richard S. Mandelson, Suite 1600, Lincoln Center, 1660 Lincoln St., Denver, CO 80264, (303) 861–4023. Transporting (1) *food and related products*, and (2) *such commodities* as are dealt in or used by restaurants, between points in CO, AZ, NM, CA, UT, and NV.

Volume No. OP2–164

Decided: January 27, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 64832 (Sub-11), filed December 8, 1980. Applicant: MAGNOLIA TRUCK LINE, INC., 3097 Fontaine Rd., Memphis, TN 38116. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Over *regular routes*, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) (1) between Alexandria and New Iberia, LA: From Alexandria over U.S. Hwy 71 to junction U.S. Hwy 167 near Lecompte, then over U.S. Hwy 167 to Lafayette, then over U.S. Hwy 90 to junction LA Hwy 14, then over LA Hwy 14 to New Iberia, and return over the same routes, serving all intermediate points, and serving Church Point and Eunice, as off-route points, and (2) between Lafayette and Crowley, LA, over U.S. Hwy 90, serving all intermediate points.

MC 73533 (Sub-13F), filed October 20, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 South Oldham St., Baltimore, MD 21224. Representative: William F. Lamperelli (same address as applicant). Transporting *books and printed matter*, from Baltimore, MD, and points in Baltimore County, MD, to Philadelphia, PA, Albany, NY, New York, NY, Boston, MA, and Somerset, NJ.

MC 84273 (Sub-10), filed January 5, 1981. Applicant: JONES TRUCKING CO., INC., 3020 Bay View Dr., Green Bay, WI 54301. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. Transporting *such commodities* as are dealt in or used by grocery stores between points in the U.S., under a continuing contract(s) with Topco Associates, Inc., of Skokie, IL.

MC 107012 (Sub-630), filed October 21, 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 (1) *paper and paper products*, and *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products, (2) *plastic and plastic articles*, and (3) *furniture* (except commodities in bulk), between points in the U.S. (except AK and HI, and from the facilities of Scott Paper Co., in DE, ME, MA, NJ, NY, and PA, to those 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 of Scott Paper Co.

MC 115162 (Sub-550), filed December 29, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same as applicant), (205) 578–2936. Transporting *wheels, hubs, brake drums, and axles*, and *parts* for wheels, hubs, brake drums and axles, from points in IN, AR, TX, UT and AL, to points in the U.S.

MC 142043 (Sub-2), filed December 2, 1980. Applicant: JOHN BRADSHAW, d.b.a. J. B. & SONS DISTRIBUTING CO., 3914 S. Dalton Ave., Los Angeles, CA 90062. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting (1) *toilet preparations*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Pro-Line Corporation, of Carson, CA.

MC 142332 (Sub-6), filed January 6, 1981. Applicant: MEAT HANDLER'S EXPRESS, INC., 900 East St. W., Camano Island, WA 98292. Representative: Michael D. Duppenthaler, 211 S. Washington St., Seattle, WA 98104. Transporting *materials, equipment and supplies used in the manufacture and distribution of airplanes and aerospace components*, between points in the U.S., under continuing contract(s) with The Boeing Company of Seattle, WA.

MC 145072 (Sub-49), filed January 6, 1981. Applicant: M. S. CARRIERS, INC., 1797 Florida St., Memphis, TN 38109. Representative: Michael S. Starnes (same as applicant). Transporting *general commodities* (except classes A and B explosives), between points in AL, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NJ, NC, NY, OH, OK, PA, SC, TN, TX, VA, WV and WI.

MC 145102 (Sub-71), filed January 5, 1981. Applicant: FREYMILLER TRUCKING, INC., 1400 South Union Ave., Bakersfield, CA 93307. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703, 608–256–7444. Transporting *food and related products*, between points in ID and TX.

MC 146643 (Sub-66), filed January 2, 1981. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 South LaSalle St., Chicago, IL 60603. Transporting *food and related products* between points in the U.S., under a continuing contract(s) with (a) C. F. Mueller Company, of Jersey City, NJ, and (b) D'Amico Foods Company, of Steger, IL.

MC 150883 (Sub-4), filed January 5, 1981. Applicant: PDR TRUCKING, INC., P.O. Box 609, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K St. NW., Washington, DC 20005, 202–347–9332. Transporting *food and related products*, between points in Mecklenburg County, NC, Greenville County, SC, and Duval County, FL, on the one hand, and, on the other, those points in the United States in and east of MT, WY, UT, and AZ.

MC 151142 (Sub-3), filed January 5, 1981. Applicant: H & H TRANSPORTATION, INC., 1425 East Main St., Newark, OH 43055. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. Transporting *chemicals and related products*, between points in the U.S. in and east of MN, IA, MO, AR and LA.

MC 153523, filed December 5, 1980. Applicant: RALPH N. ATWELL, Rte. 4, Box 152, North Tazewell, VA 24630. Representative: Ralph N. Atwell (same address as applicant). Transporting *lumber*, between points in the U.S., under continuing contract(s) with Luther Compton & Sons, Inc., of Bluefield, VA.

Vol. OP2–165

Decided: January 27, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 1263 (Sub-38), filed December 29, 1980. Applicant: McCARTY TRUCK LINE, INC., 17th & Harris Sts., Trenton, MO 64683.Representative: James M. McCarty (same as applicant). Over *regular routes* transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (1) between Des Moines, IA and Ottumwa, IA: (a) from Des Moines over IA Hwy 5 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Ottumwa, and return over the same route, (b) from Des Moines over IA Hwy 163 to junction U.S. Hwy 63, then over U.S. Hwy 63 to Ottumwa, and return over the same route; (2) between Ottumwa, IA and Davenport, IA: (a) From Ottumwa over U.S. Hwy 34 to junction U.S. Hwy 218, then over U.S. Hwy 218 to junction Interstate Hwy 80, then over Interstate Hwy 80 to

Davenport, and return over the same route, serving Clinton, IA as an off-route point; (b) from Ottumwa over U.S. Hwy 34 to junction U.S. Hwy 67, then over U.S. Hwy 67 to Davenport, and return over the same route, (c) from Ottumwa over U.S. Hwy 34 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Davenport, and return over the same route; (3) between Trenton, MO and Cedar Rapids, IA: from Trenton over U.S. Hwy 65 to junction IA Hwy 2, then over IA Hwy 2 to junction U.S. Hwy 218, then over U.S. Hwy 218 to Cedar Rapids, and return over the same route, serving Keokuk, Ft. Madison, and Washington, IA as off-route points; (4) between Trenton, MO and Newton, IA; from Trenton over U.S. Hwy 65 to junction U.S. Hwy 34, then over U.S. Hwy 34 to IA Hwy 14, then over IA Hwy 14 to Newton, and return over the same route; (5) between Trenton, MO and Des Moines, IA, over U.S. Hwy 65, serving all intermediate routes in (1) through (5).

MC 3753 (Sub-32), filed December 22, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., 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 explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Hagerstown, MD and Winchester, VA over Interstate Hwy 81, serving all intermediate points and the off-route points in Clark, Frederick and Warren Counties, VA.

MC 98572 (Sub-80), filed October 22, 1980, published in the **Federal Register** issue of November 28, 1980, and republished, as corrected, this issue. Applicant: SOUTHEAST TEX-PACK EXPRESS, INC., P.O. Box 47967, Dallas, TX 75247. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Texas Hwy 105W, (64) between Conroe and Security, TX, over TX Hwy 105E, (65) in connection with routes (19), (20), and (21) above, serving Conroe, New Waverly, Huntsville, Trinity, Groveton, Crockett, Pennington, and Lovelady, TX, as off-route points, and (66) serving all intermediate points in routes (1) through (64) above; restricted in (1) through (66) above, to the transportation of shipments having no single article, piece or packaging weighing in excess of 100 pounds and which have a total weight of 500 pounds or less per shipment. The purpose of this republication is to correct the restriction on page 5.

MC 105813 (Sub-278), filed December 29, 1980. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 270, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) from points in Fairfield County, CT, to points in Clayton, DeKalb and Fulton Counties, GA.

MC 106642 (Sub-1), filed December 30, 1980. Applicant: PALMER MOTOR COACH SERVICE, INC., 275 West Main St., Stafford Springs, CT 06076. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103 (413) 781-8205. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Hampden, Hampshire, Franklin, and Worcester Counties, MA, and Hartford, Tolland, and Windham Counties, CT, and extending to points in CT, DE, FL, GA, MA, MD, ME, NH, NC, NY, PA, RI, SC, TN, VT, VA, and DC.

MC 115162 (Sub-544F), filed October 3, 1980, (Correction), previously published in the **Federal Register** issue of October 16, 1980, and republished this issue. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *textiles, textile products, and diapers,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S.

Note.—The purpose of this republication is to correct the commodity description in (1) above.

MC 118612 (Sub-12), filed December 30, 1980. Applicant: COLUMBIA TRUCKING, INC., 700-131st Place, Hammond, IN 46320. Representative: Richard A. Kerwin, 180 North LaSalle St., Chicago, IL 60601. Transporting *petroleum or coal products* from points in La Porte County, IN to points in IL.

MC 119552 (Sub-11), filed December 18, 1980. Applicant: J. T. L., INC., 49 Rosedale St., Providence, RI 02903. Representative: Ronald N. Cobert, Suite 501, 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 the U.S., under continuing contract(s) with Thompson Can Company, of Dallas, TX.

MC 136012 (Sub-7), filed January 6, 1981. Applicant: UNITED STATES TRANSPORTATION, INC., 4963 Provident Dr., Cincinnati, OH 45246. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. Transporting *chemicals and allied products,* and *food and related products,* in bulk, in tank vehicles, between Cincinnati, OH, on the one hand, and, on the other, St. Louis, MO, and points in TN, KY, IN, IL, and the lower peninsula of MI.

MC 138902 (Sub-17), filed January 6, 1981. Applicant: ERB TRANSPORTATION CO., INC., P.O. Box 65, Crozet, VA 22932. Representative: Harry C. Ames, Jr., Suite 805, 666 Eleventh St., NW, Washington, DC 20001. Transporting *food and related products* between points in Berks County, PA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC.

MC 143812 (Sub-24), filed December 29, 1980. Applicant: VAN DIEST TRUCKING, INC., 1415 East Ninth Ave., Pomona, CA 91766. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *food and related products,* and (2) *materials, equipment, and supplies* used in the production and distribution of the commodities in (1) above, (1) between points in WA, on the one hand, and, on the other, points in ID, MT, NV, NM, OR, TX, UT, WA, and WY, and (2) between points in CA, on the one hand, and, on the other, points in FL and TX.

MC 146983 (Sub-2), filed December 29, 1980. Applicant: JE-RI TRUCKING, INC., 70 Woodcrest Drive, P.O. Box 1994, Fargo, ND 58107. Representative: Kipley B. H. Erickson, 502 First National Bank Building, Fargo, ND 58126. Transporting *such commodities* as are dealt in or used by wholesale beverage distributors between points in the U.S., under a continuing contract(s) with Bergseth Bros., Co., Inc., of Fargo, ND.

MC 152392 (Sub-1F), filed November 14, 1980. (Correction), previously published in the **Federal Register** issue of December 10, 1980, and republished this issue. Applicant: DWIGHT CHRISTIAN AND STUART CHRISTIAN, a partnership, d.b.a. TDS FERTILIZER TRUCKING DIVISION, Fertile, MN 56540. Representative: Todd W. Foss, 502 First National Bank Bldg., Fargo, ND 58126. Transporting *anhydrous ammonia,* in bulk, in tank vehicles, (1) from points in Grand Forks, McHenry, and Foster Counties, ND, to points in MN, and (2) from points in Clay and Pope Counties, MN to points in ND.

Note.—This republication is to show origin counties in part (2) as counties in the State of MN.

Volume No. OP2–167

Decided: January 28, 1981.

By the Commission, Review Board No. 2. Members Chandler, Eaton, and Liberman.

MC 14702 (Sub-88), filed January 9, 1981. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215 (615) 228–8575. Transporting *metal products* between points in (a) Mahoning, Belmont and Jefferson Counties, OH, (b) Washington and Westmoreland Counties, PA, and (c) Ohio, Marshall and Brooke Counties, WV, on the one hand, and, on the other, points in the U.S.

MC 15752 (Sub-2), filed January 8, 1981. Applicant: BERKSHIRE TRAVEL AGENCY, INC., 920 Van Reed Road, Wyomissing, PA. 19603.Representative: John J. Stevenson (same as applicant) (215) 374–4538. To engage in operations, in interstate or foreign commerce, as a *broker*, at Reading, PA, Wyomissing, PA, Pottstown, PA, and Allentown, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage, in the same vehicle with passengers*, in round-trip special and charter operations beginning and ending at points in Berks, Lebanon, Montgomery, Lancaster, Schuylkill and Lehigh Counties, PA, and extending to points in the U.S. (including AK and HI).

MC 28813 (Sub-23), filed December 16, 1980. Applicant: MOTOR EXPRESS, INC. OF INDIANA, 1440 West 34th St., Chicago, IL 60608. Representative: Elliott Bunce, Suite 1301, 1600 Wilson Blvd., Arlington, VA 2209. Over *regular routes*, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Indianapolis, IN and Nashville, TN, over U.S. Hwy 31 to Louisville, KY, then over U.S. Hwy 31W to Nashville, and return over the same route, serving all intermediate points and serving Seymour, IN, and points in Davidson County, TN, and Jefferson County, KY, as off-route points.

Note.—Applicant intends to tack this authority with its existing authority and to interline.

MC 33433 (Sub-3), filed December 22, 1980. Applicant: FRANK STEFANELLI, 1297 Van Houten Ave., Clifton, NJ 07013. Representative: Frank Stefanelli (same as applicant). Transporting *toilet preparations and soaps*, and *materials, equipment and supplies* used in the manufacture of toilet preparations and soaps, between points in the US., under continuing contract(s) with Mennen Co., Inc., of Morristown, NJ.

MC 103993 (Sub-1071), filed January 2, 1981. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same as applicant) (219) 295–2200. Transporting *metal products, clay, concrete, glass or stone products*, and *rubber or plastic products*, between points in Coshocton and Tuscarawas Counties, OH, Mahaska County, IA, Boone County, MO, Jefferson and Talladega Counties, AL, Boone County, KY, Riverside County, CA, and Upshur County, WV, on the one hand, and, on the other, points in the U.S.

MC 108223 (Sub-39), filed December 11, 1980. Applicant: CENTURY-MERCURY MOTOR FREIGHT, INC., P.O. Box 43050, St. Paul, MN 55164. Representative: Warren K. Wahoske (same as applicant). Transorting *such commodities* as are dealt in or used by manufacturers and distributors of industrial heating equipment and commercial heating equipment, between St. Paul, MN, on the one hand, and, on the other, points in the U.S.

MC 109533 (Sub-136), filed December 30, 1981. Applicant: OVERNITE TRANSPORTATION COMPANY, 1000 Semmes Avenue, Richmond, VA 23224. Representative: John C. Burton, Jr. (same as applicant) (804) 231–8281. 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 points in KY, IN and East of Jefferson, Bullitt, Hardin, Larue, Hart, Edmonson, Butler and Logan Counties, KY as off-route points in connection with its otherwise authorized operations. Applicant intends to tack authority sought herein with authority presently held under MC 109533. Applicant proposes to interline traffic with present connecting carriers at authorized interline points.

MC 113843 (Sub-291), filed January 9, 1981. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., 5th Floor, Boston, MA 02210. Representative: Lawrence T. Sheils (same as applicant) (617) 482–3830. Transporting *food and related products* between points in Daviess County, KY, on the one hand, and, on the other, points in IA, IL, IN, KS, MI, MN, MO, NC, NE, ND, OH, OK, SD, and WV.

MC 115092 (Sub-126), filed January 2, 1981. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Dr., St. Charles, IL 60174 (312) 584–8018. Transporting *clay, concrete, glass, or stone products*, between points in Salt Lake County, UT, on the one hand, and, on the other, points in Tulsa County, OK, Navarro County, TX, and Fresno, Los Angeles, and San Joaquin Counties, CA.

MC 115162 (Sub-551), filed December 30, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant) (205) 578–2836. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. Condition: Issuance of this certificate is conditioned upon coincidental cancellation, at carrier's written request, of all of the carrier's existing certificates and concurrent cancellation of all pending authorities.

MC 115232 (Sub-4), filed January 7, 1981. Applicant: OVERLAND MOTOR EXPRESS, INC., d.b.a. Boulder-Denver Truck Line, Inc., 5880 Valmont, Boulder, CO 80301. Representative: John P. Thompson, 450 Capitol Life Center, Denver, CO 80203 (303) 861–8046. Over *regular routes*, transporting *general commodities* (except classes A and B explosives), between Denver CO and Cheyenne, WY, over Interstate Hwy 25 (also designated U.S. Hwy 87); (2) between Denver, CO and Cheyenne, WY over U.S. Hwy 85; (3) between Denver, CO and Cheyenne, WY: from Denver over U.S. Hwy 287 to junction CO Hwy 1, then over CO Hwy 1 to junction U.S. Hwy 87, then over U.S. Hwy 87 to Cheyenne, WY, and return over the same routes, serving points in Adams, Boulder, Larimer and Weld Counties, CO and Laramie County, WY, as intermediate or offroute points, in connection with applicant's otherwise authorized regular route operations.

MC 123133 (Sub-9), filed January 5, 1981. Applicant: DENNY TRANSPORT, INC., 3405 Industrial Parkway, jeffersonville, IN 47130. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, 502–589–5400. Transporting *general commodities* (except classes A and B explosives), between Louisville, KY, on the one hand, and, on the other, points in the U.S.

MC 123993 (Sub-89), filed January 2, 1981. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768 (512) 476–6083. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Owens-Illinois, Inc., of Toledo, OH.

MC 124692 (Sub-355), filed January 6, 1981. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401 (612) 340-0808. Transporting *metal products* between points in Box Elder County, UT, on the one hand, and, on the other, points in the U.S.

MC 125952 (Sub-49), filed January 8, 1981. Applicant: INTERSTATE DISTRIBUTOR CO., 8311 Durango SW., P.O. Box 99307, Tacoma, WA 98499. Representative: Daniel W. Baker, Esq., 100 Pine St. #2550, San Francisco, CA 94111 (415) 986-1414. Transporting *food and related products* between points in the U.S., under continuing contract(s) with California and Hawaiian Sugar Company, of San Francisco, CA.

MC 125973 (Sub-7), filed January 5, 1981. Applicant: CROWN WAREHOUSE TRANSPORTATION COMPANY, INC., 710 East 9th Ave., Gary, IN 46401. Representative: Jack H. Blanshan, 205 West Touhy Ave., Suite 200, Park Ridge, IL 60068 (312) 692-3020. Transporting *pulp, paper, and related products*, between points in the U.S., under continuing contract(s) with Stone Container Corporation, of Chicago, IL.

MC 126082 (Sub-4), filed January 6, 1981. Applicant: SLENTZ & SONS, INC., R.R. #3, Leo, IN 46765. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240 (317) 846-6655. Transporting *chemicals and related products* between points in Vermilion County, IL, on the one hand, and, on the other, points in IN and MI.

MC 128573 (Sub-13), filed January 5, 1981. Applicant: BARNETT TRUCK LINES, INC., 3404 Wheat St., Kinston, NC 28501. Representative: Vaughan S. Winborne, 1108 Capital Club Bldg., Raleigh, NC 27601 (919) 832-5732. Transporting *chemicals and related products*, between points in VA, NC, SC, GA, and TN.

MC 133562 (Sub-42), filed January 5, 1981. Applicant: HOLIDAY EXPRESS CORPORATION, P.O. Box 115, Estherville, IA 51334. Representative: Herbert W. Allen, P.O. Box 2733, Des Moines, IA 50315 (515) 287-1602. Transporting *food and related products* between points in the U.S., under a continuing contract(s) with (a) Spencer Foods, Inc., of Schuyler, NE and (b) John Morrell & Co., of Chicago, IL.

MC 134403 (Sub-3), filed January 5, 1981. Applicant: GATEWAY TRUCKING, INC., 169 Station St., Aliquippa, PA 15051. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, 412-471-1800. Transporting *metal products*, between points in Beaver, Washington, Allegheny, and Westmoreland Counties, PA, on the one hand, and, on the other, points in OH and WV.

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 134783 (Sub-71), filed January 6, 1981. Applicant: DIRECT SERVICE, INC., 940 East 66th St., P.O. Box 2491, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203 (303) 839-5856. Transporting *such commodities* as are dealt in or used by tanneries between points in the U.S.

MC 138493 (Sub-9), filed January 5, 1981. Applicant: JAKUM TRUCKING, INC., Rural Route 2, Miley Rd., Sheboygan Falls, WI 53085. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703 (608) 256-7444. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Badger Liquor Co., Inc., of Fond du Lac, WI.

MC 140902 (Sub-16), filed January 2, 1981. Applicant: DPD, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant) (305) 593-3204. Transporting *petroleum or coal products* between points in the U.S. under a continuing contract(s) with Trumbull Asphalt, Division of Owens-Corning Fiberglas Corporation, of Summit, IL.

MC 141573 (Sub-1), filed January 19, 1981. Applicant: EXPEDITIONS AMERICAS, LTD., 176 West Adams St., Chicago, IL 60603. Representative: Robert M. Hausman, 1747 Pennsylvania Ave., NW., Suite 300, Washington, DC 20006. Transporting *passengers and their baggage, in the same vehicle with passengers*, in round-trip special and charter operations (1) beginning and ending at New York, NY and extending to points in NY, RI, MA, VT, PA, VA, and DC; (2) beginning and ending at Denver, CO, and extending to points in CO, UT, AZ, and NM, and (3) beginning and ending at Los Angeles, CA, and extending to points in CA, AZ and NV.

MC 141932 (Sub-40), filed December 22, 1980. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA 02339. Representative: Alton C. Gardner (same address as applicant). Transporting *food and related products*, from Memphis, TN, to points in the U.S., restricted to traffic originating at or destined to the facilities of Adams Packing Association, Inc.

MC 143953 (Sub-5), filed January 5, 1981. Applicant: ELITE TRUCKING COMPANY, P.O. Box 69, Station E, St. Joseph, MO 64505. Representative: W. R. England, III, P.O. Box 456, Jefferson City, MO 65102 (314) 635-7166. Transporting *chemicals and related products*, between points in the U.S., under continuing contracts with Rhone-Poulenc Inc., of Monmouth Junction, NJ.

MC 145122 (Sub-2), filed January 8, 1981. Applicant: SKYLAND, INC., 256 Celia Street, S.W., Wyoming, MI 49508. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601 (312) 332-5106. Transporting *general commodities* (except classes A and B explosives) between (1) Detroit Metropolitan Wayne County Airport, on the one hand, and, on the other, Chicago O'Hare Airport, and (2) between Detroit Metropolitan Wayne County Airport and Willow Run Washtenaw County Airport, on the one hand, and, on the other, points in Jackson, Hillsdale, Calhoun, Branch, Eaton, Barry, Kalamazoo, Allegan, Van Buren, Cass, Berrien and St. Joseph Counties, MI and Williams County, OH.

MC 146753 (Sub-17), filed January 2, 1981. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh St., NW, Washington, DC 20001 (202) 628-9243. Transporting *printed matter* between the facilities used by Rand McNally and Company in the U.S., on the one hand, and, on the other, points in the U.S.

MC 146822 (Sub-3), filed January 6, 1981. Applicant: EUGENE L. FRAZIER, d.b.a. SUNSET TRANSPORT SYSTEMS, 2200 N. Parmalee, Compton, CA 90222 (P.O. Box 6, Gardene, CA 90247). Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211 (213) 655-3573. Transporting *electrical equipment* between the facilities used by Globe Illumination Company in the U.S., on the one hand, and, on the other, points in the U.S.

MC 147552 (Sub-9), filed January 2, 1981. Applicant: CAJUN CARTAGE & WAREHOUSING CORP., 1205 St. Louis St., New Orleans, LA 70150. Representative: Thomas N. Willess, 1000 Sixteenth St., NW, Suite 502, Solar Building, Washington, DC 20036 (202) 783-8131. Transporting *general commodities* (except classes A and B explosives), between points in St. John the Baptist Parish and Orleans Parish, LA.

MC 147723 (Sub-12), filed January 2, 1981. Applicant: MID-WESTERN TRANSPORT, INC., 10506 S. Shoemaker Ave., Santa Fe Springs, CA 90670.

Representative: Joseph Fazio (same as applicant). Transporting *metal products* between points in the U.S., under continuing contract(s) with Intalco Aluminum Corporation of Ferndale, WA.

MC 148412 (Sub-5), filed December 29, 1980. Applicant: GRIBBLE TRUCKING, INC., RD 3, Rockwood, PA 15557. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *locomotive parts, electrical equipment,* and *parts* for electrical equipment, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of locomotives and electrical motors, between points in the U.S., under continuing contract(s) with General Electric Company, of Erie, PA.

MC 151922 (Sub-1), filed January 5, 1981. Applicant: HIGH SIERRA EXPRESS, INC., 1235 Southern Way, Sparks, NV 89431. Representative: Michael W. Dyer, 527 East Moana Lane, Reno, NV 89515 (702) 826–9007. Transporting *general commodities* (except class A explosives), between points in NV, OR, CA, WA, ID, UT and AZ. Condition: Any certificate issued in this proceeding, to the extent that it authorizes the transportation of classes A and B explosives, shall be limited in term to a period expiring 5 years from its date of issuance.

MC 153272 (Sub-2), filed December 23, 1980. Applicant: S & H CONTRACTORS, INC., Box 186, Walton, KY 41094. Representative: Rudy Yessin, 113 West Main St., Frankfort, KY 40601 (502) 227–7326. Transporting *machinery, contractors' materials and supplies, and commodities* the transportation of which by reason of size and weight require the use of special equipment, between points in the U.S.

MC 153293 (Sub-1), filed December 24, 1980. Applicant: PREMIUM PLASTICS, INC., 250 Forrest St., Metuchen, NJ 08840. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *plastic materials,* between points in the U.S., under continuing contract(s) with Hercules Incorporated, of Oak Brook, IL.

MC 153413 (Sub-1), filed January 5, 1981. Applicant: ROBERT E. GUNSALLUS, d.b.a. R. E. GUNSALLUS & SON, 906 Chase St., Osage, IA 50461. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *fertilizer, fertilizer ingredients, feed and feed ingredients* between points in the U.S., under continuing contract(s) with Man-an-so, of Nevada, IA.

MC 153483, filed December 22, 1980. Applicant: ANTWEILER TRUCKING COMPANY, INC., Star Route, Montgomery City, MO 63361. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956 (414) 722–2848. Transporting (1) *refractories, and insulation,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above, between points in Audrain and Callaway Counties, MO, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 153512, filed January 2, 1981. Applicant: DAVID R. MILLER d.b.a. WESTERN HERITAGE TOURS, 179 North Main St., Kalispell, MT 59901. Representative: Owen R. Katzman, 1828 L St. NW suite 1111, Washington, DC 20036, 202–296–2728. As a *brokers,* at Kalispell, MT, to arrange for the transporation by motor vehicle, of *passengers and their baggage,* between points in MT, WA, CO, UT, OR, SD, CA, AZ, NV, WY, and ID, on the one hand, and, on the other, points in U.S.

MC 153533, filed December 24, 1980. Applicant: MILLER TRANSPORTATION, INC., 2003–15 Penile Rd., Louisville, KY 40272. Representative: Herbert D. Liebman, P.O. Box 478, Frankfort, KY 40602. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Jefferson, Oldham, Bullitt, Warren, and Hardin Counties, KY, and Clark, Floyd, Harrison, Jefferson, Crawford, and Washington Counties, IN, and extending to points in VA, SC, FL, OH, IL, GA, NV, TN, IN, KY, WV, AL, and MO.

MC 153552, filed December 29, 1980. Applicant: STEEL TRANSPORT, INC., 612 A Rte. 41, Schereville, IN 46375. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting *iron and steel articles and aluminum and aluminum articles,* between points in IL, IN, MI, MO, KY, OH, and WI.

MC 153553, filed December 16, 1980. Applicant: ROCKINGHAM CARRIAGE SERVICE, INC., Rt. #1 Bypass, P.O. Box 1349, Portsmouth, NH 03801. Representative: Robert G. Parks, 20 Walnut St. Suite 101, Wellesley Hills, MA 02181. Transporting *motor vehicles* (except mobile homes), in truckaway and driveaway service, between points in ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, PA, VA, and DC.

Volume No. OP3–143

Decided: January 21, 1981.

By the Commission, Review Board No. 2. Members Chandler, Eaton, and Liberman.

MC 2934 (Sub-98), filed January 5, 1981. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Parkway, Suite 403, Indianapolis, IN 46205. Transporting *carpets,* from Dalton, GA, to points in CT, DE, IL, IN, MD, MA, MI, NH, NJ, NY, OH, VA, WI, and DC.

MC 60014 (Sub-205), filed December 30, 1980. Applicant: AERO TRUCKING, INC., Box 308, Monroeville, PA 15146. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *metal articles,* between the facilities of Primary Steel, Inc. at Savannah, GA, 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 69454 (Sub-12), filed January 9, 1981. Applicant: DITTO FREIGHT LINES, 1575 Industrial Ave., San Jose, CA 95112. Representative: Daniel W. Baker, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of glass containers, between points in the U.S., under continuing contract(s) with Thatcher Glass Manufacturing Company, a Division of Dart Industries, of Elmira, NY.

MC 106644 (Sub-357), filed December 31, 1980. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same address as applicant). Transporting (1) *commodities,* the transportation of which because of size or weight, require the use of special equipment, self-propelled articles (except automobiles), and building materials, between those points in the U.S. in and east of WI, IA, NE, MO, OK, and TX, on the one hand, and, on the other, those points in the U.S. in and west of MN, SD, WY, CO, KS, and NM; and (2) *commodities* described in (1) between points in the U.S., restricted in (2) above having a prior or subsequent movement by rail.

MC 106674 (Sub-520), filed January 2, 1981. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *containers,* between Nashville and Knoxville, TN, on the one hand, and, on the other, points in KY, OH, IN, AR, AL, and MS.

MC 114045 (Sub-578), filed December 29, 1980. Applicant: TRANS-COLD

EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *Wine*, from points in NY, to points in TX and LA.

MC 114045 (Sub-580), filed December 29, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *such commodities* as are delat in or used by food business houses, from points in Dane County, WI, Scott, Dallas, and Muscatine Counties, IA, Cook and McHenry Counties, IL, and Erie County, OH, to points in TX.

MC 114555, filed January 2, 1981. Applicant: ELIZABETH B. STUART, d.b.a. REDWOOD EMPIRE TOUR AND TRAVEL, 3150 Broadway, P.O. Box 3790, Eureka, CA 95501. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055. As a *broker*, at Eureka, CA in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in Humboldt County, CA, on the one hand, and, on the other, points in the U.S.

MC 115554 (Sub-37), filed December 31, 1980. Applicant: HEARTLAND EXPRESS, INC., OF IOWA, P.O. Box 89B, R.R. #6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *appliances*, (2) *batteries*, (3) *electrical equipment, instruments, machinery and supplies*, (4) *refrigerating, cooling and heating equipment*, (5) *computers, security systems, and cabinets*, (6) *parts* for the commodities in (1) through (5) above, and (7) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities in (1) through (5) above (except commodities in bulk), between points in the U.S., restricted in (3) and (4) above against the transportation of commodities which because of their size or weight require the use of special equipment.

MC 123074 (Sub-18), filed January 8, 1981. Applicant: M. L. ASBURY, INC., 141 South Main St., Romeo, MI 48065. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. Transporting *petroleum and petroleum products*, from points in Allen County, OH, to points in Wayne, Oakland, and Macomb Counties, MI.

MC 134134 (Sub-91), filed December 29, 1980. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman, P.O. Box 7439, Omaha, NE 68107. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. Transporting *such commodities* as are used or dealt in by food and drug stores, between points in Tazewell and Peoria Counties, IL, on the one hand, and, on the other, points in IN, IA, KS, KY, MD, MA, MI, MN, MO, NE, NJ, NY, OH, and PA.

MC 134405 (Sub-103), filed January 2, 1981. Applicant: BACON TRANSPORT COMPANY, a Corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *sand*, in bulk, between those points in the U.S. in and west of WI, IL, MO, AR, and MS.

MC 134535 (Sub-10F), filed December 30, 1980. Applicant: CASALE CONTRACT CARRIERS, INC., P.O. Box 1393, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting (1) *paper, paper products and containers*, and (2) *materials, supplies and equipment* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Container Corporation of America, Philadelphia, PA.

MC 142364 (Sub-45), 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 *such commodities* as are dealt in or used by hardware stores, drug stores, discount houses, grocery and food business houses (except frozen and in bulk), between the facilities of The Clorox Company, at or near Atlanta, GA, on the one hand, and, on the other, points in AR, KY, MS, and TN; and (2) between the facilities of The Clorox Company, at or near Kansas City, MO, on the one hand, and, on the other, points in AR.

MC 144115 (Sub-7), filed December 29, 1980. Applicant: DIVERSIFIED CARRIERS, INC., 903 6th St., NW., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of FAFCO Incorporated.

MC 144115 (Sub-8), filed January 2, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 903 6th St., NW., Rochester, MN 55901. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI 53095. Transporting *food and related products*, between the facilities of Farmland Foods, Inc., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 145465 (Sub-9), filed December 30, 1980. Applicant: CURN ENTERPRISES, INC., Route 6, Box 8, Allegan, MI 4901. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Transporting (1) *drugs* and *toilet articles* and (2) *materials and supplies* used in the manufacture, sale and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with L. Perrigo Company, of Allegan, MI.

MC 149114 (Sub-1F), filed January 2, 1981. Applicant: NATIONAL TRANSPORT SERVICES, a Corporation, 100 Industrial Ave., Edison, NJ 08817. Representative: Barbara R. Klein, 1101 Connecticut Ave., NW, Washington, DC 20086. Transporting *medical products*, between points in the U.S., under continuing contract(s) with Becton-Dickinson and Company, of Rutherford, NJ.

MC 149114 (Sub-2), filed January 2, 1981. Applicant: NATIONAL TRANSPORT SERVICES, a Corporation, 100 Industrial Ave., Edison, NJ 08817. Representative: Barbara R. Klein, 1101 Connecticut Ave., NW, Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Warner-Lambert Company, its affiliates, subsidiaries and divisions.

MC 149114 (Sub-3), filed January 2, 1981. Applicant: NATIONAL TRANSPORT SERVICES, a corporation, 100 Industrial Ave., Edison, NJ. Representative: Barbara R. Klein, 1101 Connecticut Ave. NW., Washington, DC 20036. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Celentano Brothers, Inc., of Verona, NJ.

MC 149235 (Sub-3), filed December 30, 1980. Applicant: C. MAXWELL TRUCKING CO., INC., 9108 Reeds Dr., Overland Parks, KS 66207. Representative: Alex M. Lewandowski, 1221 Baltimore Ave., Ste. 600, Kansas City, MO 64105. 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 Procter & Gamble Distributing Co., of Cincinnati, OH.

MC 150105, filed January 2, 1981. Applicant: KING ASSOCIATED ENTERPRISES, LTD., a corporation, P.O. Box 253, Butler, WI 53007.

Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting *commodities for recycling*, between points in the U.S., under continuing contract(s) with Recom, Inc., of Menomonee Falls, WI.

MC 150954 (Sub-8F), 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 *glass*, between points in the U.S. (except AK and HI), under continuing contract(s) with Guardian Industries Corp., of Corsicana, TX.

MC 151845 (Sub-1F), filed December 16, 1980. Applicant: ADAMIC TRUCKING, INC., 15522 Rider Rd., Burton, OH 44021. Representative: Lewis S. Witherspoon, 88 East Broad St., Columbus, OH 43215. Transporting (1) *metal buildings*, unassembled and knocked down, and (2) *parts, supplies, and accessories* used in the installation of metal buildings, between Galesburg, IL, and Annville, PA, on the one hand, and, on the other, points in Cuyahoga, Geauga, Lake, Portage, and Stark Counties, OH.

MC 152544 (Sub-2), filed December 9, 1980. Applicant: CYPRESS TRUCK LINES, INC., 1746 East Adams St., Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *machinery*, between points in FL, on the one hand, and, on the other, points in the U.S. (except HI).

MC 15345F, filed December 24, 1980. Applicant: APPLE CITY TRANSPORT, INC., 384 Pine St., Watsonville, CA 95076. Representative: Daniel W. Baker, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *farm products*, and *food and related products*, between points in WA, OR, NV, CA, and AZ.

Volume No. OP4–228

Decided: January 28, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 41406 (Sub-165), filed January 21, 1981. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 8400 Westlake Dr., Merrillville, IN 46410. Representative: Ralph D. Artim (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in MI, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 60506 (Sub-3), filed January 12, 1981. Applicant: O'NEILL BROS. TRANSFER & STORAGE CO., 706 S. W. Commerical St., Peoria, IL 61602. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *general commodities* (except classes A and B explosives), between points in Bureau, Cook, Cass, Christian, Dewitt, DuPage, Fulton, Henry, Kane, Knox, LaSalle, Livingston, Logan, McLean, Mason, McDonough, Marshall, Menard, Macon, Peoria, Putnan, Sangamon, Schuyler, Stark, Tazewell, Warren, Will, and Woodford Counties, IL.

MC 89716 (Sub-57), filed January 21, 1981. Applicant: DICK JONES TRUCKING, a corporation, P.O. Box 965, Powell, WY 82435. Representative: Truman A. Stockton, Jr., 1365 Logan St., Suite 100, Denver, CO 80203. Transporting *building materials*, between points in OR, on the one hand, and, on the other, points in CO, MT, and WY.

MC 101186 (Sub-22), filed January 19, 1981. Applicant: ARLEDGE TRANSFER, INC., Hwy 3 West, P.O. Box 157, Burlington, IA 52601. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives), between points in IA, IL, IN, MN, MO, NE, and WI.

MC 105886 (Sub-35), filed January 21, 1981. Applicant: MARTIN TRUCKING, INC., East Poland Ave., Bessemer, PA 16112. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *clay, concrete, glass or stone, products*, between points in Lawrence County, PA, on the one hand, and, on the other, points in the Lower Peninsula of MI.

MC 141076 (Sub-31), filed January 21, 1981. Applicant: ROGERS MOTOR LINES, INC., R.D. #2, P.O. Box 388 D2, Hackettstown, NJ 07840. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC.

MC 148576 (Sub-5), filed January 21, 1981. Applicant: DOTSON TRUCKING CO., INC., 1220 Murphy Ave. SW., Atlanta, GA 30310. Representative: Brian S. Tern, North Springfield Professional Center, 5411–D Blacklick Rd., Springfield, VA 22151. Transporting *scrap materials and scrap metals*, between Gaston, SC, on the one hand, and, on the other, points in AL, FL, GA, NC, and TN.

Volume No. OP4–231

Decided: January 28, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 29886 (Sub-380), filed January 19, 1981. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 39th Ave., Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting *machinery*, between points in MI, on the one hand, and, on the other, points in AR, AZ, CA, CO, ID, KS, LA, MN, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY.

MC 77577 (Sub-7), filed January 14, 1981. Applicant: GLENNON'S MILK SERVICE, INC., 1150 West Chester Pike, P.O. Box 521, West Chester, PA 19300. Representative: Norman Weiss, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives), between points in CT, DE, MA, MD, NH, NJ, NY, PA, RI, VA, VT, WV, and DC.

MC 95876 (Sub-372), filed January 12, 1981. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402. Transporting (1) *air conditioning equipment*, and (2) *furnaces and parts and accessories for furnaces*, between points in Warren, Rutherford, and Davidson Counties, TN, and Onondaga County, NY, 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 95876 (Sub-376), filed January 19, 1981. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402. Transporting *machinery*, between the facilities of Renolds Metals Company, in the U.S. on the one hand, and, on the other, points in the U.S.

MC 117786 (Sub-122), filed January 19, 1981. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting (1) *forest products* and (2) *lumber and wood products*, between points in the U.S.

MC 111956 (Sub-57), filed January 19, 1981. Applicant: SUWAK TRUCKING COMPANY, a corporation, 1105 Fayette St., Washington, PA 15301. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Over regular routes, transporting *general commodities* (except classes A and B explosives), (1) between Washington, PA, and St. Louis, MO, over Interstate

Hwy 70, and (2) between Columbus, OH, and St. Louis, MO: from Columbus over Interstate Hwy 71 to Louisville, KY, then over Interstate Hwy 64 to St. Louis, and return over the same route, serving all intermediate points and serving all points in St. Louis County, MO as off-route points in connection with routes (1) and (2) above.

MC 128346 (Sub-2F), filed January 9, 1981. Applicant: HAUPT CONTRACT CARRIERS, INC., P.O. Box 1023, Wausau, WI 54401. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers of air conditioners, humidifiers and dehumidifiers, between points in the U.S., under continuing contract(s) with Edison Products, of Edison, NJ.

MC 152376 (Sub-1F), filed November 10, 1980. Applicant: TABLOID SHIPPERS, INC., 1101 Tonnele Ave., North Bergen, NJ 07047. Representative: William J. Augello, 120 Main St., P.O. Box Z, Huntington, NY 11743. Transporting *printed matter*, between points in the U.S.

Volume No. OP4–232

Decided: January 30, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 102546 (Sub-3(M1F)) (notice of filing of petition to modify a permit), filed November 28, 1980. Petitioner: BLUE FLASH EXPRESS INCORPORATED, Route 1 Box 233, Zachary, LA 70791. Representative: L. F. Aguillard (same address as applicant). Petitioner holds motor *contract carrier* authority in permit MC–102546 Sub 3, issued November 5, 1980, authorizing transportation, over irregular routes, of *chemicals*, in bulk, between points in LA, MS, AL, GA, SC, NC, TN, AR, KS, OK, and TX, under continuing contract(s) with Kaiser Aluminum & Chemical Corporation, of Oakland, CA, and ICI Americas Incorporated, of Wilmington, DE. By the instant petition, petitioner seeks to add Allied Chemical Corporation, of Morristown, NJ, as an additional contracting shipper.

MC 113336 (Sub-92), filed January 19, 1981. Applicant: PETROLEUM TRANSIT COMPANY, INC., P.O. Box 921, Lumberton, NC 28358. Representative: R. E. Stone, Rt. 3, Montpier Dr., Franklin, TN 37064. Transporting *petroleum, natural gas and their products*, between points in Erie and Niagara Counties, NY, Venango, McKean, Cumberland, and Warren Counties, PA, and Hancock and Pleasants Counties, WV, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, AR, and LA.

MC 133796 (Sub-60), filed January 12, 1981. Applicant: WASHINGTON-CALIFORNIA EXPRESS, INC., 919 South McGarry St., Los Angeles, CA 90029. Representative: Joseph A. Keating, Jr., 121 South Main St., Taylor, PA 18517. Transporting *rubber and plastic products*, between points in Schuylkill County, PA, on the one hand, and, on the other, points in the U.S.

MC 142716 (Sub-6), filed January 22, 1981. Applicant: C & L TRUCKING, INC., 1609 27th St., N.W., Cedar Rapids, IA 52405. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *food and related products*, between points in Emmet and Woodbury Counties, IA, and Minnehaha County, SD, on the one hand, and, on the other, points in AR, IL, KS, LA, MN, MO, NE, OK, SD, TX, and WI.

MC 148126 (Sub-4), filed January 21, 1981. Applicant: E.W.L. TRUCKING, INC., 2055 John's Dr., Glenview, IL 60025. Representative: Paul J. Maton, 10 S. LaSalle St., Rm 1620, Chicago, IL 60603. Transporting *metal products and building materials*, between points in the U.S., under continuing contract(s) with Air Distribution Associates Inc., of Wood Dale, IL.

MC 148616 (Sub-3), filed January 22, 1981. Applicant: TRANSPORT WEST, INC., P.O. Box 2015, Eugene, OR 97402. Representative: Gene E. Cook (same address as applicant). Transporting *materials, equipment, and supplies* used in the manufacture of containers, between points in the U.S., under continuing contract(s) with Container Corporation of America, of Santa Clara, CA.

Volume No. OP5–31

Decided: January 26, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 2428 (Sub-34), filed January 2, 1981. Applicant: H. PRANG TRUCKING CO., INC., 112 New Brunswick Ave., Hopelawn, NJ 08861. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives), between points in the U.S, under continuing contract(s), with The Celotex Corporation, of Tampa, FL.

MC 5618 (Sub-5), filed January 13, 1981. Applicant: GEM CITY TRANSFER LINE, INC., 1811 North 30th Street, Quincy, IL 62301. Representative: Douglas G. Brown, The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *general commodities* (except classes A and B explosives) between points in Allamakee, Clayton, Dubuque, Clinton, Scott, Muscatine, Louisa, Des Moines and Lee Counties, IA, and points in IL and MO, restricted to shipments having a prior or subsequent movement by rail.

MC 112049 (Sub-27), filed January 13, 1981. Applicant: McBRIDE'S EXPRESS, INC., East Route 316, Mattoon, IL 61938. Representative: Michael R. Solomon, 433 Thatcher Ave., St. Louis, MO 63147. Transporting *general commodities* (except classes A and B explosives) serving points in St. Charles County, MO, as an off-route point in connection with applicant's otherwise authorized regular route operations.

MC 113158 (Sub-50), filed January 6, 1981. Applicant: TODD TRANSPORT COMPANY, INC., Box 158, Secretary, MD 21664. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Transporting *pulp, paper, and related products*, between Philadelphia, PA, on the one hand, and, on the other, points in DE, FL, GA, MD, NC, NY, OH, SC, VA, WV, and DC.

MC 115669 (Sub-203), filed January 5, 1981. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Vayle Hayes (same address as applicant). Transporting *salt and salt products*, between Chicago, IL, Detroit, MI, St. Paul, MN, St. Louis, MO, Omaha, NE, Milwaukee, WI, points in Alameda County, CA, Reno County, KS, Iberia County, LA, Manistee and St. Clair Counties, MI, Lake and Wayne Counties, OH, Van Zandt County, TX, and Salt Lake County, UT, on the one hand, and, on the other, points in LA, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, and WY.

MC 118848 (Sub-25), filed January 2, 1981. Applicant: DOMENICO BUS SERVICE, INC., 71 New Hook Access Rd., Bayonne, NJ 07002. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *passengers and their baggage*, between New York, NY, and Atlantic City, NJ., under contract(s) with Harrah's Marina Hotel Casino of Atlantic City, NJ.

MC 119789 (Sub-726), filed January 14, 1981. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting (1) *food and related products*, and (2) (a) *forest products*, (b) *lumber and wood products*, and (c) *building materials*, between points in

the U.S., under continuing contract(s) in (1) above with Swift Independent Packing Co., of Chicago, IL and Nestle Enterprises, of White Plain, NY, and in (2) above with the Weyerhauser Company, of Hot Springs, AR.

MC 121598 (Sub-14), filed January 13, 1981. Applicant: SHELBYVILLE EXPRESS, INC., Old Railroad Ave., Shelbyville, TN 37160. Representative: James G. Caldwell (same address as applicant). Transporting *transportation equipment* between points in TN, on the one hand, and, on the other, points in MI, OH, and IN.

MC 138279 (Sub-21), filed January 5, 1981. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Avery International, San Marino, CA.

MC 138438 (Sub-102), filed January 16, 1981. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *general commodities* (except classes A and B explosives), between Baltimore City, MD, and Alexandria, VA and points in Washington County, MD, and IL, on the one hand, and, on the other, points in DE, MD, PA, VA, WV, and DC.

MC 141339 (Sub-2), filed January 14, 1981. Applicant: DAVIS, INC., Route 3, Box 651, Starke, FL 32091. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *chemicals and related products*, between points in Middlesex County, NJ, on the one hand, and, on the other, points in NC, SC, GA, and FL.

Volume No. OP5–32

Decided: January 26, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 142319 (Sub-3), filed January 2, 1981. Applicant: STRAUSS TRUCKING, LTD., a corporation, P.O. Box 316, Bloomsbury, NJ 08804. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048. Transporting *furniture and fixtures*, between points in the U.S.

MC 142449 (Sub-16), filed January 12, 1981. Applicant: SPEEDWAY HAULERS, INC., P.O. Box 1463, South Bend, IN 46624. Representative: Jo Ann Sawyer (same address as applicant). Transporting *general commodities*, between points in IL, IN, IA, OH, MI, MN, MO, KY, and WI. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 145748 (Sub-3), filed January 2, 1981. Applicant: MEYERS TRANSFER, INC., Rt. 64, East, Mt. Morris, IL 61054. Representative: Abraham A. Diamond, 29 South LaSalle St., Chicago, IL 60603. Transporting *buildings and building materials*, between points in the U.S., under continuing contract(s) with Cedar Forest Products, Division of Farmer's Lumber & Supply Co., of Polo, IL.

MC 145888 (Sub-4), filed January 2, 1981. Applicant: GRAHAM H. BELL, d.b.a. B & W TRUCKING, P.O. Box 281, Gloucester, MA 01930. Representative: Graham H. Bell (same address as applicant). Transporting *food and related products*, between points in ME, MA, NH, VT, CT, RI, NY, NJ, DE, MD, VA, OH, MI, IN, IL, KY, WV, PA, TN, SC, NC, WI, FL, AL, GA, and DC.

MC 146078 (Sub-38), filed January 2, 1981. Applicant: CAL–ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting *general commodities* (except classes A and B explosives) between points in the U.S. on and west 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 149568 (Sub-2), filed January 12, 1981. Applicant: TRUCK SERVICE COMPANY, a corporation, 2169 E. Blaine, Springfield, MO 65803. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting (1) *rubber and plastic products*, and (2) *chemcials and related products*, between points in the U.S., under continuing contract(s) with E. I. du Pont de Nemours & Co., Inc., of Wilmington, DE.

MC 150999 (Sub-1), filed January 2, 1981. Applicant: GENE F. LACAEYSE, d.b.a. G. F. LACAEYSE TRANSPORT, R.F.D. Box 110, Montezuma, IA 50171. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *meat, meat products, and meat by-products, and articles distributed by meat-packing houses*, between points in Marshall County, IA, on the one hand, and, on the other, points in NC, SC, FL, MS, and TX.

MC 151098 (Sub-1), filed January 12, 1981. Applicant: JEN–CHARTER INC., 4 Gravin St., Coram, NY 11727. Representative: Transporting *waste or scrap materials not identified by industry producing*, between points in the U.S., under continuing contract(s) with Chemical Pollution Control, Inc., of Bayshore, NY.

MC 152118F, filed November 7, 1980. Applicant: JOSE ROCHA, d.b.a. J. R. TRANSPORT, 11 Jefferson St., Cambridge, MA 02141. Representative: George C. O'Brien, 12 Vernon St., Cambridge, MA 02142. Transporting *trailers and modular units*, between points in the U.S., under a continuing contract(s) with Design Space International, of Randolph, MA.

MC 152519 (Sub-1), filed January 12, 1981. Applicant: CENTRAL FLORIDA TRUCKING CO., INC., State Road 640 and Noralyn Mine Road, Bartow, FL 33830. Representative: Dan R. Schwartz, 3100 University Blvd., S., Suite 225, Jacksonville, FL 32216. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with Baker Phosphate Corporation, of Bradenton, FL.

MC 153418 (Sub-1), 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 class A and B explosives), between points in the U.S., under continuing contract(s) with K-Mart Corporation, of Troy, MI.

MC 153558, filed January 12, 1981. Applicant: CEREL'S TOURING, LTD., 19 Main Street, Natick, MA 01760. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K Street, N.W., Washington, DC 20005. To engage in operations as a *broker* at Natick, MA, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, between points in the U.S.

Volume No. OP5–34

Decided: January 27, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce, and Jones.

MC 43038 (Sub-497), filed January 16, 1981. Applicant: COMMERCIAL CARRIERS, INC., 20300 Civic Center Dr., 4th Floor, Box CS 5027, Southfield, MI 48037. Representative: Paul H. Jones, 29725 Shacket Ave., Madison Heights, MI 48071. Transporting *transportation equipment*, between points in the U.S.

MC 56388 (Sub-42), filed January 9, 1981. Applicant: HAHN TRANSPORTATION, INC., New

Market, MD 21774. Representative: Francis J. Ortman, 7101 Wisconsin Ave., Suite 605, Washington, DC 20014. Transporting *limestone*, between points in York County, PA, and points in Frederick County, MD.

MC 112668 (Sub-63), filed January 7, 1981. Applicant: HARVEY R. SHIPLEY & SONS, INC., 2601 Emory Rd., P.O. Box 266, Finksburg, MD 21048. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Random House, Inc., of Westminster, MD.

MC 116849 (Sub-6), filed January 9, 1981. Applicant: ISLAND TRANSPORTATION CORPORATION, 299 Main St., Westbury, NY 11590. Representative: Paul J. Goldstein, 109 Church St., New Haven, CT 06510. Transporting *cement*, between points in MN, IA, MO, WI, IL, TN, KY, MI, IN, OH, WV, VA, NC, MD, DE, NJ, PA, NY, and CT.

MC 118959 (Sub-257), filed January 14, 1981. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. Lasalle St., Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives), between points in Cape Girardeau County, MO, and points in AR, IL, IN, KY, MO, and TN.

MC 119639 (Sub-24), filed January 8, 1981. Applicant: INCO EXPRESS, INC., 3600 South 124th St., Seattle, WA 98168. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Transporting (1) *pulp, paper, and related products*, and (2) *printed matter*, between points in CA on the one hand, and, on the other, points in OR, WA, AZ, and NV.

MC 119689 (Sub-34), filed January 16, 1981. Applicant: PEERLESS TRANSPORT CORP., 2701 Railroad St., Pittsburgh, PA 15222. Representative: Robert T. Hefferin (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 119988 (Sub-274F), filed November 4, 1980. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), between points in Tarrant County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 121568 (Sub-75), filed January 15, 1981. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *chemicals and related products*, between points in Davidson County, TN, on the one hand, and, on the other, points in the U.S. in and east of MT, WY, CO, and NM.

MC 135678 (Sub-28), filed January 16, 1981. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Roome 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *lumber and wood products*, between points in AR and CA.

MC 136818 (Sub-123), filed January 16, 1981. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *alcoholic beverages*, between points in IL, on the one hand, and, on the other, points in CO, IA, IN, KS, MI, MN, MO, MT, ND, NE, NM, OK, SD, WI, and WY.

MC 140859 (Sub-13), filed January 14, 1981. Applicant: WESTERN KENTUCKY TRUCKING, INC., 1245 Center St., P.O. Box 1072, Henderson, KY 42420. Representative: William L. Willis, Suite 708, McClure Bldge., Frankfort, KY 40601. Over *regular* routes, transporting *general commodities* (except classes A and B explosives), (1) between Evansville, IN and Sebree, KY, over U.S. Hwy 41, (2) between the junction of U.S. Hwy 41 and U.S. Hwy 60 and Newman, KY, over U.S. Hwy 60, (3) between the junction of U.S. Hwy 60 and Alternate U.S. Hwy 41 and Dixon, KY, over Alternate U.S. Hwy 41, (4) between the junction of U.S. Hwy 60 and KY Hwy 136 and Smith Mills, KY, over KY Hwy 136, and (5) serving all intermediate points in routes (1) through (3) serving points in Henderson County, KY, as off-route points in connection with routes (1) through (4) above, and serving no intermediate points in (4) above.

MC 143328 (Sub-39), filed January 15, 1981. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. Transporting *beverages*, between points in AZ, CA, CO, ID, MT, NV, OR, UT, and WA.

MC 144678 (Sub-34), filed January 5, 1981. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th St., Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of its certificates in Nos. MC 144678 and subs thereunder, MC 22229 and subs thereunder, and MC 39120 and subs thereunder, and also of any authority that may be issued by the Commission in pending proceedings.

MC 151078 (Sub-2), filed January 16, 1981. Applicant: COASTAL FAST FREIGHT, INC., P.O. Box 445, Jersey City, NJ 07305. Representative: Owen B. Katzman, 1828 L St., NW., Suite 1111, Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Acme Fast Freight, Inc., of Los Angeles, CA.

MC 151378 (Sub-6), filed January 12, 1981. Applicant: BIG B TRUCK LINES, INC., P.O. Box 67, Jonesburg, MO 63351. Representative: John F. Clark (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in CA, CT, GA, IL, IN, MA, MO, MS, OH, NJ, and RI, on the one hand, and, on the other, points in the U.S.

MC 152378 (Sub-1), filed January 8, 1981. Applicant: RAIL-HIGHWAY TRANSPORTATION COMPANY, A DIVISION OF AJF INDUSTRIES, INC., 11960 West Industrial Dr., Ste 330, St. Louis, MO 63141. Representative: Ronald N. Cobert, Suite 501, 1730 M St., NW, Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives) between points in AR, IL, IN, IA, KS, KY, MO, and TN.

MC 152478F, filed October 23, 1980. Applicant: WILEY LEWALLEN, 6250 Forest Avenue, Union City, GA 30291. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237. Transporting *lumber and building materials*, between points in the U.S., under continuing contract(s) with Pharris Lumber Company, of East Point, GA.

Vol. No. OP5–36

Decided: January 28, 1981.

By the Commission, Review Board No. 3; Members Parker, Fortier, and Hill.

MC 22509 (Sub-31F), filed November 25, 1980, previously noticed in the **Federal Register** issue of December 17, 1980. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Ave., St. Joseph, MO 64505. Representative: Harry Ross, 58 South Main St., Winchester, KY 40391. Transporting *insulation and insulation materials*, between points in Johnson, Leavenworth, Wyandotte, and Shawnee Counties, KS, and Jackson, Platte and Clay Counties, MO, on the one hand, and, on the other, points in MN, NE, WI, IA, IL, IN, MO, AR, LA, OK, TX, KY, and TN.

Note.—The purpose of this republication is to show the correct base counties to be served in the territorial description.

MC 22509 (Sub-32F), (Republication) filed November 28, 1980, previously noticed in **Federal Register** issue of December 17, 1980. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Ave., St. Joseph, MO 64505. Representative: Harry Ross, 58 South Main St., Winchester, KY 40391. Transporting *insulation and insulation materials*, between points in Johnson, Leavenworth, Wyandotte, and Shawnee Counties, KS and Jackson, Platte and Clay Counties, MO, on the one hand, and, on the other, points in CO.

Note.—This republication corrects the base counties to be served in the territorial description.

MC 105269 (Sub-92F), filed November 28, 1980, previously noticed in the **Federal Register** issue (Republication) of January 8, 1981. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *general commodities* (except commodities in bulk, in tank vehicles), between points in IL, IN, IA, KY, MN, MO, NY, OH, PA, WV, and WI, restricted to the transportation of traffic originating at or destined to the facilities and warehouses of International Paper Company, its subsidiaries and suppliers.

Note.—This republication is to include IL in territorial description, which was inadvertently omitted.

MC 152919F, filed November 26, 1980, previously noticed in the **Federal Register** issue of December 17, 1980. Applicant: ROBERT J. EDELMAN d.b.a. R & L EDELMAN, Rtes. 22 and 23, Hillsdale, NY 12529. Representative: Hugh M. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting (1) *plastics, plastic bottles and accessories* for plastics and plastic bottles, (2) *corrugated boxes*, and (3) *materials, equipment and supplies* used in the manufacture and sale of the commodities in (1) and (2) between points in the U.S., under continuing contract(s) with Charter Supply Co., Inc., of Philmont, NY.

Note.—This republication shows the correct domicile of the supporting shipper.

Volume No. OP5–37

Decided: January 28, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 99569 (Sub-7F), filed December 8, 1980. Initially published in the **Federal Register** on January 13, 1981. Applicant: STOTT & DAVIS MOTOR EXPRESS, INC., 18 Garfield St., Auburn, NY 13021. Representative: Michael R. Werner, P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in NY, PA, and NJ.

Note.—This application is republished to show the correct territorial description.

MC 145349 (Sub-1F), filed October 16, 1980. Applicant: PROFESSIONAL DRIVER SERVICES, INC., 1631 Lebanon Rd., Nashville, TN 37210. Representative: Boyd Adams (same address as applicant). Transporting *new trucks and new truck chassis*, in drive-away service, from Wilmington, DE, to Allentown, PA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-4283 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

Washington, Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

February 2, 1981.

This application for long-and-short-haul relief has been granted by the I.C.C. No. 43897, Southwestern Freight Bureau, Agent, (No. B–113), reduced rates on iron or steel pipe, from Sparrows Point, MD, Lorain, OH, Economy, McKeesport, Marado and Steelton, PA, and Milwaukee, WI to Indpark, TX, in Supplement No. 257 to its Tariff ICC SWFB 4853, effective January 29, 1981. Grounds for relief-destination rate relationship.

This application was received by the Commission's Suspension Board on January 28, 1981. This precluded the Board from publishing the requested relief in the **Federal Register** in order to give interested parties an opportunity to protest.

By action of January 28, 1981, the Commission Suspension Board, Members Fitzgerald, Halvarson, and O'Malley, concluded to grant the requested relief, except for future relief, in Long and Short Haul No. 20677, subject to the proviso that the authority will expire 45 days from January 28, 1981. Member O'Malley did not participate.

This notice is to advise that the Commission's Suspension Board will reopen this proceeding on its own motion (if not protested), to consider the expiration date of the authority. Interested parties wishing to object may file objections with the Suspension Board not later than the 10th day before the expiration date.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-4285 Filed 2-4-81; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Proposed Stipulation and Judgment Approving Settlement Agreement in Action Under the Resource Conservation and Recovery Act, the Clean Water Act, the Rivers and Harbors Act of 1899 and the Common Law of Nuisance to Require a Comprehensive Cleanup Program of the Hyde Park Landfill Site in Niagara Falls, N.Y.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 19, 1981, a proposed stipulation and judgment approving settlement agreement in *United States of America* v. *Hooker Chemical and Plastics Corporation; Hooker Chemical Corporation; Occidental Petroleum Investment Corporation; Occidental Petroleum Corporation: (Hyde Park Landfill)*, Civil No. 79–989, was lodged with the United States District Court for the Western District of New York.

The proposed stipulation and judgment approving settlement agreement requires Hooker Chemical and Plastics Corporation to undertake a comprehensive cleanup program at its Hyde Park landfill site in Niagrara Falls, New York where Hooker deposited chemical waste and to deposit money in a fund, and provides for guarantees by Occidental Petroleum Corporation.

The proposed stipulation and judgment approving settlement agreement may be examined at the Office of the United States Attorney, 502 U.S. Courthouse, Court and Franklin Streets, Buffalo, New York 14202; at the Region II Office of the Environmental Protection Agency, Office of Public Awareness, Room 905, 26 Federal Plaza,

New York, New York 10278; at the Environmental Protection Agency, Enforcement Division, Room W1119, 401 M Street, SW., Washington, D.C. 20460; at the Environmental Protection Agency Office, 9820 Colvin Blvd., Niagara Falls, New York 14304; and at the Hazardous Waste Section, Land and Natural Resources Division of the Department of Justice, Room 1644, Ninth and Pennsylvania Avenue, NW, Washington, D.C. 20530. A copy of the proposed stipulation and judgment approving settlement agreement may be obtained in person or by mail from the Hazardous Waste Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $15.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

The Department of Justice will receive written comments relating to the proposed stipulation and judgment approving settlement agreement for a period of thirty days from the date of this notice. Comments should be directed to the Acting Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice, Ninth and Pennsylvania Avenue, NW, Washington, D.C. 20530 and should refer to *United States of America* v. *Hooker Chemical & Plastics Corp., et. al., (Hyde Park Landfill)*, D.J. Ref. 90-7-1-40.

Anthony C. Liotta,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 81-4213 Filed 2-4-81; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 81-6]

Reports, Recommendations and Responses; Availability

Aviation Safety Report No. NTSB-SR-80-2

The Status of General Aviation Aircraft Crashworthiness.—The National Transportation Safety Board has completed as assessment of the adequacy of occupant protection in general aviation aircraft during a crash. The Board's report, released January 29, reviews accident investigation findings, crashworthiness research and studies, and the regulatory requirements to assess the adequacy of occupant protection during general aviation crash conditions which should be survivable.

As a result of its review, the Safety Board on December 31 reiterated the following recommendations to the Federal Aviation Administration:

CY-70-42, Part 4—[Initiate] regulatory action . . . to rise the "minor crash landing" inertia forces of [13 CFR] 23.561 to a level comparable to those produced by a moderate-to-severe crash landing. Until a reasonable crash design condition is decided upon, including a specified crash acceleration pulse, it is suggested that the longitudinal inertia force be raised to 20 to 25 and the forces about other axes be similarly increased. (Recommendation Status: Previously closed when the FAA issued a notice of proposed rulemaking whose requirements, if made final, would have accomplished the recommended action.)

A-77-70—Amend 14 CFR 23.785 to require the installation of approved shoulder harnesses at all seat locations as outlined in NPRM 73-1. (Recommendation Status: Open, Unacceptable Action.)

Also in its letter of December 31 to FAA, the Safety Board issued the following "Class II, Priority Action" recommendations:

Require that those general aviation aircraft manufactured to include attachment points for shoulder harnesses at occupant seats be fitted with shoulder harnesses no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in FAA registration. (A-80-125)

Develop, in coordination with airframe manufacturers, detailed, approved installation instructions for installing shoulder harnesses at each seat location in current models and types of general aviation aircraft in which shoulder harness attachment points were not provided as standard equipment. Publish and provide these instructions to owners of these aircraft by December 31, 1982. (A-80-126)

Require that those general aviation aircraft for which FAA-approved harness installation instructions have been developed be fitted with shoulder harnesses at each seat location no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in the FAA registration. (A-80-127)

At established intervals, exend the application of all newly established occupant protection provisions of 14 CFR Part 23 to all newly manufactured general aviation aircraft. (A-80-128)

Revise 14 CFR 23.785(j) to incorporate performance standards and test criteria to insure that an acceptable level of occupant safety is achieved though cabin "delethalization." (A-80-129)

Revise current standards for seat and restraint systems to incorporate needed crashworthiness improvements identified in FAA Research Project reports. (A-80-130)

Establish standards for the dynamic testing of occupant protection devices required in general aviation aircraft. (A-80-131)

Railroad Accident Report No. NTSB-RAR-80-11

Rear-End Collision of SEPTA-Conrail Trains Nos. 406 and 472 on Conrail Track, North Wales, Pennsylvania, July 17, 1980.—The Safety Board's report, released January 29, indicates that train No. 472 struck the rear of train No. 406 while it was standing on the No. 2 track east of the station at North Wales. The rear car of train No. 406 overrode and destroyed the empty lead car of train No. 472. Of the estimated 321 persons on the two trains, 64 passengers and three crewmembers received injuries. Damage to the equipment was estimated at $1,475,000.

The Safety Board determined that the probable cause of this accident was the failure of the engineer of train No. 472, who was operating the train from the second car, to observe the roadway ahead and to keep the brakeman in the lead car in his view so he could receive the brakeman's hand signals to properly control the train, and Conrail's failure to take malfunctioning equipment out of service when repairs could not be effected. Contributing to the cause of the accident were the placement of a brakeman who was not familiar with the physical characteristics of the roadway, inclement weather, Conrail's inadequate training program for traincrews, and the inability of the brakeman to distinguish whether train No. 406 was approaching on the opposite track or moving/standing on the track occupied by train No. 472 because of confusion created by the illuminated rear headlight on train No. 406.

As a result of its investigation of this accident, the Safety Board on January 5 forwarded the following "Class II, Priority Action" recommendations to the Consolidated Rail Corporation:

Develop and implement a program for training and periodically requalifying operating personnel and train dispatchers on the physical characteristics of the system over which they operate. (R-80-51)

Develop and implement a program for training and periodically requalifying operating personnel on the mechanical and electrical characteristics of commuter cars to include some elementary trouble-shooting and corrective measures. (R-80-52)

Provide for the inspection by competent maintenance personnel of equipment laying over at outlying terminals before it is released on a scheduled run. (R-80-53)

In a separate letter, also forwarded on January 5, the Board issued this Class II recommendation to the Federal Railroad Administration:

Amend 49 CFR 221.15(c)(3) to prohibit the use of the white rear headlight as a marking device on any train. (R-80-54)

Aviation Safety Recommendation Letter

Safety Board investigation of the March 27, 1980, accident near Denver, Colo., involving a Beech Kingair 200, N456L, has disclosed that the lack of

priority message handling on the leased service-A high-speed weather data circuit, which serves the Denver FSS, resulted in the omission of an urgent weather message, SIGMET GOLF 1, calling for severe icing in eastern Colorado, from the weather briefing.

In view of its investigation of this accident which resulted in 10 fatalities when the aircraft crashed in an open field, the Safety Board on January 28 recommended that the Federal Aviation Administration:

Develop and implement a priority message-handling procedure to assure the immediate delivery of urgent weather messages to all weather ciruits that originate from the Weather Message Switching Center in Kansas City, Mo. (Class II, Priority Action) (A–81–8)

Responses to Safety Recommendations

Aviation: A–80–111, from the Federal Aviation Administration, January 23, 1981.—Response is to a recommendation issued last November 7 following investigation of the December 27, 1979, incident involving separation of a Hamilton Standard propeller blade (P/N 6353A–18) from the right engine of a Douglas DC–3 aircraft, N100SD. The recommendation asked FAA to make compliance with Hamilton Standard Service Bulletins No. 329 and 329A mandatory. (See 45 FR 76814, November 20, 1980.)

Based on a review of a technical evaluation by FAA's Great lakes Region, FAA will issue a notice of proposed rulemaking in January 1981 relative to the inspection described in Hamilton Standard Service Bulletin No. 329A and will decide during March 1981 whether to proceed with a final rule.

Highway: H–80–73, from the National Highway Traffic Safety Administration, January 5, 1981.—Response is to a recommendation issued October 21 following investigation of the collision which occurred last April 23 involving a B&J Trucking Company truck and a Coachella Valley Unified School District schoolbus near Coachella, Calif. The recommendation asked NHTSA to immediately urge the States to adopt a schoolbus seating policy that front and rear seats be left vacant when feasible and to revise NHTSA pupil transportation safety manuals to include this policy. (45 FR 80380, December 4, 1980.)

NHTSA reports that a letter has been sent to each State Director of Pupil Transportation, again calling to their attention the identified hazard and encouraging incorporation of the Board's recommendation in their State schoolbus driver manuals. Also, NHTSA is updating its Highway Safety Program Manuals and will insert the Board's findings and recommendations concerning this subject. NHTSA notes that very few school districts assign seats to pupil passengers and many have expressed doubts that the Board's recommendation could be easily enforce.

Railroad: R–79–32, from the National Railroad Passenger Corporation (Amtrak), December 18, 1980.—Letter is a followup to Amtrak's November 28 response (45 FR 81694, December 11, 1980) to a recommendation concerning operation on the Northeast Corridor of certain commuter cars by the State of New Jersey without correcting injury-producing features of car interiors. The recommendaton stemmed from the June 9, 1978, commuter and passenger train collision at Seabrook, Md.

Amtrak reports receiving word from the State of New Jersey that the Arrow III fleet, series 1304–1533, is now is use on the Northeast Corridor and North Jersey Coast Line and complies with the Board's recommendation. Amtrak also reports that the Arrow II fleet, series 534–603, now leased to Amtrak, will be removed from service by the end of 1981, rehabilitated in 1982, and assigned to New Jersey commuter service. Coat hooks will be removed; new 2 and 3 "walk-over" seats will be installed with no exposed metal on the seat backs plus padded hand holds, padded ticket holders and a seat-back position locking arrangement. The bag rack ends will be equipped with a molded rubber bumper to eliminate head injuries. Amtrak notes that the Arrow I fleet (32 cars) is now in storage and will be rehabilitated similarly to the Arrow II fleet prior to being returned to service in the fourth quarter of 1983. These cars were never operated in Amtrak service.

Note.—Single copies of Safety Board reports are available without charge, as long as limited supplies last. Copies of Board recommendation letters, responses and related correspondence are also provided free of charge. All requests for copies must be in writing, identified by recommendation or report number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of Safety Board reports may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

January 30, 1981.

[FR Doc. 81-4188 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-58-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–17487; File No. SR–CBOE–81–1]

Chicago Board Options Exchange, Inc.; Proposed Rule Change Relating to Certain Authorizations To Sell Memberships

Comments requested on or before February 26, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1981, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Proceeds from Sale of Membership

Rule 3.15. No change.

* * * Interpretations and Policies:

.01 Notwithstanding the language of paragraph (g) of the Rule and subject to the provisions in paragraphs (a) through (f) respecting disposition of proceeds of sale, the Exchange may recognize and give effect to a valid instrument by which a member, in consideration of a loan or quarantee of a loan by another member for the purpose of purchasing a membership, has authorized the lending or guaranteeing member to sell that membership.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change.*

This policy has been adopted to enable a CBOE member who has financed the purchase of an Exchange membership for another CBOE member to cause that membership to be sold.

Rule 3.15 establishes a priority in the disposition of proceeds of sale of a CBOE membership for claims by members who previously have loaned or guaranteed loans for the purchase of the membership. The stated policy will enhance the security afforded by this priority position by enabling the lender or guarantor to sell the membership if authorized to do so by a power of attorney granted in consideration of the loan or guarantee. Promulgation of this policy appears advisable to make clear that CBOE will recognize such a power of attorney notwithstanding the language of Rule 3.15(g) which states that the CBOE will not give recognition to any instrument which purports to transfer the interest of a member in his membership or in the proceeds of sale thereof.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.*

The proposed rule change will not have an impact on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.*

Comments were not and are not to be solicited by the CBOE.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argumments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1981.

For the Commisssion by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

January 27, 1981.

[FR Doc. 81-4203 Filed 2-4-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

International Metals and Petroleum Corp.; Order of Suspension of Trading

January 30, 1981.

It appearing to the Securities and Exchange Commission that there are questions concerning the adequacy and accuracy of International Metals and Petroleum Corporation's financial statements with respect to its assets, particularly the value of its oil leases the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of International Metals and Petroleum Corporation.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:30 a.m. on January 30, 1981 through midnight February 8, 1981.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-4202 Filed 2-4-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17488; File No. SR-NASD-80-29]

National Association of Securities Dealers, Inc.; 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 31, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers Inc. ("Association" or "NASD") has filed with the Securities and Exchange Commission ("Commission") a proposed rule change which would significantly revise Schedule E under Article IV, Section 2 of the Association's By-Laws ("Schedule E"). Schedule E relates to Association members' distribution to the public of securities issued by such members or their affiliates. The proposed rule change would remove many of the provisions of Schedule E which presently restrict, *inter alia*, the size and frequency of public offerings of members' securities, the information disclosed in connection with such offerings, and the ability of "insiders" to dispose of personal holdings of members' securities. The proposed rule change would also significantly reduce the number of offerings by affiliates of members which are subject to Schedule E. Certain restrictions believed necessary to reduce conflicts of interest inherent in a member's distribution of its own securities or those of an affiliate would be retained.

The text of the proposed rule change appears below.

NASD's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

NASD's Stated Purpose of the Proposed Rule Change

The purpose of the proposed rule change is to make substantial revisions to Schedule E limiting the application of the Schedule and eliminating those requirements which no longer serve any useful regulatory purpose or which create impediments to capital raising by broker/dealers. The Association believes that certain minimum requirements must be satisfied for the protection of public investors and the public interest in any public distribution of securities issued by a member or affiliate of a member in which the member will participate. However, certain provisions of Schedule E which were intended to address regulatory concerns attendant to the self-underwriting of securities by a broker/dealer in the early 1970's are, in the opinion of the Association, no longer relevant to conditions existing in the current securities markets. The proposed rule change reflects the consensus of these viewpoints.

The revisions contained in the proposed rule change and the rationale

underlying the Association's position regarding each revision have been filed with the Commission.

Three important changes should be noted specifically in subsection 3(c)(1). First, proposed subsection 3(c)(1) imposes an additional requirement on members which have not been in business for at least five years. While the proposal in subsection 3(b) would no longer require a firm to have been in the securities business for five years to participate in the distribution of its securities, the Association concluded that certain safeguards should be retained where a newer firm is issuing securities for which there is no bona fide independent market and no minimum rating. Accordingly, proposed subsection 3(c)(1) would permit a member which (itself or through a predecessor broker/dealer) has not been engaged in the securities business for five years to participate in an offering under that subsection only if the offering is managed by a qualified independent underwriter.

Secondly, the option of utilizing two independent underwriters contained in proposed subsection 3(c)(1) no longer requires the participation of independent counsel to such underwriters. The Association's experience in administering the present requirement in Schedule E for such counsel indicates that the additional regulatory benefit derived from the participation of such counsel is marginal in view of the fact that, in most instances, the services of such persons are utilized only after offering documents have been prepared by others. It has also been suggested that the requirement for participation by such independent counsel results in additional legal expenses, thereby constituting a further impediment to capital raising. The Association has concluded, therefore, that it would be in the public interest to delete this requirement.

Finally, it should be noted that the proposed ratings ("Ba" by Moody's or "BB" by Standard and Poor's) are lower than the present requirements ("Baa" and "BBB" respectively), thereby reducing the number of offerings which will be subject to Schedule E. The Association has concluded that the pricing mechanism of the marketplace can now be expected to properly evaluate offerings of this type. The minimum ratings which would be required to take advantage of subsection 3(c)(3) are nonetheless higher than that for an exemption from the Association's general filing requirements for public offerings, a minimum rating of "B".[1]

The most important revision to note is the proposed change to current section 10 which would provide the Corporate Financing Committee with authority to grant exemptions from Schedule E. Presently, only the Board of Governors is empowered to grant such exemptions. Board approval, however, must often be obtained under severe time constraints and cumbersome administrative procedures. The Association has therefore concluded that the interests of members, issuers, and the public could best be served by delegating authority to the Corporate Financing Committee to grant or deny requests for exemptions.

The NASD's Stated Basis Under the Act for the Proposed Rule Change

Section 15A(b)(2) of the 1934 Act [2] provides that an association of brokers and dealers such as the NASD shall not be registered as a national securities association unless the Commission determines that the association has the capacity to carry out the purposes of the Act and to enforce compliance with the Act and the rules and regulations thereunder by its members and persons associated with its members. Further, section 15A(b)(6) of the 1934 Act [3] requires that the rules of a national securities association be designed, in part, to prevent fraudulent and manipulative acts or practices, to promote just and equitable principles of trade, to remove impediments to and perfect a free and open market and, in general, to protect investors and the public interest.

As originally adopted, Schedule E was designed to further the aforementioned purposes of the Act by imposing certain requirements on the participation by members in a public distribution of securities issued by such members or affiliates of such members as a result of potential problems perceived by the Association which could adversely impact on the public interest. In particular, the public distribution of member securities was a relatively new phenomenon. After carefully analyzing the phenomenon, the Association perceived potential problems inherent in the self-underwriting process which could impact adversely on the performance of securities markets. In addition, potential dangers arising from the means used to distribute securities, the methods employed to price securities, and the potential harm to public investors generally from abuse of the self-underwriting process as a result of inherent conflicts of interest therein necessitated regulatory action by the Association consistent with its statutory responsibilities cited above.

After several years of experience regulating the public distribution of member securities and the self-underwriting process, the Association, mindful of its responsiblities under the 1934 Act, undertook a complete review of Schedule E and the experience of its members in seeking capital from the public in compliance with its requirements. The conclusion reached by the Association was that many of the potential problems perceived when Schedule E was adopted had not materialized and that the regulatory policies reflected in Schedule E to deal with these problems were no longer relevant. In reaching its conclusion, the Association noted the growing need to assure a stable capital base for member firms and to facilitate access by member firms to the capital markets to further enhance the industry capital base. However, consistent with its responsibilities for the protection of the public investor, the Association further concluded that certain minimum requirements imposed on the self-underwriting process continue to be necessary to prevent abuses which may result from the inherent conflicts of interest involved in the process.

The proposed rule change, therefore, reflects a more balanced approach by the Association to achieve the goals expressed in the Act. Specifically, to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to generally protect public investors and the public interest, the Association believes the minimum regulatory requirements reflected in the proposed rule change are necessary if the Association is to maintain the capability to carry out the purposes of the Act and enforce compliance by its members in like manner. At the same time, the Association strongly believes the proposed rule change is necessary and consistent with the objectives embodied in the Act regarding the removal of impediments to a free and open market and the enhancement of access by member firms to the capital markets, the foreseeable consequences of which are an enhanced capital base for members and increased financial stability. The Association also views the proposed rule change as consistent with intitiatives taken by the Commission

[1] *See* Interpretation of the Board of Governors—Review of Corporate Financing, Filing Requirements, NASD Manual (CCH) ¶2151.02 at p. 2025.

[2] 15 U.S.C. 78o-3(b)(2).

[3] 15 U.S.C. 78o-3(b)(6).

under the 1933 and 1934 Acts to facilitate small business financing.

By creating a balance between minimum requirements for essential public investor protection and maximum access to capital markets, the Association firmly believes the proposed rule change to Schedule E achieves the objectives reflected in its statutory obligations under Section 15A (b)(2) and (b)(6) of the Act in an equitable manner.

Comments Received From Members, Participants or Others on Proposed Rule Change

Antecedents of the proposed rule change were published for comment by members and other interested persons on two separate occasions. A total of 13 comments were received by the Association.

All comments received by the Association were directed to the rule proposal published in Notice to Members 80–3 (January 18, 1980). No comments were received on the revised rule proposal published in Notice to Members 80–39 (August 11, 1980).

Copies of all comments in response to Notice to Members 80–3 are available from the Association.

The NASD's Statement on Burden on Competition

The Association recognizes that Schedule E as currently in effect and the proposed rule change thereto impose a burden on competition to the extent that members underwriting an issue of their own securities or securities of an affiliate must comply with requirements which other issuers of securities may not be required to meet. Consequently, member firms subject to Schedule E may be considered to be in a position of competitive disadvantage relative to other issuers seeking capital from the public.

The Association also recognizes that to properly discharge its statutory responsibilities under the 1934 Act, certain minimum requirements are necessary to assure that the self-underwriting process which Schedule E regulates does not disturb the integrity of the capital markets and adversely affect public investors and the public interest. When the Association adopted Schedule E, the statutory responsibilities discussed above where preeminent considerations. As a result, the Association endeavored to anticipate a wide variety of potential problems which were addressed in Schedule E.

The Association now believes, after several years of experience adminstering Schedule E, that many of the potential problems perceived earlier are no longer relevant to current practices of members or the regulatory environment within which the self-underwriting process is carried out. In fact, many of the current provisions of Schedule E impose a burden on member firms not justified by the need to protect public investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

In response to current perceptions of the Association's statutory responsibilities in connection with self-underwriting, the proposed rule change alleviates an existing burden on competition not necessary to achieve the purposes of the Act while retaining those regulatory requirements considered essential to the achievement of those statutory purposes. The proposed rule change reflects a "fine tuning," albeit extensive, of Schedule E to minimize the burdens imposed on members and to maintain an effective regulatory framework for investor protection thereby establishing a better balance between regulatory necessity and unrestricted competition.

The Association believes that the proposed rule change imposes no greater burden on competition than is necessary to achieve the purposes of the 1934 Act as discussed above.

By March 12, 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 rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by February 26, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

January 26, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-4204 Filed 2-4-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 81-011]

Safety Measures for Diving Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice.

PURPOSE: The purpose of his Notice is—

1. To inform the public that the Inter-Governmental Maritime Consultative Organization (IMCO) is developing a Code on Safety Measures for Diving Systems; and

2. To solicit comments concerning the proposed Code.

DATES: The closing date for submitting comments is March 5, 1981.

ADDRESSES: The address for submitting comments is Commandant (G–MMT–2/12), U.S. Coast Guard, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: For any questions regarding this Notice and the scope of the information desired, contact Mr. Howard Hime, c/o Commandant (G–MMT–2/12), U.S. Coast Guard, Washington D.C. 20593, (202) 426–2160.

Discussion

The XXIII Session of IMCO's Sub-Committee on Ship Design and Equipment was held in London, England, on January 12–16, 1981. At this session an Ad Hoc group was convened to discuss a proposed Code on Safety Measures for Diving Systems. Representatives from Norway, the United Kingdom, Japan, the Federal Republic of Germany, Sweden, the United States, the Oil Industry Exploration and Production Forum, International Association of Classification Societies, International Chamber of Shipping, and the International Labour Organization participated in the discussions.

The scope of the proposed Code is limited to mixed-gas diving systems using transfer under pressure techniques operating from ships or floating structures. The objectives of the proposed Code are to facilitate international movement and operation of diving systems and to enhance diving

safety. The U.S. delegation believes that the Code, in its present form, does not meet either of these objectives and so noted this belief in the Sub-Committee's report to IMCO's Maritime Safety Committee.

In its present form the Code requires diving systems to be certified by the Administration with which the ship or floating structure carrying the diving systems is registered. This means that portable diving components which move from ship to ship may have to be certified by different Administrations each time they move. The U.S. delegation believes that this certification requirement will hinder the international movement of diving systems and cause an undue delay in diving operations without significantly aiding safety.

Request for Information

The U.S. intends to submit a paper to the Maritime Safety Committee (MSC) expressing these concerns and making appropriate recommendations to modify the proposed Code. In order to assure that the recommendations reflect the needs of the diving industry, written comments on the proposed Code are request so they can be incorporated in the paper submitted to the MSC. Specifically, the Coast Guard is interested in obtaining information regarding—

- The need for an international Code;
- What requirements in the proposed Code will enhance diving safety;
- What additional requirements should be included in the proposed Code to enhance diving safety; and
- What requirements should be included in the proposed Code to aid international movement of portable diving systems.

Meetings

In addition to obtaining written comments, an open meeting will be held at 9:00 a.m. on February 19, 1981, in the Grand Room of the Hyatt Regency, 500 Poydras Plaza, New Orleans, Louisiana, 70140. The purpose of the meeting will be to discuss the proposed Code on Safety Measures for Diving Systems, including the above listed topics.

The next meeting of the MSC will be held in London, England, on March 30–April 3, 1981.

Text of Proposed Code

The proposed Code on Safety Measures for Diving Systems as revised at the XXIII Session of IMCO's Sub-Committee on Ship Design and Equipment is as follows:

Clyde T. Jusk, Jr.,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

January 29, 1981.

Code on Safety Measures for Diving Systems

1 This Code has been developed to provide an [acceptable minimum] international standard for the design, construction and survey of diving systems on ships and floating structures engaged in diving operations, in order to enhance safety of divers/personnel. The Code accepts that interchangeability of equipment or the addition or deletion of components is reasonable and common practice and that this Code should not inhibit this.

2 The intent of the Code is also to facilitate the international movement and operation of diving systems.

3 Throughout the development of the Code it was recognized that it must be based upon sound design and engineering principles and experience gained from operating such systems; furthermore, that design technology of diving systems is not only a complex technology but is rapidly developing and that the Code should be re-evaluated and revised as necessary. To this end the Organization will periodically review the Code, taking into account both experience and the latest technical developments.

4 Any existing diving system which complies with the provisions of the Code should be considered eligible for issuance of a certificate in accordance with this Code.

5 The Code is not intended to prohibit the use of an existing system simply because its design, construction and equipment does not conform to the requirements of this Code. Many existing diving systems have operated successfully and safely for extended periods of time and their operating history should be considered in evaluating their suitability.

6 The Code does not include requirements for diving operations or the procedures for control of diving operations.

Chapter I—General

1.1 *Purpose*

The purpose of this Code is to recommend design criteria, construction, equipment and survey standards [and other safety measures] for diving systems so as to minimize the risk to divers, personnel, ships and floating structures having such systems on board.

1.2 *Application*

The Code applies to new diving systems [and/or main components] which are certificated more than twelve months after the date on which the Assembly of the Organization adopts this Code. However any existing system [or main component] which complies with the provisions of the Code should be considered eligible for issuance of a certificate in accordance with this Code.

1.3 *Definitions*

For the purpose of this Code the terms used have the meanings defined in the following paragraphs unless expressly provided otherwise.

1.3.1 *Administration* means the government of the State whose flag a ship or floating structure is entitled to fly and which carries a diving system.

1.3.2 *Bottle* means a pressure vessel for the storage of gases under pressure.

1.3.3 *Breathing gas/breathing mixture* means all gases and mixture of gases which are used for breathing during diving operations.

1.3.4 *Certificate* means Diving System [and/or main components] Safety Certificate.

1.3.5 *Surface compression chamber* means a pressure vessel for human occupancy with means of controlling the differential pressure between inside and outside of the chamber.

1.3.6 *Depth* means the pressure, expressed in metres or feet of sea-water, the diver is exposed to at any time during a dive or inside a compression chamber or a diving bell.

1.3.7 *Diving bell* means a submersible compression chamber, including appendages, for transfer of diving personnel under pressure between the underwater work site and the surface compression chambers.

1.3.8 *Diving system* means the whole plant and equipment necessary for the conduct of diving operations using transfer under pressure techniques.

[1.3.9 *Fire safe area* means an area (or location) in which the risk of fire or explosion does not exist or is present to a minimal degree.]

1.3.10 *Handling system* means the plant and equipment necessary for the raising, lowering and transport of the diving bell in air and water.

1.3.11 *Life support system* means the gas supply, breathing gas system, decompression equipment, environmental control system and equipment required to provide a safe environment for the diving crew in the diving bell and the surface compression chamber under all ranges of pressure and conditions they may be exposed to during diving operations.

1.3.12 *Mating device* means the equipment necessary for the connexion and disconnexion of a diving well to a surface compression chamber.

1.3.13 *Maximum operating depth* of the diving system is the depth in metres/feet of sea water equivalent to the maximum operating pressure for which the diving system is designed.

1.3.14 *Living compartment* means the part of the surface compression chamber which is intended to be used as the main habitation for the divers during diving operations and which is equipped for such purpose.

1.3.15 *Organization* means the Inter-Governmental Maritime Consultative Organization (IMCO).

1.3.16 *Umbilical* means the link between the diving support unit and the diving bell or diver, or between a diver and diving bell and may contain surveillance, communication leads, power supply cables, breathing gas hoses and hot water for diver heating. The hoisting and lowering strength member may or may not be part of the umbilical.

1.3.17 *Working pressure* means the pressure to which a pressure containment device is exposed at any particular instant during normal operating conditions.

1.4 *Exemptions*

An Administration may exempt any system which embodies features of a novel kind from any of the provisions of the Code, so that the research and development into such novel features is not restricted by the Code. Any such system should, however, comply with safety requirements which, in the opinion of that Administration, are adequate for the operation intended and are such as to ensure the overall safety of the system. The Administration allowing any such exemptions should list the exemptions on the Certificate and communicate to the Organization the particulars, together with the reasons therefor, so that the Organization may circulate details to Member Governments for their information.

1.5 *Equivalents*

1.5.1 Where the Code requires that a particular fitting, material, appliance, apparatus, item or type of equipment should be fitted or carried in a system, or that any particular provision should be made, or any procedure or arrangement complied with, the Administration may allow alternative arrangements in that system, provided that the Administration is satisfied that such alternative are at least as effective as the requirements of the Code.

1.5.2 Where as Administration allows any alternative fittings, material, appliance, apparatus, item of equipment or provision, procedure, arrangement, novel design or application to be used, it should communicate to the Organization the details of the alternative arrangements, together with a report on the specifications and test data submitted, so that the Organization may circulate the information to Member Governments.

1.6 *Surveys and Certification*

1.6.1 Each diving system should be subject to the surveys specified below:

.1 An initial survey before [any fixed] system is put into service or before the Certificate required under this section of the Code is issued for the first time, which should include a complete survey of the diving system, equipment, fittings, arrangements and material fully complying with the applicable provisions of the Code.

.2 Periodical surveys at intervals specified by the Administration, but not exceeding five years, which should be such as to ensure that the system, equipment, fittings arrangements and material fully comply with the applicable provisions of the Code.

.3 Inspections at intervals specified by the Administration, but not exceeding twelve months which should be such as to ensure that the system, fittings, arrangement, safety equipment and other equipment fully comply with the applicable provisions of the Code and are in good working order. Such intermediate inspections should be endorsed on the Certificate issued under the provisions of this section.

.4 An inspection either general or partial according to the circumstances should be made every time a defect is discovered or an accident occurs which affects the safety and certification of the system or whenever any significant repair or alteration is made. The inspection should be such as to ensure that the repairs or alterations carried out have been done effectively and are in all respects in full compliance with the applicable provisions of the Code.

.5 In the case of temporary systems made up of portable components the individual components should conform to the requirements of the Code for design, construction and testing and suitable documentation available to the satisfaction of the Administration. Such systems should be subject to inspection for compliance with the requirements of the Code before operations commence.

1.6.2 Surveys should be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it. In every case the Administration concerned should fully guarantee the completeness and efficiency of the surveys.

1.6.3 After any inspection or survey under this section has been completed no significant change should be made in the system without the agreement of the Administration or any person or organization duly authorized by it, except the replacement of equipment and fittings for the purpose of repair or maintenance.

1.6.4 A Certificate may be issued, after survey in accordance with this section, either by the Administration or any person or organization duly authorized by it. In every case the Administration assumes full responsibility for the Certificate.

1.6.5 The Certificate should be drawn up on the official language of the Administration in the form corresponding to the model given in the Appendix to the Code. If the language used is neither English nor French, the text should include a translation into one of these languages.

1.6.6 Any exemptions granted under 1.4 should be clearly noted on the Certificate.

1.6.7 A Certificate should be issued for a period specified by the Administration, and should not exceed five years from the date of issue.

1.6.8 No extension of the five-year period of validity of the Certificate should be permitted.

1.6.9 A Certificate would cease to be valid if significant alterations have been made to the system without the agreement of the Administration or any person or Organization authorized by it, except the replacement of such equipment or fittings for the purpose of repair or maintenance, or if surveys and inspections as specified by the Administration under the provisions of 1.6.1 have not been carried out.

1.6.10 Each [main component] of the diving system should be stamped with an official number or other distinctive identification which should be given on the Certificate.

1.7 *Control*

1.7.1 Every diving system, issued with a Certificate under 1.6 is subject, whilst under the control of an Administration other than that of the flag State, to control by officers duly authorized by that Administration for verification that the Certificate is valid. Such Certificates should be accepted unless there are clear grounds for believing that the condition of the system or its equipment does not

correspond substantially with the particulars of that Certificate. In that case, the officer carrying out the control may take such steps as will allow the system to operate on a temporary basis without undue risk to the divers and the personnel on board. In the event of this control giving rise to intervention of any kind, the officer carrying out the control should inform the Administration or the Consul of the country in which the ship or floating structure [on which the system is installed] is registered in writing forthwith of all circumstances in which intervention was deemed to be necessary, and the facts should be reported to the Organization.

1.7.2 Notwithstanding 1.7.1, the provisions of 1.6 are without prejudice to any rights of the Coastal State under international law to impose its own requirements relating to the regulation, surveying and inspection of diving systems engaged, or intending to engage in diving operations on those parts of the seabed and sub-soil over which that State is entitled to exercise sovereign rights.

Chapter 2 Construction And System Requirements

2.1 *General*

2.1.1 As far as reasonable and practicable a diving system should be designed and constructed so that the failure of any single component should not lead to a dangerous situation.

2.1.2 Systems and components should be designed for the conditions under which they are certified to operate.

2.1.3 Materials for diving system components should be suitable for their intended use.

2.1.4 All components in a diving system should be designed, constructed and tested in accordance with international or national standards[1] recognized by the Administration or proprietary specifications acceptable to the Administration.

2.1.5 In the design of pressure vessels including accessories such as doors, hinges, closing mechanisms, penetrators, etc., the effects of rough handling and accidents should be considered in addition to design parameters such as pressure, temperature, vibration, operating and environmental conditions.

2.1.6 All components in a diving system should be designed and arranged to permit easy cleaning, disinfection, inspection and maintenance.

[1] Such as a recognized Classifications Society with rules for diving systems which are acceptable to the Administration.

2.1.7 A diving system should include the control equipment necessary for safe performance of diving operations.

2.2 *Surface Compression Chambers*

2.2.1 A diving system should, as a minimum, include either one compression chamber with two separate compartments, or two interconnected separate chambers designed to permit ingress or egress of personnel while one compartment or chamber remains pressurized. All doors should be designed so that locking mechanisms, if provided, can be operated from both sides.

2.2.2 Where a surface compression chamber is to be used in circumstances in which a person is intended to remain under pressure for a continuous period of more than 12 hours, it should be arranged to allow most divers to stand upright and to stretch out confortably on their bunks. The smaller of the two compartments should be large enough for at least two persons. One of these compartments should be a living compartment.

2.2.3 The living compartment and other compartments intended to be used for decompression, should have a lock through which provisions, medicine and equipment may be passed into the chamber while its occupants remain under pressure.

2.2.4 Locks should be designed to prevent opening under pressure and interlocks should be designed to prevent accidental opening.

2.2.5 Each pressure compartment should have viewports that allow observation of all occupants from the outside.

2.2.6 A surface compression chamber should provide a suitable environment and facilities for the persons who use it, having regard to the type and duration of operation. Where the chamber is intended to be occupied for more than 12 hours, toilet facilities should be provided.

2.2.7 The diving system should be capable of allowing a safe transfer of a person under pressure between the diving bell and the surface compression chamber (and vice versa).

2.3 *Diving Bell*

2.3.1 A diving bell should:

1. be provided with proper protection against mechanical damage;

2. be equipped with one extra lifting point designed to take the entire weight of the bell including ballast and equipment;

3. be equipped with means whereby each diver using the bell is able to enter and leave it in a safe way.

[2.3.2 Diving bell doors should be designed to prevent opening under pressure and should be operable from both sides.]

2.3.3 [A diving bell should provide a suitable environment and facilities for the persons who use it, having regard to the type and duration of operation].

2.3.4 [Each diving bell should have viewparts that as far as practicable allow an occupant to observe a diver when working outside the bell.]

2.3.5 Diving bells should be designed to provide adequate space for the number of occupants envisaged, together with their equipment.

2.4 *Other Pressure Vessels Not Intended for Human Occupancy*

2.4.1 Special attention should be paid to the design and choice of material for pressure vessels containing oxygen.

2.4.2 Oxygen and gases with an oxygen volume percentage higher than 25 per cent should be stored in bottles exclusively intended for such gases.

2.5 *Pipes, Valves, Fittings and Hoses*

2.5.1 Pipe systems should be so designed as to minimize the noise inside the compression chamber during normal operation.

2.5.2 A surface chamber should be equipped with such valves, gauges and other fittings as are necessary to control and indicate the internal pressure and safe environment of each compartment from outside the chamber at a centralized position.

2.5.3 A diving bell should be equipped with such valves, gauges and other fittings outside the bell as necessary to control and indicate the pressure and safe environment within the diving bell. The external pressure on the diving bell should also be indicated inside the bell.

2.5.4 All pipe penetrations on chambers should be fitted with two devices as close to the penetration as practicable. [One device is to be a shut-off valve and the other device is to be a check valve or non-return valve, as appropriate.]

2.5.5 All surface compression chambers and diving bells which may be pressurized separately should be fitted with overpressure alarms or pressure relief valve. All other pressure vessels and bottles should be fitted with a pressure relief device.

2.5.6 Piping systems which may be subjected to a higher pressur than designed for should be fitted with a pressure relief device.

2.5.7 All materials used in oxygen systems should be compatible with oxygen at the working pressure and flow rate.

2.5.8 The use of high-pressure oxygen piping should be minimized by the fitting of pressure reducing devices, as close as practicable to the storage bottles.

2.5.9 Flexible hoses, except for umbilicals, should be reduced to a minimum.

2.5.10 [Hoses for oxygen should, as far as practicable, be of non-combustible materials.]

2.5.11 Piping systems carrying mixed gas or oxygen under high pressure should not be arranged inside accommodation spaces, engine rooms or similar compartments.

2.5.12 Gases vented from the diving system should be vented to the open air away from the sources of ignition.

2.5.13 All high-pressure piping should be well protected against mechanical damage.

2.5.14 Piping systems containing gases with more than 25 per cent oxygen should be treated as systems containing pure oxygen.

2.5.15 Oxygen systems with pressure greater than 25 psig. must have slow opening shut-off valves except pressure boundary shut-off valves.

2.6 *Breathing Gas Supply, Storage and Temperature Control Supply*

2.6.1 Each surface compression chamber and diving bell should be fitted with adequate equipment for supplying and maintaining the appropriate breathing mixtures to its occupants at all depths down to maximum operating depth. Where adding pure oxygen to the chamber, a separate piping system should be provided.

2.6.2 In addition to the system mentioned in 2.6.1, each compression chamber and diving bell should contain a separately controlled built-in breathing system for oxygen, theraputic gas or bottom mix gas with at least one mask per occupant stored inside each separately pressurized compartment and means should be provided to prevent any dangerous accumulation of gases.

2.6.3 The diving bell should be designed with a self-contained breathing gas system capable of maintaining a satisfactory concentration of breathing gas for the occupants for a period of at least 24 hours at its maximum design operating depth.

Storage

2.6.4 The diving system and breathing gas storage facilities should be sited in a fire-safe area with due regard to escape arrangements.

2.6.5 Oxygen bottles should be installed in a well-ventilated location.

2.6.6 Oxygen bottles should not be stored near flammable substances.

2.6.7 The diving system and breathing gas storage facilities should not be sited in machinery spaces or other spaces of similar fire risk. Where, due to the necessity of diving operations, systems are sited in hazardous areas, the electrical equipment should comply with the requirements of such equipment in hazardous areas.

Temperature Control

2.6.8 A diving system should include adequate plant and equipment to maintain the divers in safe thermal balance during normal operations.

2.6.9 There should be means to maintain the divers within the diving bell in thermal balance in an emergency [for at least 24 hours]. Such requirements may be satisfied by the use of passive means carried in the bill.

2.7 *Handling System for Submerged Diving Bell*

2.7.1 A diving system should be equipped with a main handling system adequate for safe transportation of the diving bell between the work location and the surface compression chamber.

2.7.2 The handling system should be designed with adequate safety factors considering the environmental and operating conditions.

2.7.3 The handling system should enable smooth and easily controllable handling of the diving bell.

2.7.4 The lowering of diving bells under normal conditions should not be controlled by brakes, but by the drive system of the winches.

2.7.5 If the energy supply to the handling system fails, brakes should be engaged automatically.

2.7.6 In the event of single component failure of the main handling system, an alternative means shall be provided whereby the bell can be returned to the surface compression chamber.

2.7.7 Provision should be made for alternative emergency retrieval of the bell. If this involves buoyant ascent the bill should have sufficient stability to maintain a substantially upright position and means should be provided to prevent accidental release of the ballast weights.

2.7.8 Handling systems and mating devices should enable easy and firm connexion or disconnexion of a diving bell to a compression chamber, even under conditions where the supporting vessel/unit is rolling, pitching or listing to predetermined degrees.

2.7.9 Where a power actuating system is used for mating operations, an auxiliary power actuating system or an appropriate means should be provided to connect a diving bell to a compression chamber, in the event of failure of the normal power actuating system.

2.8 *Interface Between Diving System and the Ship or Floating Structure*

2.8.1 The diving system and breathing gas facilities should be arranged in spaces or locations which are adequately ventilated and provided with suitable electric lighting.

2.8.2 When any part of the diving system is sited on deck particular consideration should be given to providing reasonable protection from the sea, icing or any damage which may result from other activities on board the ship or floating structure.

2.8.3 Provision should be made to ensure that the diving system and auxiliary equipment is securely fastened to the vessel or floating structure and that adjacent equipment should be similarly secured.

2.9 *Fire Prevention—Fire-Fighting System*

2.9.1 All materials and equipment used in connexion with the diving system should be, as far as is reasonably practicable, of fire-retardant type in order to minimize the risk of fire and sources of ignition.

2.9.2 Where the diving system or its ancillary equipment are carried in the interior of ships or floating structures they should be separated from adjacent fire risk areas by Class A-60 divisions.[2]

2.9.3 Interior spaces containing diving equipment such as compression chambers, diving bells, gas storage, compressors, [electric motors, other electric equipment], etc., should be covered with an automatic fire detection and alarm system and a suitable fixed fire-extinguishing system.

2.9.4 Portable fire extinguishers of approved types and designs should be distributed throughout the space containing the diving system. One of the portable fire-extinguishers should be stowed near the entrance to that space.

2.9.5 When situated in enclosed spaces a manually actuated water spray system having an application rate of [10 litres/m²/min] should be provided to cool and protect pressure vessels in the event of external fire. When situated on open decks fire hoses may be considered as providing the necessary protection.

2.9.6 Each compartment in a surface compression chamber should have a means of extinguishing a fire in the

[2] Class A-60 divisions as defined in Chapter II-2 of the International Convention for the Safety of Life at Sea, 1974.

interior which will provide rapid and efficient distribution of the extinguishing agent to any part of the chamber.

2.10 *Electrical System*

2.10.1 All electrical equipment and installations, including power supply arrangements, should be designed for the environment in which they will operate to minimize the risk of fire, electrical shock to personnel, and galvanic action of the compression chamber or diving bell.

2.10.2 In the event of the failure of the main source of power supply to the diving system an independent emergency source of power should be available for the safe termination of the diving operation.

2.10.3 The alternative source of power should be located outside the machinery casings, to ensure its functioning in the event of fire or other casualty causing failure to the main electrical installation.

2.10.4 Each compression chamber and diving bell should have adequate means of lighting to allow an occupant to read gauges and operate the systems within each compartment.

2.11 *Control Systems*

2.11.1 The diving system should be arranged such that centralized control of the safe operation of the system can be maintained under all weather conditions.

2.11.2 As a minimum facilities should be provided at the central control position to monitor the values of the following parameters for each occupied compartment:

Pressure;
Temperature;
Humidity;
Oxygen partial pressure;
CO_2 partial pressure.

The values for pressure temperature and oxygen partial pressure should be indicated continuously.

2.11.3 Provision should be made within the bell for an independent means of monitoring O_2 and CO_2 levels.

[2.11.4 Each diving bell should be equipped with an adequate TV system for monitoring divers.]

2.12 *Communication and Relaxation System*

2.12.1 The communication system should be arranged for direct two-way communication between the control stand and:

—Diver in water;
—Diving bell;
—Each compartment of the chambers;
—Diving system handling positions;
—Dynamic positioning room;
—Bridge, ship's command centre or drilling floor.

2.12.2 Alternative means of communication with divers in the surface compression chamber and diving bell should be available in emergency.

2.12.3 Each compression chamber and diving bell should be connected to a speech unscrambler when used with mixed gas systems.

2.12.4 A self-contained through-water communication system should be provided for emergency communication with diving bells when operating under water.

2.12.5 A diving bell should have an emergency locating device [proposed emergency frequency 37.5 kHz] designed to assist personnel on the surface in establishing and maintaining contact with the submerged diving bell if the umbilical to the surface is severed.

Chapter 3 Evacuation and Transport of Injured Diver Under Pressure

3.1 *Evacuation*

3.1.1 An evacuation system should be provided with sufficient capacity to evacuate all divers under pressure, in the event of the ship having to be abandoned.

3.1.2 The evacuation system should either be self-contained and able to decompress all divers from the maximum operating depth to atmospheric pressure in a safe way, or so arranged that safe decompression from the maximum operating depth to atmospheric pressure is possible in co-operation with another diving system on another ship.

3.1.3 The evacuation system for divers should be capable of being launched and operated under the same weather conditions, heel, trim, etc., as for other survival craft on board.

3.2 *Transport of an Injured Diver*

3.2.1 The diving system should be so constructed and arranged [that it is possible] to evacuate an injured or sick diver under pressure from the compression chamber. For this purpose there should be sufficient space and equipment to handle the evacuation chamber and there should always be on board all necessary connecting flanges, etc., for the equipment relevant for this purpose in the area of operation.]

Dated:

[FR Doc. 81-4286 Filed 2-4-81, 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Macomb County, Mich.

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, in cooperation with the Michigan Department of Transportation (MDOT), is issuing this notice to advise the public that an Environmental Impact Statement will be prepared on a proposal to improve 10 miles of M-59 between Mound Road and I-94 (Macomb County).

FOR FURTHER INFORMATION CONTACT: Mr. John Kliethermes, District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901. Telephone (517) 377-1879, (FTS 374-1879) or Mr. Jack Morgan, Manager, Public Involvement Section, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909. Telephone 1-800-292-9576 (toll-free), or (517) 373-2166.

SUPPLEMENTARY INFORMATION: M-59 serves as a major State trunkline route in the southeast Michigan region and the Detroit urban complex.

Portions of the section under study can no longer accommodate current traffic volumes safely and efficiently. If left unimproved the entire section of M-59 under study will not be able to accommodate anticipated traffic volumes in the near future.

Alternatives under study include: (1) doing nothing, (2) alternate modes of travel, (3) low capital investment, (4) major reconstruction of the existing facility, or constructing, (5) limited-access urban freeway on the existing alignment or (6) a rural limited access freeway on a new location. All of the major action alternatives would correct deficiencies on M-59 with varying degrees of social, economic, and environmental impacts. Potential impacts include dislocation of homes and businesses, possible bypassing of communities, disruption of residents during construction, possible Section 4(f) involvement, secondary development because of improved access, loss of wildlife habitat, loss of prime and unique agricultural lands, degradation of surface water quality and its resulting effects on fish habitat and floodplain alteration. A Joint Development Plan Study is also being done by the consulting firm of Community Planning and Management, P.C., of Utica, Michigan and several subcontractors. These are: Spalding, DeDecker and Associates, Inc., Reid, Cool and Michalski, Inc., Prote, Krause, Allen,

Inc., Community Planning Consultants and Gilbert A. Zook.

Early coordination with a number of Federal, State, and local agencies as well as input received from a series of public information meetings have identified the more significant issues to be addressed in the EIS. Accordingly, a preliminary scoping document is being prepared by FHWA and MDOT identifying those issues and will be available on request to all interested agencies, organizations, and individuals. The Draft EIS is scheduled for completion by late 1980 and will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

Comments and suggestions on the scoping document, the proposed project, and the identified issues are invited from all interested parties and should be submitted to the FHWA or MDOT. Please furnish any comments to the above contact persons. Separate copies of the scoping document will be furnished to the following Federal agencies which have been involved in the early coordination activities or which may be designated a cooperating agency: U.S. Department of the Interior, Fish and Wildlife Service and Heritage Conservation and Recreation Service; Environmental Protection Agency; Department of the Army, Corps of Engineers, and the Department of Agriculture.

The Draft EIS is scheduled for completion by late 1980 and will be available for public and agency review and comment.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on January 26, 1981.

John C. Kliethermes,

District Engineer.

[FR Doc. 81-4265 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Marion County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Marion County.

FOR FURTHER INFORMATION CONTACT: Mr. A. M. Walker, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104, Telephone: (205) 832-7379. Mr. B. J. Kemp, Director, State of Alabama Highway Department, 11 South Union Street, Montgomery, Alabama 36130, Telephone: (205) 832-5440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an environmental impact statement (EIS) for Alabama Project APD-471(5). This is a proposal to build a four-lane highway from Marion County Highway 19 to Marion County Highway 45. Estimated project length is 18 miles.

The proposed project is a segment of Corridor "X" in the Appalachian Development Highway Program. Corridor "X," a freeway-type facility, when completed will extend from near Fulton, Mississippi, to Birmingham, Alabama. The modern multi-lane highway will improve access and induce economic growth to this Appalachian area.

Alternates under consideration include: (1) three alternate locations, one route north of Hamilton and two routes south of Hamilton; (2) a no action alternative; and (3) postponing the action alternative.

Two public involvement meetings have been held to solicit input on the proposed alignments. Copies of the draft EIS will be sent to appropriate Federal, State and local agencies, and to private organizations and individuals who have previously expressed interest in the proposal. A public hearing will also be held. Public notice will be given concerning the time and place of the hearing. The Draft EIS will be available for public review and comment at the hearing. A scoping meeting will be held in the project area in early 1981. Also, written comments have been solicited from Federal, State and local agencies, officials and individuals who may have an interest in the project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 23.003, Appalachian Development Highway System. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on January 27, 1981.

Bill H. Boydston,

Assistant Division Administrator, Montgomery, Alabama.

[FR Doc. 81-3890 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Hearing on Notification and Remedy of Defects; Denials

This notice sets forth the reasons for the denials of petitions for a hearing on the question of whether a manufacturer has reasonably met its obligation to remedy a safety-related defect or noncompliance.

On October 15, 1980, Marvin Cronick of Vulcan, Michigan, petitioned the agency to hold a public hearing pursuant to 49 CFR 557.3(c) to determine if Sheller-Globe Corp. had reasonably met its responsibility to correct a noncompliance with Motor Vehicle Safety Standard No. 222 *School Bus Seating and Crash Protection* on his Superior school bus, specifically to repair "seat pads". Sheller-Globe had notified him of the noncompliance but the repairs were never performed.

Information received from Sheller-Globe indicated that it had shipped the necessary parts to Mr. Cronick for the work to be done locally, and that the noncompliance was remedied on December 22-23, 1980. Based upon the fact that the problem was resolved without holding a hearing, the petition was denied on December 24, 1980.

Mary Blair of Casselberry, Florida, wrote NHTSA on November 4, 1980, complaining that Nissan had failed to correct a safety related defect in her 1978 Datsun 280Z passenger car, and petitioning for a hearing. Specifically, she had received a recall notice advising her that parts would be available in mid-February 1980 to correct a cold idle problem but that the repairs were never performed.

NHTSSA was informed by Nissan that its dealer had inadvertently reported repair of the Blair car, and that the defect had been remedied on December 11, 1980. Based upon the fact that the problem was resolved without holding a hearing, the petition was denied on December 24, 1980.

(Sec. 156, Pub. L. 93-492, 38 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 28, 1981.

Lynn Bradford,

Associate Administrator for Enforcement.

[FR Doc. 81-3888 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP81-1; Notice 1]

American Mopeds Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

American Mopeds Inc. of Norwalk, Ohio has petitioned to be exemped from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, Tire Selection and Rims for Vehicles Other Than Passenger Cars. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Paragraph S5.3 of Standard No. 120 requires, as of September 1, 1977, for certain information to be permanently attached to motorcycles, either on the certification label or on a separate tire information label. This information includes the size designation for rims appropriate for the vehicle's tires (S5.3.2). In the course of a compliance investigation (CIR 2371) NHTSA discovered this item lacking from a motor driven cycle (moped), manufactured by Califfo of Italy, and imported by American Mopeds.

In reply to MHTSA's inquiry American Mopeds surmised that there were no more than 2502 Califfo deluxe mopeds without the proper information. None of the vehicles were manufactured or imported before February 1979. American Mopeds believes that the noncompliance is inconsequential because the information on the moped carries the tire size (2.25x16), and it is "standard practice in the industry to refer to tires as a 16" wheel". The only rim available for a 2.25x16 tire is a 16 inch rim and only one tire rim combination is offered on the vehicle. Therefore, no consumer confusion will result in the event of replacement.

Interested persons are invited to submit written data, views, and arguments on the petition of American Mopeds Inc. described above. Comments should refer to the Docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 9, 1981.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 29, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-4137 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP80-15; Notice 1]

Kawasaki Motors Corp., U.S.A.; Receipt of Petition for Determination of Inconsequential Noncompliance With Vehicle Identification Number Regulation

Kawasaki Motors Corp., U.S.A. of Santa Ana, California has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliacne with 49 CFR 571.115, *Vehicle Identification Number*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Effective September 1, 1980, each motorcycle has been required by Standard No. 115 to be assigned a vehicle identification number (VIN) that includes a "check digit" used to verify the accuracy of the transcription of the VIN (S3, S4.1, S5). Kawasaki manufactured approximately 3,100 motorcycles in the transition period August 18–September 17, 1980, with an incorrectly calculated check digit. These were models KZ440A2 and KZ440D2. The company says that the location of the VIN stamping is difficult for access to perform corrective work, and therefore it is not possible to repair the noncompliance. Further, restamping is not an operation that can be successfully performed in a dealership. As of the date of the petition, 60 units had been retailed and 2,500 were in dealer's inventory. Only 500 are in Kawasaki's stock, and to uncrate them, correct, re-assemble and re-crate the vehicles would be "extremely disruptive" and "very costly".

In support of its petition, Kawasaki argues that the incorrect check digit poses no risk to traffic safety, nor does it reduce the potential effectiveness of any future recall campaign involving the vehicles, as the vehicles can be correctly identified by the VIN regardless of the check digit. In the event that State registration becomes a problem, the company says it will explain the problem and identify the vehicles affected. It will also provide the National Auto Theft Bureau with a listing of all affected VIN's, including the incorrect check digit.

Interested persons are invited to submit written data, views and arguments on the petition of Kawasaki Motors Corp., U.S.A., described above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Nelson Erickson and Taylor Vinson, respectively.

Comment closing date: March 9, 1981.

(Sec. 102, Pub. L. 93-492, 99 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 29, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 81-4138 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. EX81-1; Notice 1]

Vintage Reproductions, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

Vintage Reproductions Inc. of Opa Locka, Florida, has petitioned for a temporary exemption of its Gazelle model from certain Federal motor safety standards on grounds of substantial economic hardship.

This notice of receipt of a petition for temporary exemption is published in accordance with NHTSA regulations on this subject (49 CFR 555.7) and does not represent any agency decision or other exercise of judgment concerning the merits of petition.

Vintage Reproductions has manufactured less than 100 vehicles since April 1979. The Gazelle is an open passenger car intended to resemble a 1929 Mercedes SSK. The company had an unaudited net loss of almost $123,000 in its fiscal year ending April 30, 1980 and a cumulative net loss for the two previous fiscal years. To require it to comply with the four safety standards for which it seeks exemptions would, in its view, create substantial economic hardship. A summary of its request and explanations follow:

Standard No. 201—Petitioner is unable to provide the sun visor required by paragraph S3.4, presumably because its open vehicle lacks structure above the windshield frame. The Gazelle has "a padded roll along the entire perimeter of the compartment and dash board", and in a collision, a belted passenger "will not * * * be pitched forward in an area beyond the padded dash".

Standard No. 202—The Gazelle has no head restraints which, in petitioner's view, would not only require a cost increase of $400 per vehicle and destroy its sales appeal, but also create a hazard by possible impairment of rear visiblity. It believes it may offer equivalent protection in that "our vehicle and seat design require full leg extension and body angle in excess of 95 degrees thereby creating almost total body immersion within the padded and rolled seat".

Standard No. 206—The present door on the Gazelle is too thin to permit compliance with door locks and retention component requirements. The petitioner argues that there is a reduced likelihood of a passenger being ejected in a crash because the seats are placed to the rear of the doors.

Standard No.214—To require conformance with the side door strength standard would result in a cost increase of $300 per vehicle, but, in the petitioner's view, passengers are protected from side impacts because of the rearward location of the seat, and its placement parallel with the all steel main frame.

The exemption would be for a period of 3 years. In support if its petition Vintage Reproductions argued that a grant would be in the public interest by adding "to the American labor force and economy" the "cost of direct labor" rising from $50,000 in 1979 to $210,000 in 1980. A denial would result in a reduction of labor costs to $94,000 and in a projected net loss of $101,000 in its next fiscal year. As a vehicle of limited appeal, the petitioner believes that the Gazelle ought not to present a hazard to traffic safety since its use will be occasional and limited, rather than used extensively as a family car.

Interested persons are invited to submit comments on the petition for exemption of Vintage Reproductions. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5108, 400 Seventh Street, SW, Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register.**

Comment closing date: March. 9, 1981.

(Sec. 3, Pub. L. 92-548, 86 Sat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 29, 1981.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc 81-4139 Filed 2-4-81; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Consumer Affairs Program; U.S. Savings Bonds Division

February 2, 1981.

Introduction

United States Savings Bonds are the most widely held class of securities in the country. An estimated one in three American households now own Savings Bonds; in 1979 alone, approximately 15.2 million individuals bought a total of almost $7 billion in Series E and H Savings Bonds.

The Series E Bonds—known in earlier times as War or Defense Bonds—were first sold on May 1, 1941. The Series E was joined by the Series H Bond in 1952, and both were superseded by the Series EE and HH Bonds on January 1, 1980, although Series E Bonds continued to be sold on some payroll savings plans until June 30, 1980.

The U.S. Savings Bonds Division was established under authority of Treasury Order No. 62 on December 26, 1945. The Division currently has a staff of around 400 Treasury employees who work with approximately 550,000 unpaid Savings Bonds volunteers. The Treasury employees work out of 99 offices around the country as well as in Washington, D.C. The Division's budget is approximately the same as the cost of one F-15 fighter plane. The Table of Organization follows as well as a list of all field offices.

The twofold mission of the United States Savings Bonds Division is to encourage individual Americans to save a portion of their money for later use and to help the United States government finance the public debt in the most cost-effective and least inflationary method possible. The Savings Bonds Program is designed to supplement other forms of savings and is aimed particularly at new and small savers. The Program does not displace the role of private thrift institutions.

The Savings Bonds Division advises and counsels the Secretary of the Treasury on matters relating to the sale and promotion of Savings Bonds; mobilizes, trains and inspires volunteer groups and individuals to serve with the program; studies market and savings patterns which influence bond sales; develops marketing programs; disseminates information on Savings Bonds to participants, the media and public interest groups; and, in cooperation with the Advertising Council, conducts a nationwide advertising campaign.

A. Consumer Affairs Officer

The Public Affairs Officer for the Division is also the Consumer Affairs Officer, with direct access to the Deputy National Director and the National Director.

The name, address, and telephone number is: Carolyn M. Johnston, Consumer Affairs Officer, U.S. Savings Bonds Division, Treasury Department, Washington, D.C. 20226, Telephone Number: (202) 634-5377.

B. Consumer Participation

The Savings Bonds Division was founded on the concept of a close relationship between the Division and a large number of consumer/volunteers. Today, an estimated 550,000 volunteers donate time or talent to the program. The largest organized volunteer/consumer groups are:

(a) approximately 4,000 state and county Savings Bonds Chairmen and their assistants.

(b) bank leaders for all states, who talk with other bankers about the program.

(c) approximately 70 top-level industry leaders who, in turn, work with other volunteers.

(d) volunteers from a large number of national organizations including the American Legion, The General Federation of Women's Clubs, Optimists, the VFW, Civitan, Kiwanis, etc.

Members of all four groups have yearly scheduled meetings with Savings Bonds officials and top Treasury policy makers, as well as informal contacts with Division personnel throughout the year. This provides the Division with information, comments and opinions on their plans and policies.

In addition to group meetings, the appropriate Division officials maintain regular contacts with organized labor groups and with advertising and public relations leaders and meet with them whenever it is deemed advisable.

The Division's 99 field offices are in constant contact with the general public and Savings Bonds volunteers through meetings, telephone calls and letters.

The Division Consumer Affairs Officer receives a steady volume of mail and telephone calls from consumers regarding Savings Bonds. All mail is responded to or referred to the appropriate office. The Consumer Affairs Officer also makes regular visits to news media around the country and talks with business and consumer affairs editors on newspapers and TV stations.

C. Development of Informational Materials for Consumers

The following materials were designed and are currently in widespread use as consumer information items.

1. EE folders. Last printing: 13 million. Distributed to consumers through banks and Savings Bonds offices.

2. HH folders. Last printing: 8 million. Distributed to consumers through banks and Savings Bonds offices.

3. "Take Stock in America" folders. Yearly printing: 30 million. Distributed in payroll savings campaigns and through Savings Bonds offices.

4. "Take Stock in America" federal folders. Yearly printing: 7 million. Distributed in payroll savings campaigns at federal installations.

5. "Questions and Answers about U.S. Savings Bonds." One page recap of information. Last printing: 2 million. General distribution by Savings Bonds offices.

6. "Facts about Series EE Savings Bonds." Last printing: 2 million. One page recap of information. General distribution through Savings Bonds offices.

7. "Good Service Manual." Primarily for use in banks and other financial institutions. Distributed through Savings Bonds offices. Last printing: 75,000.

8. "Quick Reference Guide." Primarily for use in banks and Savings Bonds offices and selective news/consumer writers. The purpose is, of course, to provide better service for consumer/bond owners who wish to purchase or redeem bonds.

9. "Legal Aspects" booklet. Used by banks, legal offices, newswriters and others dealing with legal aspects of Savings Bonds purchase, ownership or redemption. Available through banks and Savings Bonds offices on an as-needed basis. Last printing: 50,000.

10. "Table of Redemption Values". Short and long forms for Series E/EE Bonds; one form for Series H/HH Bonds and one form for Savings Notes. Lists the current value of Savings Bonds and Notes. Prepared by the Bureau of the Public Debt, Treasury Department, and available from them at no charge. The long form for Series E/EE Bonds is also available, for a small fee, from the Consumer Information Center, Pueblo, Colorado 81009. A limited number are distributed by the Consumer Affairs Officer, Savings Bonds Division.

11. "Schedule of Interest Dates for U.S. Savings Bonds, Series E." Yearly printing: 15,000. A convenient reference for people cashing Series E Bonds. A limited number are available from the Consumer Affairs Officer, Savings Bonds Division, and from Savings Bonds offices. Limits are necessary because of the small staff of the Savings Bonds Divisions.

12. "Answers to Inquiries" One to four page question and answer format on commonly asked questions. Sent in response to written or telephone queries. The "Answers" are prepared in response to specific questions and there are six different sets in current use. Available from the Consumer Affairs Officer, Savings Bonds Division, and from local Savings Bonds offices.

13. "50 Questions and Answers on U.S. Savings Bonds." Detailed booklet prepared by the Savings Bonds Consumer Affairs Officer and sent to all Federal Information Centers to help answer telephone inquiries.

14. Informational press releases on topical subjects, such as taxes, changes in the bond program, etc. Widely disseminated to the news media. Available, upon request, from the Public Affairs Office, Savings Bonds Division.

D. Consumer Affairs Training for Agency Staff Members

Savings Bonds Promotional Representatives are made aware of the pervasive consumer aspects of Savings Bonds by the very nature of their work, including the fact that participation in the bond program is voluntary. All Bond Promotional Representatives, all Office and Branch Heads, and some clerical personnel (those dealing with the public) attend a two week in-house orientation course, with heavy emphasis on consumer aspects.

The training is generally held within the first year after a Bond Division employee has come to work. During the two-week period, the Consumer Affairs Officer, and other Division officials, stress the need for constant consumer awareness.

E. Procedures for Complaint Handling

Complaints regarding U.S. Savings Bonds come to Headquarters and field offices through letters, telephone calls and personal visits as well as by referrals of complaints received by consumer affairs editors of newspapers and magazines and letters to Congress.

The complaints are handled either through resolving the complaint directly, referring the complaint to the proper sources, working with the proper agency to resolve the complaint or explaining why the matter (for example, low interest rates) cannot be resolved at the present time.

For examples: a complaint may involve alleged coercion by employees to buy bonds, in which case the nearest Savings Bonds field office would personnally investigate the matter with the complainant and his/her employer. A complaint may involve lost bonds, and the person would be referred to the proper office in the Bureau of the Public Debt. A complaint may involve someone writing their Congressional office about not receiving payroll savings bonds on time, in which case a Savings Bonds representative would make inquiries. A

complaint may involve a misunderstanding of the Savings Bonds Program by a news reporter and the Division's public affairs officer would respond. The guiding principle is to resolve the complaint, if possible, through the fastest and most direct means, or to explain fully why it cannot be satisfied.

Jesse L. Adams,

Deputy National Director, U.S. Savings Bonds Division.

[FR Doc. 81-4180 Filed 2-4-81; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Transamerica Insurance Company of Michigan—Change of Name

Wolverine Insurance Company, a Michigan corporation, has formally changed its name to Transamerica Insurance Company of Michigan, effective January 1, 1981. The company was last listed as an acceptable surety on Federal bonds at 45 FR 44513, July 1, 1980.

A certificate of authority as an acceptable surety on Federal bonds, dated January 1, 1981, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Transamerica Insurance Company of Michigan, Battle Creek, Michigan. This new certificate replaces the certificate of authority issued to the company under its former name, Wolverine Insurance Company. The underwriting limitation of $6,256,000 established for the company as of July 1, 1980 remains unchanged.

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 Treasury Circular 570, 1980 Revision, at page 44513 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 29, 1981.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 81-4267 Filed 2-4-81; 8:45 am]

BILLING CODE 4810-35-M

Office of Revenue Sharing

Population Changes for Entitlement Period Twelve

AGENCY: Office of Revenue Sharing, Department of the Treasury.

ACTION: Data notice.

SUMMARY: This announces that the Office of Revenue Sharing has revised the population estimates of certain counties and States for the intial intrastate allocations for Entitlement Period Twelve.

FOR FURTHER INFORMATION CONTACT: Matthew Butler, Manager, Data and Demography Division, Office of Revenue Sharing, 2401 E. Street, NW., Washington, D.C. 20226, telephone (202) 634-5166.

SUPPLEMENTAL INFORMATION: According to § 51.20(b)(3) of the revenue sharing regulations (31 CFR 51.20(b)(3)) and the authority of the Secretary of the Treasury under Section 109(a)(7)(B) of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1228(a)(7)(B)), notice is given that the Secretary has used additional estimates which have necessitated upward revisions to the population of certain counties and States for purposes of the initial intrastate allocations for Entitlement Period Twelve (October 1, 1980 to September 30, 1981). Such revisions are contained in the accompanying table which shows original and revised 1978 population estimates.

Section 51.20(a) of the regulations (31 CFR 51.20(a)) provides that the data used in the determination of allocations and adjustments will be the latest and most complete data supplied by the Bureau of the Census or such sources of data as in the judgment of the Secretary will provide for equitable allocations. Section 51.20(b)(3) of the regulations (31 CFR 51.20(b)(3)) requires that where the Secretary determines that the data provided by the Bureau of Census or the Department of Commerce are not sufficiently current or comprehensive, or are otherwise inadequate to provide for equitable allocations, the Secretary may use other data, including estimates. The Secretary's determination shall be final.

These revisions are the direct consequence of data verifications initiated by the Navaho, Oglala Sioux, and Osage Indian tribes for prior entitlement periods. Documentary evidence presented by the tribes, and estimates developed by the Bureau of Indian Affairs, indicated higher populations for those tribes than the Census-based estimates had provided for those entitlement periods. The documentary evidence and estimates necessitated upward revisions in the 1970 Census counts and the 1973, 1975, 1976, and 1977 estimates of the population of those counties and States in the accompanying table, for purposes of equitably determining the intrastate allocations. The last revisions in the 1977 population estimates for Entitlement Period Eleven were published in the **Federal Register** on October 3, 1979 (44 FR 57001).

Since the 1978 Census-based estimates of population (as denoted by the column designated "Original") do not reflect the earlier documentation and Bureau of Indian Affairs estimates of population, it has been necessary to adjust comparably the 1978 population estimates of these same affected counties and States in the initial intrastate allocations for Entitlement Period Twelve.

The Office of Revenue Sharing intends to replace the 1978 population estimates for all eligible governments (including Indian tribes and Alaskan native villages) with the 1980 Census counts of population for the final allocations for Entitlement Period Twelve scheduled in June, 1981, if the Bureau of the Census can make the 1980 Census counts available prior to the final allocation of Entitlement Period Twelve.

1978 Population (Entitlement Period 12)

State and county	Original	Revised [1]
Arizona	2,372,936	2,396,921
Apache County	49,328	54,821
Coconino County	66,086	75,669
Navajo County	63,681	72,590
New Mexico	1,214,603	1,225,517
Bernalillo County	381,232	382,263
McKinley County	56,921	61,214
Rio Arriba County	28,127	28,447
Sandoval County	25,659	26,055
San Juan County	75,332	79,992
Socorro County	10,570	10,761
Valencia County	54,282	54,305
Utah	1,316,742	1,318,179
San Juan County	13,081	14,518
South Dakota	690,574	693,967
Bennett County	3,034	4,043
Jackson County [2]	3,041	3,435
Shannon County	8,536	10,526
Oklahoma	2,842,514	2,845,287
Osage County	34,284	37,057

[1] For general revenue sharing purposes.
[2] Reflects consolidation with Washabaugh County on January 1, 1979.

Dated: January 28, 1981.

José Pepe Lucero,

Director, Office of Revenue Sharing.

[FR Doc. 81-4178 Filed 2-4-81; 8:45 am]

BILLING CODE 4810-28-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 24
Thursday, February 5, 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
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2
Federal Deposit Insurance Corporation	3-6
Parole Commission	7

1

[M-305 Amdt. 4]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10:30 a.m., January 28,1981 (after open meeting).

PLACE: Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 7a. *Central Zone-Caracas/Maracaibo Venezuela Case.* (Memo 245, BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary (202) 673-5608.

[S-195-81 Filed 2-2-81; 4:31 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, February 13, 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, 254-6374.

[S-194-81 Filed 2-2-81; 4:05 pm]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection(e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 2, 1981, the Corporation's 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 the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a resolution proposing the establishment of a special task force and a program for awarding bonuses for outstanding performance by Corporation officers and employees at or above the grade GG-16 level.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: February 2, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-199-81 Filed 2-3-81; 1:13 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, February 2, 1981, the Corporation's 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 the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of The Mitsubishi Bank of California, Los Angeles, California, for consent to merge under its charter and title with First National Bank of San Diego County, Escondido, California, and for consent to establish the eleven offices of First National Bank of San Diego County as branches of the resultant bank.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,644-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Case No. 44,662-L—North Point State Bank, Arlington Heights, Illinois

Memorandum and Resolution re: The Peoples Bank, Willcox, Arizona

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

Dated: February 2, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-200-81 Filed 2-3-81; 1:14 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 9, 1981,to consider the following:

Disposition of minutes of previous meetings.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Kaye, Scholer, Fierman, Hayes & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.
Report of the Controller regarding the Corporation's securities portfolio inventory as of December 31, 1980.

The meeting will be held in the Board Room on the sixth floor of the FDIC Buidling located at 550 17th Street, N.W. Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 2, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-196-81 Filed 2-2-81; 4:39 pm]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 9, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Request for reconsideration of a previous denial of a request for extension of time, pursuant to section 215.6(b) of Regulation O of the Board of Governors of the Federal Reseve System, for compliance with the aggregate limitations on loans to a principal shareholder and his related interests:

Peoples Bank of Ford City, Pa., Ford City, Pennsylvania

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,640-L (Amended)—Franklin National Bank, New York, New York
Case No. 44,651-NR—United States National Bank, San Diego, California

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedins (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Request for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 2, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-197-81 Filed 2-2-81; 4:39 pm]

BILLING CODE 6714-01-M

7

[1P0401]

PAROLE COMMISSION.

TIME AND DATE: 1–2:30 p.m., Tuesday, February 3, 1981.

PLACE: Room 500, 320 First Street NW, Washington, D.C. 20537.

STATUS: Closed (business meeting).

CHANGES IN THE MEETING: On February 2, 1981, the Commission determined that the time for beginning the above meeting be advanced to 10:30 a.m. on Tuesday, February 3, 1981. The meeting will be held in the above location for the purposes specified in the original announcement. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Barbara Meierhoefer, Acting Director of Research, United States Parole Commission (202) 724–3095.

[S-198-81 Filed 2-3-81; 11:42 am]

BILLING CODE 4410-01-M

federal register

Thursday
February 5, 1981

Part II

Environmental Protection Agency

Hazardous Waste Management System; Standards Applicable to Owners and Operators of Treatment, Storage, and Disposal Facilities; and Permit Program

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 260 and 264

[SWH-FRL 1724-8]

Hazardous Waste Management System; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities and EPA Administered Permit Programs

AGENCY: Environmental Protection Agency.

ACTION: Reproposal of Proposed Rule and Proposed Amendments to Rule.

SUMMARY: EPA is required by the Resource Conservation and Recovery Act (RCRA) to issue standards applicable to owners and operators of hazardous waste management facilities. These standards are to be used in issuing permits for facilities used to store, treat, or dispose of hazardous waste. EPA has issued many of its permitting standards, but has not yet promulgated permitting standards for land disposal facilities. It has proposed such standards and has subsequently published a supplemental notice of proposed rulemaking. Based on its own analysis and review of public comments received on these previous rulemaking proposals, EPA has reached a conclusion about the type and form of land disposal facility permitting standards that are necessary but believes these standards need to be reproposed.

Therefore, EPA is today reproposing permitting standards applicable to owners and operators of hazardous waste land disposal facilities, and is proposing companion informational and procedural requirements for permit applications and other related rules.

DATES: Comments are due on or before [180 days after publication]. Four public hearings, one in Washington, D.C. and one in each of three other major cities, will be held during June 1981. A notice giving the date, time, place and other particulars will be published in the **Federal Register** 90 days prior to the first of these hearings.

Comments are also due on certain related draft Technical Resource Documents on or before [90 days after publication] in accordance with the announced availability of these documents in 45 FR 82964–82965, December 17, 1980.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone (202) 755–9173.

Comments on today's proposed rule should identify the regulatory docket as follows: "Section 3004 Permitting Standards for Land Disposal Facilities." Comments on the Technical Resource Documents should be submitted separately and should identify the document title.

The public docket for this rulemaking is available at Room 2711B, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 and is available for reviewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Robert B. Taylor, Acting Branch Chief, Land Disposal Branch, Office of Solid Waste [WH–564], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone (202) 755–9120.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq., sections 6905, 6912(a), 6924, and 6925; and, with respect to "well injection," under the authority of Sections 1421, 1422, 1423, and 1424 of the Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1977, 42 U.S.C. 300f et seq. sections 300h, 300h–1, 300h–2 and 300h–3.

II. Introduction

Under Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, EPA is required to issue regulations setting forth a complete "cradle-to-grave" system for the management of hazardous waste. These regulations must include (1) a regulation to identify hazardous wastes that are to be regulated, (2) standards applicable to generators and transporters of hazardous waste, (3) standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, (4) regulations governing the issuance of permits to owners and operators of hazardous waste treatment, storage and disposal facilities, and (5) guidelines governing the authorizing of States to implement and enforce a State hazardous waste management program in lieu of the Federal program. Because of the enormity and complexity of this task, EPA has elected to issue these regulations in phases (see 45 FR 33086 and 45 FR 33156, May 19, 1980). On February 26, 1980, EPA promulgated standards for generators and transporters of hazardous wastes in 40 CFR Parts 262 and 263. These standards were re-published with technical amendments on May 19, 1980 (see 45 FR 33140-33152). On May 19, 1980, EPA promulgated several regulations: a general regulation relating to the several regulations herein discussed (40 CFR Part 260), a regulation identifying hazardous waste (40 CFR Part 261); regulations governing the issuance of permits and the authorization of States to implement a hazardous waste program (40 CFR Parts 122 through 124); interim status standards applicable to owners and operators of "existing" hazardous waste treatment, storage and disposal facilities (40 CFR Part 265); and administrative, non-technical standards that are to be used in issuing permits to owners and operators of treatment, storage and disposal facilities (40 CFR Part 264)—see 45 FR 33066–33588. Together with the February 26, 1980 regulations, these regulations constituted "Phase I" of EPA's phased development of RCRA Subtitle C regulations. Several proposed amendments were also published on May 19, 1980 and a number of final, interim final and proposed amendments to the above cited regulations have been promulgated or published since May 19, 1980.

The Phase I regulations promulgated on February 26 and May 19, 1980 became effective on November 19, 1980 and put into operation major elements of the hazardous waste management system authorized and mandated by Subtitle C of RCRA. Among other things, on and since November 19, 1980, generators have been required to identify the hazardous wastes that they produce and to comply with specified requirements, particularly with respect to hazardous wastes that they ship off-site for treatment, storage or disposal; transporters have been required to meet specified requirements pertaining to the off-site shipment of hazardous wastes; and owners and operators of "existing" hazardous waste treatment, storage and disposal facilities have been required to comply with the interim status standards of Part 265. In addition, the process of authorizing States to implement Phase I hazardous waste programs—programs covering those activities governed by the February 26 and May 19 regulations—has been initiated and has already resulted in several interim authorizations and substantial progress toward many more.

The principal standards missing in the May 19, 1980 regulations were the technical standards in Part 264 to be used in issuing permits to hazardous waste management facilities and the companion requirements in Part 122 pertaining to Part B permit applications. In the preamble to the Part 264 and 265 standards promulgated on May 19, 1980 (see 45 FR 33156), the Agency indicated that these "Phase II" standards would be promulgated by the end of 1980. Toward this commitment, EPA promulgated a portion of these Phase II standards on January 12, 1981 (see 46 FR 2802–2892). That promulgation included additional general facility standards (principally location standards) in Subpart B of Part 264; closure and post-closure standards in Subpart G; financial responsibility standards in Subpart H; permitting standards for storing hazardous wastes in containers in Subpart I; and permitting standards for storing or treating hazardous wastes in tanks, surface impoundments, and waste piles in Subparts J, K and L. In addition, conforming changes to Part 122, principally the related information requirements for Part B permit applications, were promulgated at that publication. EPA has also promulgated permitting standards for incinerators in Subpart O of Part 264 and related Part B permit application requirements in Part 122 (it also has proposed additional rules for incinerators).

The effect of issuing these two sets of permitting standards is to supply major elements missing from the May 19, 1980 regulations and to enable EPA to begin processing permits for facilities or portions of facilities that store hazardous wastes in containers; treat or store hazardous wastes in tanks, surface impoundments or piles or treat hazardous wastes in incinerators. This leaves standards for land disposal facilities—surface impoundments and waste piles which dispose of hazardous wastes in lieu of or in addition to storing or treating of such wastes (Subparts K and L), land treatment facilities (Subpart M), landfills (Subpart N), underground injection facilities (Subpart R), and underground seepage facilities (Subpart S)—together with ground water monitoring standards for land disposal facilities (Subpart F) and related land disposal standards in Subparts B and T as the principal parts of Part 264 that remain to be promulgated.[1] As explained herein, EPA is not ready to promulgate these standards and instead, believes it is necessary to re-propose these standards before promulgating them. This action provides this reproposal.

The development of permitting standards for land disposal facilities has been a difficult task for the Agency. On December 18, 1978, it proposed land disposal standards together with other standards (see 43 FR 58946) and invited public comments. Since that time and through September 1980, the Agency assessed the comments received and, more importantly, fully re-examined the basis and purpose of such standards. this effort resulted in the publication of Supplemental Notice of Proposed Rulemaking on October 8, 1980 (see 45 FR 66816—66823). In that notice, EPA explained that it has examined four alternative types of land disposal standards and was inclined to develop standards that combined various elements of all four alternatives but which primarily would be based on non-numerical health and environmental standards—standards which the Agency often has called "BEJ" (best engineering judgment) standards. The Agency invited and received public comments on the October 8, 1980 notice.

This action reflects a consideration of the comments received on the October 8, 1980 notice together with a consideration of the comments received on the proposed rules of December 18, 1978. Based on these and other considerations, EPA concluded that the public interest would be better served and more workable standards would be developed if it took the extra time to re-propose its permitting standards for land disposal facilities. The proposed standards that the Agency is publishing today are substantially different than those proposed in December 1978. Additionally, these proposed standards were not delineated in full detail in the October notice; rather only a broad outline of these standards was presented in that notice. Thus, the public has not had the opportunity to comment on the specifics of today's proposed standards and EPA has not had the benefit of such comments. For these reasons, the Agency believes a re-proposal is justified and imperative.

In re-proposing these standards, EPA full recognizes that permanent regulation of hazardous waste land disposal facilities, using RCRA Subtitle C permits, will necessarily be delayed for perhaps a year. Although it takes this action with great reluctance, the Agency firmly believes that the very difficult policy and technical issues encompassed in developing workable and adequately protective land disposal standards require a very careful and deliberate development of these standards. As will be discussed herein, these standards govern the ultimate disposition of hazardous wastes and, therefore, these standards will have long-term consequences (e.g., whether these wastes will present human health and environmental hazards many years after their disposal such as occurred at Love Canal and other land disposal sites). To err in the standards that are promulgated for hazardous waste land disposal facilities could have serious, long-term consequences. Thus, the Agency deems it necessary to take additional time to develop appropriate land disposal standards.

Pending the effective date of final or interim final land disposal standards, (about 18 months from now), EPA will be precluded from issuing RCRA Subtitle C permits for land disposal facilities or portions of facilities engaged in land disposal (as noted above, with the promulgation of standards on and since January 12, 1981, EPA will be able to proceed with the issuance of permits for storage, incineration and other treatment facilities or portions thereof). Moreover, because EPA's Part 122 regulations prohibit construction and operation of new hazardous waste land disposal facilities without a permit, this would prevent new hazardous waste land disposal facilities from being built for at least 18 months.[2] To deal with this problem, EPA will soon promulgate temporary permitting standards for new land disposal facilities which essentially will allow permitting of such facilities to proceed until permanent standards can be promulgated and can take effect.

With respect to existing land disposal facilities, EPA will have to await final or interim final rules to proceed with permitting. However, the interim status standards of Part 265 will apply to these facilities and, in many cases, more stringent State standards, including standards for issuing State permits, will apply. Additionally, where any existing facility is causing an imminent and substantial hazard, the Agency will be able to take appropriate enforcement or clean-up action under other authorities including Section 7003 of RCRA and the recently enacted "Superfund" statute.

III. The Problem Being Addressed

Land disposal of hazardous waste constitutes placement of hazardous

[1] Also, permitting standards for chemical, physical and biological treatment and for thermal treatment (other than incineration) need to be promulgated, but issuance of permits to these facilities can be based on the standards of Subparts J, K and L of Part 264 until these standards are promulgated.

[2] A recent amendment to Part 122 relaxed the prohibition of the construction, without a permit, of new hazardous waste management facilities other than land disposal facilities—see 46 FR 2344, January 9, 1981.

constituents in or on the land where they are intended to remain forever.[3] As such, hazardous waste land disposal constitutes deliberate and direct placement of hazardous waste in the environment (e.g., in a landfill, a surface impoundment or a land treatment facility), albeit in a confined segment of the environment. This presents two problems: (1) The waste and its hazardous constituents may remain hazardous for a long period of time (up to hundreds of years) and, in some cases, forever (e.g., toxic heavy metal constituents) and (2) the waste or its constituents and byproducts may migrate from the confines of the land disposal facility into the broader environment.

Many hazardous wastes placed in land disposal facilities will not degrade to a point where they are no longer hazardous, or will do so only very slowly. Toxic heavy metals, for example, will not degrade; although, in certain cases, their ionic state may be altered to make them more or less toxic (e.g., converting the hexavalent form of chromium to the trivalent). Toxic organic constituents may degrade in the anaerobic condition of a landfill, but this degradation is usually slow (taking anywhere from a few years to 100 years or more) and may not be complete, leaving toxic degradation products. Moreover, current scientific knowledge about the degradation of hazardous wastes placed in land disposal facilities is imperfect. For these two reasons, it is necessary to assume, at this time at least, that hazardous wastes and hazardous constituents placed in a land disposal facility will remain hazardous for very long periods of time and therefore will remain a potential hazard to human health and the environment for very long periods of time.

There is good theoretical and empirical evidence that the hazardous constituents which are placed in land disposal facilities very likely will migrate from the facility into the broader environment. This may occur several years, even many decades, after placement of the waste in the facility, but data and scientific prediction indicate that, in most cases, even with the application of best available land disposal technology, it will occur eventually.

Natural water, from precipitation or from other sources (e.g., groundwater) will inevitably infiltrate into the facility unless a water-tight containment system (e.g., landfill cover) is constructed and *perpetually* maintained to prevent such intrusion. In addition, there inevitably will be liquids within the wastes placed in the facility (this is particularly true for surface impoundments but also will be true for landfill even with the prohibition of disposal of bulk and containerized liquid wastes). Once in the facility, such water or liquid generates leachate, principally by solubilizing hazardous constituents in the waste. Such leachate inevitably leaks out of the facility and migrates into the underlying soils and groundwater, unless a containment system (e.g., a landfill or surface impoundment liner and/or leachate collection system) is constructed and *perpetually* maintained. This process of natural water infiltration or liquid inclusion, leachate generation and leachate migration into the environment results in the discharge of hazardous constituents into the broader environment.

Although it is technically possible to design and construct a land disposal containment system consisting of an impermeable liner and cover and a leachate collection system to interrupt this process; EPA seriously questioned whether such systems can be maintained and made to operate effectively and efficiently for long periods of time, or perpetually where this is required. Natural materials such as very low permeability clay soils that might be used for liners or covers are not impermeable. They possess some degree of premeability that allows infiltrating water or exfiltrating leachate to slowly but inevitably migrate through the material. Manmade impermeable materials that might be used for liners or covers (e.g., membrane liners or other materials) are subject to eventual deterioration, and although this might not occur for 10, 20 or more years, it eventually occurs and, when it does, leachate will migrate out of the facility. Additionally, these manmade impervious materials are subject to physical rupture during both placement and operation. When ruptured, they obviously allow leakage of leachate. Finally, leachate collection systems have some collection efficiency less than 100 percent even when newly constructed and, over time, may lose efficiency by plugging and deterioration. More important, however, to be effective, they must be maintained and operated and the leachate collected must be treated or otherwise managed as a hazardous waste. If leachate is produced for a long period of time, then the leachate collection and management system must be operated for a long period of time. Therefore, where leachate collection is an essential part of a land disposal containment system, then long-term maintenance and operation of the collection system and long-term management of the leachate collected is imperative.

As discussed, man's ability to prevent generation and containment of leachate has technical limitations. However, perhaps the more important limitations are institutional limitations. Given that hazardous wastes and hazardous constituents may not degrade or may only degrade slowly—an assumption that must be made in most cases—their potential to generate hazardous leachate continues for very long periods of time. Given further that the technical wherewithal to prevent leachate generation and contain and treat any leachate that is generated depends more on maintenance and operation of containment and treatment systems than on the satisfactory design and construction of such systems, the institutional arrangements for long-term maintenance and operation of such systems become extremely important. There is considerable doubt about whether the owners and operators of land disposal facilities can provide the long-term maintenance and operation of containment systems required to control leachate generation and migration and confine hazardous wastes and hazardous constituents to the confines of the land disposal facility. The requirements of Subparts G in both Parts 264 and 265, require post-closure care and maintenance of land disposal facilities for at least 30 years. Although, the regulations allow EPA to require post-closure care and maintenance required for periods greater than 30 years where necessary to protect human health and the environment, there will clearly be some finite limit to the extended time periods that can reasonably and practicably be required and complied with. If 30 years or some longer required time period is not sufficiently long to exceed the potential for leachate generation and migration, then only two options are available: providing for some public body or other institutional mechanism to assume responsibility for continuing post-closure care and maintenance, or predicting and expecting control of leachate generation and containment for only a finite period and basing the issuance of land disposal permits on the eventual cessation of post-closure care and maintenance and the inevitable migration of leachate from the facility into the broader environment. At the

[3] Placement of such waste into or on the land for a finite period with intent to remove it for subsequent storage, treatment or disposal would be considered and regulated as hazardous waste storage.

present time, few, if any, institutional mechanisms exist for public assumption of post closure care. Thus, EPA believes that the problem of inevitable leachate generation and migration and concommitant finite ability to technically and institutionally prevent or control such leachate generation and migration should be squarely faced and dealt with in the development of land disposal standards.

The potential for leachate generation and migration into the broader environment is not the only long-term problem associated with the land disposal of hazardous wastes. Migration of volatile hazardous constituents out of the land disposal facility and into the atmosphere also is possible in many cases (e.g., the migration of volatile carcinogenic constituents into the basements of homes in the Love Canal area). Generation and migration of toxic or explosive gases (e.g., methane from the anaerobic biodegradation of organic wastes) over a long period of time also can be a problem. Land disposal of ignitable or reactive wastes which have not been pretreated can present a long-term fire or explosion potential, unless or until such wastes degrade into non-ignitable or non-reactive forms or are otherwise rendered non-ignitable or non-reactive by leaching or other actions. Finally, the mere existence of hazardous wastes and hazardous constituents in or on the land can pose a long-term hazard in the event that future land-use activities serve to expose these hazardous wastes where humans can come into direct and harmful contact with them (as occurred also at Love Canal) or where they are even more readily transported into the broader environment. As with leachate generation and migration, man's ability to technically and institutionally manage and control these long-term problems is limited.

As discussed, the essence of the problems faced in the regulation of the land disposal of hazardous waste is the inevitable long-term potential for the wastes or their hazardous constitutents to leak out of the facility. If it were technically and institutionally possible to contain wastes and their constituents in land disposal facilities forever or until degradation mechanisms rendered them non-hazardous, then the problem of regulating such land disposal would be comparatively simple and straight forward. It would entail development of reasonably specific (but flexible) design and operating standards or, alternatively, containment performance standards specifying total containment of hazardous wastes and their constituents within the land disposal facility forever or until degradation mechanisms rendered them non-hazardous, as the case may be. Unfortunately, at the present time, it is not technologically and institutionally possible to contain wastes and constituents forever or for the long time periods that may be necessary to allow adequate degradation to be achieved. Moreover, if degradation of the hazardousness of waste does, in fact, occur, current state-of-knowledge does not know what the degradation periods are for most, if not all, hazardous wastes and, therefore, does not know what containment time periods to specify. Consequently, the regulation of hazardous waste land disposal must proceed from the assumption that migration of hazardous wastes and their constituents and by-products from a land disposal facility will inevitably occur.

IV. Alternative Standards Considered

As discussed in the October 8, 1980, Supplemental Notice of Proposed Rulemaking (see 45 FR 66816–66823), EPA considered four fundamentally different alternative land disposal standards: (1) Facility design and operating standards, (2) containment standards, (3) specific (numerical) health and environmental performance standards, and (4) non-specific (non-numerical) health and environmental performance standards. These same four alternative standards, together with the public comments received on them (as invited by the October 1980 notice) were considered in developing today's proposed rule. Also considered were the proposed land disposal standards of December 18, 1978, and the public comments received on those proposed standards.

A. Facility Design and Operating Standards

The land disposal standards proposed on December 18, 1978 (see §§ 250.45–2, 250.45–3 and 250.45–5 at 43 FR 59006–59014) were basically design and operating standards (however, §§ 250.42–1, 250.42–2 and 250.42–3 of the proposed rule, which provided overriding standards to be used where they were deemed necessary by the permit writer, were basically non-specific health and environmental performance standards). By specifying, for example, detailed requirements for liners, leachate collection systems and final covers for landfills, these design and operating standards implicitly specified a containment system capable of minimizing leachate generation and containing any leachate generated for a finite time period. As pointed out in the October 1980 notice, a major advantage of these standards or ones like them is that they give the regulated community and the regulating agencies a clear idea of what is required of hazardous waste land disposal facilities. This advantage, however, carries with it a major drawback: such standards tend to be rigid and inflexible making it difficult to construct facilities to meet site-specific, waste-specific conditions. They also tend to inhibit application of emerging technology or more efficient but equally effective designs or operating procedures. This inflexibility was criticized by many of the commenters on the December 1978 proposed rule.

However, the more important negative feature of design and operating standards, which are based on containment, such as those proposed, is that they only guarantee human health and environmental protection for a finite time period. Whereas this may be sufficient for some hazardous wastes, it may not be sufficient for many others and may only serve to defer the day when contaminated leachate migrates from the facilities or when any of the other environmental consequences of land disposal occur. In light of the discussion presented in Section III, above, EPA believes that, as basic standards, design and operating standards cannot assure health and environmental protection in perpetuity. Consequently, the Agency is not today proposing or reproposing design and operating standards as the basic standards for land disposal facilities. It is, however, proposing certain design and, particularly, certain operating standards in Subparts F, K, L, M, N, R, S and T of Part 264. These standards, which are discussed later in this preamble, are those that the Agency believes are necessary under any set of alternative land disposal standards because they are prerequisite to any long-term control of land disposed hazardous wastes.

B. Containment Standards

Because of public comments criticizing the inflexibility of the December 1978 proposed design and operating standards, EPA seriously considered containment standards for land disposal facilities. The standards considered were essentially performance standards which specified that hazardous wastes and hazardous constituents had to be contained for some specified time (e.g., 100 years) within the land disposal facility or within a larger defined area (e.g., the area under the property of the land disposal facility). Although similar in

ultimate effect to the proposed design and operating standards—both would require containment for a finite period of time—these containment standards were different in that they would have specified the ultimate performance to be achieved rather than specific facility designs and operating procedures. Thus, the permit applicant would have had the flexibility of selecting and tailoring the design of his facility and his operating methods of site-specific and waste-specific conditions and, therefore, would not be tied to rigid design and operating standards.

As explained in the October 1980 notice, two types of containment standards were considered (see 45 FR 66817–66818). The essential element of both types of standards, however, was that they were based on achieving containment of hazardous wastes and hazardous constituents within a confined area for a finite time. Like design and operating standards they provided human health and environmental protection for a finite time period but did not guarantee protection beyond that time period. The Agency found this lack of protection beyond a specified containment period to be a serious problem with containment standards and, therefore, is not today re-proposing such standards.

C. Specific Health and Environmental Performance Standards

The Agency considered the very different alternative, as compared to those described above, of specific health and environmental standards. As described in the October 1980 notice, this approach involved establishing specific, often numerical ambient quality standards for ground and surface waters and eventually for other parts of the environment (e.g., air and soils) which could not be exceeded as a result of hazardous waste or hazardous constitutents which migrate out of the land disposal facility. Such standards would apply at points of current or *potential* environmental use (e.g., current or potential points of ground water withdrawal for various uses). These standards would allow the permit applicant wide flexibility in designing and operating a land disposal facility, provided only that he could meet the ambient standards specified.

These standards would protect human health and the environment by clearly and specifically defining what ambient quality levels constitute health and environmental protection. Application of these standards would require a considerable amount of site study and prediction by the permit applicant to demonstrate that the migration of hazardous waste and hazardous constituents into the environment would never cause the establishment ambient standards to be exceeded. This would, for example, require the permit applicant to assess and predict the amount and quality of leachate generated in the land disposal facility; the migration, dispersion and attenuation of the leachate after it leaves the facility and moves into and through the environment; and the concentrations and types of contaminants that would occur at actual and potential points of use of ground waters and hydraulically-connected surface waters. This study would be far more detailed and extensive than than that necessary to show compliance with design and operating standards or containment standards, but the results would be much more valuable and positive from an environmental protection standpoint because they would show, within the accuracy of prediction, what are the future health and environmental effects of the facility and whether or not they are effects that can be accepted (i.e., whether or not the ambient standards will be met).

Although this specificity makes this alternative very attractive, ambient quality standards have not yet been established for most of the hazardous constituents regulated by EPA's hazardous waste management regulations (see Appendix VIII of Part 261 at 45 FR 33132–33133 and amendments thereto at 45 FR 47834, 45 FR 74889 and 45 FR 78544 for the current list of these constituents). Consequently, the Agency is not able, at this time, to exclusively use this approach to assure adequate health and environmental protection. However, it is possible to employ this approach where ambient standards or criteria are available and, therefore, today's proposed standards (see those standards proposed for Subpart B of Part 264) incorporate specific health and environmental performance standards with respect to hazardous constituents for which the Agency has or can establish ambient quality standards. With respect to other hazardous constituents, non-specific health and environmental performance standards are being proposed.

D. Non-Specific Health and Environmental Performance Standards

The fourth and final alternative standards considered were non-specific health and environmental performance standards. As described in the October 1980 notice, these standards set forth both (1) the type of assessments and predictions that a permit applicant would have to perform to show the environmental effects of his land disposal facility and (2) the broad environmental objectives that would be used in the permit issuance process to judge the acceptability of these effects. With respect to the assessments, predictions and demonstrations that the permit applicant would have to perform, these standards are not different from the specific health and environmental standards discussed above. They do differ, however, in that broad narrative environmental objectives (e.g., the concentration of contaminants will not adversely effect human health or the environment) substitute for ambient quality levels as the bases for judging the acceptability of the environmental effects caused by a land disposal facility.

V. Consideration of Comments and Development of Today's Proposed Rule

A. Consideration of Comments

Commenters on the December 1978 proposed design and operating standards for land disposal facilities (as well as other types of facilities) criticized the rigidity and inflexibility of these standards. They argued that such requirements were incapable of accommodating the wide variety of site-specific and waste-specific conditions that would be encountered in the real world and, therefore, would serve to both over-regulate and under-regulate land disposal facilities. They further argued that such standards could inhibit the use of more efficient, less costly but equally protective designs and operating procedures. Finally, they contended that such standards would stifle technological innovations. These same concerns were expressed by many commenters on the October 1980 notice. By-in-large, these commenters did not object to design and operating standards as basic standards but objected to the rigidity with which they were stated and the lack of variance provisions attached to them. Many of these commenters therefore suggested that a performance standard be incorporated within each design and operating standard to indicate the performance objective being sought and to provide the basis for varying the design and operating standard to meet the peculiarities of site-specific or waste-specific conditions encountered at a particular facility or to accommodate more efficient or innovative designs and operating procedures.

EPA agrees that greater flexibility in design and operating standards is desirable in cases where the Agency can describe its desired goals in terms of specific performance objectives.

Accordingly, today's proposed standards in Subparts F, K, L, M, N, R, S and T attempt to achieve this purpose.

Comments received on the October 1980 Supplemental Notice of Proposed Rulemaking were quite varied in their preference for and criticism of the four alternative types of standards presented in that notice. Generally, the comments found attributes and deficiencies in each of the four approaches. When taken altogether, however, no clear concensus was expressed on which approach was best. Many commenters felt that the fourth alternative—non-specific health and environmental performance standards—and, to some extent the third alternative—specific health and environmental performance standards—required studies, demonstrations and burdens of proof of permit applicants that were too costly and otherwise too great to bear. These commenters tended to express a preference for design and operating or containment standards or some combination thereof, particularly in the short term until the States developed ground water use designations and until EPA established ground water quality criteria and more reliable methodologies for performing the studies and demonstrations required by the third and fourth alternatives. Even so, several commenters found merit in the third and fourth alternatives or in some of the elements of these alternatives, particularly in the sense that these alternatives provided considerable flexibility in the design and operation of facilities. In summary, the Agency received many useful and helpful comments on the October 1980 notice, but these comments did not decidedly point toward any one of the four alternative standards as the standards that EPA should develop and promulgate for land disposal facilities.

One area where there was concensus among the commenters on the October 1980 notice was that the notice was insufficient for proposed rulemaking leading to a final or interim final rule. They argued (1) that the notice presented some very different approaches to regulating land disposal facilities than were proposed in December 1978, (2) specific regulatory requirements were not presented in the notice and (3) the 30 day public comment period was too short to provide reasonable opportunity for meaningful public comment. The Agency agrees with these arguments and, therefore, as previously stated, is today re-proposing its permitting standards and related permit application requirements for land disposal facilities.

Many of the commenters on the October 1980 notice recognized that the third and fourth alternative standards depend on determining the uses of ground water and hydraulically-connected surface water to be protected. In the third alternative, these uses (and points of use) need to be determined so that specific ambient quality standards established in EPA's regulation could be applied and used to judge the acceptability of the land disposal facility from the standpoint of the "plume" of contaminants migrating from the facility and reaching the points of water use. In the fourth alternative, the same process would apply except that acceptability of the facility would be based on broad narrative environmental objectives rather than specific ambient quality standards applied to the designated uses. The commenters argued that the State and local governments rather than the Federal government, were the proper authorities to designate uses of ground and surface waters. EPA does not disagree with these comments and, in fact, has proposed such an approach in its Proposed Ground Water Protection Strategy, for which an executive summary and notice of public hearings was published in 45 FR 77514 on November 24, 1980.

Several commenters further contended, however, that the Agency should not proceed with either its third or fourth approaches until State or local jurisdictions have designated uses for their ground and surface waters. They argued that, to do otherwise, would place an unreasonable burden on land disposal permit applicants to determine and predict present and potential water uses and demonstrate the correctness of their determinations. EPA disagrees with this recommendation. The Agency believes that State or local designations of water uses should be used by permit applicants as and when they are adopted. It recognizes, however, that designation of water use by these public bodies may take several years to accomplish. It does not believe that proper regulation of land disposal facilities should be sacrificed or delayed until such designations are made. Unless or until State or local water use designations are adopted, it believes that permit applicants and the RCRA permit process, with input from State and local government agencies, must proceed with the best determination of actual and potential uses of affected ground and surface waters that can be made and that permits should be fashioned and issued to protect the water uses so determined.

Many commenters expressed concern about the "presumption against any degradation" delineated in the October 1980 notice. These concerns ranged from confusion about what this concept would mean in terms of its real-world application to arguments contending that this presumption is not authorized by RCRA.

Put very simply, EPA proposed in the October 1980 notice and is proposing today that the environment should not be degraded at any existing or potential point of use *unless* or *until* the degree of degradation is determined or predicted, evaluated and found to be acceptable. To do otherwise, would be to blindly allow degradation without knowing its consequences. In practical application, with respect to ground and surface waters, this concept would mean that hazardous contaminants migrating from a land disposal facility would not be allowed to reach and degrade such waters at points of current or potential use unless the effects of these contaminants on the use of the water are determined, assessed and deemed acceptable in the permit issuance process. Given that not all points within ground and surface waters are used or potentially used, degradation of these points (i.e., portions of ground and surface waters) would not be precluded. In this respect, the concept is not an absolute non-degradation concept. Further, given that different ground and surface water uses require different water quality and therefore, permit different degrees of degradation, this concept can allow degradation even at points of use—provided, however, that such degradation does not interfere with the use and is found acceptable. In this sense, as well, the concept also is not an absolute non-degradation concept. The Agency recognizes that many ground water and surface water bodies or portions thereof are used at so many closely located points that degradation of non-use points would be greatly limited. It further recognizes that many ground and surface water bodies are used for purposes requiring very high quality (e.g., drinking water uses) so that acceptable degradation is quite limited. For these water bodies, the concept approaches an absolute non-degradation policy and properly so. EPA contends, however, that other water bodies or portions thereof are not so highly used or used for high-quality-demanding purposes and therefore can accommodate reasonable levels of degradation.

Clearly, the Agency has shied away from the position of prohibiting any and all degradation of the environment by

land disposal facilities. It does not believe that this is possible or reasonable. Even in cases where all feasible treatment of hazardous wastes is accomplished, there likely will be hazardous residuals (principally toxic heavy metals) that inevitably will have to be disposed of in or on the land and, as discussed in Section III, inevitably will migrate into and degrade the environment. The Agency, however, has not shied away from prohibiting unacceptable degradation or prohibiting degradation before there is the opportunity to judge its acceptability.

Several commenters argued for design and operating standards (including performance standards as discussed above). They suggested that these standards be based on a "containment" objective: containment of hazardous wastes and hazardous constituents within the land disposal facility during the operating life of the facility (e.g., 20 years) and containment of hazardous constituents within a broader area (e.g., the area underlying the property on which the facility is located) for a longer period (e.g., the 30 or more years of the post-closure care and maintenance period). One commenter suggested this as an interim or short-term approach until State or local ground and surface water use designations, ambient ground water quality criteria and more extensive methods for making hydrogeological and other studies could be developed to more readily implement either or both of the third or fourth alternative standards. In all cases, however, these comments were based on the assumption that, if groundwater contamination was discovered or predicted to occur before or after the containment period, remedial measures, such as interceptor wells or trenches, would then be required. For several reasons, EPA is reluctant to accept these recommendations (except perhaps as interim, transitional requirements applicable to existing facilities as discussed in Section VI). First, as discussed in Section III, EPA is reasonably certain that hazardous constituents and by-products will migrate out of most facilities and migrate beyond either of the suggested containment areas at some time after the containment periods. Second, EPA is not certain that, once these hazardous contaminants migrate out of the facility, they can be readily and effectively intercepted and removed so that they do not migrate to points of water use. Finally, EPA doubts whether it can assure that the facility owner or operator will implement effective remedial measures whenever releases occur, particularly for an extended period of time or after the originally-established and funded post-closure period. In short, EPA believes that relying on containment during the operating and post-closure-care periods and on application of remedial measures thereafter will, in many cases, fail to provide long-term human health and environmental protection.

With respect to EPA's Intended Approach in the October 1980 notice and the delineation of the information and demonstrations that would be required of permit applicants under this approach, commenters expressed several concerns. First, they contended that the required information and demonstrations were extensive, extremely costly and beyond the reasonable capacity of most permit applicants to provide. Secondly, they felt that not all of the information and demonstrations delineated were needed in many cases (e.g., land disposal facilities underlain by deep, tight clay soils and located over deep, non-usable ground water aquifers). Thirdly, they claimed that some of the demonstrations (e.g., prediction of the human health risks posed by contaminants that migrate to points of water use) were far beyond the capabilities of permit applicants if not the state-of-the-art. Finally, they argued that some of the requirements (e.g., health and risk assessments) placed burdens on the permit applicants that properly should rest with EPA or other government agencies.

EPA agrees that the information and demonstrations requirements may be quite costly and burdensome for some permit applicants and, for others, will not be insignificant. Given the long-term hazard potential of land disposal of hazardous wastes described in Section III, however, it believes that such requirements are essential to making sound environmental judgments about these disposal activities. The costs and efforts of meeting these requirements are justified costs of doing business—of having the privilege of depositing hazardous constituents in or on the land where they might adversely affect people's health and welfare for many decades.

Furthermore, EPA believes that proper siting of land disposal facilities, proper pre-treatment of certain hazardous wastes and tailored design of facilities for different types of wastes will reduce the information and demonstration requirements and, thereby, will alleviate their costs and burdens. For example, locating facilities in areas underlain with deep ground waters or non-usable ground waters or underlain with deep formations of low permeability clay soils will enable the permit applicant to readily demonstrate that contaminants will not migrate to points of water use, thus lessening the requirements that otherwise would apply. Pre-treating hazardous wastes so that they do not contain the more toxic or carcinogenic hazardous constituents also will lessen these requirements. Likewise, tailoring the disposal facility to the types of wastes disposed of so that, for example, solubilization of hazardous constituents is reduced will lessen the requirements. The Agency has tried to provide, in the standards proposed today, provisions that require more or less information and demonstration based on site-specific, waste-specific conditions.

For those permit applicants that insist on locating a land disposal facility over a shallow, high quality, highly used ground water aquifer or insist on placing highly toxic wastes in a land disposal facility without pre-treatment or insist on otherwise locating, designing and operating a system that is capable of discharging contaminants that will migrate to and affect water uses, it will be both difficult and expensive to assemble the information and provide the demonstrations required for permitting decisions. However, in EPA's view, these costs and burdens are necessary to assure that the facility will not cause unacceptable environmental degradation.

Other comments were received on the detailed elements of the October 1980 notice. These are addressed in the appropriate parts of this preamble which follows.

B. Development of Today's Proposed Rule

EPA is today proposing permitting standards for land disposal facilities (see amendments to Subparts A and B of Part 264 and to Part 122 in today's proposed rules) that are drawn from the third and fourth alternative standards—specific and non-specific health and environmental performance standards—presented in the October 1980 notice. These proposed standards are supplemented with certain proposed design and operating standards (see Subparts F, K, L, M, N, R, S and T of today's proposed rules) where the Agency deems that these more specific standards can be fashioned.

The Subparts A and B standards proposed in this action essentially require a thorough and deliberate assessment of the long-term health and environmental impact of land disposal facilities. The Agency recognizes that these assessments will require permit

applicants to gather and submit considerable detailed information and perform difficult and complex demonstrations. It also recognizes that the required information and demonstrations will be difficult and time consuming to review by EPA and State permitting officials and very likely will require more time in processing and issuing permits than might otherwise be required if design and operating standards or containment standards were employed. However, EPA concludes that these consequences must be accepted in order to provide for full consideration of the serious implications that the facility might have for the public's health and welfare for decades to come.

The Agency also realizes that the extensive information and demonstration requirements of today's proposed rule will be sufficiently great to deter land disposal permit applications for many locations, for some wastes and from some persons. As such, today's proposed rule, if promulgated, will probably reduce the number of land disposal facilities, significantly limit the location of these facilities, limit the types of hazardous wastes placed in these facilities, promote the use of alternative methods of managing hazardous wastes (e.g., incineration, treatment, recycling) and preclude potential permit applicants who lack the resources or the technical capability to meet the information and demonstration requirements. In the Agency's view, these are not undesirable results. Because it frequently poses long-term hazards to human health and the environment, EPA views land disposal as the least desirable method of hazardous waste management and believes it should be used only in those situations where, because of the location of the site, nature of the waste and adequacy of the management technologies and operating practices used, it can be carried out in a manner which will assure long-term protection of human health and the environment. Clearly, today's proposed standards and permit application requirements will create economic and feasibility constraints that will limit land disposal practices. The Agency, however, does not believe these standards and requirements will preclude land disposal as a necessary hazardous waste management practice. It contends that there are suitable land disposal sites, adequate land disposal facility designs and practices and competent persons and firms to operate land disposal facilities necessary to manage hazardous wastes than cannot be handled by other alternatives.

Finally, the Agency recognizes that the techniques for making the hydrogeological investigations and other studies necessary to meet the information and demonstration requirements of today's proposed rule are not fully developed and need to be improved and extended. It also recognizes that the technical expertise of undertaking these investigations and studies is limited. It believes, however, that the techniques and expertise exist to perform, in some degree, each of investigatory tasks that would be required of today's proposed rule. Certainly, advancements in the state-of-the-art and capabilities, which will result from the implementation of today's proposed requirements, will improve performance in the future. EPA believes that the requirement proposed today will encourage such advancements.

EPA does not intend to underestimate any of the several consequences of taday's proposed rule delineated above. It may be that these consequences are more severe than the Agency now estimates. Therefore, EPA invites comments on this matter and seriously solicits facts and data about the above consequences. Certainly, the public interest or the RCRA Subtitle C objectives are not well served by rules that do not work or produce unintended results. Consequently, EPA is anxious to know how and where and why today's proposed rules are sufficiently deficient in this regard to warrant a different approach.

As indicated above, EPA has rejected design and operating standards and containment standards as the basic standards to be used for permitting hazardous waste land disposal facilities—at least new facilities. It fully recognizes the virtues of these types of standards: Their specificity and certainty and their easier implementability. As discussed above, however, the Agency is concerned that they only guarantee health and environmental protection for a finite period. This is not to say that the Agency believes that these standards do not have a place in its land disposal regulations. As mentioned previously, today's proposal includes certain design and operating standards for hazardous waste land disposal facilities in Subparts F, K, L, M, N, R, S and T. Also, as discussed in Section VI which follows, EPA is considering and inviting comments on applying these types of standards as interim permit standards (not to be confused with interim status standards) to be used in certain situations in issuing interim permits to "existing" land disposal facilities. Beyond this, the Agency intends to look for opportunities where these standards might be used to improve the implementability of the program. Conceptually, the Agency believes there may be situations where sufficient information is known about a particular hazardous waste, its characteristics of persistence and degradation in a land disposal facility and its potential to retain hazardous constituents from release and migration, and where sufficient information is known about the hydrogeological features of sites where these wastes may be disposed of to enable the Agency to develop a specialized design and operating standard. Where these situations are found, EPA would consider developing such standards. In this respect and in possible other respects, EPA is open to suggestions and solicits comments about where it might effectively incorporate design and operating or containment standards in the rule proposed today or subsequent amendments thereto.

VI. Application of Proposed Rule to New and Existing Facilities

EPA is proposing that today's proposed standards and permit application requirements be applicable to both new and existing hazardous waste land disposal facilities (see definition of these facilities in §§ 260.10 and 122.3). It feels quite certain about the appropriateness of these standards for new facilities, believing that it is essential that a thorough and deliberate evaluation of new facilities should be made before they are allowed to come into existence. With respect to existing facilities, it also believes that it is essential that such an evaluation be made before allowing these facilities to continue operation under a full RCRA permit. However, the Agency has some concerns about the consequences of applying the proposed rules to existing facilities.

First, the Agency recognizes that it will take five or more years for it and authorized States to issue permits to all existing hazardous waste management facilities, including land disposal facilities. During this time, existing facilities [4] will only have to meet the interim status standards of Part 265. For land disposal facilities, the interim status standards do not contain many of the requirements necessary to assure environmental protection from the long-term hazards discussed in Section III.

[4] For the purposes of this discussion, existing facilities that have interim status.

Consequently, for the next one to five years or more, many existing land disposal facilities will not be required by EPA's hazardous waste regulations to meet permit conditions that today's proposed rules would otherwise eventually impose. This is a concern to the Agency because most of the existing land disposal facilities are capable of presenting the potential environmental hazards described in Section II.

Secondly, and perhaps more importantly, the application of today's proposed standards and permit requirements to existing land disposal facilities will take time, once the permit issuance process is initiated (i.e., once submission of the Part B permit application is requested). Section 122.22 allows the permit applicant six months to prepare and submit a Part B permit application, but because of the extent and complexity of the information and demonstrations that would be required under these proposed rules, additional time may have to be allowed.[5] After submission of the Part B, the review and processing necessary to issue or deny a permit will take additional time. Again, because of the complexity of the information and demonstrations that would be required, the review of the Part B may well take several months and may also lead to time consuming hearings, if they are requested. In summary, it is quite likely that as many as 24 months or more could elapse between initiation and conclusion of the permitting proceeding. During this time, the existing land disposal facility would continue under interim status to receive and dispose of hazardous wastes without full permit controls. This is of concern to the Agency for the same reason stated above.

Where the issuance or denial of full permits for existing land disposal facilities are going to be unavoidably delayed, EPA believes there is need and justification for some type of interim requirements that are more extensive than the current interim status standards of Part 265. However, such requirements would have to be expeditiously applied if they are to serve their interim purpose.

To address this need, EPA is considering employing an interim permit process and using a combination of design and operating standards and containment performance standards as interim permit standards. The purpose of these standards would be to require full containment for a finite time for those hazardous wastes that are received and disposed of in a facility during the interim permit period preceding the issuance or denial of a full RCRA permit. Although, as discussed above, the Agency does not believe that containment-type standards are necessarily satisfactory for long-term control of hazardous waste land disposal facilities, it believes they do have merit as standards for interim application. In this application, they would serve almost as storage standards, requiring the confinement of wastes received by the facility in "new cells" designed to contain for a specified finite period. If the review for issuing a full permit for the facility reveals that such confinement is grossly inadequate (e.g., hazardous waste constituents from the new calls very likely will eventually migrate to points of ground water use and produce unacceptable degradation at those points of use) then the full permitting of the facility can require exhuming and proper re-disposal of the wastes or other appropriate remedial measures. This could readily and safely be accomplished because the wastes would be contained in the new cells, catalogued as to where they were placed in these cells, and segregated to keep incompatible wastes apart. If, on the other hand, the results of applying today's proposed standards in the issuance of a full permit reveal that the interim permit standards are sufficiently protective or even more protective of the environment than the terms of the full permit would otherwise have required, then a head start on adequately managing the wastes received by the facility during the interim permit period will have been achieved.

For this approach to work effectively, the interim permit standards would have to be quite specific and readily applied through an issuance of an interim permit—a process that could be initiated and completed within a few months. EPA believes that a combination of design and operating standards (with built in performance standards as recommended by commenters) and containment standards would provide such specificity and implementability.

When submission of a Part B application for an existing facility is requested, the applicant would be asked to supply information necessary to consider issuance of an interim permit as well as information and demonstrations necessary to consider issuance of a full permit. The information requested for the interim permit would have to be submitted in six months. Basically, this information would consist of a description of the design and operation of the facility and a showing that the containment performance standard and the design and operating standards will be met. The information and demonstrations for the full permit (as delineated in this proposed rule) also would be required to be submitted within six months but could be extended for good cause. EPA or the State (where the State is authorized) would first consider and issue or deny an interim permit, hopefully within a few months of receiving the Part B application. It then would consider the issuance or denial of the full permit (actually, review of the permit application for an interim and full permit would proceed concurrently but preference would be given to processing the interim permit first, leaving better opportunity to thorougly and carefully processing the full permit).

It is anticipated that most applications for permits for existing land disposal facilities would result in the issuance of an interim permit under which the facility would operate until a full permit is issued or denied. However, where the permitting official has good cause (e.g., the facility is already contaminating ground water and the operation of a successful containment system for continuing disposal of hazardous wastes is doubtful), the official could deny an interim permit. This would preclude continued operation of the facility until a full permit is issued. The Agency believes that interim permits would only be denied for a relatively few facilities where allowing continuance of disposal activities until a full and thorough review of the facility could be made would present a substantial risk to human health or the environment.

The foregoing approach would only apply to existing landfills where it is possible to implement a containment system for the new cells that could and would be used to receive wastes during the pendency of the interim permit. This approach simply cannot work for existing surface impoundments which are continuing to operate and cannot be readily retrofitted without severe disruption and expense to provide containment for wastes received during the pendency of processing of a full permit. For these facilities, the Agency and the States will have to depend on expeditious review and processing of full permit applications to minimize the possible environmental insults that could occur during the full permit process. For similar reasons, this approach does not work well for and would not be applicable to land treatment facilities.

The Agency did consider application of the above concept of containing

[5] Today's proposed amendments to Part 122 would give the permitting official authority to extend the time period.

wastes during permit processing through requirements that would be imposed through its interim status standards. Such requirements would need to be promulgated as amendments to Part 265. It has tentatively rejected this approach (although still holds it open for consideration) because it believes that the specific terms of these requirements may require some degree of case-by-case determination and variance which could only be effectively accomplished through a permit-issuance process.

The Agency has not been able to develop and include in today's proposal the specific regulatory language that would be needed to implement the interim permit approach herein discussed. However, the elements of that approach are few and comparatively simple. The Agency would establish interim permit standards in Part 264 which would be used in issuing interim permits to landfills. These standards would be flexible containment performance standards requiring the landfill to have a liner, leachate collection system and final cover designed and operated so as to contain the hazardous wastes and its hazardous constituents for a period of 50 years. The purpose of these standards would be to achieve in-the-land storage of wastes until a thorough review of the facility can be accomplished in the processing of the full permit. This is the reason for the requirement for a liner, leachate collection system and final cover. The basis for the containment period of 50 years is simply to provide some reasonable time period during which environmental protection is assured and within which remedial measures, if necessary, could definitely be accomplished. The Agency would be proposing a shorter time period if it could be assured that, in all cases, a full permit, requiring any necessary remedial measures (in addition to full permit requirements) would be issued (and not denied) and any required remedial measures could be accomplished during the operating life of the facility. EPA is concerned that this may not be the case in all situations and that it may have less leverage in causing the owner or operator to provide remedial measures if (1) the full permit is denied and the facility must therefore cease operation or (2) the facility is closed prior to culmination of the full permit process. In these situations, it may take time to arrange for remedial measures and the 50 year containment period would provide an ample time span within which to make such arrangements.

In addition to the containment performance standards discussed above, the final and interim final standards design and operating in §§ 264.11 through 264.17 and Subparts C, D, E, G and H of Part 264 would apply and be used in issuing interim permits. Also, the design and operating standards in Subparts F and N of today's proposed amendments to Part 264 would apply.

The Agency would also establish special provisions for interim permits in Part 122. These would include (1) discretionary authority for the permit official to initiate an interim permit process when requesting a Part B permit application, (2) authority to issue or deny interim permits, (3) a specification that the term for an interim permit would be no more than five years or that time period culminated by the issuance of a full permit, whichever is less and (4) specification of the additional Part B permit application information requirements to support consideration of an interim permit. The procedures for issuing an interim permit would be the same as those for issuing a full permit (these are now established in Parts 122 and 124).

EPA invites comments on this interim permit approach and its specific elements described above. In particular, the Agency would like comments on the proposed containment performance standard and its 50 year containment requirement. Also, it would like comment on whether this approach is workable and, if not, why not. If commenters believe other approaches are more workable, the Agency would like to learn of them and would like commenters to describe them in sufficient detail so that EPA can evaluate them.

VII. Detailed Discussion of Proposals

A. Subpart A—General

The major amendment to Subpart A is the addition of the "Non-numerical health and environmental standard" which is the basis of today's promulgation of criteria and standards for the permitting of land disposal facilities. This amendment is discussed below under the title "Ground-water protection standard". That title is used since the Agency may in the future promulgate additional health and environmental standards. The substantive standard being issued today is related primarily to the health and environmental effects of discharges into or on the land which migrate to and with the ground water.

1. *Purpose, scope and applicability—§ 264.1.* This Section is being amended to conform the applicability of the regulations to exclude only those "injection wells" which, by definition, can fully comply with the criteria and standards being issued today for land disposal facilities. Because of the Agency's decision to propose the Non-numerical health and environmental standard, it can not continue the complete delegation of the authority to permit land disposal by well injection to the jurisdiction of the Underground Injection Control Program of the Safe Drinking Water Act (SDWA) as it had previously intended. For a more complete discussion of the issues see the preamble to the Proposed Hazardous Waste Management: Interim Status Requirements for Underground Injection (45 FR 33280) and the preamble to the Water Programs; Consolidated Permit Regulations and Technical Criteria and Standards; Underground Injection Control Program (45 FR 42472).

The basic decision of the Agency to resolve the problems of which criteria and standards apply when a facility, subject to both the RCRA and the SDWA, is to be permitted is that both apply. The *Authority* section of this preamble therefore cites both Acts with respect to "well injection", and the standards herein apply. This should be understood to be an administrative resolution of the problem which reduces the issues to those of exclusive jurisdiction.

At both the federal and the state levels of government, the management and protection of ground water is not exclusively associated with either broad health and environmental effects or with the use of ground water for drinking water. As EPA has been, state agencies are often also charged by their own legislative bodies to consolidate resources in the management of any resource. Part of the intent of the decision referenced above is to follow management flexibility in charging individuals to be responsible for either the RCRA or thw SDWA programs, or both. The scope of the exclusive jurisdiction is discussed later in this preamble with reference to the RCRA permit by rule in § 122.28.

2. *Ground-water protection standard—§ 264.2.* One of the most critical goals of the regulations being proposed today is the protection of ground water from potential adverse effects in the land disposal of hazardous wastes. In the December 18, 1978 proposed regulations (43 FR 58982), the Agency expressed its intention to protect ground water by relying on design and operating standards subject to an overriding human health and environmental standard. The overriding

standard would apply when design and operating standards alone would not achieve the objective of the Act. In the design and operating standards included in the December 18, 1978 proposed regulations, the Agency sought to protect ground water by requiring containment of hazardous wastes.

Based on comments and its own analysis, the Agency now recognizes that containment of wastes disposed of into or on the land is achievable for only some limited period of time. Moreover, in many cases containment does not represent the most efficient, protective, and effective control achievable. Ultimately, containment designs act only as a control on the initiation of release of wastes to the environment or as a control on the rate of release. To fulfill the statutory mandate of RCRA—the protection of human health and the environment—a temporary solution such as containment simply is not adequate.

As a result, the Agency published on October 8, 1980, a Supplemental Notice of Proposed Rulemaking, outlining the regulatory approach embodied in these proposed regulations. This approach will be implemented by a combination of design, operating, and locational standards. Primary reliance is place on maintaining a physical separation of the ground water affected by dispoal or discharge and any subsequent use of or exposure to the affected ground water. Separation, and the control of subsequent use, are both possible because not all ground water is used, usable, or needed for any use and because ground water returns to the surface environment in a definable way.

The basic goal embodied in these regulations for the protection of human health and the environment is to rigorously protect all ground water which is now or will in the future be used for any purpose from the harmful effects which can result from hazardous waste disposal. Further, these regulations will ensure that the natural re-entry of affected ground water into the surface environment does not cause unacceptable effects.

A variance may be authorized where an absolute separation from ground water use can not be achieved, however, the permit applicant carries a heavy burden of proof to show that the effects which will result from his disposal or discharge activities will not adversely affect human health or the environment.

The comments received in response to the October 8, 1980 Federal Register Notice displayed a wide diversity of views as to the preferred regulatory approach. The comments ranged from those who supported the total flexibility of a general performance standards, to those who felt the technical design requirements are needed to supplement a non-numerical health and environmental standard, to those commenters who supported total reliance on specific performance standards, design standards, or a combination of the two.

The Agency recognizes the advantages and disadvantages to each of these approaches. Facility design standards have the advantage of being specific, leaving no question to the permit applicant or the permit issuing authority as to what is required. Such an approach would clearly simplify the permitting process by removing any discretion from the permitting authority. However, design standards are also very rigid and it is impossible under such an approach to consider the almost infinite variety of site specific factors which may occur. Likewise, the rigidity of this approach discourages the development of innovative technologies for the protection of ground water. Most importantly, it is simply not feasible at this time for EPA to develop the full range of technical design standards which would be required to fully protect ground water from all adverse health and environmental effects.

Specific ambient health and environmental performance standards also share the advantage of being straightforward in terms of notifying the permittee as to what he must achieve. The major drawback of this approach is that a full range of specific performance standards has not yet been established to cover all of the possible adverse effects of hazardous waste disposal.

A non-numerical health and environmental standard has the advantage of being flexible—allowing for and even encouraging the development of new technologies aimed at the protection of ground water. This approach also enables the Agency and/or the permit issuing authority to respond to new information generated from a variety of sources including the permitting process, monitoring data and scientific research. The use of a non-numerical performance standard will also assure immediate fulfillment of the statutory mandate of RCRA without the long delay that would be required to promulgate adequate specific performance or design standards.

Concerns were expressed by commenters on several aspects of a regulatory approach based on a non-numerical performance standard. Many commenters felt that such an approach does not give adequate guidance to the permittee or the permit issuing authority as to what is necessary to achieve the standard and qualify for a permit. The Agency believes that the regulations being proposed today will clarify to a large extent those areas that commenters felt were vague in the October 8, 1980 Notice. These proposed regulations specify in greater detail the requirements for permit issuance and the showing required for a variance. Others felt that the proposed approach will complicate and lengthen the permitting process. In the opinion of the Agency, in many cases the data required of permit applicants will be readily available and the permitting process will be able to proceed without delay. Where this is not the case, the Agency believes that the impact on the permitting process is justified in light of the potential impact of hazardous waste disposal, the magnitude of the potential harm, and public concern over protection from the risks of disposal of hazardous wastes.

B. Subpart B—General Facility Standards

1. *Location—§ 264.10.* Section 264.10 is being amended in these regulations to ensure the applicability of the location standards in § 264.18(b) to land disposal facilities. Locational considerations other than those to be considered in § 264.18(b) are contained elsewhere in the regulations. Such other locational considerations are specifically applicable to land disposal facilities and the characteristic which distinguishes such facilities from other types of opertional units, i.e., discharge into the land and ground water.

2. *Land disposal facilities—§ 264.19.* Section 264.19(a) lists the types of facilities that are land disposal facilities and therefore subject to the informational and demonstration requirements necessary to establish compliance with the ground water protection standard.

Section 264.19(b) limits land disposal facilities eligible for permitting to the types of facilities defined in § 264.19(a), subject to exceptions granted through the petition process described in § 260.23. This petition process is intended to protect the owner or operator of a successful treatment, storage or disposal facilitity from the potential oversight of the Agency in promulgating minimum requirements. The Agency does not intend to invalidate successful facilities by its regulations or to limit future facilities to the types with which it is presently familiar and for which it has prescribed technical requirements.

Section 264.19(c) sets forth five classes of land disposal facilities. These classes are established by the present or future use of ground waters into which a

facility does or will discharge. The purpose of categorizing facilities by class is to facilitate descriptions of the varying amounts of information and levels of demonstration required to pursue a permit.

Many customers felt that the ground water protection approach outlined in the October 8, 1980 Federal Register notice failed to consider the concept of multiple uses of ground water and failed to take into account existing contamination or uses of ground water. The facility classification scheme provides a mechanism by which these factors are given relevance in the permitting process. For example, ground water which is currently contaminated at a level which precludes its present or future use for drinking purposes, if that is recognized and acknowledged as a fact, will be subject to reduced informational and demonstration requirements.

a. *Types of facilities—§ 264.19(a).* Section 264.19(a) lists six major types of land disposal facilities: (1) Surface impoundments; (2) waste piles; (3) land treatment facilities; (4) landfills; (5) seepage facilities; and (6) injection wells. Type (5)-seepage facilities can be further subdivided into at least four categories: (A) seepage lagoons; (B) drying beds; (C) seepage pits; and (D) seepage beds. The types of facilities may be described as follows:

(1) Surface impoundments, as the name implies, are facilities at which liquid wastes or other liquids are impounded or held. In § 260.10 a surface impoundment is defined as an earthen structure designed to hold an accumulation of liquids or wastes containing free liquids. Wastes placed in surface impoundments are usually in a liquid or semi-liquid state. The purpose of a surface impoundment as described in the applicability section of Subpart K is for storage or treatment rather than disposal. Discharge to the ground water, when it occurs constitutes disposal however, and disposal often occurs as leachate from facilities which are commonly called surface impoundments. When such disposal occurs, i.e., when a surface impoundment is not designed to prevent virtually all discharge, or is to be closed with waste left in place, it is considered a disposal facility. A surface impoundment can be designed to achieve the objective of no discharge, in which case it is referred to in this section as being used "solely for storage or storage and treatment". Such a surface impoundment is not considered a land disposal facility in Part 264. The term seepage facility is used in these regulations to describe a facility which is designed with the objective of discharging (i.e., disposing of) liquids into the land. Surface impoundments are often used as part of a flow through treatment system that disposes of treated liquids through a piped discharge to surface waters. Discharge to the atmopshere normally occurs as diffuse gaseous emissions. Wastes are usually removed at closure, but may be left in place.

(2) Waste piles are facilities at which wastes, usually in a solid state, are placed on the land for the purpose of storage or treatment. Discharge to the ground water normally occurs as leachate. Discharge to the surface waters normally occurs both by erosion and as leachate mixed with ground water. Discharge to the atmosphere normally can occur through wind erosion or as diffuse gaseous emissions. Wastes are usually removed at closure, but may be left in place. A waste pile can also be designed to prevent virtually all discharge into the land in which case they are also referred to as being used "solely for storage or storage and treatment" and are not considered land disposal facilities provided the wastes are removed at closure.

(3) Land treatment facilities are facilities at which waste; usually in a solid, semi-solid, semi-liquid, or liquid state; are spread on the surface of the ground for the purpose of treatment. Discharge to the ground water normally occurs as leachate. Discharge to the surface waters normally occurs both by erosion and as leachate mixed with ground water. Discharge to the atmosphere normally occurs as diffuse gaseous emissions. Wastes are nearly always left in place at closure.

(4) Landfills are facilities at which wastes, usually in a solid or semi-solid state, are placed into or on the land for the purpose of permanent disposal. Discharge from the facility to the ground water normally occurs as leachate. Discharge to the surface waters can occur by erosion, but normally occurs as leachate mixed with ground water. discharge to the atmosphere normally occurs as diffuse gaseous emissions. Wastes are nearly always left in place at closure.

(5) Seepage facilities are facilities at which wastes; usually in a liquid, semi-liquid, or semi-solid state; are placed into or on the land for the purposes of storage, treatment, or disposal. Four types of seepage facilities are described in this section, all of which are defined as injection wells in Part 146 (the UIC Program) when the depth is greater than the largest surface dimension.

(A) Seepage lagoons are facilities at which wastes; usually in a liquid, semi-liquid, or semi-solid state; are placed into the land for the purpose of treatment, storage, and disposal. The essential difference between a seepage lagoon (which normally has a free liquid surface) and a surface impoundment is, as mentioned above, is the objective of the design. Impoundments which are designed with the objective of seepage (i.e., discharge into the land) are seepage lagoons. Discharge to the ground water normally occurs as leachate. Discharge to the surface waters normally occurs as leachate mixed with ground water. Discharge to the atmosphere normally occurs as diffuse gaseous emissions. Wastes are usually removed at closure, but may be left in place.

(B) Drying beds are facilities at which wastes, usually in a semi-Solid state, are placed on the land for the purpose of treatment (drying) and storage. Discharge to the ground water normally occurs as leachate. Discharge to the surface waters normally occurs as leachate mixed with ground water unless leachate is collected in which case it may be directed through a piped outlet. Discharge to the atmosphere normally occurs as diffuse gaseous emissions. Wastes are usually removed at closure, but may be left in place.

(C) Seepage pits are facilities at which wastes, usually in a liquid state, are placed into the land for the purpose of disposal. Discharge to the ground water is by direct seepage of the wastes, also termed leachate for the purpose of this regulation. Discharge to the surface waters normally occurs as leachate mixed with ground water. Discharge to the atmosphere may be by direct venting, or by diffuse emissions. If solid residuals remain after closure, they are usually left in place but they may be removed.

(D) Seepage beds are facilities at which wastes, usually in a liquid state, are placed into the land for the purpose of disposal. Discharge to the ground water is by direct seepage of leachate. Discharge to the surface waters normally occurs as leachate mixed with ground water. Discharge to the atmosphere may be by direct venting, if the seepage bed is covered, or by diffuse emissions. If solid residuals remain after closure, they are usually left in place but they may be removed.

(6) Injection wells are facilities at which wastes, in a fluid (usually liquid) state, are injected into the land under a pressure head greater than the pressure head of the ground water into or above which they are injected for the purpose of disposal. Discharge to the ground water is either direct or by direct

seepage of leachate from the well outlet. Discharge to the surface waters normally occurs as leachate mixed with ground water. Discharge to the atmosphere may be by direct venting up the well, or by diffuse emissions through and from the soil. Wastes are always left in place after closure.

b. *Classes of land disposal facilities—§ 264.19(c).* Five classes of facilities (designated by capital letters) are established in this section. With respect to present or future uses of ground water, three distinctions are drawn: ground water which is not and will not in the future be a source of water supply for any use; ground water which is or may in the future be a source of water supply for uses other than drinking; and ground water which is or may in the future be a source of drinking water supply. A further distinction is drawn between facilities which do or will discharge into ground water which is or may be used as a source of drinking water, depending upon whether the facility affects a public or private water supply. Greater protection is afforded to private drinking water sources because often those dependent on private supplies have no alternative source of drinking water or do not have a feasible option of treating water to make it suitable for drinking. The distinction between Class A, which is related to entire aquifers, and Class B, which is related to portions of aquifers, is primarily administrative. Both entire aquifers and portions thereof are commonly described in reference literature (e.g., USGS reports).

3. *Minimum standards applicable to a variance from the ground-water protection standard for ground water used for drinking*—§ 264.20. The numerical criteria established in § 264.20 are minimum requirements for permitting land disposal facilities which require a variance because they discharge to ground water which is or may in the future be used for drinking. The criteria should ensure that subsequent use of ground water effected by discharge will be acceptable as drinking water with respect to its listed contaminants (hazardous constituents and decomposition and reaction byproducts). The requirements are based on the National Drinking Water Standards but are established as percentages of those standards to maintain "optimum" water quality for drinking rather than allowing degradation to the maximum acceptable contaminant levels for use represented by the National Standards. The percentages applied are based on the background document to the National Secondary Drinking Water Standards.

The particular contaminants listed in § 264.20(a) are included in the National Primary Drinking Water Regulations, and are health related. The 80% factor is simply a margin for error intended to avoid "brinksmanship" in the permitting process with respect to the standard for judging water unacceptable for drinking. Comment is requested as to the reasonableness of using such a factor rather than the standard itself.

The numerical standards of the Primary Drinking Water Regulations are established at maximum concentration levels of: metals and inorganics indigenous to ground water, several pesticides and bacteria, above which water is considered not properly usable for drinking. Also of significance are the contaminants which are not listed in the Primary Drinking Water Standards, but are likely to be found in discharges of liquid hazardous wastes and leachate. Many of these contaminants (especially hazardous constituents) if present in a discharge, would make the water unusable for drinking. Some of these potential contaminants are covered in § 264.20(b).

The contaminants listed in § 264.20(b), which include the pesticides in the Interim Primary Drinking Water Regulations, cannot be safely discharged into drinking water. They are generally known or suspected carcinogens, highly toxic, or are produced and marketed as systemic poisons. Use and spillage account for the primary human and environmental exposure. The criteria, which are minimum standards, do not preclude discharge of these substances to the ground water but do restrict the intentional disposal of such substances to ground water used or not precluded from use as human drinking water.

4. *Performance standards and associated demonstrations of performance—§ 264.21.* Section 264.21 establishes both performance standards and demonstrations of performance required in the permitting process. The demonstration requirements include the showing which must be made by permit applicants seeking a variance as described in § 264.2(a)(2). Some of the requirements of this section vary according to the class of disposal facility (see § 264.19(c)) for which permit authorization is sought. These distinctions recognize that not all ground water requires the same high level of protection as ground water which is now or will in the future be used for drinking purposes.

Section 264.21 forms the basis for determinations of acceptability (i.e. permit approval or denial). The manner of consideration in the permit process is also described in this section.

Section 264.21(a) requires that surface water quality standards not be violated. Many people do not perceive the ground water and surface water systems to be part of the same flow system and thereby fail to recognize their interdependence. This provision will force a coordinated analysis based on the fact that these systems are not distinct. In most areas of the country, the low flows to which surface water quality standards apply are supported entirely by the discharge of ground water.

Section 264.21(a)(2)(iv) requires owners or operators of land disposal facilities requiring a variance (see § 264.2(a)(2)) to demonstrate the social and economic need for the facility and that no practical options for waste reduction exist. The Agency believes that these issues are implicit in the permitting process and that they will be of particular relevance in the public participation aspects of that process. This requirement ensures that these issues will be addressed by owners and operators in a manner that allows adequate scrutiny by the public and the permit issuing authority.

The factors which must be considered when a variance is required are enumerated in § 261.21(a)(2)(v) for surface waters and 264.21(d) for ground waters. It is from the analysis of these factors that conclusions can be drawn to determine whether or not a permit should be issued. For many contaminants, the Agency has data which can serve as a basis for drawing conclusions, but for others, data is unavailable or limited. The data base for formulated and decomposition inorganics is sufficiently documented and referenced. However, with respect to natural and synthetic organics, the data base is less precise. This is due, in part, to the fact that the technology required to identify, measure, and correlate these compounds with observed health and environmental effects has only recently been developed. In the past, most discussion of the effects of organics in water were merely categorized as "taste and odor" problems. Most of the factors are physical or chemical factors which are available or determinate. Other factors, especially those associated with the risk of exposure to complex organic chemicals, are associated with data from which differing conclusions may be drawn by reasonable people and represent the frontiers of knowledge. The Agency does not underestimate the

difficulty which might be involved in making a successful demonstration in adverse locational circumstances, but nonetheless feels that permitting decisions that allow exposure to hazardous waste cannot be justified because of a lack of knowledge. Technical discussions of those factors are included in the Background Document.

It cannot be too strongly stressed that locations which do not expose the public to human risks are of paramount importance in hazardous waste land disposal. The need for good sites is even more acute for hazardous wastes which have only a very limited data base. The primary means of ensuring that exposure does not occur through ground water are the requirements of § 264.21(b).

Several commenters expressed concern that the ground water protection strategy set forth in the October 8, 1980 Federal Register notice failed to give proper deference to State or local designation of ground water uses. Section 264.21(b)(1) provides that if a government entity has the authority to control ground water exposure by restricting activities that might result in exposure, and such entity exercises that authority in favor of the type of activity proposed to be carried on or being carried on by the owner of operator land disposal facility, then the permit process can recognize those determinations.

In many States, individual ownership of ground water is not possible; rather the State maintains ownership and control. The rights of individuals to the ground water are limited to reasonable use, provided that such use does not interfere with the similar rights of others. Rights to use are usually ancillary to land ownership but may otherwise be acquired through the purchase of rights of others, or granted or withheld through the legislative process. Rights may also be held by other levels of government. For example, in the West, the Federal government has not surrendered it rights to materials beneath the ground surface, including ground water, to State ownership; although some rights may have been surrendered to individuals. Municipalities or counties may also hold rights to ground water; especially jurisdictions that have been awarded the power of eminent domain.

Section 264.21(b)(2) provides that if a permit applicant can, by virtue of his vested rights, control exposure to effects caused (or to be caused) by the disposal of the waste into or on the land by restricting activities that could result in exposure, the permitting process can recognize those rights. Rights to land or ground water are only recognized; not granted by the permitting process. With respect to ground water, the manner in which such rights are held varies markedly in different areas of the country according to applicable law. By recognizing the rights that are held and exercised by individuals or government entities in the regulation, the permitting obligation of the Agency does not interfere with existing and variable federal, state, local, or private control over ground water.

A permit applicant who cannot realize control over the vested interests his activities will affect, or when that control is not provided by a duly authorized government entity, is not precluded from pursuing a permit application. Such an application may be granted if it is established that the effects resulting from the land disposal activity are acceptable with respect to the remainder of the performance standards. This includes the opportunity to show that affected ground waters cannot reasonably be used as provided in § 264.21(d)(3). Specific criteria are established for such a showing under the UIC program as referenced in § 264.21(d)(4). The limitation on the "exempt aquifer" criteria expressed in the paragraph is due to the character of the exemption associated with those particular criteria. They are criteria associated with the use of the land and ground water for purposes which are not consistent with the maintenance of high quality drinking water. They are not appropriate for application to allow hazardous waste disposal. It should be noted that this paragraph also limits the practice of disposing of hazardous waste by "well injection" directly into an "underground source of drinking water". The Agency has initiated a ban of such practices under the authority of the SDWA. If a showing that ground water use is not possible can be made in any given location, it would be appropriate that the vested rights to such affected ground waters be assigned or acquired and then dedicated.

There are currently a limited number of state planning documents which could, because they are required under federal law and subject to the approval of the Administrator, be recognized by the Agency in its administration of the permit program under Subtitle C of the RCRA. Those with the greatest potential relevance are the State Solid Waste Management Plans—section 4007(a) of the RCRA; Statewide Waste Treatment Management Plans—section 303(a) of the CWA; and Areawide Waste Treatment Management Plans—section 208 of the CWA. Compliance with statewide or areawide planning is required by § 264.21(a)(2)(A). Further, it has been suggested by some that State-Federal Water Quality Standards could be adopted by states for ground water, approved by the Administrator, and they receive similar status as those established for surface waters—sections 303(c) and 303(d) of the Clean Water Act (CWA). The Proposed Ground Water Protection Strategy, discussed below represents the most significant effort to achieve a State Federal relationship for the protection of ground water.

5. *Ground Water Protection Strategy.* On November 18, 1980, EPA published the Proposed Ground Water Protection Strategy. This Strategy, when promulgated in final form, will serve as EPA's policy framework in the area of ground water protection. Public input on the issue of ground water protection was solicited at recent National Ground Water Strategy meetings sponsored by EPA, with participants from State and local government and business, environmental, academic and public interest groups. The consensus of the workshop participants, as reflected in the proposed Strategy, was a recognition that the ground water system should be segmented with respect to all its legitimate uses, while continuing to recognize the priority of its use for drinking and irrigation to support life.

The proposed Strategy contemplates that the major responsibility for ground water protection, evaluation and segmentation will be at the State and local level. The approach outlined in the Strategy involves the development by the States, of State ground water protection strategies to be implemented through a classification scheme. This classification scheme would prioritize ground water areas for high levels of protection and identify those areas most suited for potentially polluting activities, such as the future siting of waste disposal facilities. The federal role under the proposed Strategy includes assisting the States in their ground-water monitoring efforts, in the development of State ground-water protection strategies, and through research and technical assistance. Additionally, the federal government is to develop minimum national requirements for high priority problems through established vehicles such as hazardous waste regulations under RCRA.

Several commenters suggested that promulgation of ground-water protection standards under Subtitle C of RCRA is premature prior to the finalization of the National Ground Water Protection Strategy. The Strategy as proposed,

however, directs the Agency to continue with the implementation of federal regulatory programs which affect ground water. Moreover, the permitting process established by these regulations provides a functional parallel to the approach set forth in the proposed strategy. Classification schemes established by the States can be recognized by the federally administered permit program. However, as stated in the proposed Strategy, until a classification scheme is adopted, EPA will maintain a policy that where ground water is currently of drinking water quality or better, it will be provided protection to ensure that its utility for this use is not impaired.

C. Subpart F—Ground-water and Air Emission Monitoring

The proposed requirements of this Subpart apply to owners and operators of land dispoal facilities used to treat, store and dispose of hazardous waste which have received a permit to operate. These requirements are intended to provide information on the impact of the facility on ambient air and ground-water quality.

In the case of ground-water monitoring, the regulations proposed on December 18, 1978 included ground-water monitoring requirements for landfills, surface impoundments and land treatment facilities; and the requirements for interim status facilities promulgated on May 19, 1980 included ground-water monitoring requirements. Also on May 19, 1980 ground-water monitoring requirements were proposed for certain underground injection facilities.

In the case of air quality monitoring, no such requirements for hazardous waste facilities have been previously proposed or promulgated under RCRA. This proposal to implement an air monitoring requirement for land disposal facilities is discussed in detail starting with item 6.—*Air Emission Monitoring*, of this section of the preamble.

1. *Applicability—§ 264.90.* The ground-water monitoring requirements proposed today apply to all hazardous waste management facilities where the storage, treatment, or disposal of hazardous waste could cause discharge to the ground water, as did both the originally proposed requirements and those promulgated for interim status facilities (Part 265). The Part 265 ground-water monitoring requirements involve monitoring of indicator parameters to detect discharges to ground water and subsequent assessment of ground water quality following detection of a discharge. These proposed regulations are similar. New facilities and facilities which had operated under interim status but had not detected a discharge to ground water are required to monitor indicator parameters until a discharge is detected. Following detection of a discharge to ground water these facilities and those facilities which had previously detected a discharge to ground water during interim status are required in these proposed regulations to monitor the quality of the contaminated ground water as it migrates from the facility. The results of this ground-water quality monitoring are then to be compared with the ground-water quality provisions of the facility permit. Although the Part 265 requirements include a waiver provision, no similar provision is included in these proposed requirements. The specific aspects of the facility ground-water monitoring system will be defined in the facility permit.

2. *Ground-water monitoring system—§ 264.91.* As in the Part 265 regulations the minimum indicator monitoring system is specified as at least one monitoring well located upgradient of the waste management area and at least three wells located at the downgradient limit of the waste management area. The proposed requirements also specify that if the described system is inappropriate at a given facility then a different system for detecting discharges to ground water must be installed and will be specified in the facility permit. Facilities monitoring the quality of the ground water following detection of a discharge to ground water are required to install ground water following monitoring wells at the downgradient limit of the waste management area to provide samples of contaminated ground water at that point and additional monitoring wells further downgradient. By requiring two downgradient groups of monitoring wells, facility owners and operators can measure changes in ground-water quality over distance and time. The facility permit will contain prediction of the quality of ground water and the information obtained from these wells will be compared against those predictions.

3. *Sampling and analysis—§ 264.92.* The Agency has published a "Procedures Manual for Ground-Water Monitoring At Solid Waste Disposal Facilities," EPA-530/SW-611, August 1977 and a manual on "Method for Chemical Analysis of Water and Wastes," EPA-600/4-78-020, March 1979. These manuals discuss sampling and analysis procedures and are applicable to the requirements of this section.

Similar to the Part 265 requirements the proposal requirements identify the preferred four indicator parameters: pH, specific conductance, total organic carbon and total organic halogen. If other suitable indicator parameters are to be used they will be specified in the facility permit. Unlike the Part 265 requirements, the ground water need not be analyzed for NPDW standards nor selected ground-water quality parameters. This type of ground-water quality information will be available from previous monitoring or the facility permit application. As in Part 265, background indicator parameter concentrations are to be established for one year and used for future comparisons. Also different from the Part 265 requirements, ground-water monitoring is to be performed on a well by well basis since the indicator monitoring will only be performed at new (uncontaminated) facilities or interim status facilities which have not detected discharges to ground water. Sampling and analysis requirements for ground-water quality assessments and predictions will be specified in the permit for the particular facility. Ground-water elevation determinations are required at all facilities to maintain a check on the water table gradient and direction.

4. *Preparation, evaluation, and response—§ 264.93.* These proposed regulations require that owners and operators evaluate the indicator monitoring data to detect discharges utilizing the techniques included in the Part 265 requirements, the student's t-statistic is recommended but other suitable techniques are acceptable. Once a discharge to ground water has been detected and confirmed an owner or operator must implement a ground-water contamination assessment program. Under this program the extent, rate, and predicted migration of ground-water contamination must be determined and compared to the predicted allowable ground-water contamination specified in the facility permit. Once the ground-water contamination program has been implemented at a facility, annual comparisons between predicted and measured ground-water quality must be performed. On a tri-annual basis the anticipated impact of the facility on downgradient ground-water quality must be repredicted and reported to the Regional Administrator. The report on the reprediction of the impact on downgradient ground-water quality may cause the Regional Administrator to review the facility permit.

5. *Recordkeeping and reporting—§ 264.94.* As in the Part 265 regulations, records of ground-water monitoring must be maintained throughout the operating period and the post-closure period. In addition to the report of ground-water monitoring included in the annual report, reports of evaluations are to be submitted in accordance with specific requirements of these proposed regulations.

6. *Air emission monitoring.* On December 18, 1978, the Agency proposed air emission standards for treatment and disposal of hazardous wastes (43 FR 59008). Based on a number of comments and the Agency's own analysis, the Agency expressed concern about the proposal which included definition of volatile waste solely in terms of its vapor pressure and use of the OSHA levels for allowing variances. The Agency discussed some aspects of the comments and the reasons for such concern in the Preamble to the Interim Status Standards for volatile waste on May 19, 1980 (45 FR 33166). The Agency is continuing its investigations of alternatives to the problem of hazardous air emissions from land disposal facilities.

The Agency recognizes that the potential of hazardous air emissions at a land disposal facility should be evaluated prior to the issuance of permits. The evaluation will consist of long-term and short-term effects upon human health and the environment based on the ambient air analysis. Information relating to the quantity of hazardous air quality air emissions and the toxicity of volatile compounds, and consideration of control measures will be required. Ambient air monitoring data which will provide the basis for evaluating the impact of hazardous air emissions from a land disposal facility to the downwind public will also be required. The Agency believes that a mechanism should be established to confirm and update the evaluation which is performed based on the state of the art methodology, and that the ambient air monitoring data can be sufficiently used for this purpose.

Within this framework, the Agency proposes to require the owner or operator of a land disposal facility to monitor the upwind and downwind ambient air quality at or beyond the waste management area, and to evaluate the potential of hazardous air emissions at his facility.The proposed requirements will provide a flexibility for making a case-by-case determination of the facility impact based on the best engineering judgement of the permitting official. This will render a higher degree of control in the area of high background concentrations, and vice versa.

The cost of the ambient air monitoring will vary depending upon frequency of monitoring and the number of specific constituents to be analyzed. The owner or operator may select the monitoring technique and procedure (including the type of contaminants to be analyzed) suitable to his applications, subject to review by the Regional Administrator. A summary description of, and support for, the recommended evaluation procedure for assessing the downwind impact can be found in "Land Disposal Toxic Air Emissions Evaluation Guideline."

The waste management area will be defined in the permit. Migration of hazardous waste constituents and byproducts from this area may violate the requirements of the permit and necessitate the reevaluation of the original assessment of the risk to human health and the environment from air emissions. The owner or operator will develop a plan to detect the location of a gaseous release migrated from the waste management area. The Regional Administrator will review the adequacy of the plan during the permitting process. If monitoring detects the release of total hydrocarbons or halogenated compounds (which are used as an indicator for toxic chemicals) further analysis for each constituent of the hazardous air emissions at the location will be required.

7. *Applicability—§ 264.90.* Improperly designed and operated facilities treating, storing, or disposing of hazardous waste could result in significant emissions of hazardous waste constituents or decomposition byproducts into the atmosphere. The general approach in the proposed regulation is to require the owner or operator of a facility from which hazardous waste constituents or decomposition byproducts are emitted into the atmosphere to establish an air monitoring system to measure the effect of the facility on ambient air quality. Gaseous releases may occur where the waste is placed or could be released by leachate from another location based on leachate migration and volatilization, leachate decomposition byproducts, or dissolved gases in the leachate. Gases may also migrate in the unsaturated zone or via ground water in the saturated zone. Ground water monitoring will effectively indicate leachate migration and the possibility of gaseous emissions and migration via leachate and ground water. Maintaining the unsaturated zone as required in the air emissions section will detect gas migration from the waste. Both saturated and unsaturated zone migration of gaseous emissions can result in releases to the atmosphere or confined spaces (e.g., basements, sewers) posing a potential threat to human health and the environment.

8. *Air emission monitoring system—§ 264.95.* This section contains requirements for a system to monitor ambient air quality and gaseous emissions. The ambient air monitoring system will consist of ambient air samplers at upwind and downwind locations, and instruments to gather meteorological data. The ambient air monitors must be installed at or beyond the limit of the waste management area as specified in the facility permit.

Sinultaneous monitoring of the upwind and downwind ambient air quality, taking wind direction and speed into consideration, will yield information on the site-specific background and downwind concentrations, to enable evaluation of the net impact of the facility on the atmosphere. Two monitors at the upwind and downwind locations would constitute the bare minimum number. The installation may be permanent, portable, or a combination of these. The number and location of the monitors will be dependent upon the size of a facility, meteorological conditions, prevalent winds, and the surrounding population density and distribution. Since the ambient monitoring data will ultimately play a major role in assessing the impact of the facility emissions of the downwind public, it is important to have a sufficient number of monitors in the direction of the population.

Meteorological data are needed to facilitate the interpretation of the ambient monitoring data. The major part of this interpretation should include the background concentration, validation of prediction, and the assessment of ambient air quality impacting public health and the environment. For most of facilities or a reasonable size, one wind direction and speed indicator would provide data sufficient for indication of wind direction and speed. Such meteorological data are also available from the National Climatic Center in Asheville, North Carolina. Other meteorological information such as stability class necessary in the evaluation may be monitored or collected to increase the accuracy of the meteorological parameters.

When a number of facilities are located in the same waste management area, the facilities affected by the proposed regulation may be monitored individually or as a whole. In either case the number and location of monitoring sites must provide the kind of data that can be used for subsequent analyses

and evaluations. It is important that the background concentration be established for each upwind monitoring site to derive a net effect of a facility.

The apparatus used for ambient air sampling of hazardous waste constituents and byproducts is available commercially and can be purchased as a package unit. If the owner or operator owns or operates some other kind of ambient air sampler, he should investigate the possibility of using the unit by adapting a sample collection device for collection of hazardous waste constituents. Although the analysis for the purpose of this regulation will be primarily directed towards individual constituents, indicators such as total hydrocarbons may have to be purchased for on-site usage, or the samples may have to be analyzed by an analytical contractor.

The portable hydrocarbon analyzers for use in detection of the location of the migrated air missions as required by paragraph (c) of this section are also commercially available. Depending upon the particular requirements, the owner operator may utilize the detector for total hydrocarbons or total halogenated compounds. The former apparatus operates on the principles of analyzing carbon compounds, the later operates on the principles of photoionization of halogenated compounds.

9. *Air emission sampling and analysis—§ 264.96.* This section addresses requirements for developing a plan to monitor ambient air quality. The plan shall include procedures and techniques for sample collection, sample preservation and shipment, analytical procedures, type of contaminants or hazardous constituents to be analyzed, meteorological data, and the chain of custody control. The description of the apparatus and the type of adsorbent if used shall also be contained in the plan.

The analytical procedures shall not only address the methods of analysis, but also the subject of quality control and assurance to increase its accuracy and precision. Although the ambient air sampler will be able to collect most or all of hazardous waste constituents or decomposition byproducts in the waste, it may be unreasonable to analyze for all of the collected hazardous components. The owner or operator will consider the quantity of a constituent in the waste, its volatility, and toxicity in arriving at the type and number of constituents to be monitored. The type and number of hazardous components analyzed may require periodic adjustment depending upon the change of operational modes at a later date. In addition to monitoring of specific constituents, monitoring of indicators may be necessary to quantify the emissions and ambient air quality relating to other adverse health effects.

Paragraph (b)(2) of this section requires, as a minimum, four sets of ambient data to be obtained during a period of three months. Since the samples at the upwind and downwind locations will be taken simultaneously, this corresponds to a sampling frequency equivalent of four times a quarter. The length of each sampling will be of such duration that the concentration can be accurately measured at the detection limit of the instrument. The importance of sampling at theoretical upwind and downwind conditions is to simplify the subsequent analysis and to alleviate any inaccuracy in ascribing the net contribution. The wind condition will invariably be a factor in the alignment of the monitors. The measurements should preferably be performed on an equal interval during a quarter period. This contrasts to an extreme situation where all measurements can be completed in a matter of a day, for instance. The measurements need not be done at the time of a maximum emission rate but it should reasonably reflect a representative case of emissions, and should not result in ambiguity in ascribing the net air quality effect of a facility.

If the owner or operator wishes, he may institute ambient air monitoring at a frequency greater than that required in paragraph (b)(2) of this section. The advantage would be improvement in the statistical significance of the results, since the sample sizes are increased.

The substance of paragraph (c) of this section has been discussed previously. The requirement includes detection of the location of migrated gaseous emissions using portable detectors, but does not include additional quantification of ambient air samples. This aspect of quantification is addressed in a later section. Because the response signaling such detection would be dependent upon the wind condition, the wind condition must be monitored any time the monitoring for the detection is carried out. The owner or operator may develop a strategy for the monitoring that will make it unnecessary to walk through the vast area on the outskirt of the waste management area. The hydraulic and geologic consideration in leachate migration and groundwater transport may provide a basis for deriving a scheme of investigation. The investigation of migration by hazardous gas itself may require consideration of pressure gradient in the soil. In cases such as capped facilities, it may be necessary to walk through the general area on the outskirt of the waste management area.

The frequency of the monitoring for detection of gaseous release is twice a year. Generally one person will carry the sniffer for detection and another person will accompany him to record the area of investigation, the background reading, identification of the location and object, and responses indicating such detection. The length of monitoring will depend upon the area of investigation and the efficiency of performing the planned strategies but it should not require more than a week period for each monitoring effort.

10. *Air emission evaluation and response—§ 264.97.* Under the requirement of paragraph (a) of this section, the owner or operator of a treatment, storage, or disposal facility must evaluate the extent of emissions of hazardous waste, its constituents or decomposition byproducts, and predict the ambient air concentrations at the downwind monitoring sites based on the rate of emissions from the facility and the background ambient air concentration. The guidance manual explains the recommended methods for estimating the emission rates from surface impoundments, landfills, and land treatment facilities, and for predicting the ambient air concentration impinging on the monitoring receptor. The estimated rate of hazardous air emissions can be further verified experimentally, but it is not required for the purpose of prediction. The screening technique described in the manual is considered sufficient for such prediction. More sophisticated dispersion models are available. Reference to a computerized model can be found in the guidance manual.

The data obtained from the ambient air monitoring system in accordance with the previous sections can be used in several ways. Since the predicted value on ambient air quality at the monitoring site should be compared with the ambient air monitoring data, the values of the parameters used in the prediction should be consistent with the conditions prevailing at the time when the ambient air sampling was performed. The comparison between the predicted and monitored values shall be included in the annual report. If there is a significant difference between the two values, the evaluation should be reviewed as to its correctness especially with respect to the estimated emission rates used in the prediction. The manual describes the quantitative relationship of the emission rates and other

parameters with the downwind ambient air concentration.

The requirement for estimating the impact of a facility on public health and the environment is addressed in paragraph (c) of this section. The comparison to be made in accordance with paragraph (b) of this section is tantamount to a scheme to calibrate the predictive models and to take corrective measures if necessary. Such models will be used to predict the anticipated effect on the downwind public. The prediction shall be repeated annually and must include at a minimum the worst condition, quarterly, and annual effects. The recommended procedure for the prediction is described in the guidance manual.

Corrective action to reduce the rate or quantity of hazardous air emissions should be required to the extent necessary to protect human health and the environment based on the ambient air quality monitoring and analysis. In addition to carcinogenic evidence, other health effects of hazardous constituents, including acute toxicity, mutagenicity, teratogenicity, bioaccumulativeness, persistency, and formation of photochemical oxidants must be considered in the impact assessment. In the area where the ambient air quality of photochemical smog is not presently acceptable, the air quality evaluation should also address the need for control of total hydrocarbons to the extent possible to prevent further deterioration of the oxidant level.

The consideration of these factors will lead to an allowable ambient air concentration impacting the downwind public and environment. The guidance manual explains the method of evaluation and the factors to be considered. The allowable ambient air concentration specified in the facility permit will be compared with the anticipated effect. Such comparison will be made available to the Regional Administrator in the annual report as required in paragraph (d) of this section. If the comparison shows a non-compliance of the predicted impact on the ambient air quality with permit provisions, the owner or operator must determine whether the hazardous air emissions can be reduced and include in the annual report the proposed modifications to the facility to bring it into compliance with allowable ambient air concentrations.

Paragraph (f) of this section addresses requirements for a plan to institute a detection system in accordance with § 264.97(c) and § 264.98(c), and capable of assessing the effect on ambient air quality when the detection of migration occurs. Once such a location is detected, the indicators can no longer be used for quantification of hazardous waste constituents. The plan must include techniques and procedures for sample collection, frequency of sampling, sample preservation and shipment, analytical procedures, quality control and assurance measures, and chain of custody control. The plan must also address the remedial measures to respond to short-term or long-term contamination and health effects. The anticipated effect of migrated emissions on the nearby population must be fully assessed when detection occurs.

The air and area contamination assessment programs is in essence a collection of the plans which will be used for the implementation of the detections system, and which will fully assess the air and area contamination if and when gaseous migration from the waste management area occurs. If a gaseous release is detected the assessment plan must be implemented, as required in paragraph (g) of this section. The owner or operator must pursue further evaluation of the contamination regarding quantification waste constituents and prediction of its impact. The results of the assessment along with the comparison with the provisions of the facility permit must be provided to the Regional Administrator.

11. *Air emission recordkeeping and reporting—§ 264.98.* This Section addresses requirements for keeping records and reporting the results of the ambient air monitoring, the system for detection of migrated emissions, and the evaluations. Such requirements are addressed in discussing each applicable section. This section represents a summary of the requirements.

D. Subpart K—Surface Impoundments

Today's publication of regulations for surface impoundments under Subpart K of Part 264 is applicable to all facilities which are defined as surface impoundments in § 260.10. These facilities may be categorized as follows:

(1) Those surface impoundments which are used solely to treat or store hazardous waste and which use a double liner containment system designed and operated in accordance with §§ 264.221(f), 264.222(c) and 264.223 (b), (c) and (d);

(2) Those surface impoundments which treat or store hazardous waste and use a single liner system; and

(3) Those surface impoundments which treat or store hazardous waste and then dispose by not removing all hazardous waste or hazardous waste residue or by leaving the waste in place at closure.

These facilities are designed to prevent discharge into the land and ground water, and to surface waters (except discharges authorized by an NPDES permit). Facilities which are designed to discharge into the land are defined as seepage facilities and are subject to the proposed Subpart R regulations.

Owners and operators of new surface impoundments that are not designed to prevent discharge into the land to comply with this Subpart will not be permitted as a surface impoundment, and existing surface impoundments that are not brought into compliance with these regulations must be permitted as a seepage facility under Subpart R, remain on interim status subject to Subpart K of Part 265, or close.

Surface impoundments (also known as pits, ponds, or lagoons) are designed to hold liquid wastes and wastes containing free liquids. Leakage to ground water generally poses the most serious threat to human health and the environment from impoundments, but air emissions from volatile wastes (today being addressed in § 264.90) and surface water contamination as a result of overtopping the impoundment or dike failure can also be serious problems.

The Agency promulgated regulations for a limited subset of facilities called surface impoundments on January 12, 1981, (46 FR 2868–2870) addressing ground water and surface water concerns. The general approach was to require primary containment and inspection.

Surface water concerns were addressed by standards which prohibit overtopping the impoundment, require maintenance of a specified freeboard, require that the structural integrity of dikes be certified by a qualified engineer and preserved by protection from perennial woody plants and burrowing mammals and by protective cover, and require inspections at specified frequencies. In addition, the regulations required a device or method to shut off waste flow into the impoundment, and the diversion of run-on away from impoundments. Above ground secondary containment was not required and inspection is used to ensure that actual or potential discharge is readily identified and corrected.

Ground water concerns were addressed by standards which required a primary liner system in contact with the waste designed to prevent discharge from the impoundment during the life (i.e., active life and closure period) of the facility, to meet certain performance requirements, and appropriate inspection and testing was required during construction and installation. A

leachate detection, collection, and removal system beneath the primary liner system was also required to detect failure of the primary liner system and to prevent discharge into the land. This system was to be inspected at least once each operating day and operated to remove any liquids which accumulate in it. A containment system evaluation and repair plan, to be implemented in the event of a liner failure or evidence of a possible liner failure, must also be prepared.

Today's regulation provides additional regulatory guidance for single liner surface impoundments including those which dispose of hazardous wastes by leaving wastes or waste residues in place at closure. A single liner surface impoundment, including those which are designed to be closed without removing the waste or waste residues, is a land disposal facility as defined in §§ 260.10 and 264.19. A surface impoundment which is a land disposal facility must be analyzed in accordance with the generic land disposal facility requirements (See §§ 264.2, 264.20, and 264.21)

1. *Applicability—§ 264.220.* The regulations in this subpart apply to owners and operators of facilities that use surface impoundments to treat or store hazardous waste and are an expansion of the regulations (46 FR 2868–2870) which applied only to surface impoundments which are used solely for storage or treatment. Although disposal may occur at some of the facilities which could be permitted under this Subpart, these regulations do not apply to facilities which are designed to discharge wastes into the land. Facilities which are designed to discharge into the land during their active life are defined as seepage facilities and are subject to the proposed Part 264, Subpart R regulations.

2. *General design requirements—§ 264.221.* Changes to the regulatory language include a specific exemption from the requirements of Subpart F for those storage or treatment and storage impoundments which comply with § 264.223(b). These facilities by virtue of their double liner containment system provide internal monitoring of any escaping leachate. Furthermore, facilities which comply with § 264.223(b) and which are used solely to treat or store hazardous waste are not used for disposal and therefore do not require the analyses specified for land disposal facilities.

3. *Closure—§ 264.228.* Closure of a surface impoundment which will be used solely to treat or store hazardous waste includes removal of all hazardous waste and hazardous waste residues. If the surface impoundment is to be designed to close with hazardous waste residues remaining, authorization must be obtained in the facility permit. As stated before, a single liner surface impoundment, including those which are designed to be closed without removing the waste residues, is a land disposal facility and must be analyzed in accordance with the generic regulations. The authorization to close with waste residues remaining comes from the analysis required by and compliance with the generic land disposal facility regulations.

E. Subpart L—Waste Piles

Today's publication of regulation for waste piles under Subpart L of Part 264 is applicable to all facilities which are defined as waste piles in § 260.10.

The Agency promulgated regulations for a limited sub-set of facilities called waste piles on January 12, 1981, (46 FR 2870–2872) addressing ground water and surface water concerns. The general approach was to require primary containment and inspection.

These regulations have been generally adopted for today's publication. Several revisions were, however, made to principally address situations where closure with wastes or waste residues remaining is anticipated. A brief review of these changes follows.

1. *General design requirements—§ 264.251.* Paragraph (b) of § 264.251 has been revised to delete mention of ground water. The generic regulations will, after comprehensive analysis and documentation, allow discharge to ground water where human health and the environment are not threatened. Direct discharge to surface water will still be prohibited without an NPDES permit.

Paragraph (c) of § 264.251 has been added to clarify the distinction between waste pill which are used for storage or for treatment and storage, and those which will allow discharges to ground water and/or surface water (disposal). Those which will be used solely for storage or storage and treatment must have a containment system complying with § 264.253. This includes a leachate and run-off collection and control system; and either an impermeable liner capable of containing the waste and associated leachate, and any equipment to which the liner may be exposed; or if the liner is not of sufficient strength to prevent failure due to physical damage from equipment used in pile operation, a leachate detection, collection and removal system to remove any discharge.

Changes to the regulatory language also include a specific exemption from the requirements of Subpart F or those storage and treatment waste piles which comply with § 264.253. Monitoring of escaping hazardous waste or hazardous waste residues is achieved by either a double lined containment system with leachate detection, collection, and removal or periodic removal of the waste pile and testing of the underlying base to ensure that it has not deteriorated to the point where it is no longer capable of containment, is already leaking or is otherwise is disrepair (see § 264.254(b) and (c)).

2. *General operating requirements—§ 264.252.* Certain waste piles will be permitted to discharge to surface and ground water during the life of the pile. Permission to discharge, or rather not requiring that discharge be absolutely prevented, will be based on the information required in the owner or operator's application. Section 264.252(c) has been revised to emphasize that leachate and run-off must be collected and controlled *unless* authorized by the permit for the facility.

3. *Inspection and testing—§ 264.254.* To ensure that hazardous wastes or hazardous waste residues are not escaping from the waste pile, periodic inspection of wind dispersal, run-on and other waste containment sytems must be effected. As previously stated, inspection of the waste pile base may be omitted if the pile has a leachate detection collection and removal system as specified in § 264.253(a)(3) (see also preamble discussion of General Design Requirements).

4. *Closure and post-closure—§ 264.258.* Closure of a waste pile which will be used to treat or store hazardous waste will require removal of all hazardous waste and hazardous waste residues. If the waste pile should be designed to close with hazardous waste residues remaining, authorization must be obtained in the facility permit. Those which are designed to be closed without removing waste residues are land disposal facilities and must be analyzed in accordance with the generic regulations. The authorization to close a waste pile with hazardous waste residues remaining is determined from the analysis required by and compliance with the generic regulations.

F. Subpart M—Land Treatment

Land treatment implies that the land or soil is used as a medium to treat hazardous waste. The regulations reflect EPA's philosophy that applying hazardous waste to the soil is a waste management practice reserved for those waste streams that can be successfully treated in a soil system.

The Agency does not consider land treatment to be an experimental disposal practice. There are certain risks and uncertainties associated with land treatment just as there are with other hazardous waste management practices. It would be inappropriate to interpret the comprehensive monitoring requirements for land treatment facilities as being a measure of the uncertainty associated with the practice. Rather the monitoring requirements are comprehensive because land treament facilities rely on dynamic physical, chemical, and biological processes occurring in the soil to degrade and immobilize waste constituents. Monitoring to the degree required by this regulation, provides the data necessary to evaluate the performance and hence determine environmental protection. The Agency considered many of these same monitoring requirements for landfills and surface impoundments, but decided against them because of the difficulty of their employment in those situations.

The Agency believes that land treatment is a viable waste management practice for selected solid and hazardous wastes and can be a more effective disposal option than landfilling or incineration.

1. *Applicability—§ 264.270.* These requirements apply to all facilities used for the land treatment of hazardous waste. A land treatment facility is a facility at which hazardous waste is applied onto or incorporated into the soil surface.

2. *General operating requirements—§ 264.272.* The General Operating Requirements for control of run-on and run-off remain unchanged from the interim status version published on May 19, 1980. The rationale for these requirements is discussed in the May 19, 1980 land treatment preamble (45 FR 33205 *et seq.*).

3. *Waste analysis—§ 264.273 (Reserved).* The requirements for Waste Analysis have been deleted because this section was thought to be redundant with the requirements order § 264.13, General waste analysis, and the information requirements of § 264.21. An owner or operator is required under § 264.13 to analyze the waste to the extent necessary to land treat the waste, and under § 264.21 to define the hazardous waste(s) that will be land treated and predict the mass rate of hazardous waste and decomposition by products that are expected to leach or otherwise escape from the site.

Given these requirements and the comprehensive waste analyses needed to comply with them, the Agency felt the waste analysis requirements of § 264.273 were unnecessary.

4. *Food-chain crops—§ 264.276.* Under Part 265.276 of the Interim Status Standards, published in the **Federal Register** as Interim Final May 19, 1980, the Agency permitted the growing of food-chain crops on active portions (treated areas) of hazardous waste land treatment facilities provided that certain requirements are met. This was a change from the proposed Interim Status Standards which prohibited growing food-chain crops.

Commenters objected to this ban, suggesting that some crops on active portions of hazardous waste land treatment facilities could be grown on treated soil without endangering human health. Instead of a ban, commenters suggested alternatives such as specifying "safe" application rates to the soil, and monitoring crops for their uptake of hazardous constitutuents. The Agency also received comments suggesting that the ban was inconsistent with the regulatory approach taken to protect food-chain crops under Subtitle D of RCRA. Those regulations were finalized as the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (The Criteria, 40 CFR Part 257), on September 13, 1979. The Criteria prescribed annual application rates and limits on cumulative loadings for cadmium based on the specific health risk, and treatment requirements for wastes containing PCB or pathogens. Commenters argued that the application of some hazardous wastes to food-chain crops present no greater risk than such practice with some non-hazardous waste.

The decision to permit food-chain crops to be grown on treated areas during the interim status period is based on the premise that where there is convincing evidence that such crop growth is safe, it would be unjustified to probibit it. Such would be the case where it is demonstrated that hazardous constituents in a particular waste may not be taken up by certain food-chain crops, or after a period of treatment the constitutents may degrade into products non-hazardous to humans. However, the Agency still maintains that there is little real need to grow food-chain crops at land treatment facilities. The small amount of land used for land treatment represents a negligible portion of the total productive land available for crop growth in this country. Furthermore, there are other productive uses of the land, such as for ornamental horticulture and growth of fiber crops or other non-food crops.

Since the Agency decided that prohibiting food-chain crop growth on treated areas of land treatment facilities could not be justified, it was necessary for the Agency to adopt an approach that would permit food-chain crops to be grown and at the same time assure that public health would be protected. The Agency carefully examined the suggestion made by commenters of specifying "safe" application rates. However, this approach was rejected by the Agency because the existing data base on rates of crop uptake of hazardous substances were not comprehensive enough to permit the Agency to specify safe application rates. Also, regulation by corp monitoring was considered limited by the fact that safe levels of most hazardous substances in crops had not been determined by the Food and Drug Administration, the Department of Agriculture, or the Environmental Protection Agency. These inadequacies which have been pointed out with the "safe" application rates approach still exist today.

While the Agency did not yet have a clear specification of the "safe" level of contaiants in food crops, it assumed that the level of such contaminants present in food crops not grown on waste amended soils is acceptable. Based on this assumption, the Agency devised a two-part test to determine whether food-chain crop growth on land treatment facilities was acceptable. Prior to growing a crop for market on soils that have received hazardous waste, the owner or operator must document that hazardous waste constituents in the waste, as well as arsenic, lead, and mercury, would not (1) be transferred to the edible portion of the crop by plant uptake or that it would not (2) occur in greater concentation in the crop than in crops grown in the same region on similar soils which have not had wastes applied.

Also, the owner or operator must use actual field studies or the crop for comparative purposes. The conditions under which the comparable crops are grown must be similar to the conditions found at the facility. For example, soil type, soil moisture, soil pH, and soil nutrients, must be similar at both the facility and the control sites. The owner or operator must also document the sample selection criteria, sample size determination, analytical methods, and statistical procedures used to make the demonstration. In order to determine compliance prior to waste application the owner or operator must pre-test a sample crop using the type of waste and application rate that will be used at the facility.

The Agency also examined the approach used in the "Criteria for the Classification of Solid Waste Disposal Facilities and Practices" and concluded that the limits developed in these regulations for cadmium should be incorporated into the Interim Status regulations.

The Criteria include two approaches for the land application of wastes containing cadmium. Control of the pH of the waste and soil mixture; animal cadmium application limits that are reduced over time; cumulative cadmium application limits based on soil cation exchange capacity (CEC); and a restriction of the cadmium concentration in waste applied to facilities where tobacco, leafy vegetables and root crops are grown.

The second approaceh allows unlimited application of cadmium provided four specific control measures are taken. First, the crop grown can only be used as animal feed. Second, the pH of the soil must be maintained at 6.5 or above for as long as food-chain crops are grown. Third, a facility operating plan must describe how the animal owners are provided notice (through provisions in land records or property deed) that there are high levels of cadmium in the soil and food-chain crops should not be grown.

The Agency does not believe, however, that the Criteria sufficiently address the broad range of constituents present in hazardous waste. Therefore, the Agency decided to set additional requirements that relate to hazardous constituents in waste applied as well as other substances of concern (i.e., arsenic, lead, and mercury) because of their effect on food-chain crops. These additional substances were identified because of their relatively high toxicity to humans and evidence that they can be taken up by crops.

The Agency believes that the Interim Status Standards adequately protect public health, and therefore has adopted a similar approach for the proposed regulations under this section. However, one section of the Interim Status Standards has been modified for the purpose of this section. The modification is the deletion of the "phasing" approach for the annual application of cadmium. Under this approach the annual application of cadmium is reduced over a set period of time. The time schedule starts from the present to June 30, 1984 and allows 2.0 kg/ha of cadmium to be applied. From July 1, 1984 to December 31, 1986 the amount is reduced to 1.25 kg/ha, and further reduced to 0.5 beginning January 1, 1987.

The cadmium limits promulgated under Subtitle D of RCRA are primarily aimed at controlling wastewater treatment sludges containing high levels of cadmium from beign placed on agricultural lands. The phased time period for the reduction of cadmium applied to agricultural lands is used in order to correspond with the pretreatment schedule that wastewater treatment facilities (POTW's) must meet, in accordance with the Clean Water Act, to reduce the amount of cadmium in their sludges. The Agency believes that by using the same time schedules, implementation of the regulation can be carried out without causing an undue hardship on operators of wastewater treatment facilities, and at the same time be assured that public health will be protected.

Because the phased schedule for controlling the annual application of cadmium is oriented primarily towards wastewater treatment sludges, the Agency has decided not to incorporate it into the regulations under this section. Instead the 1987 annual cadmium application rate of 0.5 kg/ha is used. The Agency feels that it is more appropriate to use the 1987 cadmium limits since most wastewater treatment sludges probably will not be classified as hazardous wastes, and to apply the phased time period to waste other than wastewater treatment sludge would be contrary to its original purpose. However, in the future, the phased schedule for annual cadmium application rate may be incorporated into the regulations under this section if the Agency finds that large quantities of wastewater treatment sludge are falling within the hazardous category. Also, it should be noted that the Agency is currently developing regulations under section 405 of the Clean Water Act that will address cadmium limits applied to food-chain crop lands. These regulations, when promulgated, may make it necessary for the Agency to modify existing cadmium limits in order to have consistency in its approach to control the application of cadmium to food-chain crop lands.

5. *Unsaturated zone (zone of aeration) monitoring—§ 264.278.* The unsaturated zone monitoring requirements are essentially the same as the interim status requirements published on May 19, 1980. Some changes have been made to make the standards more clear and to be consistent with the requirements of §§ 264.21 and 264.96.

In response to a possible misunderstanding concerning the May 19, 1980 regulations, the Agency has clarified when soil-core and soil-pure water sampling is to be initiated. The proposed standards require that soil-core sampling be initiated prior to waste application, and that soil-pure water sampling devices be installed prior to waste application. The first samples must be taken from the soil-pure water sampling devices when sufficient soil-pure water is collected.

These new requirements apply only to new facilities since existing facilities will already have initiated unsaturated zone monitoring as required under interim status.

Changes made to the proposed standards to make them consistent with the objectives of § 264.21 and 264.96 provide the owner or operator with a more tangile unsaturated zone monitoring design objective. Essentially the owner or operator is required to design and implement an unsaturated zone monitoring plan which will characterize the leachate that is expected to leave the zone of incorporation. In addition the monitoring results must be able to substantiate the predictions made under §§ 264.21 and 264.96. These requirements are admittedly onerous but the Agency strongly feels that the owner or operator must completely as possible understand the effect his waste is having on the unsaturated zone. This information will be needed to both predict what effects land treatment will have on the groundwater, and determine what variables need to be manipulated in order to optimize the performance of the site.

Comments to the May 19, 1980 interim status unsaturated zone monitoring requirements indicated a perference for performance standards versus design standards.

This complaint is directed toward the standard requiring the use of lysimeters. Commentors felt that lysimeters hinder the operation of heavy equipment and they feel that soil core and groundwater monitoring negate the need for soil-pure water monitoring.

EPA agrees that the operation of heavy equipment at land treatment facilities may be hindered by the placement of lysimeters. However, the information gained from the use of lysimeters greatly outweighs any minor loss in land utilization of productivity.

The information obtained form the analysis of soil-pore water, i.e., a measure of the amount of hazardous constituents passing through the system, cannot be determined from soil cores or groundwater monitoring. Lysimeters are one way to measure this contaminant transport phenomenon, lined test cells are another.

Unsaturated zone monitoring is more readily accomplished than ground-water monitoring. Lysimeters or lined test cells

are shallow and do not require a significant knowledge of the water table and ground water flow characteristics that is required for ground-water monitoring.

6. *Recordkeeping—§ 264.279.* The requirements for recordkeeping have remained unchanged from the interim status standards published on May 19, 1980. The reader is referred to the preamble discussion of 45 FR 33206 *et seq.*

7. *Closure and post-closure—§ 264.280.* The closure and post-closure requirements have been changed to allow the use of a qualied soil scientist to verify that the facility has been closed in accordance with the specifications in the approved closure plan.

One commenter requested the above change and the Agency agreed with the validity of the comment. A soil scientist will have an appreciation for the factors likely to influence the establishment of a vegetative cover and the mobility of hazardous constituents in the soil. An engineer was not ruled out because of the possibility of a shortage of qualified soil scientists in any particular region.

Some minor changes in wording were made to the closure and post-closure standards in order to make them consistent with the objectives of § 264.21. These changes, similar to those made to the unsaturated zone monitoring requirements, require that the owner or operator give major consideration to characterizing the leachate leaving the zone of incorporation. The method by which a site is closed and the length of post-closure are dependent upon knowing the nature and extent of leachate leaving the zone of incorporation and the effects the leachate will have upon the groundwater.

8. *Special requirements for ignitable or reactive waste—§ 264.281.* Comments to the May 19, 1980 interim status standards indicated that it was inappropriate to include § 264.261 because land treatment of these types of waste is common practice and should be continued until promulgation of general facility standards which would allow case-by-case determinations.

Handling ignitable and reactive wastes involves danger to personnel at the land treatment facility. These wastes present great danger of fire, spontaneous chemical reactions, and explosion. Even so, the regulation allows these materials to be land treated if these dangers can be eliminated by incorporation into the soil.

Furthermore, a clause has been added to the regulation in response to comments allowing management of these wastes if they are protected from conditions leading to ignition or reaction. The Agency is unaware, however, how such ignition or especially reaction could be prevented in the open area of a land treatment facility unless the wastes were rendered non-ignitable or non-reactive.

9. *Special requirements for ignitable waste—§ 264.282.* The requirement that incompatible wastes may not be placed in the same land treatment area unless the land process complies with § 264.17(b) has been retained and no wording changes have been made.

No comments were received on this section of the regulations.

10. *Special requirements for classes of facilities—§ 264.283.* The standard requires that a land treatment facility have a minimum of two meters between the incorporated waste and the aquifer being or to be used, (i.e., the historical high water table for water table aquifers, or the bottom of the confining soils for artesian aquifers).

Land treatment facilities which discharge to an aquifer which in its entirety, is not and will not in the future be a source of water supply for any use (Class A Facility) are exempt. Land treatment facilities which discharge into a portion of an aquifer which is not or will not be used in the future (Class B facility) are also exempt.

The two meter separation requirement applies only to those facilities located over groundwater that is or will be of future use. This requirement, which was not proposed as interim final on May 19, 1980, is considered necessary because of the nature of land treatment facilities, i.e., the reliance on attenuation of contaminants in the unsaturated zone. Although a land treatment facility might operate successfully over a space of less than two meters from groundwater the Agency feels the risk is too great given the potential consequences.

G. Subpart N—Landfills

Proper landfilling of hazardous waste is more than the act of simple burial. Hazardous waste landfills must be carefully engineered to provide long-term protection of ground water, surface water, air, and human health. The state of the art of landfill technology is developing and changing. However, there are techniques currently available for effectively reducing the adverse health and environmental effects from landfills. Furthermore, the Agency expects that these regulations, in prohibiting certain improper practices, will accelerate the development of good techniques for landfilling, pretreatment of wastes to be landfilled, and waste reduction.

1. *Applicability—§ 264.300.* These requirements apply to all landfills used for the disposal of hazardous waste.

2. *General design requirements—§ 264.301.* A leachate monitoring system is the only structure specifically required in this section. The monitoring results from this system will provide an efficient method for the permit writer to evaluate the predictions required for compliance with § 264.21. Leachate quality is one of the first unknowns which must be estimated before contaminant release rates and their effects on groundwater can be predicted. Therefore, a close agreement between actual and predicted leachate quality provides at least some assurance that the facility is operating according to plan. Gross disagreement between actual and predicted leachate quality may cause the Administrator to require a reassessment or recalibration of the predictive tools used by an owner or operator. These reassessments could, in some cases, uncover potential problem areas early enough to avoid more costly clean-up operations.

Only new landfills and landfill cells are affected by this requirement. The Agency believes that attempts to retrofit many existing facilities with a leachate monitoring system would create an unacceptable hazard to human health and to the environment.

EPA specifically requests comment on § 264.301(a). Of particular interest are (1) sampling methods capable of collecting representative samples of leachate in a landfill not equipped with a liner, and (2) the nature and extent of activities necessary to comply with this section.

Paragraphs (b) and (c) of this section provide the minimum acceptable controls for the construction of liner systems and leachate collection and removal systems. These regulations do not require the construction of a liner for all landfills but EPA recognizes that many landfills will be constructed using liners to contain the hazardous wastes.

These standards are a departure from the detailed design standards contained in the December 18, 1978 proposed regulation (43 FR 59009–59011). The changes are due to the comments received on the proposed regulations and advancements in the state of the art. Much more information is now available which can be used in the design of effective liner systems. EPA has developed two technical reports to assist in the design: "Lining of Waste Impoundment and Disposal Facilities" (SW/870), September, 1980 and "Landfill and Surface Impoundment Performance Evaluation" (SW /869), September, 1980.

The requirements stated in § 264.301 indicate EPA's concern for both the structural integrity of the system and the chemical resistance of the liner materials. For a liner system to be successful much care and attention must be given to these aspects of the design.

3. *General operating requirements—§ 264.302.* Control of precipitation on and near the active disposal area(s) and control of wind blown materials are the major concerns during operation. These are the same requirements which were given in Part 265.

4. *Inspection and testing—§ 264.306.* These requirements reinforce EPA's concern of the need to control surface water runoff due to rainfall and to carefully inspect any liner system which is installed at a disposal facility. The appurtences used to control the run-on and run-off at a landfill must be inspected each week and after major storms to ensure that they are functioning properly.

There are specific requirements which are applicable to an inspection and testing program to be implemented during the construction or installation of a liner system. These are minimum requirements which will provide data to evaluate the effectiveness of the liner system.

5. *Surveying and recordkeeping—§ 264.309.* These are the same requirements which have been used in Part 265.

6. *Closure and post-closure—§ 264.310.* The overall objectives of closure and post-closure are to minimize the need for further maintenance of the facility and to restrict the escape of hazardous materials. A final cover over completed portions of a landfill is an important first step in meeting these objectives. The design of the final cover must be consistent with the permit for the facility and therefore with the predictions made in comnpliance with § 122.25(d) because the accuracy of these predictions are vitally contingent on precise cover designs and maintenance procedures. EPA has developed two technical reports to assist in designing landfill covers: "Evaluating Cover Systems for Solid and Hazardous Waste, (SW/867), September, 1980 and "Landfill and Surface Impoundment Performance Evaluation" (SW/869), September, 1980. Similarily, any other equipment or maintenance routine which is necessary to abide by the permit must be continued into the post-closure care period.

7. *Special requirements for ignitable or reactive waste—§ 264.312.* Ignitable or reactive wastes may not be placed in a landfill unless the waste is treated so that the waste does not meet the definition of ignitable (§ 261.21) or reactive (§ 261.23) prior to or immediately after placement in the landfill. EPA assumes that the most common method used to comply with this regulation will be to mix the waste with soil or some other relatively inert material before the waste is landfilled. This requirement is the same as the requirement in Part 265.

8. *Special requirements for incompatible wastes—§ 264.313.* This requirement, which is identical to Part 265, states that incompatible wastes must not be placed in the same landfill cell.

9. *Special requirements for liquid waste—§ 264.314.* This requirement does not allow bulk liquids to be placed in a landfill unless the owner or operator can prove that the added liquid will enhance stabilization of the landfill. Such a landfill must be lined with a material which is chemically and physically resistant to the added liquid and the leachate control system must be capable of removing all leachate produced. The intent of this requirement is to exercise needed control over the disposal of hazardous waste liquids. Earlier regulations have allowed the placement of liquids in landfills without the requirement to prove that stabilization is enhanced. EPA believes that the potential damage from allowing uncontrolled disposal of liquids in landfills greatly outweighs the benefits from allowing the practice. Allowing liquids in landfills increases the hydraulic head within the fill and hydraulic head is the primary driving force which cause pollutant migration from landfills.

EPA does recognize that the decomposition and subsequent stabilization of some materials can be enhanced by the addition of liquids. For this reason, EPA will allow liquid addition when it can be demonstrated that stabilization is enhanced.

This does not alter the basic EPA belief that landfills should be kept dry. By minimizing liquids in landfills the transport mechanism to move pollutants beyond the landfill is minimized.

The requirement which does not allow containers holding liquids or waste containing free liquids is the same as the requirement in Part 265.

10. *Special requirements for containers—§ 264.315.* This requirement is that empty containers must be crushed during disposal so that void space is minimized. This requirement has been included because empty containers can degrade, collapse, and disrupt the final cover of the landfill which is the same effect created by containers filled with liquids. Reducing the volume of the empty containers will minimize this effect.

The overall intent of the requirement is to eliminate all significant voids including partially empty containers. EPA is providing definitions for "full or filled containers" and "partially empty container" for comment. Comments are requested in the following areas: (1) Alternative criteria which may be used to define full or filled containers, and (2) the nature and extent of activities which will be necessary to comply with this regulation.

11. *Special requirements for classes of facilities—§ 264.316.* The requirement is that all classes of facilities must have a minimum of two meters between the lowest level of construction for the landfill and the highest portion of the water table.

The purpose of the requirement is to maintain a positive separation between the landfill and any ground water which might infiltrate the waste. This requirement is consistent with EPA's theory of maintaining landfills as dry as possible.

H. Subpart R—Underground Injection

On May 19, 1980, § 265.430, Applicability was promulgated as an interim final regulation. In so doing the Agency enabled wells disposing of hazardous waste by underground injection (also regulated under the Underground Injection Control (UIC) program, authorized by the Safe Drinking Water Act (SDWA)) to acquire interim status under RCRA. The Agency further explained that such injection wells would be regulated under Subpart R until a UIC program had been implemented in each State. After an injection well received a permit under UIC, it would achieve a RCRA permit by rule under § 122.26. As explained elsewhere in this preamble the permit by rule has been amended so that only certain of those wells can achieve a RCRA permit by rule. The remaining wells will be subject to permitting under Subpart R or S of the Part 264 proposed regulations.

1. *Applicability—§ 264.430.* The proposed requirements of Subpart R apply to wells used for the disposal of hazardous waste by injection into the subsurface which pass through the surficial aquifer (i.e., discharge below the surficial aquifer). All such wells will by necessity be cased since they must pass through an aquifer. Wells which discharge hazardous waste into or above the surficial aquifer, for which casing is not always necessary, are to be subject to the requirements of proposed Subpart S. The requirements of this

Subpart R, therefore, apply to Class I wells and some Class IV wells (as designated under the UIC program). Such wells must also comply with applicable requirements and standards established in Parts 122 and 146 as explained in another section of this preamble.

Injection wells which receive a RCRA permit under Subpart R will have complied with the ground-water protection standard also proposed in today's Federal Register. The only additional technical requirements necessary in Subpart R then relate to design and operation capable of achieving compliance and monitoring to verify compliance.

Part 146 requirements for Class I wells, promulgated on June 24, 1980, were established to assure that injection or formation fluids not migrate out of the injection zone and into an underground source of drinking water. In the case of RCRA, Subpart R injection wells (regardless of UIC designation) must be designed and operated to prevent migration of hazardous waste out of the zone of containment or otherwise into other formations or aquifers. Because of the similarity of objective the Agency has utilized the promulgated Part 146 requirements to the extent possible in these proposed Subpart R regulations. The reader must understand, however, that the Part 146 requirements differ significantly from Part 264 requirements. The Part 264 requirements are minimum standards, requirements and criteria which must be developed by a State seeking authority to implement a UIC program. These Part 146 requirements do not apply to owners or operators of injection wells directly. Such owners and operators must comply with State requirements which have been established in implementing a State UIC program. For this reason, these Part 146 requirements have not been adopted by reference in Subpart R but are utilized as explained below.

2. *General design and installation requirements—§ 264.431.* This proposed requirement is a performance standard. Owners and operators must design and install injection wells to assure that injected hazardous waste enter and stay within the zone of containment, specified in the facility permit, and not migrate into other formations or aquifers. In § 146.12 are design and construction requirements for Class I wells under UIC. In § 264.431 owners and operators are informed that utilization of the technical standards and considerations specified in § 146.12 will enable compliance with the § 264.431 performance requirement. The § 146.12(a) restriction on location with regard to underground sources of drinking is not included since some wells regulated in accordance with Subpart R may discharge above underground sources of drinking water. Also, requirements regarding prevention of migration into underground sources of drinking water are equally applicable in preventing migration into formations or aquifers other than the zone of containment, whether or not they are underground sources of drinking water. In order to comply with § 265.431, an injection well will need to be cased and cemented and hazardous waste will need to be injected through tubing with a packer as specified in § 146.12.

3. *General operating requirements—§ 264.432.* This proposed requirement is a performance standard also. Once an injection well is properly installed it must be operated and maintained to prevent unacceptable migration of injected hazardous waste or reaction or decomposition byproducts of the waste. Section 264.432 explains that the operating procedures included in § 146.13 can enable compliance with this performance standard. Pressure in the injection zone is not to exceed a calculated maximum and pressure on the well annulus between the casing and tubing maintained to assure mechanical integrity. Injection into the annulus is explained in § 146.13 as unacceptable.

4. *Monitoring and response—§ 264.433.* These proposed requirements are similar to those proposed on May 19, 1980 in § 265.434 for interim status facilities. They are also similar to those contained in § 146.13(b). Demonstration of mechanical integrity and maintenance of allowable injection zone pressure will enable owners and operators to assure that migration beyond the zone of containment has not occurred. Ground-water quality monitoring is not a general requirement within § 264.433 but may be required in the facility permit in certain circumstances.

5. *Closure and post-closure—§ 264.434.* The closure requirements in these proposed regulations specify that wells must be closed to prevent future use and plugged. Plugging upon well abandonment is the normal practice. Section 264.434 explains that the plugging techniques described in § 146.10 can enable compliance with the plugging requirement. Post-closure care is not required of wells regulated in accordance with Subpart R, therefore, an exclusion from compliance with §§ 264.117, 264.118 and §§ 264.144—264.145 is included in § 264.434. These are the only exclusions from the general standards and requirements of Part 264.

I. Subpart S—Seepage Facilities

This Section of the regulations applies to facilities which are designed to discharge via seepage facilities. Seepage facilities may or may not be designed to provide holding and controlled release capability for liquid wastes and wastes containing free liquids. These regulations provide standards for design, operation, and inspection for facilities which are classified as seepage facilities. There are four types of seepage facilities: (1) Seepage lagoons, (2) drying beds, (3) seepage pits, and (4) seepage beds. The first two types are similar to surface impoundments, in that they are used for depositing liquid wastes and sludges except they are designed with the objective of seepage into the land. Seepage pits are similar to dug wells and seepage beds are any horizontal distribution system (whether covered or uncovered) used to intermittently introduce liquids into the land (e.g., leaching fields associated with septic tanks). For the purpose of these regulations, any injection well that is not cased to prevent discharge into the surficial aquifer is also a seepage facility.

1. *Applicability—§ 264.460.* The regulations in this Subpart apply to owners and operators of seepage facilities used to treat, store, or dispose of hazardous waste, except as § 264.1 provides otherwise. The regulations for seepage facilities are identical, to a degree, to the proposed regulations for surface impoundments under Subpart K of Part 264. For seepage facilities, there are no regulations for liners and a leachate detection, collection and removal system since seepage facilities are designed to discharge.

The rationale for the surface impoundments requirements used to regulate seepage facilities can be found in the preamble for Subpart K—Surface Impoundments. Seepage lagoons and drying beds must comply with all sections of these regulations, while seepage pits and seepage beds must only comply with: (1) § 264.463 (containment system) and § 264.467 (contingency plans) provided these two types of seepage facilities maintain a dike, (2) § 264.468 (closure and post-closure), (3) § 264.469 (special requirements for ignitable or reactive waste), and (4) § 264.270 (special requirements for incompatible wastes).

The types of seepage facilities are not yet defined in § 260.10. They are described in § 264.19. The Agency intends to define those types in the rule but is soliciting public comment by this proposal before doing so.

J. Subpart T—Minimum Acceptable Treatment of Hazardous Wastes Prior to Disposal

Under this subpart, requirements are established for the minimum acceptable treatment of hazardous waste prior to disposal in a land treatment facility. The purpose of these requirements is to reduce the potential adverse effects of hazardous waste disposal by reducing the mobility of wastes, or their ability to cause other wastes to become mobile, or generate toxic gases.

Owners and operators of hazardous waste landfills are required under this subpart, by using available conventional technology, to convert soluble metals as salts to less soluble forms (i.e., oxides, hydrous oxides or sulfides) and to precipitate metals that are in solution. Wastes that are highly acidic or alkaline must be neutralized and wastes that are or contain surfactants or organic solvents must be disposed of separately from other wastes. Specifically, wastes that contain cyanide must be treated so that the cyanide is destroyed, thus reducing the risk that toxic hydrogen cyanide gas will be formed.

The requirements under this subpart, relating to mobility of wastes, address three general groups of mechanisms that may result in the enhancement of waste migration in soils. The first mechanism is one in which waste constituents are solubilized by other waste constituents and thereby increasing their potential for migration. Examples of this mechanisms include the solubilization of organics in organic solvents, solubilization of metal salts in acid (or bases), and the solubilization of inorganic and organic wastes by the action of surfactants and chelating agents. The second mechanism is the dissolution of metal salts by percolating water, while the third mechanism involves the chemical reactions among waste constituents which results in the generation of products which may be more mobile than the initial reactants. An example of the third mechanism would be pesticides that form soluble salts with alkaline caustics (Guthion/sodium hydroxide).

Except for § 264.491(a)(5) the Agency has not proposed establishing treatment requirements under this section for specific and non-specific sources of hazardous wastes listed in §§ 261.31 and 261.32. However, it is intended that treatment requirements be established for the listed wastes and other wastes which may be listed as information becomes available to the Agency. The Agency is requesting comments on treatment requirements appropriate to specific and non-specific sources of wastes defined in §§ 261.31 and 261.32 or specific hazardous wastes which are appropriate prior to disposal.

K. Amendments to Part 260

1. *Definitions—§ 260.10.* Certain definitions are being added and other definitions are being amended to conform with the usage of the terms in the regulations governing the land disposal of hazardous wastes.

In addition, the numbering sequence of the definitions in § 260.10 is being deleted in favor of an alphabetized arrangement of terms to accomodate the addition of new definitions.

Many comments were received on the use of the terms *contamination* and *degradation* in the October 8, 1980 Notice. Most of those comments requested or suggested definitions for those terms. To avoid the confusion that often arises by the use of these words, they have not been used in the regulations being proposed today.

The amendments of the definitions of *Aquifer, Injection well, Underground injection, Well,* and *Well injection* in § 260.10 are technical amendments to conform those definitions to the definitions of the same terms in §§ 122.3 and 146.03.

Similarly, the amendment of the definition of *Disposal* in § 260.10 is a conforming amendment (separate from that referred to in the preamble on Part 122) to the definition of the term in § 122.3.

The more substantive amendments are related to the Agency's decision to regulate surface impoundments which are not designed to prevent seepage, other types of seepage facilities (which were formerly considered "injection wells"), and other wells which discharge or inject hazardous wastes into surficial aquifers under both the RCRA and the SDWA. This necessitated the addition of new definitions for *Underground seepage* and *Seepage facility* and amendment of the definition of *Landfill* and *Surface impoundment.* A definition of *Surficial aquifer* has also been added because the term is used in the amended RCRA permit by rule (*see* § 122.26 as amended) for deep injection wells subject to exclusive regulation under the UIC Program which are used to dispose of hazardous wastes. A definition of *Cased injection well* has also been added because the term is used in the definition of *Seepage facility.* A *Cased injection well* will usually be a Class I well as defined for the UIC program. Such wells, when used for hazardous waste disposal are subject to a standard of no migration into a *Surficial aquifer.* Some of these are to be permitted by rule under the RCRA and individually permitted under the UIC program.

The above referenced decision also made it appropriate to add certain definitions which existed in Parts 122 and 146 to Part 260. These are *Formation, Formation fluid, Injection zone,* and *Plugging.*

A new definition has been added for *Land disposal facilities,* and the definition of *Disposal facility* has been modified to reflect the fact that waste will not remain in place after closure at some types of facilities which are regulated as land disposal facilities. This situation may occur when either the waste will be removed or the waste or the decomposition byproducts of the waste will migrate from the facility and therefore not remain at the facility after closure. The definition of *Land treatment facility* has been similarly modified to reflect the fact that waste *may* or *may not* remain in place after closure at land treatment facilities. A new definition has also been added to establish the meaning of a phrase—*Zone of containment*—used in the regulations governing land disposal of hazardous wastes.

Finally, definitions have been introduced for the terms *Decompostion byproduct* and *Reaction byproduct.* These and similar terms, such as contaminants, have been used extensively in the regulations and preambles to describe the substances other than the hazardous wastes or the hazardous waste constituents which can be expected to exist in leachate when hazardous waste or hazardous waste constituents are disposed of into or on the land. They have also been added to the definition of *Disposal.* Although many of these byproducts are not hazardous, some can and do cause adverse effects on human health and the environment and therefore must be considered in the permitting of land disposal facilities.

2. *Petitions to amend Part 264 or Part 265 to allow special types of treatment, storage, and disposal facilities at a particular location, for a particular hazardous waste, or for a hazardous waste from a particular source—§ 260.23.* In accordance with section 7004 of RCRA, Subpart C of section 260 sets forth procedures by which any person may petition EPA for the promulgation, amendment, or repeal of any regulation under RCRA. This section provides a mechanism by which owner/operators or potential owner/operators may petition for an amendment of any of the operational, locational, design or construction requirements of Parts 264 or 265 by demonstrating that the practice or procedure they propose to

use is equal to or better than that already required by the regulations. Such demonstrations are to be made for a particular facility or waste and any petitions granted will be applicable only to the facility or waste for which the demonstration was made. This section incorporates the petitioning procedures set forth in section 260.20 and allows the Administrator to grant a temporary amendment prior to making a final decision on a petition.

Several comments on the October 8, 1980 Notice requested that when technical design requirements are specified in the regulations, the Agency allow the permittee to substitute different but equivalent designs. EPA agrees that this is a desirable feature and is proposing to institute it through this petition process. This process will allow recognition of unique site specific factors that enable owner/operators to effectively employ different treatment, storage or disposal designs. It is also intended to encourage innovative technologies and maintain flexibility in the regulations by allowing the technical requirements to be adapted to advances in the state of the art.

L. Amendments to Part 122

1. *Definitions—§ 122.3.* Two definitions—*Disposal* and *Disposal facility* are being revised in § 122.3. Both definitions are being revised to conform to revised definitions in § 260.10.

In addition because of the use of the terms *Formation, Formation fluid, Injection zone, Plugging, Underground injection, Well,* and *Well injection* in Part 264, the parenthetical reference associated with the term has been expanded to include the RCRA.

The term *surficial aquifer,* used in § 122.26, has been added in both §§ 122.3 and 260.10.

2. *Modification or revocation and reissuance of permit—§ 122.15(a)(8).* Section 122.25(a)(8) provides the means by which permits may be modified in response to the repredictions of locus and rate of leachate effects required by § 122.28(f). This modification provision is necessary because state of the art limitations make it impossible to precisely predict the zone of effects at the time of permit application. As new information is gathered through monitoring, predictions of leachate migration can be made more accurately. These repredictions can then be incorporated into the permit limitations for maximum allowable zone of effects.

If the repredictions indicate that the originally predicted zone of effects will be or have been exceeded, the permittee is required to propose permit modifications. The proposed modifications may be to reduce the rate of waste disposal or expand the zones of permitted effects. Likewise, if it appears that the originally predicted zone will not be reached, the permittee may request a modification of the permit to reduce the zone limitations. This last type of modification may be of real interest to a permittee since the zone of permitted effect defined (i.e., the zone of containment) is an encumbrance on the land which reduces it real value.

The Director is required to modify a permit if he finds that the zones of effects defined in the permit are substantially unrelated to the actual zones of effects. The modification in intended only to decrease the permitted zones of effects when a permittee has made a very conservative estimate during the permitting process that becomes apparent upon monitoring. All permit modifications which decrease the permitted zones of effects or reduce the rate of waste disposal are considered "minor modifications" (see § 122.17) and therefore may be made without a draft permit or public review.

Minor modifications of permits—§§ 122.17(e)(8). Permit modification made pursuant to § 122.15(a)(8) which decrease the zone of permitted effects caused by leachate discharges from land disposal facilities or reduce the rate of waste disposal are included in the list of "minor modifications" contained in § 122.17. The effect of these modifications is to make the permit more stringent. Because they are "minor modifications", no draft permit or public review is required.

4. *Application for a Permit—§ 122.22(a).* Certain commenters on the Part B application informational requirements proposed on June 14, 1979 (44 FR 34278–80) noted that part of the informational requirements to be submitted with Part B of the application might require more than six months to obtain. The Agency agrees and is proposing to add §§ 122.22(a)(4) and (5) to limit the discretion of the Director to deny an application which is incomplete when the informational requirements of the Agency or the regional availability of professional services with the requisite skills to generate and evaluate the information limit the ability of the applicant to comply with the six month filing requirement of §§ 122.22(a)(2) and (3).

The authority of the Director to deny an incomplete application, when it is apparent that a completed application would not comply with the ground water protection standard is re-established as § 122.22(a)(6) and new provisions are added to allow an interim permit to be issued.

The provision for the issuance of an interim permit provides a mechanism to allow and endores improvements at existing facilities prior to final permit issuance, a mechanism to recognize "good" facilities, and a mechanism to terminate interim status for "bad" facilities. The provision of a five year limitation for an interim permit is based on the expected Agency delay in acting on lower priority permit applications for existing facilities.

5. *Permit application requirements—contents of Part B of the RCRA permit application—§ 122.25.* Specific permit application requirements applicable to the land disposal of hazardous wastes have been added as §§ 122.25(c) through (h), the information required by these subsections is supplementary to the requirements to be fulfilled for Part B of the application in compliance with § 122.25(a). These subsections respond to commenters who pointed out that all of the Part B informational requirements proposed on June 14, 1979 (44FR 34278–80) were not needed or appropriate for all facilities. It limits the obligation of applicants to supply information that would not be relevant to their particular application.

Many of these provisions are similiar to those proposed on June 14, 1979 (44 FR 34178–p80), but they are expressed with greater specificity and are limited to land disposal facilities. Therefore, they reflect the concern expressed by commenters that much of the required information was not needed for all facilities and should be made specific on a case by case basis.

a. *Specific technical information requirements for land disposal facilities—§ 122.25(c).* Section 122.25(c) establishes the obligation to file the information required to evaluate the specific types of facilities with reference to the technical requirements of the individual Subpart for each facility type (Subparts K, L, M, N, R, and S).

b. *Specific generic information requirements for land disposal facilities—§ 122.25(d) and (e).* Subsection 122.25(d) establishes the obligation to file, as part of Part B of the application, a detailed definition of the wastes to be disposed of, a detailed prediction of the leachate plume which will be established as a result of any permanent disposal of hazardous wastes into or on the land, and a description of the location of gaseous migration in and from the land. These subsections, which are central to the regulation is discussed in detail below under—6. *Information Requirements for Permitting Discharges from Land Disposal Facilities.*

c. *Reports on hydrogeology, climatology, and geography—§ 122.25(f).*

Subsection 122.25(f) establishes the obligation to file, as part of Part B of the application, reports on the hydrogeology, climatology, and geography of the area where the facility is to be located.

The report on hydrology and geology is to be based on by data available from public sources and confirmed by site investigations or based on site investigations required in paragraph (g). Specific reference to accommodating the potential interested readers of the report are made in §§ 122.25(f)(2) (i) and (vii). These subsections stress the need to avoid excessive use of technical jargon which could create lengthy hearings due to requests for clarification and interpretation from the interested public.

Subsections 122.25(f)(2) and (f)(3) establish the obligation to file, as part of Part B of the application, a report on the climatology and geography based on the data required by §§ 122.25(g) (2) and (3).

d. *Site investigation requirements—§ 122.25(g).* The acquisition of basic field data on site specific conditions is essential to the preparation of the report required in § 122.25(f) and to the development of the generic informational requirements for land disposal facilities of § 122.25 (d) and (e) which are discussed in detail below.

The site investigation requirements of these regulations require a relatively standard type of field investigation. The only basis for defining the requirements in the regulation is to establish certain minimum requirements and to deal with the degree accuracy needed on a situation specific basis.

The use of standard datum (i.e., USGS controls) references is required so that analysis of the site can be made with valid references to data generated by others.

The majority of the requirements are for survey accuracy definition. A survey accuracy sufficient to *allow* (not require) the mapping of the area within forty meters of any construction activity at a contour interval of two meters is required. The same surface survey accuracy applies when leachate will migrate within ten meters of the ground surface. The Agency is quite concerned that predictions of the locus of leachate migration be accomplished with a high degree of accuracy when leachate will be near the ground surface. A depth of ten meters has been chosen to represent a depth that is beyond casual excavation and will below the cellar depth of most small structures. The survey of the contact surface between unconsolidated and consolidated materials is also required; the accuracy specified is a four meter contour interval. Ground water table contour requirements are similar. The specified accuracy is two meters where ground water mounding can be expected and where ground water mixed with leachate will be less than ten meters from the ground surface. Comment is requested on the reasonablenesss of these requirements.

It is also required that sufficient ground water data be obtained to allow flow net analysis of ground water and leachate flow under varying conditions of stress on the system.

The required information on climatology is self explanatory, however, the informational requirements on land use and land use controls requires discussion.

Permit applicants are required to describe the type of land use, the land use controls and the projected land use in the area of the proposed site. The rationale for the requirement is to provide the permit reviewer sufficient information on the character of the patterns of activity to judge the compatibility of the proposed facility. The presence and strengths of land use controls to preserve the appropriateness of the setting are a critical element. Absent controls, exclusion of future encroachment of residential or otherwise less than compatible uses cannot be prevented. Projections of land uses are likewise essential, the controls at best are inducements for or against particular land uses; whether or not the "permitted" or "allowed" use *will* occur can be haphazard if not desultory. The permit will be issued considering the impact on current patterns, compliance with appropriate land use controls and compatibility with projected land uses.

It is not the Agency's intent to either foster or inhibit local control of land use. The history of national and state efforts at land use controls is too heavily burdened with emotional distraction to use as a major element of siting strategy. Siting of hazardous waste management facilities clearly presents greater then localized issues for resolution, but the localized issues are intense, and they are intensely perceived. States have delegated land use controls to local governments, and inspite of a resurgence of State interest during the 60's and 70's, land use decisions are preponderantly local issues. The review process for hazardous waste management facility siting will establish the mechanism for presenting both local and statewide land use decisions. However, the reviewer is reminded to maintain a proper perspective. Procedural and substantive issues involved in establishing land use policy in the vicinity of prospective sites will be considered as well as the resulting designations. The review process will not be bound by local zoning or other land use decisions, nor should it be construed as review, endorsement or appeal of local decisions by the EPA. Rather, where local regional or State planning decisions have been made, or where local hearings have been held on land uses issues, the facts, the testimony and the subsequent changes, as well as the decisions may be considered by the reviewer. Full de novo consideration of these issues should be placed in perspective by the reviewer, considering the statewide and interstate regional implications of the siting question. The reviewer may consider evidence regarding the exclusionary use of zoning where it has been practiced, the taking issue where appropriate or any of the commonly troublesome land-use pitfalls.

Permit applicants are also required to provide information concerning whether or not the aquifer underlying the area in the vicinity of a facility is or will be used as a water supply. A variety of facility designs must be anticipated, with designs with varying degrees of reliance upon natural assimilative capacities versus containment and treatment. Underlying aquifers will be subject to the threat if not the assurance of entry of contaminants. The Agency requires a demonstration of any claim that the aquifer subject to accidental or designed discharge will not be used as a source of water supply for any use; for instance, if such claim is made, or if alternatively, the vicinity of the aquifer near the discharge does bear withdrawal for use, the Agency requires rather full description of the use. These regulations provide the requirements of use disclosure which must be supplied for facilities in Classes A–E.

Class A: Applicants wishing to locate facilities over aquifers which are not and will not in the future serve as sources of water for any use must investigate that entire aquifer and interconnected aquifers into which leachate will migrate. Systems of interconnected aquifers should be treated as a single aquifer for this purpose. The objective of the investigation is to ascertain that in fact domestic, agricultural, industrial or commercial uses are not now served and will not be served in the future. Demonstration of the contention that they will not serve is intended by the Agency to constitute the following:

1. A tabulation of all withdrawal controls now in effect (e.g., State prohibitions on withdrawal) or private ownership of the whole aquifer with deed notation to warn future owners.

2. If the water will not be used because of its poor quality,

demonstration should include lab analyses and a cost assessment for treatment to acceptable quality.

3. The closest users of groundwater should be identified and the intervening aquifer discontinuity demonstrated.

4. Any existing discharges and surface outcrops of the aquifer should be identified.

5. Three dimensional descriptions of boundary conditions surrounding the aquifer.

Class B: The requirements for Class A facilities should be met for the unused and unusable portion. In addition, the applicant should indicate the nature and extent of the hydraulic interface with usable portions of the aquifer. Flow net descriptions, timing and migration potential should be presented indicating both the worst case and the most probable arrival of contamination from the facility to the used or usable portion.

Classes C, D, and E: All facilities located over used or usable aquifers must submit information concerning the possibility of contaminants from the facility arriving at each possible point of withdrawal for use. Surface discharges should be considered possible points of use for this purpose. Flow net analysis and pollutant transport predictions are required. These must be prepared in sufficient detail to support pollutant migration increments at three year intervals to facilitate validation.

The minimum monitoring scheme in accordance with Subpart F will provide an acceptable drilling plan for acquisition of nearsite data on the aquifer. Well logging, with split-spoon samples at five foot intervals, will generally be considered satisfactory geophysical data. The same level of detail should be provided on the existing water wells in the aquifer, where available. All users should be listed, clearly indicating the level of treatment now provided, and the capability of that treatment with respect to anticipated contaminants and their by-products from the facility.

Subsection 122.25(g) establishes a similar obligation to file a description of the ground water monitoring program proposed to verify or improve the "best estimate" predictions of leachate migration and a description of any modeling program base on monitoring data which is required by the regulations or proposed by the applicant.

6. *Information requirements for permitting discharges from land disposal facilities—§ 125.25(d).* a. *Purpose.*—Under the approach being proposed today, each hazardous waste facility will be evaluated directly for its impact on human health and the environment. Instead of merely estimating the adverse environmental impact of a facility by comparing its design parameters with national design requirements thought to be safe, this approach will evaluate each facility on an individual basis. To safely and properly determine the human health and environmental impact of a hazardous waste facility, extensive information is required on: (1) The characteristics of the wastes disposed, of both individually and collectively, (2) the hydrogeological characteristics of the site, (3) the water quality requirements of any underlying aquifer, and (4) the interaction of wastes with the site hydrogeology and (5) the resultant effects on water quality. It is only by the acquisition and subsequent analysis of this information that a reasonable assessment of any adverse health and environmental impact can be determined on a site specific basis.

b. *Summary of proposed regulation—§ 122.25(d).* Because each hazardous waste management facility is to be independently evaluated for its impact on human health and the environment, a uniform mode of analysis must be provided to ensure that all sites are evaluated by the same criteria. This uniform mode of analysis will take the form of extensive informational requirements for evaluating and predicting the effect of a hazardous waste facility on human health and the environment. These informational requirements are outlined in § 122.25(d) and require the permittee to provide information on five major topics:

(1) A description of the wastes (both qualitative and quantitative) to be disposed of in the facility.

(2) A description of leachate and gas migration from the facility.

(3) A hydrogeologic description of the unsaturated zone.

(4) A hydrogeologic description of the saturated zone.

(5) A description of all discharges into surface waters and all withdrawals of ground water, that will be mixed with leachate from the disposal facility.

The overall objective of these informational requirements is to acquire the data necessary to establish the absence or degree of adverse effects on human health and the environment.

In order to provide maximum flexibility in implementing the above described informational requirements, varying levels of precision will be allowed. Section 122.25(e) outlines the framework for recognizing major differences in site and waste specific circumstances, and inadequacies in the state of the art which would indicate a necessity to allow some variation in the required degree of precision to comply with informational requirements. This section seeks to limit unnecessary informational requirements and ease the regulatory burden wherever possible without jeopardizing the assessment of health and environmental effects. For example, a detailed analysis of the effects associated with the human consumption of affected ground water is unnecessary if the ground-water protection standard is met and the water is not and will not be consumed.

c. *Waste identification and quantification—§ 122.25(d)(1).* Waste identification and quantification is the first and most vital step in the analysis of health and environmental effects. This subsection requires a detailed accounting of hazardous wastes to be disposed of in each operational unit of a disposal facility (see § 122.3 Definition of "Hazardous Waste Management facility" and § 260.10 Definition of "Facility"). This is simiar to the accounting required in Part A of the permit application (see § 122.24(g)). The information required in Part A also includes an identification by hazardous waste number (see § 122.1(c)(1)). However that information (to be recorded on Form 3) deals only with the hazardous waste delivered to the facility and how it is to be stored, treated, or disposed. One cannot necessarily identify the specific disposal facility operational unit from Form 3 unless there is only one of each type of unit at the facility. In some cases, the hazardous wastes disposed of at a facility may be a waste produced by a treatment process at the facility. Such a hazardous waste is not described on Form 3 except by reference to the generic descriptions of storage, treatment, and disposal unit operations for each identified waste received. It should be reemphasized that a waste resulting from the treatment of a hazardous waste remains a hazardous waste by definition (see § 261.3(c)(2)) although such a hazardous waste will not have a Hazardous Waste Number (see "when applicable" in § 122.25(d)(1)(i)).

It is possible for a waste which has been classified as hazardous to be exempted from the direct regulatory jurisdiction of the Agency under Subtitle C of RCRA in accordance with a specified procedure (see §§§ 261.3(a)(2)(i), and (ii), and 261.3(d)(2), all of which reference §§ 260.20 and 260.22). Sections 260.20 and 260.22 describe a rulemaking procedure by which the Administrator can be petitioned to exclude a specific

waste at a facility from being defined as hazardous. The procedure is relatively rigorous, however, and in most cases where a petitioner would be successful, it would probably be less burdensome to apply for and receive a permit. A successful petitioner would not be subject to Subtitle C of RCRA, although would still be subject to Subtitle D.

The key concept to the importance of the informational requirements is brought forth in §§ 122.25(d)(1)(ii) and (iii). Unless absolute storage (containment) of the waste is achieved in a land disposal facility, disposal is only transitory and will ultimately result in the migration of the waste and its decomposition byproducts. For all practical purposes, absolute storage in land disposal facilities is unachievable for more than some limited period of time during which active management is continued. Furthermore, absolute storage may not be achievable in most land disposal facilities even where there is continuous management. Because of these realities, the primary issues in regulating land disposal facilities are associated with the rate and locus of release of waste contaminants. The pertinent factors are reaction rates, decomposition rates, release rates, and migration rates.

All hazardous waste is composed of matter, which cannot be destroyed. Some listed hazardous wastes are elemental in form either as disassociated ions in solution or as soluble salts. These materials, which can be categorized as metals and inorganics, are native to the environment and are hazardous primarily due to the relative amount in which they are present when disposed of as a waste. Additionally, they may be hazardous because they induce the ionic components of pure water (the hydronium ion $(H_3)^+$) or the hydroxyl ion (OH–)), to be present in excess amounts. This results in a water solution which is corrosive due to acidity or causticity.

Successful disposal of metals and inorganics involves their reintroduction into the natural environment at a rate which is consistent with their natural occurrence in the environment. Placing such materials on or in the land in a controlled manner can be a successful way to achieve this end. To be sure of safe disposal, knowledge of several factors is required: the interactions of materials disposed of in a mixture, the solubility of the materials in water, the chemical interaction of the materials with natural earth materials, and the concentrations of contaminants which will constitute an unusual exposure and cause adverse health and environmental effects. Proper waste disposal may be accomplished by several techniques or combination of techniques. For example, in some cases treatment may be necessary to alter the chemical form of these materials before disposal. Similarly, in other cases, design features can be engineered to reduce the amount of water available to solubilize the wastes. Likewise, management controls can be instituted to limit exposure within the locus of waste disposal and migration by simply restricting human activity. Some listed hazardous wastes in this category (metals and inorganics) are so insoluble that restricting re-excavation is the only control that is needed. Other listed hazardous wastes are significantly soluble only when mixed with certain other wastes. Therefore, in addition to restricting re-excavation, these incompatible wastes need to be segregated. All of the factors which control the rate of migration are determinate provided the locus of migration is determinate and the characteristics of the earth materials encountered in that migration are known or can be measured.

Natural and synthetic organics are the most problematical classes of hazardous wastes because their numbers are nearly infinite. Synthetic organics, created by man for some specific useful purpose and ultimately discarded, are often the subject of the greatest public interest when they can or do adversely affect human health. It should be stressed however, that in addition to synthetic organics, natural organics also constitute a large number of listed hazardous wastes that exhibit the most publicly feared adverse effect on human health—carcinogenesis. Essentially all organics, whether natural or synthetic, are prone to biochemical degradation. However, because of their toxicity or their molecular configuration, a number of organics are extremely persistent in the natural environment. This effect is magnified when they are disposed of in bulk quantities (or high concentrations) antagonistic to the coexistence of life forms. The problem of high concentrations can be dealt with more successfully through diffuse disposal by land spreading (see Subpart M—Land Treatment) rather than landfilling. Landfilling an organic waste may only act to attenuate the waste physically as the waste migrates through the land (below the soil solum) where life generally does not exist. In addition, biodegradation is often limited to relatively slow anaerobic metabolic processes such as fermentation because in a normal landfill, available oxygen is quickly utilized by any life forms which are present.

With regard to formulated inorganics and decomposition inorganics, the data base for the land disposal informational requirements is adequate. However with respect to natural and synthetic organics the data base is less precise. This is due, in part, to the fact that the means to measure or even identify specific derivatives of many such organics (both natural and synthetic) and correlate these measurements with observed health and environmental effects is of relatively recent origin. Except where the effects were so acute as to be discernable without precise measurement, the prevailing practice concerning the presence of most organics in drinking water within the last decade has been to lump them together under the heading of "taste and odor" problems.

With the proper waste identification and quantification, all of the additional factors needed to evaluate the rate of migration of any given contaminant or mixture of contaminants in earth materials are determinate. Even complex mixtures will tend to differentiate in transfer through the soil due to the rate phenomenon of chromatographic reaction with the soil. Wastes disposed of separately at the same site may also become mixed in transit. Therefore, the mixing of wastes in the disposal process introduces a significant complication to the problem of predicting whether adverse effects to human health and the environment will result. However, by controlling the creation of new mixtures of contaminants in disposal to those which will not interact (or interact in a predictable way), the disposer can take advantage of available reference data to the extent that it exists. If the disposer does not control the creation of new mixtures of contaminants, then he may have to incur the obligation and cost of defining environmental fate factors experimentally.

In § 122.25(d)(1)(ii) an applicant is required to describe the expected rate of waste deposition. These data are essential to any valid predicition of solubilization, migration, and effect. These data, supplemented by data obtained by waste analysis where required, (see § 264.13(a)(1)) and data accumulated for annual reporting (see §§ 264.75(d) and 264.75(e)) will be the basis for triannual reassessment of that prediction based on actual date on the type of waste disposed and the rate of disposal for each waste (see § 122.28(f)). In § 122.25(d)(1)(iii) an applicant for a permit is separately required to

establish an absolute limit on the rate of waste deposition he is seeking authorization for. This limit will be used in determining permit violations. A permit violation will occur if a specifically defined type of waste is disposed of in quantities greater than authorized or if a type of waste not authorized by the permit is received and disposed of into or on the land. It should be noted that the permit limits based on § 122.25(d)(1)(iii) will not function to limit the receipt of waste at the facility, but only the rate of disposal of that waste into or on the land. The difference between the rate of delivery or receipt and the rate of permitted disposal, if any, must be accounted for in storage. By this means, permit applicants will be able to allow for projected business growth or even provide some margin for management error in committing themselves to service clients whose business needs for disposal services might expand or exceed estimate needs. Permittees can also allow some margin to accommodate emergency or unforeseen needs.

d. *Leachate migration—§ 122.25(d)(2).* This subsection requires a detailed prediction of the rate at which leachate (solubilized contaminants) will migrate from each land disposal operational unit. Section 122.25(d)(2)(iii) requires a characterization of the liquid available to mobilize solid materials. There are three types of liquids available to act as solvents: rainwater, liquids placed in the disposal facilities, and liquids generated in the disposal facilities.

The first type of liquid is infiltrating rainwater. The amount of rainwater which can be predicted to impact on any particular facility will vary with location due to climate, geology and topography. Incident rainwater will vary seasonally at each location. The rate of infiltration at any given time is determined by analysis of runoff, evaporation, and transpiration. All of these factors vary with the physical state and configuration of the site. Individual sites can be designed and managed to induce: Surface run-off (by proper grading), evaporation (by allowing liquids to be exposed to the atmosphere over large areas), or transpiration (by possessing a high density vegetative cover). The normal situation at an active landfill is such that the infiltration of rainwater is enhanced due to a disturbed and unvegetated site surface. In actively used areas, surface runoff is most often collected and retained on the site thereby inducing infiltration. Channeling of run-off from the site to surface waters is subject to permitting under the NPDES program, and is usually avoided for management convenience. The net effect of these factors, in non-arid areas with relatively impermeable soils, is that the soil below the site (and often the waste within the site) becomes saturated with water thereby enhancing solubilization and migration of the waste constituents (see § 122.25(d)(4)(ii)). The phenomena for this adverse effect is the elimination of the zone of aeration in which maximum attenuation of waste constituents would normally occur (see § 122.25(d)(3)).

The second type of liquids are those placed in a land disposal facility. In the Interim Status Standards (ISS) for landfills and waste piles, this practice has been restricted, but not eliminated. By contrast, the waste disposed of in a surface impoundment or by land spreading are often in the liquid state. A solid waste disposed of in a landfill, even though solid in handling characteristics, could be as high as 90–95% liquid and still not release "free liquids" (see the Preamble to the ISS at 45 FR 33214).

The third and final type of liquid referenced in § 122.25(d)(2)(iii) are liquids which are generated within a land disposal facility operational unit. Affixed water is often a part of a solid. Additionally some solids are hydrophillic and may capture water from the surrounding medium (including the air). Of greater potential importance are the liquids that may be generated by organic decay. Most organic matter was originally formed through the process of photosynthesis which involves the combining of carbon dioxide (CO_2) and water (H_2O) to form organic material $(CHO)_x$. When the process is reversed during the decay of organic matter, water is released. In anaerobic environments, such as those commonly found in landfills used to dispose of organic matter, alcohol intermediates are formed through fermentation reactions and are often released.

The solution available to dissolve solids is a mixture of these liquids and the dissolved gases to which they are exposed—predominately CO_2, H_2S, and NH_3. The character of the liquids are further altered by the solubilization of solids from the wastes and soils with which it comes into contact. An equilibrium between the solution and the solids with which it is in contact is most often reached when excess solids and gases are present (the norm in a landfill). For metals and inorganics this equilibrium can be determined from either reference sources or experimental data. However for organics, the character of the solution will vary depending of the adsorptive affinity of the organic constituents for the solids (including the soils) with which it contacts. Within a landfill, or at the interface with natural earth materials, the character of the leachate solution with respect to organic constituents is usually determinate only by direct measurement unless the system is chemically simple. Based on experience, it can be empirically characterized by reference to historical direct measurements or by experimental simulation.

Sections 122.25(d)(2)(i) and (ii) requires the permittee to characterize the leachate to the best of his ability. Section 122.25(d)(2)(iv) requires him to make a "worst case" predicition which will be used in subsequent predictions of the limits of authorized effects and locus of effects by which the permit will be limited. The permit will not directly limit the maximum rate of leachate discharge with respect to the concentration or mass of contaminants (however, volume may be limited in the permit as a control on surface management and ground water mounding). Leachate monitoring is required by direct or simulative means for each type of land disposal facility in the appropriate Subpart (see Subpart K-Surface Impoundments, Subpart L-Waste Piles, Subpart M-Land Treatment, Subpart N-Landfills, and Subpart R-Underground Injection and Subpart S—Seepage facilities).

e. *Unsaturated zone monitoring—§ 122.25(d)(3).* This subsection requires the permittee to characterize the migration of leachate and gases through the unsaturated zone. Gases may be generated either directly from the waste in the facility or from leachate. With respect to leachate, this characterization will require knowledge of the interaction of the leachate with each particular type of earth material with which it will come into contact. The exchange characteristics with earth materials are determinate for individual contaminants and specific types of earth materials (both soil and rock) and rates of solution flow. They are commonly described empirically from laboratory or field (in situ) measurements and reported according to a convention involving an expression called the Freundlich isotherm equation and a "distribution coefficient" included in the equation. When consideration of velocity factors are added, the values referred to as the "retardation factor", are expressed as a function of both the porosity of the specific earth materials and the distribution coefficient. The velocity factors are not usually important in the unsaturated zone but are significant in

the saturated zone. The exchange in the unsaturated zone is a mass exchange phenomenon which will vary with time at any location until the exchange capacity of the earth materials is fully utilized (i.e. the solution and the soil are in chemical equilibrium and no net exchange occurs). Therefore a progressive diminishing of the total exchange capacity must be anticipated. If the design of the disposal facility depends on the exchange taking place, then the exchange capacity can not be exceeded. This is a mass balance type of problem which could limit the total mass of contaminant placed in any one land disposal operational unit. Control is achievable by two methods: (1) Determining the total exchange capacity available and limiting the total mass of the waste disposed of to or below that limit, or (2) retarding the migration of the leachate by closing and covering the disposal facility.

An effective infiltration reducing cover can significantly reduce the driving force which allows leachate to migrate. the cover would thereby commensurately reduce the rate of contaminant mass migration. It should be noted that this design and management technique requires continuing maintenance, and becomes ineffective when the zone of deposition is within the saturated zone. Unfortunately, it is quite common for landfills to be designed to operate within the saturated zone, being maintained dry by groundwater and/or leachate withdrawal systems. This practice ignores the fact that the water table elevation which will be re-established following closure will saturate the waste unless the leachate withdrawal is continued ad infinitum. When this saturation occurs, the character of the leachate will tend to change since greater volumes of water will be in intimate contact with the waste. The driving forces tending to move the leachate will also be altered thereby increasing the rate of migration of solubilized contaminants and likely causing the leachate to move in new unpredicted directions.

Another factor which must be considered for at least the most active containments is horizontal dispersivity. This phenomena is caused by capillary action, molecular diffusion, and the tortuosity of the dominant vertical flow path through the unsaturated zone. Horizontal dispersivity can be empirically determined, but the resulting horizontal component of flow is usually so small that a vertical characterization with some safety factor is sufficient. This does not mean that the horizontal component of leachate flow can be ignored, however, since the presence of relatively impermeable layers or lenses will force horizontal flow by inducing perched saturated zones.

Ultimately, the complexity of the analysis required in § 122.25(d)(3) is dependent on the natural complexity of the geology in the vicinity of the site. The regulations require the applicant to define the locus of effect resulting from his waste disposal activities. The applicant can choose to locate the disposal site where the natural geologic system is homogenous and relatively simple to define. Alternatively, by locating where the system is complex and thereby difficult to define, the applicant will be obligated to expend greater resources in investigating, understanding, and defining the locus of effect that his proposed activity will have on the environment. By careful site selection, the permit applicant can greatly reduce the informational burden of the permitting process, thus reducing the costs associated with obtaining a permit.

The art of defining gaseous migration is less fully developed than the art of defining liquid migration. The principles and factors are however known, and the requirement of definition should encourage the refinement of the art. With the incidents of serious adverse health and environmental effects known to the Agency, the problem cannot be ignored due to the relative weakness of the developed art of definition.

f. *Saturated zone monitoring—§ 122.25(d)(4).* This subsection requires the permittee to characterize the migration of leachate in the saturated zone. The first task, required in § 122.25(d)(4)(ii), is to describe the alteration caused by the facility in the vertical elevation of the ground water in the zone of saturation. This phenomenon, called ground water mounding, occurs beneath essentially all active operational units of land disposal facilities in response to the addition of liquids from normal land disposal practices (see § 122.25(d)(2) with respect to quantitative factors). In performing this analysis, it must be remembered that the elevation of the saturated zone also rises and falls due to natural variations in the amount of rainwater infiltration. Occasionally, the saturated zone elevation will vary due to external factors which may influence the pressure head adjacent to the leachate migration zone. Seasonal variations in elevation can be quite large, particularly in tight soils such as tills and clays. Determination of these seasonal variations can be made by conventional hydrogeologic investigation and an understanding of the natural system. Naturally occurring high water table elevations are often identifiable by physical observation of the soil due to soil mottling and can be directly measured through wells. In some areas, the U.S. Geological Survey (USGS) measures these variations in specified observation wells and reports results monthly. This data, however, may not be sufficiently localized for direct (rather than inferential) use in the facility design. The characterization of variations in the elevation of the saturated zone is of extreme importance in defining the ground water flow system because the water table head is the driving force behind ground water migration.

Based upon characterization of the ground water mounding caused by the facility and the results of the site investigation required in § 122.25(g), a flow net can be devised to predict leachate flow patterns assuming that the flow characteristics were similar to ground water indigenous to the area. Refinements to this assumption can be made by considering additive factors to account for transverse, lateral and vertical dispersivity. The use of a ground water flow net and analysis of leachate dispersivity factors then allows the probable leachate plume to be described as required in § 122.25(d)(4)(iii).

Dispersivity is an empirical factor which varies with the specific type of contaminant and earth material through which the contaminant migrates in the ground water. Dispersivity can be described by reference to the three possible dimensions—transverse, lateral, and vertical. The real extent of the plume (in the horizontal plane) would be described by the contaminant(s) that exhibited the greatest transverse and lateral dispersivity. In practice, experimental determinations of dispersivity are imprecise and in situ response can only be approximated. The format of the regulation allows this imprecision to be accommodated administratively by allowing uncertainties to be accounted for between the best estimate of the zone to be affected and the permit limiting estimate of the zone. These accommodations are reflected in § 122.25(d) (7) and (8).

The third dimension, vertical dispersivity, would be a reflection of the transverse dispersivity in homogeneous medium. Due to layering, however, in situ resistance to vertical flow is often greater than the resistance to horizontal flow. Gravitational effects can also be

very significant. Many contaminants are immiscible in water and respond independently to gravitational forces in accordance to their specific gravity. Contaminants which are significantly lighter than water tend to float at the surface of the plume zone. Those contaminants which are significantly heavier, sink and extend the vertical dimension of the zone downward. Similar effects are caused when contaminants are miscible (or soluble) in water as the heavier contaminants usually tend to drag the leachate zone deeper into the ground water flow system. The more rapid the relative flow is in the transverse direction, the less pronounced vertical dispersivity will be. The vertical dispersivity effect must be defined to comply with §§ 122.25(d)(4)(iii) and (iv).

The definition of the transverse transport of contaminants by units of mass depends primarily on the leachate exchange phenomenon of the earth medium through which it flows. Except in slow moving systems (e.g., tight soil) the velocity factor is significant, and must be taken into account. This means that "retardation factors" should be used to express the phenomenon rather than "distribution coefficients" alone. The leachate-soil exchanges can be an extremely significant factor in improving the quality of the leachate through dilution, or in certain cases (e.g., in shallow systems with sufficient energy to support biological activity), the degradation of organic matter. The dominant effect is a reduction in the concentration of contaminants at an area of discharge (or withdrawal) through delay (retardation) and dilution (dispersion). Continuous long term use of the same disposal area for the same refractory contaminants will ultimately negate the desired effect of retardation. With respect to immiscible contaminates which tend to layer in the flow system, the exchange capacity is utilized more rapidly. Therefore, quality improvement with respect to distance and time are less probable. Immiscible contaminants which are lighter than water are quite likely to exhibit greater transverse dispersivity than water, especially if they are less viscous than water. Immiscible contaminants which are heavier than water will tend to be deposited to a greater extent in the natural system and sink deeper into the ground water system. Heavier immiscible contaminants may exhibit a pressure head independent of the ground water system (due to their own specific gravity) and migrate in different directions than the ground water.

Sections 122.25(d)(4)(i) through (v) require an analysis of contaminant transport in the saturated zone. Such an analysis is within the state of the art, however the art is not yet precise. The regulations accommodate this imprecision by requiring maximum rate and locus predictions and commitments (see §§ 122.25(a)(1)(iii), (2)(iv), (3)(v), (4)(iv) and (v), (5)(ii) and (iv). Periodic re-predictions are also required based on monitoring data collected during operation of the facilities (see 122.28(f). Where imprecision is due to the physical characteristics of the contaminants (i.e., those which are immiscible and exhibit specific gravities quite different than water or leachate), design, management, and regulatory controls should seve to restrict disposal in the saturated zone. These controls may be pertinent to the concentrated land disposal of volatile organic solvents and chlorinated organic solvents, controlled (retarded) evaporation, or long term storage in the unsaturated zone.

g. *Discharge from zone of containment—§ 122.25(d)(5).* This subsection deals with contaminants other than gases, that are discharged or withdrawn from the zone of containment described in §§ 122.25(d)(3)(v) and (iv). It should be noted that the ground water table forms the upper boundary of the zone of containment except where the description provided in compliance with § 122.25(d)(3)(v) shows otherwise.

Section 122.25(d)(5)(i) deals with the expected locus of discharge from the containment zone while § 122.25(d)(5)(ii) deals with the locus of discharge to be authorized by the permit. To be authorized, the discharge effects (which are maximum effects not expected to be are realized) must meet: the ground water protection standard (established in § 264.2), the performance standards (established in §§ 264.20 and 264.21), and the demonstrations of performance (required in § 264.21).

Fluids withdrawn from the saturated zone are discussed in §§ 122.25(d)(5)(iii) and (iv), in a manner similar to the locus of discharge considerations discussed above.

7. *Variations in precision—§ 122.25(e).* The purpose of this subsection is to establish a basis for allowing some variation in the degree of precision required to comply with subsection (d) informational requirements. The informational requirements are based on the premise that a certain amount of information is necessary to determine whether or not an effect resulting from land disposal is acceptable. This minimum information must be sufficient to allow the following questions to be answered:

(1) *What* may cause the adverse effect?

(2) *Where* may the effect occur?

(3) *How much* exposure may occur?

The hard data needed to answer these questions will vary considerably with the character of waste disposed of, the location of the disposal site, and the method of disposal. These variations in circumstances surrounding a permit application indicate a necessity to allow some variation in the degree of precision of the data required for informed decisions on permit applications. Additionally, inadequacies in the state of the art are recognized and accounted for by allowing best estimates where currently available prediction methods do not provide precise data.

The Agency is striving to be as flexible as possible by limiting informational requirements where possible and allowing variations in the levels of precision required in recognition of state of the art constraints. To further aid permit applicants in meeting the informational requirements, EPA has available a number of guidance documents in the form of Permit Writer's Guidance Manuals and Technical Resource documents (see § VII(B) of the Preamble for more information on these documents).

Section 122.25(d)(2)(iv) requires that the definition of the character and volume of leachate discharged from a facility be a best estimate. The monitoring and modeling requirements of § 122.5(f) provide a mechanism for subsequent verification and re-prediction of this initial estimate. Section 122.25(e)(3) further clarifies the term "best estimate" by requiring the estimate to be sufficiently precise to establish a number of factors necessary to determine the potential adverse effect of the leachate.

As mentioned previously, the art of defining gaseous migration is less fully developed than the art of defining liquid migration. In recognition of this, § 122.25(e)(5) requires only a best estimate of the locus of gaseous migration. At a facility containing many operational units (the same or different types of units), the gaseous migration from one unit may be a small percentage of the total emissions of the facility. Section 122.25(e)(2)(iv) allows the rate of gaseous migration from any one particular operational unit at a facility to be considered in conjunction with the rate of migration from all operational units at the facility.

Section 122.25(d)(8) gives a permit applicant the option of using a multiplier

(e.g., 105 percent, 120 percent) in defining the location and rate of migration to allow for a margin of error in his predictions. The applicant must, however, define the factor(s) if he elects to use one. By providing for a margin of error in this way, a permittee can guard against permit violations resulting from the imprecision of prediction methods without compromising the "best estimates".

Where leachate (or ground water affected by leachate) will discharge to standing surface water or the surface of the ground, a prediction as accurate as can be achieved is required by § 122.25(d)(11). However, where the affected surface water or ground is within the controlled boundaries of the facility, a lesser degree of accuracy is acceptable. This imprecision is allowed because exposure to the potentially affected water and ground will be controlled through the security requirements contained in § 264.14.

Leachate plumes caused by the disposal of hazardous wastes into or on the land may migrate into a number of various passive collection devices such as storm drains, sanitary sewers, ditches, or agricultural drainage systems. This migration may cause damage to the collection devices (e.g., corrosion of sewer pipes) and the subsequent, unexpected migration of contaminants where the leachate plume interacts with the normal flows associated with these devices. Section 122.25(e)(12) requires that these factors be predicted and accounted for in the information submitted by permit applicants.

8. *Permits by rule—§ 122.26.* As mentioned previously in this preamble, the scope of the permit by rule to allow RCRA jurisdiction over certain types of facilities to be exclusively administered under the UIC program has been proposed for amendment. A basic problem became evident upon analysis by the Agency of the decision not to implement the total UIC ban of Class IV wells. Class IV wells are those which "inject" hazardous waste above an "underground source of drinking water" (USDW). Included are a number of facilities that are wells because of the UIC definition (i.e., deeper than wide). Many are among those subject to Subpart S—Seepage Facilities—of today's promulgation. It should be noted that the Class IV ban of wells that inject directly into a USDW is being continued, and must be considered a limitation on RCRA jurisdiction to permit such facilities.

The basic problem is that the scope of authority to permit or deny applications for permit under the RCRA and the SDWA is not equivalent. In today's proposed rule that problem is being resolved by promulgating under both the RCRA and the SDWA. In this way the RCRA standard will apply equally to either program and, at least within the Agency, exclusive jurisdiction is not a primary issue. The allocation of staff resources with appropriate talents to review permit applications for hazardous waste land disposal facilities can be managed as appropriate to the Agency's goals.

The permit by rule allows UIC exclusive jurisdiction in those circumstances when it is clear that the RCRA standard will be complied with. Those circumstances exist *only* when *no* waste will enter a surficial aquifer and no water will be withdrawn for use from the zone of containment within the injection zone. In all other circumstances, the RCRA criteria and standards will apply. Due to the choice to promulgate under both laws, permits using the RCRA rule may be issued by those administering the UIC program.

9. *Triannual reprediction of leachate plume migration—§ 122.28(f).* Permittees are required in § 122.25(d) to define maximum rate and locus effects of leachate discharges from their facility and include these definitions in the permit application. These predictions are then incorporated as permit limitations (see § 122.29(c)) and if exceeded, constitute a permit violation. However, the state of the art in defining leachate transport is not precise and it is recognized that predictions made at the time of permit application may not be accurate. To further account for this imprecision (§ 122.25 (d) and (e) also account for it), § 122.28(f) requires submission of triannual repredictions of the effects described in § 122.25(d) and any information supplemental to the reprediction required in § 122.25(e). Any proposed modifications to the monitoring and modeling program necessary in light of the reprediction of effects must also be submitted.

The triannual reports, containing the above described information, need not be submitted until March 1 of the year following the completion of three full years of operation. For the purposes of this requirement, the water year (October 1 to September 30), rather than the calendar year, is used for the computation of years of operation.

If these repredictions indicate that limits on the rate or locus of effects contained in the permit have or will be exceeded, the permittee must request a modification of the permit.

The proposed modification can be to expand the zone of effects or reduce the rate of waste disposal (see § 122.15(a)(8)(i)). If it appears that the maximum zone of effects defined in the permit exceeds that which will be reached, the permittee may request a permit modification to reduce the defined zone (see § 122.15(a)(8)(ii)).

If the Director finds that the zone of effects defined in the permit is substantially unrelated to the actual zone of effects, he must require the permittee to redefine the zone (see § 122.15(a)(8)(iii).

10. *Establishing RCRA permit conditions—§ 122.29.* Two permit conditions are being proposed as additions to § 122.29. The first, contained in § 122.29(b), requires that RCRA permits limit the maximum rate of disposal at or below the rate applied for by the applicant. The second, contained in § 122.29(c), establishes that the only effects which will be authorized by permits are those defined by the applicant in accordance with § 122.25(c). This does not mean that all described effects will be authorized, but only that any effects which are not described in the application will not be authorized by the issuance of a permit even in the absence of a permit condition.

VIII. Supporting Documents

The Agency has developed or will prepare the following supporting documents in conjunction with these regulations.

A. *Background Documents*

Nine background documents support these regulations, providing response to public comments and rationale for how and why the regulations have come to be written the way they are. In conjunction with the references listed in them, these documents provide the basis for and defense of the proposed regulations.

For the most part, they are the same background documents issued in support of the May 19, 1980, promulgation, but they have been expanded to include: (a) Summaries and responses to comments on the May 19 interim final, interim status regulations; (b) summaries and response to comments on the October 8, 1980, supplemental notice of proposed rulemaking, permit standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities; (c) summaries and responses to comments on the proposed (December 1978) general standards; and (d) rationale for the general standards proposed today. The following documents directly support the regulations proposed today.

1. Surface Impoundments
2. Waste Piles

3. Land Treatment
4. Landfills
5. Underground Injection and Underground Seepage
6. Information Requirements for Permitting Discharges from Land Disposal Facilities
7. Ground Water Protection Standard
8. Ground-water and Air Emission Monitoring
9. Performance Standards for Land Disposal Facilities

Copies of the Background Documents used in support of these proposed rules are available for review in all EPA Regional Office libraries and in EPA headquarters library (Public Information Reference Unit) Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

B. *Guidance Documents*

The permit official must review and evaluate permit applications to determine whether the proposed objectives, design, and operation of a land disposal facility will be in compliance with all applicable provisions of the regulations (40 CFR 264).

EPA is preparing two types of documents for permit officials responsible for hazardous waste landfills, surface impoundments, and land treatment facilities: Permit Writer's Guidance Manuals and Technical Resource Documents. The Permit Writer's Guidance Manuals provide guidance for conducting the review and evaluation of a permit application for site-specific control objectives and designs. The Technical Resource Documents support the Permit Writer's Guidance Manuals in certain areas (i.e., liners, leachate management, closure, covers, water balance) by describing current technologies and methods for evaluating the performance of the applicant's design. These documents will also assist the owner/operator to identify and evaluate technologies which can be used to control potential adverse effects on human health and the environment in order to comply with the Part 264 regulations. The information and guidance presented in these manuals constitute a suggested approach for review and evaluation based on best engineering judgments. There may be alternative and equivalent methods for conducting the review and evaluation. However, if the results of these methods differ from those of the EPA method, their validity may have to be validated by the applicant.

In reviewing and evaluating the permit application, the permit official must make all decisions in a well defined and well documented manner. Once an initial decision is made to issue or deny the permit, the Subtitle C regulations (40 CFR 124.6, 124.7 and 124.8) require preparation of either a statement of basis or a fact sheet that discusses the reasons behind the decision. The statement of basis or fact sheet then becomes part of the permit review process specified in 40 CFR 124.6–124.20.

These manuals are intended to assist the permit official in arriving at a logical, well-defined, and well-documented decision. Checklists and logic flow diagrams are provided throughout the manuals to ensure that necessary factors are considered in the decision process. Technical data are presented to enable the permit official to identify proposed designs that may require more detailed analysis because of a deviation from suggested practices. The technical data are not meant to provide rigid guidelines for arriving at a decision. References are cited throughout the manuals to provide further guidance for the permit official when necessary.

The following draft Technical Resource Documents are available:

a. Evaluating Cover System for Solid and Hazardous Waste (SW–867)
b. Hydrologic Simulations on Solid Waste Disposal Sites (SW–868)
c. Landfill and Surface Impoundment Performance Evaluation (SW–869)
d. Lining of Waste Impoundment and Disposal Facilities (SW–870)

Single copies of these documents are available from Ed Cox, Solid Waste Information, U.S. EPA, 20 West St. Clair Street, Cincinnati, Ohio 45268. If available copies run out, the Agency may have to charge by the page for photocopying. EPA is also preparing the following additional manuals in support of the Part 264 Land Disposal regulatory program:

1. Permit Writer's Guidance Manuals:
a. Landfills
b. Surface Impoundments
c. Land Treatment
d. Piles
2. Technical Resource Documents:
a. Management of Hazardous Waste Leachate (SW–871)
b. Guide to the Disposal of Chemically Stabilized and Solidified Wastes (SW–872)
c. Closure of Hazardous Waste Surface Impoundments (SW–873)
d. Design and Management of Hazardous Waste Land Treatment Facilities (SW–874)
e. Soil Permeability Test Manual
f. Leachate Characterization from a Hazardous Waste Facility
g. Landfill Closure Manual
h. Ground-Water Monitoring for Owners and Operators of Treatment, Storage or Disposal Facilities

C. Economic, Environmental, and Regulatory Impacts

Under Executive Order 12044, the Agency is required to prepare a regulatory analysis for all new significant regulations. This analysis is to include a comprehensive economic impact analysis and a discussion of the regulatory alternatives considered. The Agency has not yet prepared the economic impact analysis for this rulemaking. However, EPA plans to complete one and make it available for public review and comment before a final rule is promulgated. The Agency's October 8, 1980 Supplemental Proposed Rulemaking Notice described and invited public comment on the regulatory alternatives considered. EPA believes that Notice fulfilled, in part, it's obligation under E.O. 12044 to describe and invite comment on the regulatory approaches considered. However, EPA plans to prepare and allow public comment on a full Regulatory Analysis before promulgation of a final rule. This analysis will discuss the approaches considered and the rationale for the approach taken in today's proposed rule.

Under the Federal Reports Act of 1942, OMB reviews reporting requirements in proposed forms and regulations in order to minimize the burden of respondents and the cost to the Federal government. For all new regulations, OMB's procedures require us to estimate the size of the reporting burden, describe who must report and apply to OMB for a clearance. Accordingly, EPA is estimating the reporting burden of today's proposed rule and will submit a clearance package to OMB as soon as possible. Congress has recently amended this Act with the Paperwork Reduction Act of 1980, Pub. L. 96–511. After the effective date of this new Act (April 1, 1980) all agencies must have OMB's approval of the reporting burden before any regulation is promulgated.

The Regulatory Flexibility Act requires all Federal agencies to consider the effects of their regulation on "small entities", i.e., small businesses, small organizations, and small governmental jurisdictions. It requires agencies to propose for public comment a "Regulatory Flexibility Analysis" for any regulations proposed after January 1, 1981, which will cause a significant impact on a substantial number of small entities. The Act requires the analysis to include, among other things, an estimate of the number of small entities affected by the regulations (where feasible), a

description of the reporting and other compliance requirements imposed on them, and a description of any alternatives considered to minimize the economic impact of the regulations on them.

Although EPA has not yet prepared a Regulatory Flexibility Analysis of the small entity impacts of the rules it is proposing today, it believes that a significant portion of the potential impact of these rules on small entities has already been substantially reduced by the small quantity generator exemption contained in EPA's May 19, 1980, regulations; an exemption granted primarily for administrative reasons. See 40 CFR 261.5. EPA intends to analyze the impact of these rules on small entities more thoroughly in the future, and publish it's analysis for public comment. In the meantime, the Agency expressly invites the public to address the impact of this rule on small entities in their comments.

Dated: January 17, 1981.

Douglas M. Costle,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 264, 260, and 122 are proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. Amend Table of Contents as follows:

a. Add to Subpart A—General:

Sec.
264.2 Non-numerical health and environmental standard (Ground-water protection standard).

b. Add to Subpart B—General Facility Standards.

264.19 Land disposal facilities.
264.20 Minimum standards applicable to a variance from the ground-water protection standard for ground water used for drinking.
264.21 Performance standards and associated demonstrations of performance.

c. Add the following:

Subpart F—Ground-water and Air Emission Monitoring

Sec.
264.90 Applicability.
264.91 Ground water monitoring system.
264.92 Sampling and analysis.
264.93 Preparation, evaluation, and response.
264.94 Recordkeeping and reporting.
264.95 Air emission monitoring system.
264.96 Air emission sampling and analysis.
264.97 Air emission evaluation and response.
Sec.
264.98 Air emission recordkeeping and reporting.

* * * * *

Subpart M—Land Treatment

264.270 Applicability.
264.271 [Reserved]
264.272 General operating requirements.
264.273 [Reserved]
264.274 [Reserved]
264.275 [Reserved]
264.276 Food chain crops.
264.277 [Reserved]
264.278 Unsaturated zone (zone of aeration) monitoring.
264.279 Recordkeeping.
264.280 Closure and post-closure.
264.281 Special requirements for ignitable or reactive waste.
264.282 Special requirements for incompatible waste.
264.283 Special requirements for classes of facilities.

Subpart N—Landfills

264.300 Applicablity.
264.301 General design requirements.
264.302 General operating requirements.
264.303 [Reserved]
264.304 [Reserved]
264.305 [Reserved]
264.306 Inspection and testing.
264.307 [Reserved]
264.308 [Reserved]
264.309 Surveying and recordkeeping.
264.310 Closure and post-closure.
264.311 [Reserved]
264.312 Special requirements for ignitable or reactive waste.
264.313 Special requirements for incompatible wastes.
264.314 Special requirements for liquid waste.
264.315 Special requirements for containers.
264.316 Special requirements for classes of facilities.

Subpart R—Underground Injection

264.430 Applicability.
264.431 General design and installation requirements.
264.432 General operating requirements.
264.433 Monitoring and response.
264.434 Closure and post-closure.

Subpart S—Seepage Facilities

264.460 Applicability.
264.461 General design requirements.
264.462 General operating requirements.
264.463 Containment systems.
264.464 Diversion structures.
264.465 [Reserved]
264.466 Inspections and testing.
264.467 Contingency plans.
264.468 Closure and post-closure.
264.469 Special requirements for ignitable or reactive waste.
264.470 Special requirements for incompatible wastes.

Subpart T—Minimum Acceptable Treatment of Hazardous Wastes Prior to Disposal

264.490 Applicability.
264.491 General requirements.

2. The authority citation for Part 264 is revised to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq., §§ 6905, 6912(a), 6924, and 6925; and, with respect to "well injection", Sections 1421, 1422, 1423, and 1424 of the Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1977, 42 U.S.C. 300f et seq. secs. 300h, 300h–1, 300h–2, and 300h–3.

3. In § 264.1, paragraph (d) is revised to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(d) The requirements of this Part apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act and a permit by rule under § 122.26(b) of this chapter only to the extent they are required by § 122.45 of this chapter. These Part 264 regulations do apply to the aboveground treatment or storage of hazardous waste before it is injected underground.

* * * * *

4. Section 264.2 is added to read as follows:

§ 264.2 Nonnumerical health and environmental standard (Ground-water protection standard).

The owner or operator of a land disposal facility shall not dispose of hazardous waste into or on any land *unless:*

(a)(1) Leachate and other subsurface discharges that will enter into and migrate within a ground water aquifer will not mingle with and thereby affect any ground water which is being or may in the future be collected or withdrawn for domestic, agricultural, industrial, commercial or other uses, or

(2) A variance is authorized in accordance with the procedures of Subpart A of Part 124 based on a showing by the owner or operator as required in this section and §§ 264.20, 264.21, and § 122.25; and a finding by the Regional Administrator; that any ground water which is being or may in the future be collected or withdrawn for domestic, agricultural, industrial, commercial or other uses will not be adversely affected for such uses and that public health and the environment will not be adversely affected; and

(b) Affected ground water will not adversely affect the use of the overlying land outside of the land disposal facility for residential, agricultural, industrial, or commercial purposes or otherwise adversely affect public health or the environment; and

(c) Discharges of affected ground waters to surface waters will not adversely affect existing or potential future uses of such surface waters or otherwise adversely affect public health or the environment.

5. In § 264.10, paragraph (b) is revised to read as follows:

§ 264.10 Applicability.

* * * * * *

(b) Section 264.18(b) is applicable only to facilities subject to regulation under this Part 264, Subparts I, J, K, L, M, N, O, R, S, and T.

6. Section 264.19 is added to read as folows:

§ 264.19 Land disposal facilities.

(a) Several types of facilities at which hazardous waste is intentionally placed, discharged, deposited, or injected into or on the land; at which waste may remain after closure; and from which leachate may discharge into or on any land are defined in § 260.10. These facilities include the following types:

(1) Surface impoundments other than those used solely for storage or storage and treatment,

(2) Waste piles other than those used solely for storage or storage and treatment,

(3) Land treatment facilities,

(4) Landfills,

(5) Underground injection facilities,

(6) Seepage facilities; including seepage lagoons, drying beds, seepage pits, seepage beds, and injection wells that are not cased to prevent discharge into the surficial aquifer.

(b) No disposal of hazardous wastes into or on the land will be authorized by permit except in a facility listed in subsection (a) of this section unless the specific type of land disposal facility is approved by rulemaking petition in accordance with §§ 260.20 and 260.23.

(c) For the purpose facilitating descriptions of the varying amounts of information required to pursue a permit under §§ 264.2(a) (1) or (2) and to establish compliance with performance standards, monitoring and modeling requirements, and technical standards; and to facilitate descriptions of varying performance standards, monitoring and modeling requirements, and technical standards in these regulations; the following classes of land disposal facilities are established:

(1) *Class A:* A land disposal facility which does or will discharge into an aquifer which, in its entirety, is not and will not in the future be a source of water supply for any use.

(2) *Class B:* A land disposal facility which does or will discharge into a portion of an aquifer which is not and will not in the future be a source of water supply for any use although other portions of the same aquifer is or may in the future be a source of water supply for some use.

(3) *Class C:* A land disposal facility which does or will discharge into a portion of an aquifer which is or may in the future be a source of water supply for uses other than as drinking water.

(4) *Class D:* A land disposal facility which does or will discharge into a portion of an aquifer which is or may in the future be a source of public drinking water supply.

(5) *Class E:* A land disposal facility which does or will discharge into a portion of an aquifer which is or may in the future be a source of private drinking water supply.

7. Section 264.20 is added to read as follows:

§ 264.20 Minimum standards applicable to a variance from the ground-water protection standard for ground water used for drinking.

Owners and operators of Class D and E land disposal facilities shall not:

(a) Discharge contaminants which will cause the concentration of contaminants at any point of actual or potential collection or withdrawal of ground water for use as drinking water to exceed:

(1) 80% of the following maximum contaminant levels specified in the National Interim Primary Drinking Water Regulations:

	Milligrams per liter
Barium	1.
Cadmium	0.01
Chromium	0.05
Lead	0.05
Nitrate (as N)	10.
Selenium	0.01

(2) 40% of the following maximum contaminant levels specified in the National Secondary Drinking Water Regulations:

	Milligrams per liter
Chloride	250.
Foaming agents	0.5
Sulfate	250.
Total dissolved solids (TDS)	500.

(3) 20% of the following maximum contamination levels specified in the National Secondary Drinking Water Regulations:

	Milligrams per liter
Copper	1.
Iron	0.3
Manganese	0.05
Zinc	0.2

(4) A color of greater than 3 color units.

(5) An odor greater than 1 threshold odor number.

(6) A sodium concentration greater than 20 mg/1.

(b) Discharge any of the following contaminants or groups of contaminants to ground waters which are or which could in the future be collected or withdrawn for use as drinking water.

Acrylonitrile
Arsenic
Benzene
Benzidine
Beryllium
Carbamate Insecticides, including but not limited to;
  Methomyl
  2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbamyl) oxime
Chlorinated Hydrocarbon Insecticides, including but not limited to;
  Aldrin
  Chlordane
  DDT (Total—DDT, DDD, & DDE)
  Dieldrin
Endrin and metabolites
Heptachlor and Heptachlor epoxide (all isomers)
Kepone
Lindane as
  gamma-Hexachlorocyclohexane
  Hexachlorocyclohexan and
  Hexachlorocyclohexane (all isomers)
  1,2,3,4,5,6-Hexachlorocyclohexane
Methoxychlor
Toxaphene
Chloroethene
Chloroform
Chlorophenoxy Herbicides, including but not limited to;
  2,4-Dichlorophenoxyacetic acid (2,4-D)
  2-Methyl-4-chlorophenoxypropionic acid
  2,3,7,8-Tetrachlorodibenzo-p-dioxin
  2,4,5-Trichlorophenoxyacetic acid
  2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP)
Chromium (hexavalent)
3,3'-Dichlorobenzidine
1,2-Dichloroethane
Dichloroethylenes, including but not limited to;
  1,1-Dichloroethylene
  trans-1,2-Dichloroethylene
2,4-Dimethylphenol
Dinitrotoluenes, including but not limited to;
  2,4-Dinitrotoluene
  2,6-Dinitrotoluene
1,2-Diphenolhydrazine
Haloethers and *Chloroalkyl Ethers,* including but not limited to;
  Bis(chloromethyl)ether
  Bis(2-chlorotheoxy) methane
  Bis(2-chloroethyl)ether

Bis(2-chloroisopropyl)ether
4-Bromophenyl phenyl ether
2-Chloroethyl vinyl ether
Chloromethyl methyl ether
Hexachlorobenzene
Hexachlorobutadiene
Hexachloroethane
Hydrogen sulfide
Nitrosoamines, including but not limited to:
N-Nitrosodi-N-butylamine
N-nitrosodiethanolamine
N-Nitrosodiethylamine
N-Nitrosodimethylamine
N-Nitrosodiphenylamine
N-Nitrosodi-N-propylamine
N-Nitrosomethylethylamine
N-Nitrosomethylvinylamine
Polychlorinated biphenyls
Organophosphate Insecticides, including but not limited to:
0,0-Diethyl-S-[2-(ethylthio)ethyl] ester of phosphoro-thioic acid (Disulfoton)
Methyl parathion
Parathion
Phorate
Pentachloronitrobenzene
Polynuclear Aromatic Hydrocarbons, including but not limited to:
Benz[c]acridine
Benz[a]anthracene
Benzo[b]fluoranthene
Benzo[j]fluoranthene
Benzo[a]pyrene
Crysene
Dibenz[a,h]acridine
Dibenz[a,j]acridine
Dibenz[a,h]anthracene
7H-Dibenzo[a,g]carbazole
Dibenzo[a,e]pyrene
Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene
Fluoranthene
Indeno[1,2,3-cd]pyrene
Naphthalene
1,1,2,2-Tetrachloroethane
Tetrachloroethene
Tetrachloromethane
1,1,2-Trichloroethane
Trichloroethene

8. Section 264.21 is added to read as follows:

§ 264.21 Performance standards and associated demonstrations of performance.

The demonstrations of performance required in paragraphs (a), (b), (c), and (d) of this section shall be considered in preparing the draft permit required by § 124.6 and in preparing the statement of basis required by § 124.7, and summarized in accordance with §§ 124.8(b)(4) and (5) in the fact sheet required by § 124.8.

(a) The owner or operator of a land disposal facility shall not initiate or continue:

(1) Any discharge that will result in the migration of contaminants into any aquifer not described in the permit application as receiving discharge; or

(2) Any discharge that will enter any aquifer(s) described in the permit application as receiving discharge and result in migration of contaminants from the containment zone into surface waters; and

(i) Result in a violation of applicable Water Quality Standards approved or established by the Administrator or interfere with the attainment or maintenance of water quality in any portion of the navigable waters for which the Administrator has established or caused to be established water quality related effluent limitations; or

(ii) Be inconsistent with any Areawide or Statewide Waste Treatment Management Plans prepared in accordance with §§ 303e or 208 of the Clean Water Act and approved by the Administrator, or

(iii) Result in contaminants for which the Administrator has not developed and published criteria for water quality in accordance with section 304(a) of the Clean Water Act:

(A) Reaching any present or potential source of water withdrawal from surface waters for domestic, agricultural, industrial, commercial or other uses; *unless*

(B) A variance is authorized in accordance with the procedures of Subpart A of Part 124 based on a showing by the owner or operator as required paragraphs (a)(2)(iv) and (v) of this section and a finding by the Regional Administrator that any surface water which is being or may in the future be withdrawn for domestic, agricultural, industrial, commercial or other uses, will not be adversely affected for such uses and that public health and the environment will not be adversly affected.

(iv) The owner or operator of a land disposal facility requiring a variance in accordance with paragraph (a)(2)(iii)(B) of this section must demonstrate that there is a social and economic need for the facility, and that there are no practical options for waste reduction including resource recovery, treatment prior to disposal, and waste segregation which could reduce or eliminate the need to dispose of the waste into or on the land.

(v) The owner or operator of a land disposal facility requiring a variance in accordance with paragraph (a)(2)(iii)(B) of this section must further demonstrate that the effects to be caused by discharge(s) will not adversely affect public health and the environment by detailed predictions of the generation, transport, and fate of individual contaminants in the leachate discharging to surface waters, and by detailed assessments of the risk of exposure to such individual contaminants taking into account:

(A) Transport, dispersion, and fate of individual contaminants in ground water with respect to: solubility in ground water, exchange with the soil or rock, attenuation by the soil or rock, degradation of the contaminants, dilution by ground water, persistance of the contaminants, accumulation of the contaminants in soil or rock, miscibility in ground water, volatility from ground water, and the viscosity, specific gravity, and surface tension of the contaminants or contaminant solutions.

(B) Transport, dispersion, and fate of individual contaminants in surface waters with respect to: solubility in surface waters, degradation of the contaminants, dilution by surface waters, persistance of the contaminants, accumulation of the contaminants in detritus and benthic deposits, and volatility from surface waters.

(C) The exposure level to individual contaminants with respect to: concentration, duration, and variability.

(D) The effects of exposure to individual contaminants on humans, animals, and plants based on reputable scientific studies which have been subject to challenging scientific review with respect to: chronic or acute toxicity, bioaccumulation, carcinogenesis, mutagenesis, teratogenesis, and eutrophication.

(3) To place in the facility any volatile wastes that will migrate and be emitted into the air unless it can be demonstrated that volatile contaminants will not adversely affect public health or the environment:

(i) Because the emissions will not cause substantial present or potential hazard to public health and the environment outside of the facility or migrate into structures occupied by persons; and

(ii) Because access to the land area where gases will escape will be controlled during the active life of the facility, during the closure and the post-closure care periods, and following the post-closure care period if gaseous escape will continue to occur.

(4) Any discharge to ground water that will adversely affect any structures which exist or may be constructed in or above any aquifer described as receiving discharge.

(b) Owners and operators of Class A and B land disposal facilities shall not discharge to or otherwise affect ground water unless such ground water is not now and will not in the future be used as a source of water supply. The owner or operator shall document:

(1) That the authority to control ground water collection and withdrawal for use is vested with a duly authorized government entity which has exercised

its authority to control ground water collection and withdrawal and use in favor of the type of use the owner or operator carries on or intends; or

(2) That privately held vested rights to control the collection and withdrawal and use of ground water from within the containment zone and any withdrawal and use of ground water which would cause the zone to expand have been exercised, or will be exercised prior to the initiation of discharge, to preclude continuing or future collection and withdrawal and use of ground water affected or to be affected by the discharge; or

(3) The owner or operator shall otherwise document that the ground water cannot now and will not in the future be used.

(4) "Well injection" of hazardous waste directly into ground water which meets the definition of an "underground source of drinking water" in § 146.03 will not be authorized by permit unless the injection is into an "exempted aquifer". An aquifer or a portion thereof exempted solely due to the criteria of paragraphs (b)(1) or (b)(4) of § 146.03 shall not be considered exempt for the purpose of hazardous waste injection.

(c) Owners and operators of Class C, D, and E land disposal facilities (i.e., those requiring a variance under § 146.2) must demonstrate that there is a social and economic need for the facility, and that there are no practical options for waste reduction including resource recovery, treatment prior to disposal, and waste segregation which could reduce or eliminate the need to dispose of the waste into or on the land.

(d) Owners and operators of Class C, D, and E land disposal facilities must further demonstrate that the effects to be caused by disharge(s) will not adversely affect public health and the environment by detafled predictions of the generation, transport, and fate of individual contaminants in the leachate and by detailed assessments of the risk of exposure to such individual contaminants taking into account:

(1) Transport, dispersion, and fate of individual contaminants in ground water with respect to: solubility in ground water, exchange with the soil or rock, attenuation by the soil or rock, degradation of the contaminants, dilution by ground water, persistance of the contaminants, accumulation of the contaminants in soil or rock, miscibility in ground water, violatility from ground water, and the viscosity, specific gravity, and surface tension of the contaminants or contaminant solutions.

(2) The exposure level to individual contaminants with respect to: concentration, duration, and variability.

(3) The effects of exposure to individual contaminants on humans, animals, and plants, based on reputable scientific studies which have been subject to challenging scientific review with respect to: chronic or acute toxicity, bioaccumulation, carcinogenesis, mutagenesis, and teratogenesis.

§§ 264.22-264.29 [Reserved]

9. In 40 CFR Part 264, Subpart F is added to read as follows:

Subpart F—Ground-water and Air Emission Monitoring

§ 264.90 Applicability.

(a) Except as otherwise provided in this chapter, the owner or operator of a land disposal facility as defined in § 260.10 and listed in § 264.19, which is used to manage hazardous waste must implement a ground-water monitoring program, capable of determining compliance with or violation of the ground-water quality provisions of the facility's permit, in accordance with the requirements of this Subpart. Ground-water monitoring is required during the active life of the facility, and if hazardous wastes or decomposition byproducts remain after closure, during the post-closure period as well.

(b) The owner or operator of a facility from which hazardous waste or decomposition byproducts *have not* entered the ground water must install, operate and maintain a ground-water monitoring system to detect any such entry which may occur.

(c) The owner or operator of a facility from which hazardous waste or decomposition byproducts *have* entered the ground water must install, operate and maintain a ground-water quality monitoring system to measure the effect of discharges from the facility on ground-water quality.

(d) The owner or operator of a facility from which hazardous waste or decomposition byproducts are emitted into the air must establish and operate an air monitoring program to measure the effect of the facility on ambient air quality, and the locations of gaseous release from below the surface of the ground or the surface of wastes placed into or on the land.

§ 264.91 Ground-water monitoring system.

(a) A ground-water monitoring system, to detect the entry of hazardous waste or decomposition byproducts from the facility into ground water, must be capable of yielding ground-water samples for analysis and must consist of:

(1) Monitoring wells (at least one) installed hydraulically upgradient (i.e., in the direction of increasing static head) for the limit of the waste management area. Their number, locations, and depths must be sufficient to yield ground-water samples that are:

(i) Representative of background ground-water quality in the surficial aquifer underlying the facility; and

(ii) Not affected by the facility; and

(2) Monitoring wells (at least three) installed hydraulically downgradient (i.e., in the direction decreasing static head) at the limit of the waste management area. Their number, locations, and depths must enable the immediate detection of any statistically significant amounts of hazardous waste or decomposition byproducts that migrate from the waste management area to the surficial aquifer.

(b) If the monitoring system described in paragraph (a) of this section cannot be utilized because of an inability to satisfy well-locational requirements, then the owner or operator must install an alternate ground-water monitoring system capable to detecting the entry of any hazardous waste or decomposition byproducts into the ground water.

(c) A ground-water monitoring system to measure the effect of discharges from the facility on ground-water quality must be capable of yielding ground-water samples for analysis to provide sufficient ground-water quality data to perform the comparisons and evaluations required in accordance with §§ 264.93 (f), (g), and (h) and must consist ot:

(1) Monitoring wells installed hydraulically downgradient (i.e., in the direction decreasing static head) at the limit of the waste management area. Their number, locations, and depths must enable the detection and quantification of any hazardous waste or decomposition byproducts from the facility which have entered the ground water, and

(2) Monitoring wells installed hydraulically downgradient from the limit of the waste management area. Their number, locations, and depths must enable the detection and quantification of any hazardous waste or decomposition byproducts from the facility which have migrated via the ground water.

(d) Separate monitoring systems for each operational unit of a facility are not required provided that provisions for sampling upgradient and downgradient water quality enable detection and measurement of any discharge from the waste management area (i.e., the limit projected in the horizontal plane as it

would exist at completion of the hazardous waste management activity).

(1) In the case of a facility consisting of only one land disposal operational unit, the waste management area is described by the waste boundary (perimeter).

(2) In the case of a facility consisting of more than one operational unit, the waste management area is described by an imaginary boundary line which circumscribes the several waste management operational units.

(e) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hold. This casing must be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g., cement grout or bentonite slurry) to prevent contamination of samples and the ground water.

§ 264.92 Sampling and analysis.

(a) The owner or operator must obtain and analyze samples from the installed ground-water monitoring system. The owner or operator must develop and follow a ground-water sampling and analysis plan. He must keep this plan at the facility. The plan must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(b) The owner or operator with a ground-water monitoring system installed to comply with the requirements of § 264.91(a) must:

(1) determine the concentration or value of the following or other suitable parameters, used as indicators of ground-water contamination, in ground-water samples obtained from monitoring wells in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(2) For each monitoring well, establish initial background concentrations or values of the indicator parameters specified in paragraph (b)(1) of this section, based on at least quarterly sampling for one year.

(3) For each of the indicator parameters specified in paragraph (b)(1) of this section, obtain at least four replicate measurements for each sample and determine the initial background arithmetic mean and variance for each well by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from each well during the year.

(4) After the first year, all monitoring wells must be sampled and the samples analyzed at least semiannually.

(c) The owner or operator with a ground-water monitoring system installed to comply with the requirements of § 264.91(c) must determine the concentrations of hazardous waste and decomposition byproducts in ground-water samples obtained with such frequency as necessary to enable the evaluations specified in §§ 264.93 (f), (g), and (h).

(d) Elevation of the ground-water surface at each monitoring well must be measured each time a sample is obtained and, if such measurements show a seasonal variation in excess of five feet or a variation in the relative elevation of the ground-water between any two wells in excess of two feet, measured monthly. All ground-water elevation measurements will be recorded as a distance measurement from the reference elevation on the well head, and with respect to mean sea level based on USGS or USC&GS datum.

§ 264.93 Preparation, evaluation, and response.

(a) The owner or operator with a ground-water monitoring system installed to comply with the requirements of § 264.91(a) must have an approved plan for a ground-water contamination assessment program. The plan must describe a ground-water monitoring program capable of determining whether hazardous waste or decomposition byproducts from the facility have entered the ground water.

(b) For each well sampled in accordance with § 264.92(b)(4), the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each indicator parameter specified in § 264.92(b)(1), and compare these results with the respective initial background arithmetic means established in accordance with § 264.92(b)(3). These comparisons must consider individually each of the wells in the monitoring system and must include:

(1) The Student's t-test at the 0.01 level of significance to determine statistically significant changes from initial background concentrations or values, or

(2) A suitable statistical comparison, other than the Student's t-test, or suitable quality control procedure (e.g., tolerance intervals) to determine unanticipated changes from initial background concentrations or values.

(c) If the comparisons made under paragraph (b) of this section for the upgradient wells show a significant change the owner or operator must:

(1) Determine whether the facility has caused the significant change.

(2) Determine whether the facility ground-water monitoring program must be modified to enable compliance with the requirements of § 264.90 (a) and (b).

(3) Notify in writing the Regional Administrator of his findings and of his proposed modifications to the facility ground-water monitoring program, and

(4) Reinstate the original or an approved ground-water monitoring program for the facility.

(d) If the comparisons made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must:

(1) Implement the plan for a ground-water contamination assessment program which meets the requirements of paragraph (a) of this section, and

(2) Determine, as soon as technically feasible, whether hazardous waste or decomposition byproducts from the facility have entered ground water.

(e)(1) If the determinations performed in accordance with paragraph (d)(2) of this section support a conclusion that no hazardous waste or decomposition byproducts from the facility have entered the ground water, the owner or operator must:

(i) Notify in writing the Regional Administrator of his findings and propose for approval any modifications to the facility ground-water monitoring program, and

(ii) Reinstate the original or an approved modified ground-water monitoring program for the facility.

(2) If the determinations performed in accordance with paragraph (d)(2) of this section support a conclusion that hazardous waste or decomposition byproducts from the facility have entered the ground water, the owner or operator must implement a ground-water monitoring program in accordance with §§ 264.90 (a) and (c).

(f) The owner or operator with a ground-water monitoring system installed to comply with the requirements of § 264.91(c) must predict the anticipated reduction in the concentration of hazardous waste and decomposition byproducts in the ground water between monitoring wells specified in § 264.92(c)(1) and those specified in § 264.92(c)(2), initially and annually thereafter.

(g) At least annually the owner or operator must compare the quality of ground water samples obtained from the

monitoring wells required in accordance with § 264.92(c)(2) with the predicted quality in accordance with paragraph (f) of this section and include an analysis of this comparison with the annual report.

(h) The owner or operator must use the data generated by the ground-water quality monitoring program required in accordance with §§ 264.90 (a) and (c), in preparing the tri-annual reprediction required in accordance with § 122.28(f).

§ 264.94 Recordkeeping and reporting.

(a) The owner or operator must keep records of all analyses and evaluations of ground-water quality and surface elevations required in accordance with this subpart.

(b) The owner or operator must report the following information to the Regional Administrator:

(1) The results of evaluations made in accordance with the requirements specified in §§ 264.93 (c), (e).

(2) Annually: the concentrations or values determined in accordance with §§ 264.92 (b), (c), and (d) along with the evaluations required under §§ 264.93 (b) and (g). During the active life of the facility, this information must be submitted as part of the annual report required under § 264.75.

§ 264.95 Air emission monitoring system.

(a) An air emission monitoring system to measure the effect of the facility on ambient air quality must be capable of yielding ambient air samples for analysis to provide sufficient ambient air quality data to perform the comparisons and evaluations required in accordance with § 264.97 (a), (b), and (c) and must consist of:

(1) Monitoring air samplers installed upwind at or beyond the limit of the waste management area to yield air samples that are:

(i) Representative of background ambient air quality in the atmosphere upwind of the facility, and

(ii) Not affected by the facility; and

(2) Monitoring air samplers installed downwind at or beyond the limit of the waste management area. Their number and locations must enable the detection and quantification of any hazardous constituents or decomposition byproducts from the facility which have been transported via atmospheric dispersion, and

(3) Wind direction and speed indicators to determine wind direction and speed. Their number and locations must enable the upwind and downwind use of monitoring air samplers installed in accordance with (a)(1) and (a)(2) of this section, and the evaluations required in accordance with § 264.97 (a), (b), (c), and (f).

(b) If the air monitoring system described in paragraph (a) of this section cannot be utilized because of an inability to satisfy locational requirements, then the owner or operator must install an alternate air emission monitoring system capable of providing sufficient quantity of ambient quality data equivalent to the requirements of paragraph (a) of this section.

(c) An air emission monitoring system, to detect the locations of a gaseous release must enable the immediate detection of the emissions of any hazardous constituents or decomposition byproducts which have migrated from the limit of the waste management area defined in § 122.25(d)(3).

§ 264.96 Air emission sampling and analysis.

(a) The owner or operator must obtain and analyze samples from the installed air emission monitoring system. The owner or operator must develop and follow an ambient air sampling and analysis plan. He must keep this plan at the facility. The plan must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures, including types of contaminant to be analyzed;

(4) Collection of wind direction, speed, and stability data; and

(5) Chain of custody control.

(b) The owner or operator with an air emission monitoring system installed to comply with requirements of § 264.95(a) must:

(1) Determine the concentrations of hazardous constituents and decomposition byproducts in ambient air samples in accordance with (b)(2) of this section.

(2) For each air upwind and downwind sampler site, obtain at least four upwind or downwind concentrations taken preferably on an equal interval over a three month period and determine the arithmetic mean and variance.

(c) The owner or operator with an air emission monitoring system to comply with the requirements of § 264.95(c) must monitor two times per year with a portable or other equivalent detection device the concentration of the following or other suitable parameters, used as indicators to detect the location of migrated gaseous emissions:

(1) Total hydrocarbons; and

(2) Total halogenated compounds.

(d) The owner or operator with an air emission monitoring system implementing the requirements of § 264.95 (a) and (c) must determine the wind direction and speed, and other meterological conditions any time air to air emissions are sampled, as necessary for the evaluations required in accordance with § 264.97 (a), (b), (c), and (f).

§ 264.97 Air emission evaluation and response.

(a) The owner or operator with an ambient air monitoring system installed to comply with the requirements of § 264.95(a) must predict the anticipated concentration of hazardous constituents and decomposition byproducts in the ambient air at the downwind monitoring sampler sites taking into account the upwind concentration, initially and quarterly thereafter.

(b) Quarterly the owner or operator must compare the quality of ambient air samples obtained from the downwind air monitoring sites required in accordance with § 264.95(a)(2) with the predicted quality in accordance with paragraph (a) of this section and include an analysis of the quarterly comparison with the annual report.

(c) Annually the owner or operator must repredict, based on data generated by the air monitoring program required in accordance with § 264.90(d), the anticipated effect of the facility on ambient air quality. The anticipated effect must include at a minimum the worst condition, quarterly, and annual effects.

(d) As part of the annual report required under § 264.75, the owner or operator must compare the anticipated effect of the facility on ambient air quality as repredicted in accordance with paragraph (c) of this section with the provision of the facility permit.

(e) If the comparisons made under paragraph (d) of this section show non-compliance with permit provisions on ambient air quality, the owner or operator must:

(1) Determine whether the facility disposal practice must be modified to enable compliance with the requirements of the permit, and

(2) Include his findings and his proposed modifications to the facility disposal practice in the annual report required under § 264.75.

(f) The owner or operator with an air emission monitoring system to comply with the requirements of § 264.95(c) must have an approved plan for an air and area contamination assessment program. The plan must describe an air emission monitoring program capable of identifying the location of gaseous release migrated from the limit of the waste management area, and capable of

assessing the effect on ambient air quality in the affected area.

(g) If monitoring performed to comply with the requirements of § 264.96(c) shows a detection of gaseous release, the owner or operator must implement the plan for an air and area contamination assessment program which meets the requirements of paragraph (f) of this section.

(h) After implementation of the plan in accordance with paragraph (g) of this section, the owner or operator must compare the extent of migration and the assessment with the provisions of the facility permit and in accordance with the provisions of the plan, provide an analysis of this comparison in writing to the Regional Administrator.

§ 264.98 Air emission recordkeeping and reporting.

(a) The owner or operator must keep records of all analyses and evaluations of ambient air quality, wind direction and speed, and air emissions required in accordance with this subpart.

(b) The owner or operator must report the following information to the Regional Administrator:

(1) The results of evaluations made in accordance with the requirements specified in § 264.97 (d), (e), and (h).

(2) Annually: the concentrations or values determined in accordance with § 264.96 (b), (c), and (d) along with the evaluations required under § 264.97(b). During the active life of the facility, this information must be submitted as part of the annual report required under § 264.75.

§ 264.220 [Amended]

10. Section 264.220 is amended by removing the *Comment.*

11. In § 264.221, paragraph (c) is revised, paragraph (d) is redesignated as paragraph (e), paragraph (e) is redesignated as paragraph (f), and a new paragraph (d) is added to read as follows:

§ 264.221 General design requirements.

* * * * *

(c) A surface impoundment must be designed to prevent direct discharge to surface water (except discharges authorized by an NPDES permit) during the life of the impoundment.

(d) A surface impoundment which is designed to be used solely for storage or storage and treatment and to prevent discharge into the land and ground water, and to surface water (except discharges authorized by an NPDES permit) during the life of the impoundment:

(1) Must have a containment system which complies with § 264.223(b); and

(2) Is exempt from the requirements of Subpart F.

(e) Dikes must be designed with sufficient structural integrity to prevent massive failure without dependence on any liner system included in the surface impoundment design.

(f) A leachate detection, collection, and removal system must be designed so that liquid will flow freely from the collection system to prevent the creation of pressure head within the collection system in excess of that necessary to cause the liquid to flow freely.

12. Section 264.228 is revised to read as follows:

§ 264.228 Closure and post-closure.

Unless otherwise authorized in the permit for the facility, at closure, all hazardous waste and hazardous waste residues must be removed from the impoundment and managed as a hazardous waste in accordance with all applicable requirements of Parts 262–266 of this chapter. Any component of the containment system or any apurtenant structures or equipment (e.g., discharge platforms and pipes, and baffles, skimmers, aerators, or other equipment) containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated; or removed and also managed as a hazardous waste.

§ 264.250 [Amended]

12. Section 264.250 is amended by removing the *Comment.*

13. In § 264.251, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 264.251 General design requirements.

* * * * *

(b) A waste pile must be designed to prevent direct discharge to surface water during the life of the pile.

(c) A waste pile that is designed to be used solely for storage or storage and treatment and to prevent discharge into the land and ground water, and to surface water during the life of the pile:

(1) Must have a containment system which complies with § 264.253; and

(2) Is exempt from the requirements of Subpart F.

14. In § 264.252, paragraph (c) is revised to read as follows:

§ 264.252 General operating requirements.

* * * * *

(c) Unless otherwise authorized by the permit for the facility, leachate and run-off from the pile must be collected and controlled.

15. In § 264.254, new paragraphs (b) and (c) are added to read as follows:

§ 264.254 Inspection and testing.

* * * * *

(b) The owner or operator of a waste pile must include in the inspection plan required under § 254.15 a schedule of inspection of the devices for controlling wind dispersal (where required) and run-on, and any waste pile containment system under §'264.253. Except as otherwise provided in paragraph (c) of this section, the inspection schedule for a waste pile containment system must include periodic removal of the waste pile and testing of the underlying base to ensure that it has not deteriorated to the point where it is no longer capable of containment, is already leaking, or is otherwise in disrepair.

(c) If it is impractical to remove the waste pile and test the underlying base periodically because of the size of the pile or the type of base used. (e.g., synthetic membrane which could be damaged during waste removal), the owner or operator may omit the pile base inspection from his inspection plan: *Provided,* That the waste pile has a leachate detection, collection, and removal system as specified in § 264.253(a)(3).

16. Section 264.258 is revised to read as follows:

§ 264.258 Closure and post-closure.

Unless otherwise authorized by the permit for the facility, at closure, all hazardous waste and hazardous waste residues must be removed from the pile and managed as a hazardous waste in accordance with all applicable requirements of Parts 262–266 of this chapter. Any component of the containment system containing or contaminated with hazardous wastes or hazardous waste residues must be decontaminated; or removed and also managed as a hazardous waste.

17. In 40 CFR Part 264, Subparts M, N, R, S, and T are added to read as follows:

Subpart M—Land Treatment

§ 264.270 Applicability.

The regulations in this Subpart apply to owners and operators of hazardous waste land treatment facilities, except as § 264.1 provides otherwise.

§ 264.271 [Reserved]

§ 264.272 General operating requirements.

(a) Run-on must be diverted away from the active portions of a land treatment facility.

(b) Run-off from active portions of a land treatment facility must be collected.

§ 264.273–264.275 [Reserved]

§ 264.276 Food chain crops.

(a) Owners or operators of land treatment facilities who propose to grow food chain crops after the effective date of this Part must comply with paragraphs (b) and (c) of this section.

(b)(1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that arsenic, lead, mercury, or other constituents:

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by paragraph (a)(1) of this section must be kept at the facility and must, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods, and statistical procedures.

(c) Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of paragraph (c)(1) (i) through (iv) of this section or all requirements of paragraph (c)(2) (i) through (iv) of this section are met.

(1)(i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(ii) The annual application of cadmium from waste and soil cadmium does not exceed 0.5 kilograms per hectare (kg/ha).

(iii) The cumulative application of cadmium from waste and soil cadmium does not exceed 5 kg/ha if the waste and soil mixture has a pH of 6.5.

(iv) If the waste and soil mixture has a pH of 6.5 or greater, or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste and soil cadmium does not exceed: 5 kg/ha if soil cation exchange capacity (CEC) is less than 5; 10 kg/ha if CEC is 5–15; and 20 kg/ha if soil CED is greater than 15.

(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops should not be grown, due to a possible health hazard.

§ 264.277 [Reserved]

§ 264.278 Unsaturated zone (zone of aeration) monitoring.

(a) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan which is designed to characterize the leachate that is expected to leave the zone of incorporation and substantiate the predictions made under §§ 122.25(d) (2) and (3) and 122.28(f).

(b) The unsaturated zone monitoring plan must include, at a minimum:

(1) Soil monitoring using soil cores, and

(2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with paragraph (a)(1) of this section, the owner or operator must demonstrate in his unsaturated zone monitoring plan that:

(1) The depth at which soil and soil-pore water samples are to be taken is below the zone of incorporation.

(2) The number of soil and soil-pore water samples to be taken is based on the variability of:

(i) The leachate expected to leave the zone of incorporation; and

(ii) The earth materials above the zone of saturation; and

(3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

(d) The owner of operator must keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator must analyze the soil and soil-pore water samples and compare the results to the predictions required under §§ 122.25(d) (2) and (3) and 122.28(f).

§ 264.279 Recordkeeping.

The owner or operator of a land treatment facility must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in § 264.73.

§ 264.280 Closure and post-closure.

(a) In the closure plan under § 264.112 and the post-closure plan under § 264.118, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) Control of the migration of leachate from the zone of incorporation into the ground water;

(2) Control of the release of contaminated run-off from the facility into surface water;

(3) Control of the release of airborne particulate contaminants caused by wind erosion; and

(4) Compliance with § 264.276 concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of paragraph (a) of this section:

(1) Type and amount of hazardous waste applies to the land treatment facility;

(2) The mobility and the expected rate and amount of migration of the leachate zone of incorporation;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water and drinking water sources);

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) Unsaturated zone monitoring information obtained under § 264.278; and

(7) Character of the leachate and its extent of migration in the earch materials above the zone of saturation.

(c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of paragraph (a) of this section:

(1) Removal of contaminated soils;

(2) Placement of a final cover, considering:

(i) Functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control), and

(ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) Collection and treatment of run-off;

(4) Diversion structure to prevent surface water run-on from entering the treated area; and

(5) Monitoring of soil, soil-pore water, and ground water.

(d) In addition to the requirements of § 264.117, during the post-closure care period, the owner or operator of a land treatment facility must:

(1) Maintain any unsaturated zone monitoring system, and collect and analyze samples from this system in a manner and frequency specified in the post-closure plan;

(2) Restrict access to the facility as appropriate for its post-closure use; and

(3) Assure that growth of food chain crops complies with § 264.276.

(e) For the purpose of complying with § 264.115, when closure is completed, the owner or operator of a land treatment facility must submit to the Regional Administrator certification both by the owner or operator and by a qualified engineer or by a qualified soil scientist that the facility has been closed in accordance with the specifications in the approved closure plan.

§ 264.281 Special requirements for ignitable or reactive waste.

Ignitable or reactive wastes must not be land treated, unless:

(a) The waste is immediately incorporated into the soil so that (1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter, and (2) § 264.17(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

§ 264.282 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same land treatment area, unless § 264.17(b) is complied with.

§ 264.283 Special requirements for classes of facilities.

A Class C, D, or E land treatment facility must have a minimum of two meters between the incorporated waste and the aquifer being or to be used, (i.e., the historical high water table for water table aquifers, or the bottom of the confining soils for artesian aquifer).

§ 264.284–§ 264.299 [Reserved]

Subpart N—Landfills

§ 264.300 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as § 264.1 provides otherwise.

§ 264.301 General design requirements.

(a) All new landfills and new landfill cells must have a leachate monitoring system capable of producing representative samples of leachate.

(b) Any liner systems present at the facility must be constructed:

(1) Of materials which have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure head, physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation; and

(2) On a foundation or base capable of providing support to the liner(s) and resistance to static head above the liner(s) to prevent failure of the liner(s) due to settlement or compression.

(c) Any leachate collection and removal system present at the facility must be constructed:

(1) Of materials which have appropriate chemical properties and are of sufficient strength and thickness to resist collapse or clogging under the pressures exerted by the overlying wastes, waste cover materials and by any equipment used at the facility.

(2) With sufficient capacity to achieve and maintain a leachate depth of one foot or less at any point on the base of the landfill.

§ 264.302 General operating requirements.

(a) Run-on must be diverted away from the active portions of a landfill.

(b) Run-off from active portions of a landfill must be collected.

(c) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

§§ 264.303–264.305 [Reserved]

§ 264.306 Inspections and testing.

(a) Each landfill, including appurtenances to control run-on and run-off, must be inspected once each week and after storms to detect evidence of deterioration.

(b)(1) During construction or installation, liner and cover systems must be inspected for uniformity, damage, and imperfections (e.g. holes, cracks, thin spots, and foreign materials).

(2) Earth material liner and cover systems must be tested for compaction density, moisture content, and permeability after placement.

(3) Manufactured liner and cover materials (e.g. membranes sheets, and coatings) must be inspected to ensure tight seams and joints and the absence of tears and blisters.

(c) Leachate samples must be collected and analyzed once each year and the results compared to the predictions required under § 122.25(d)(2). These comparisons must be reported on an annual basis along with the monitoring results required under § 264.94(b)(2).

§§ 264.307–264.308 [Reserved]

§ 264.309 Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required in § 265.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

§ 264.310 Closure and post-closure.

(a) As part of the closure and post-closure requirements of Subpart G of this part, the owner or operator must place a final cover over the landfill. The final cover must:

(1) Be designed, constructed and maintained in a manner which is consistent with the permit issued for the facility.

(2) Be tested an inspected during closure and post-closure according to the requirements of § 264.306.

(b) During the post-closure care period, the owner or operator must:

(1) Maintain all containment structures and equipment at the facility in a manner which is consistent with the permit issued for the facility.

(2) Continue to operate the leachate monitoring system required by § 264.301(a) and § 264.306(c).

§ 264.311 [Reserved]

§ 264.312 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in the landfill so that:

(a) The resulting waste, mixture, or dissolution of material no longer meets

the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter, and

(b) Section 264.17(b) is complied with.

§ 264.313 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same landfill cell, unless § 264.17(b) is complied with.

§ 264.314 Special requirements for liquid waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids must not be placed in a landfill, unless:

(1) The added liquid is shown to enhance stabilization of the landfill, and

(2) The landfill has a liner which is chemically and physically resistant to the added liquid, and a functioning leachate collection and removal system with a capacity sufficient to remove all leachate produced.

(b) A container holding liquid waste or waste containing free liquids must not be placed in a landfill, unless:

(1) The container is designed to hold liquids or free liquids for a use other than storage, such as a battery or capacitor; or

(2) The container is very small, such as an ampule.

§ 264.315 Special requirements for containers.

(a) An empty container must be crushed flat, shredded, or similarly reduced in volume or filled with solids before it is buried beneath the surface of a landfill. A partially empty container must be:

(1) Filled with solids compatible with the wastes already in the container; or,

(2) Crushed to eliminate void spaces; or

(3) Emptied and the empty container crushed flat, shredded, or similarly reduced in volume before it is buried beneath the surface of the landfill.

(b) "Full or filled container" means the materials in the container:

(1) Are within 7.6 centimeters (3 inches) of the top of the container, or

(2) Occupy 90 percent or more of the volume of the container, whichever results in the lesser void space.

(c) "Partially empty container" means a container that is neither empty nor full.

§ 264.316 Special requirements for classes of facilities.

New landfills, regardless of class (see § 264.19), must have a minimum of two meters between the leachate detection, collection, and removal system liner, other liner, or waste, whichever is lower, and the historical high water table for a water table aquifer, or the bottom of the confining soils for an artesian aquifer.

§§ 264.317-264.339 [Reserved]

Subpart R—Underground Injection

§ 264.430 Applicability.

The regulations of this Subpart apply to owners and operators of facilities which dispose of hazardous waste by means of an injection well which discharges below the surficial aquifer, except as § 264.1 provides otherwise.

§ 264.431 General design and installation requirements.

An underground injection well which discharges hazardous waste below the surficial aquifer must be designed and installed to prevent the migration of hazardous waste and decomposition or reaction byproducts from the well casing and from the zone of containment. An injection well designed and installed in accordance with the technical requirements and specifications included in § 146.12(b), (c), (d) and (e) of this chapter will be considered as satisfying the requirements of § 264.431.

§ 264.432 General operating requirements.

The owner or operator of an underground injection well which discharges hazardous waste below the surficial aquifer must prevent the migration of hazardous waste and decomposition or reaction byproducts from the well casing and from the zone of containment. An injection well operated in accordance with the technical requirements and specifications included in § 146.13(a) of this chapter will be considered as satisfying the requirements of § 264.432.

§ 264.433 Monitoring and response.

The owner of operator of an underground injection well which discharges hazardous waste below the surficial aquifer must:

(a) Develop a plan for a monitoring program capable of determining compliance with § 264.432 and the facility permit by:

(1) Demonstrating the mechanical integrity of the injection well; and

(2) Demonstrating that the pressure of the injected fluids remains within allowble limits.

(b) Specify in the plan required under paragraph (a) of this section:

(1) For demonstrating mechanical integrity:

(i) The annular pressure range to be maintained and basis for determining it for the specific well tubing, packer and casing characteristics and for the anticipated injection fluid temperature;

(ii) The devices and procedures for continuous monitoring and recording of the annular pressure, and evaluation of that information; and

(iii) Procedures for immediate response to changes in the annular pressure outside the allowable range, and for restoration of mechanical integrity;

(2) For demonstrating that injection fluid pressure remains within allowable limits:

(i) The calculated fracture pressure and the basis for determining it for the specific formation and zone of containment.

(ii) The calculated allowable injection pressure to be measured at the well head and the basis for determining it for specific injection fluid characteristics (i.e., specific gravity, viscosity and temperature);

(iii) The techniques and procedures for continuous monitoring and recording of the injection pressure at the well head, and for evaluation of that information; and

(iv) Procedures for immediate response to an increase in the well head pressure above the allowable limit, to restore pressure to within allowable limits.

(c) Implement the monitoring plan which satisfies paragraph (b) of this section and determine the mechanical integrity of the well and the injection zone pressure.

(d) Keep records of the monitoring data and evaluations specified in paragraph (b)(1) and (2) of this section throughout the active life of the facility.

(e) Submit an annual report to the Regional Administrator in which compliance with § 264.432 is assured; and separately identify in the annual report those corrective actions, specified in paragraphs (b)(1)(iii) and (b)(2)(iv) of this section which were implemented during the reporting period; and provide an explanation of circumstances which required corrective action.

§ 264.434 Closure and post-closure.

(a) The owner or operator of an underground injection well which discharges hazardous waste below the surficial aquifers must close his facility in a manner that prevents future use of the well and minimizes threats to public safety.

(b) The owner or operator of an underground injection well which discharges hazardous waste below the surficial aquifer must close by plugging the well with cement. Plugging in accordance with the technical requirements included in § 146.10(b) of

this chapter will be considered as satisfying this requirement.

(c) The owner or operator of an underground injection well which discharges hazardous waste below the surficial aquifer is excluded from the requirements of §§ 264.117–264.118 and §§ 264.144–264.145 of this Part.

§§ 264.435–264.459 [Reserved]

Subpart S—Seepage Facilities

§ 264.460 Applicability.

The regulations in this Subpart apply to owners and operators of seepage facilities used to treat, store, or dispose of hazardous waste, except as § 264.1 provides otherwise.

§ 264.461 General design requirements.

(a) Seepage lagoons and drying beds must be designed to comply with the requirements of § 264.221, Subpart K.

§ 264.462 General operating requirements.

Seepage lagoons and drying beds must be operated and maintained to comply with the requirements of § 264.222, Subpart K.

§ 264.463 Containment system.

(a) All earthen dikes must have a protective cover, such as grass, shale, or rock, or be constructed of materials which are sufficiently resistant to wind and water erosion to preserve the structural integrity of the dike.

§ 264.464 Diversion structures.

(a) Run-on must be diverted away from a seepage lagoon or a drying bed.

§ 264.465 [Reserved]

§ 264.466 Inspections and testing.

(a) The owner or operator of a seepage lagoon or a drying bed must comply with the inspection requirements of § 264.226, Subpart K.

§ 264.467 Contingency plans.

Seepage facilities with dikes must comply with the requirements of § 264.227, Subpart K, applicable to dikes.

§ 264.468 Closure and post closure.

Unless otherwise authorized in the permit for the facility, at closure, all hazardous waste and hazardous waste residues must be removed from a seepage facility and managed as a hazardous waste in accordance with all applicable requirements of Parts 262–266 of this chapter. Any component of the containment system or any appurtenant structures or equipment (e.g., discharge platforms and pipes, and baffles, skimmers, aerators, or other equipment) containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated; or removed and also managed as a hazardous waste.

§ 264.469 Special requirements for ignitable or reactive waste.

Ignitable or reactive hazardous waste must not be placed in a seepage facility, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the facility so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter; and

(2) § 264.17(b) is complied with; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The seepage facility is used solely for emergencies.

§ 264.470 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples) must not be placed in the same seepage facility, unless § 264.17(b) is complied with.

§ 264.471–§ 264.499 [Reserved]

Subpart T—Minimum Acceptable Treatment of Hazardous Waste Prior to Disposal

§ 264.490 Applicability.

The regulations of this subpart apply to owners or operators of facilities used for the land disposal of hazardous wastes, except as § 264.1 provides otherwise.

§ 264.491 General requirements.

Except as otherwise provided in this section or in Part 266, owners or operators of facilities shall, at a minimum, use available technology to reduce the potential adverse effects of hazardous waste disposal by:

(a) Treating wastes prior to landfilling to reduce their mobility or their ability to cause other waste to become mobile, or ability to release toxic gas.

(1) Soluble metals as salts or salt solutions shall be converted to an oxide, hydrous oxide or sulfide.

(2) Using available technology to precipitate metals from solutions in which they are solubilized due to complex formations or chelation.

(3) Wastes that are highly acidic or alkaline shall be neutralized.

(4) Wastes that are or contain surfactants, organic solvents or chelating agents shall be disposed separately from other wastes.

(5) Wastes containing cyanide salts or salt solutions shall be treated so that the cyanide is oxidized.

§§ 264.292–264.499 [Reserved]

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 is revised to read as folows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq., secs. 6905, 6912(a), 6921 through 6927, 6930, and 6974; and, with respect to "well injection", Sections 1421, 1422, 1423, and 1424 of the Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1977, 42 U.S.C. 300f et seq. secs. 300h, 300h–1, 300h–2, and 300h–3.

§ 260.10 [Amended]

2. In § 260.10, paragraph (a) is revised to read as follows:

(a) When used in Parts 260 through 265 of this chapter, the following terms have the meanings given below:

* * * * *

3. In § 260.10, remove the number preceding each defined term.

4. In § 260.10, revise the definitions of the following terms to read as follows:

(a) * * *

Aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

* * * * *

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of hazardous waste into or on any land or water so that such hazardous waste or any constituent, decomposition byproduct, or reaction byproduct thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Disposal facility means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste may remain after closure.

* * * * *

Injection well means a well into which fluids are being injected.

* * * * *

Landfill means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well or seepage facility.

* * * * *

Land treatment facility means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface.

* * * * *

Surface impoundment or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or seepage facility. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

* * * * *

Underground injection means a well injection.

* * * * *

Well means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well where the depth is greater than the largest surface dimension.

5. In § 260.10, the following terms and definitions are added in aphabetical order to read as follows:

(a) * * *

Cased injection well means a well which is cased within the surficial aquifer to prevent the escape of fluids from the well into the surficial aquifer.

* * * * *

Decomposition byproduct means a byproduct of hazardous waste derived from the waste by physical, chemical, or biological reactions.

* * * * *

Formation means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.

* * * * *

Injection zone means a geological formation, group of formations, or part of a formation receiving fluids through a well.

* * * * *

Land disposal facility means a disposal facility or part of a disposal facility at which leachate or other hazardous waste will or may discharge into ground water.

* * * * *

Plugging means the act of or process of stopping the flow of water, oil, or gas in formations penetrated by a borehole or well.

* * * * *

Reaction byproduct means a substance resulting from physical, chemical, or biological reactions involving a hazardous waste or decomposition byproduct with any other substance including byproducts derived from each materials which react with hazardous waste or decomposition byproducts.

* * * * *

Seepage facility means any land disposal facility which is used to emplace liquids into the land or the ground water which is not a cased injection well, a landfill, a surface impoundment, or a land treatment facility.

* * * * *

Surficial aquifer means the uppermost aquifer with an upper boundary defined by a water table which is naturally recharged from the ground surface and/or from the unsaturated zone and in addition includes formations which are saturated with water intermittently, seasonally, or which develop a perched water table within the unsaturated zone.

* * * * *

Underground Seepage means the underground emplacement of fluids at atmospheric pressure through an uncased well, a dug hole, or a disposal facility constructed in a dug hole or an earth material fill.

* * * * *

Zone of containment means the volume of earth materials defined by a permit applicant in accordance with §§ 122.25(d)(3)(v) and (4)(iv) beyond which the permit applicant asserts his discharge will not cause effects in the ground water or in earth materials.

6. Section 260.23 is added to read as follows:

§ 260.23 Petitions to amend Part 264 or Part 265 to allow special types of treatment, storage, and disposal facilities at a particular location, for a particular hazardous waste, or for a hazardous waste from a particular source.

(a) Any person who is operating or who proposes to construct and operate a treatment, storage, or disposal facility of a type other than those types defined in § 260.10 or otherwise described in these regulations and for which operating methods, techniques, and practices have been prescribed in accordance with § 3004(3) of the Act and for which location, design, and construction requirements have been prescribed in accordance with § 3004(4) of the Act: may petition for an amendment under this section and § 260.20. To be successful the petitioner must demonstrate to the satisfaction of the Administrator that the operating methods, techniques, and practices he proposes to use; and the location, design, and construction of the facility he is operating or proposes to construct and operate are equivalent or superior to the requirements of Part 264 or Part 265 for the particular location at which he is operating or proposes to operate; and for the particular hazardous waste(s) he is treating, storing, or disposing of or proposes to treat, store, or dispose of.

(b) After receiving a petition, the Administrator may request any additional information which he reasonably may require to evaluate the petition.

(c) An amendment will only apply to the particular waste(s) or facility covered by the petition and demonstration.

(d) For facilities operating pursuant to section 3005(e) of the Act and Part 265 of these regulations, the Administrator may (but shall not be required to) grant a temporary amendment before making a final decision under § 260.20(d) whenever he finds that there is substantial likelihood that an amendment will be granted. The Administrator shall publish notice of any temporary amendment in the **Federal Register**

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 122 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.; Safe Drinking Water Act, 42 U.S.C. 300f et. seq.; and Clean Water Act, 33 U.S.C. 1251 et. seq.

2. In § 122.3, revise the definitions of the following terms to read as follows:

§ 122.3 Definitions.

* * * * *

Disposal (RCRA) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any "hazardous waste" into or on any land or water so that such hazardous waste or any constituent or decomposition or reaction byproduct thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Disposal facility (RCRA) means a facility or part of a facility at which "hazardous waste" is intentionally placed into or on the land or water, and at which waste may remain after closure.

* * * * *

Formation (RCRA and UIC) means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable on the subsurface.

Formation fluid (RCRA and UIC) means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud".

* * * * *

Injection zone (RCRA and UIC) means a geological "formation", group of formations, or part of a formation receiving fluids through a "well".

* * * * *

Plugging means the act of or process of stopping the flow of water, oil, or gas in "formations" penetrated by a borehole or "well".

* * * * *

Underground injection (RCRA and UIC) means a "well injection."

* * * * *

Well (RCRA and UIC) means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection (RCRA and UIC) means the subsurface emplacement of "fluids" through a bored, drilled, or driven "well;" or through a dug well, where the depth is greater than the largest surface dimension.

* * * * *

3. In § 122.3, the following terms and definitions are added in alphabetical order as follows:

§ 122.3 Definitions.

* * * * *

Surficial aquifer (RCRA and UIC) means the uppermost aquifer with an upper boundary defined by a water table which is naturally recharged from the ground surface or from the unsaturated zone and in addition includes formations which are saturated with water intermittently, seasonally, or which develop a perched water table within the unsaturated zone.

* * * * *

Zone of containment (RCRA and UIC) means the volume of earth materials defined by a permit applicant in accordance with § 122.25(d)(3) (v) and (4)(vi) beyond which the permit applicant asserts his discharge will not cause effects in the ground water or in earth materials.

4. In § 122.15, paragraph (a)(8) is added to read as follows:

§ 122.15 Modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(8) *For RCRA only,* based on the repredictions required in § 122.28(f):

(i) When the repredictions indicate that the limits established in accordance with §§ 122.25(d)(3) and (4) have not or will not be met, the report required in § 122.28(f) shall include a request for modification of the permit to:

(A) Reduce the rate of waste disposal defined in accordance with 122.25(d)(1)(iii); or

(B) Increase the zones of permitted effects defined in accordance with §§ 122.25(d)(3)(v) and (4)(iv).

(ii) The permittee may include in the report required in § 122.28(f), a request for modification of the permit to reduce the zones of permitted effects.

(iii) If, in the opinion of the Director, the zones of permitted effects are substantially unrelated to actual zones of effects based on monitoring and modeling, the Director that the permittee redefine the zones to more closely reflect the actual zones of effects which exist and are predicted.

* * * * *

(5) In § 122.17, paragraph (e)(3) is added to read as follows:

§ 122.17 Minor modifications of permits.

* * * * *

(e) * * *

(3) Reduce the rate of waste disposal in accordance with § 122.15(a)(8) (i) or decrease the zone of permitted effects in accordance with §§ 122.15(a)(8)(ii) or (iii).

* * * * *

6. In § 122.22, paragraphs (a)(4), (5), (6), (7), and (8) are added to read as follows:

§ 122.22 Application for a permit.

* * * * *

(a) * * *

(4) If a Part B application filed in response to a requirment initiated under § 122.22(a)(2) is considered incomplete by the permit applicant at the time of the required filing, he shall so advise the Director stating the reason the application is incomplete and the date on which the completed application will be filed.

(5) If the Director determines the reason that the filing is incomplete is beyond the reasonable discretion of the applicant due to the requirements of §§ 122.25(d), (f), and (g) including the regional availability of professional services with the requisite skills, he shall not deny the application on the basis of § 122.25(a)(3).

(6) If the Director determines that an incomplete application shows that the permit applicant will not comply with § 264.2; he may either deny the application or issue an interim permit with a compliance schedule for the filing of a completed Part B. He may incorporate such other conditions in the interim permit as he finds appropiate to protect public health or the environment.

(7) If the Director determines that an incomplete application shows that the permit applicant will, in all likelihood, comply with § 264.2; he may issue an interim permit.

(8) No interim permit shall be issued for a term longer than five years.

* * * * *

(7.) In § 122.25, paragraphs (c) through (h) are added as follows:

§ 122.25 Contents of Part B.

* * * * *

(c) *Specific information requirements.* The following additional information, based on the technical requirements of Subparts K, L, M, N, R, and S (generic requirements for all land disposal facilities are covered in paragraph (d) of this section), is required from owners or operators of specific types of HWM facilities that are used or to be used for land disposal:

(1) For all facilities that use *surface impoundments* for reasons other than solely for storage or storage and treatment, except as otherwise provided in § 264.220, all of the applicable information requirements in § 122.25(b)(4).

(2) For all facilities that use *waste piles* for reasons other than solely for storage or storage and treatment, except as otherwise provided in § 264.250, all of the applicable information requirements in § 122.25(b)(3).

(3) For all *land treatment* facilities, except as otherwise provided in § 264.270, the owner or operator must submit detailed plans and specifications, and data which must collectively include the information itemized in paragraphs (c)(3) (i) through (iv) of this section. For new facilities, the plans and specifications must be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor. For existing facilities, comparable detail must be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

(i) Detailed design drawings and specifications of the run-off collection structures required in § 264.272.

(ii) The unsaturated zone monitoring plan as required in § 264.278, including the rationale used in developing the plan and a detailed map of the facility showing the location and depth of the soil-pore water sampling devices.

(iii) Detailed descriptions of any inspection, testing, and recordkeeping procedures needed to comply with § 264.279.

(iv) A description of the operating procedures including any plans or equipment that will ensure compliance with §§ 264.281 and 264.282.

(4) For *landfill* facilities, except as otherwise provided in § 264.300, the owner or operator must submit detailed plans and specifications accompanied by an engineering report which must collectively include the information itemized in paragraphs (c)(4) (i) through (x) of this section. For new facilities, the plans and specifications must be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor. For existing facilities, comparable detail must be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

(i) Detailed design drawings and specifications of the leachate monitoring system required in § 264.301(a).

(ii) Detailed design drawings and specifications of any liner(s) and liner base(s) present at the facility and the installation procedures used to comply with § 264.301(b).

(iii) Detailed design drawings and specifications of any leachate collection and removal system present at the facility demonstrating compliance with the requirements in § 264.301(c).

(iv) Detailed plans and specifications and basis of design of any structures needed to comply with the general operating requirements in § 264.302.

(v) Detailed descriptions of any inspection, testing, and recordkeeping procedures needed to comply with § 264.306.

(vi) Detailed design drawings and specifications of the final cover required in § 264.310(a).

(vii) Detailed descriptions of all maintenance, testing and inspection procedures to be used at the facility during the closure and post-closure care period as needed to satisfy the requirements of § 264.310 (b) and (c).

(viii) A map(s) which satisfies the requirements of § 264.309 (a) and (b). All existing facilities must submit map(s) showing the approximate location of each hazardous waste type within each cell for all wastes disposed of during the interim status period.

(ix) A description of the operating procedures including any plans or equipment that will ensure compliance with §§ 264.312, 264.313, 264.314 and 264.315.

(x) Detailed design drawing(s) of the landfill and surrounding geology showing the dimensions and depth of the uppermost aquifer beneath the facility.

(5) For *underground injection* facilities, except as otherwise provided in § 264.430, the owner or operator must submit detailed plans and specifications accompanied by an engineering report which must collectively include the information itemized in paragraph (c)(5) (i) through (v) of this section. For new facilities, the plans and specifications must be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intends to construct the facility without hiring a contractor. For existing facilities, comparable detail must be provided, but the form of presentation need not assume contractor construction except to the extent that the facility will be modified.

(i) A statement of the maximum pressure to be applied to the well head and basis (calculations) of establishment.

(ii) A statement of the annular pressure to be maintained and basis (calculations) of establishment.

(iii) An analysis of the well construction material selection including casing, cementing, tubing and packer materials.

(iv) A description of the operating procedures to comply with § 264.432.

(v) A description and justification of well plugging techniques to be utilized at closure.

(6) For *seepage* facilities, except as § 264.460 provides otherwise, all applicable information requirements in § 122.25(b)(3).

(d) *Informational requirements for permitting discharges from land disposal facilities.* Except as provided in paragraph (e) of this section, each owner or operator applying for a permit to dispose of hazardous waste into or on the land shall file the following information as part of his application:

(1) A definition of the specific hazardous wastes to be disposed of in each disposal facility operational unit, including:

(i) The specific wastes by hazardous waste number when applicable.

(ii) The expected rate of deposition of each specific waste including both wastes defined as hazardous wastes in accordance with § 261.3 and any other waste to be disposed of in conjunction with such hazardous wastes.

(iii) The maximum rate of deposition of each specific waste described in accordance with § 122.25(d)(1)(ii) for which permit authorization is being requested.

(2) A definition of the rate of mass transport of leachate and gases from the land disposal facility, including:

(i) The mass rate of hazardous wastes, and the decomposition byproducts of hazardous wastes expected to leach or otherwise escape from the facility,

(ii) The mass rate of any other wastes and the decomposition byproducts of such other wastes expected to leach or otherwise escape from the facility,

(iii) The mass rate of infiltrating rainwater and other liquids disposed of or generated within the facility expected to leach or otherwise escape from the facility, and

(iv) The maximum mass rate of infiltrating rainwater, any other liquids to be disposed of or generated within the facility, hazardous wastes and any other wastes to be disposed of within the facility, and the deompositon byproducts of such hazardous wastes or other wastes including gases expected to leach or otherwise escape from the facility.

(3) A definition of the earth materials above the zone of saturation which will be in contact with leachate discharging from the land disposal facility and gases released from the facility and the leachate, including:

(i) The lateral and vertical extent of the expected migration of leachate in any materials emplaced to control the rate of leachate migration.

(ii) The lateral and vertical extent of the expected migration of leachate in each natural earth material formation determined to exist during site investigation studies required in paragraph (g) of this section.

(iii) The lateral and vertical extent of the expected migration of gases through any materials or wastes emplaced within the facility.

(iv) The lateral and vertical extent of migration of gases in each natural formation determined to exist during the site investigation studies required in paragraph (g) of this section.

(v) The maximum lateral and vertical extent of earth materials above the zone of saturation and the area at the surface of the ground or the waste for which authorization to be in contact with leachate discharged from the facility or gases released from the facility and the leathate is being requested.

(4) A definition of the earth materials in the saturated zone which will be in contact with the leachate discharged from the land disposal facility and the extent and rate of leaching, including:

(i) The mass rate of transport of infiltrating rainwater, any other liquids to be disposed of or generated within the facility, hazardous wastes or any other wastes to be disposed or within the facility, and the decomposition byproducts of such hazardous wastes or other wastes; expected to leach from the facility to the ground water.

(ii) Any alteration in the vertical elevation of the zone of saturation expected to occur due to the existence of the facility and/or the discharge from the facility to the saturated zone.

(iii) The transverse, lateral, and vertical extent of the expected migration of leachate within each natural earth material formation in the saturated zone determined to exist during site investigation studies required in paragraph (g) of this section.

(iv) The maximum transverse, lateral, and vertical extent of earth materials in the saturated zone for which authorization to be in contact with leachate discharged from the facility is being requested.

(v) The maximum mass rate of transport within the saturated zone of infiltrating rainwater, any other liquids to be disposed of or generated within the facility, hazardous wastes or any other wastes to be disposed of within the facility, and the decomposition byproducts of such hazardous wastes or other wastes for which permit authorization is being requested.

(5) A definition of the discharges and/or withdrawals of ground water mixed with leachate, including:

(i) The mass rate of discharge from the saturated zone of liquids to be disposed of within the facility, liquids other than water which will be generated within the facility, hazardous wastes or any other wastes to be disposed of within the facility, substances solubilized from earth materials by leachate, and the decomposition byproducts of such hazardous wastes, liquids, or other wastes or substances; into any flowing surface waters, any standing surface waters, or to the ground surface within the zone of containment.

(ii) The maximum mass rate of discharge from the saturated zone of liquids to be disposed of within the facility, liquids other than water which will be generated within the facility, hazardous wastes or any other wastes to be disposed of within the facility, substances solubilized from earth materials by leachate, and/or the decomposition byproducts of such hazardous wastes, liquids, or other wastes or substances; into any flowing surface waters, any standing surface waters, or to the ground surface within the zone of containment for which permit authorization is being requested.

(iii) The mass rate of withdrawal from the saturated zone of liquids to be disposed of within the facility, liquids other than water which will be generated within the facility, hazardous wastes or any other wastes to be disposed of within the facility, substances solubilized from earth materials by leachate, and the decomposition byproducts of such hazardous wastes, liquids, or other wastes or substances into any well or other ground water collection device, except monitoring wells or collection devices installed or to be installed to monitor or characterize the leachate and the ground water.

(iv) The maximum mass rate of withdrawal from the saturated zone of liquids to be disposed of within the facility, liquids other than water which will be generated within the facility, hazardous wastes or any other wastes to be disposed of within the facility, substances solubilized from earth materials by leachate, and the decomposition byproducts of such hazardous wastes, liquids, or other wastes or substances; into any well or any other ground water collection device, except monitoring wells or collection devices installed or to be installed to monitor or characterize the leachate and/or the ground water.

(e) The precision of the definitions required in subsection (d) of this section may be varied in accordance with the need for information to establish compliance with the standards of this regulation as follows:

(1) The informational requirements of § 122.75(d)(1) are applicable to all types and classes of land disposal facilities without exception.

(2) The informational requirements of § 122.75 are applicable to all types and classes of land disposal facilities however;

(i) For surface impoundments and waste piles, used solely for storage or storage and treatment which are designed to preclude leakage, as described in § 264.19(d) (i) and (ii), no definition of leachate discharge is required unless leakage is to be controlled by a leachate collection system.

(ii) For seepage facilities and injection wells which are designed and operated solely to introduce liquids into the land, leachate discharge can be considered equivalent to waste deposition unless the boundary conditions, between the liquid and the land, control the rate of discharge to a rate less than the rate of deposition.

(iii) For all types of facilities, the rate of gaseous escape which occurs directly to the atmosphere from any land disposal facility operational unit may be considered in conjuction with gaseous emissions from all operational units of the facility.

(iv) For all facilities from which leachate will discharge into the land, the informational requirements of §§ 122.25(d)(2)(i), (ii), and (iii) are to be considered as a best estimate of the volume and character of the leachate which will discharge from the facility into the land or be collected for treatment, discharge, or disposal from within or above materials emplaced to control the rate of leachate migration. Leachate discharge into the land will be subject to verification and more precise definition based on monitoring and modeling in accordance with § 122.28(f).

(3) For any portion of the leachate which will discharge into natural earth material formations, the volume of discharge must be defined as precisely as possible; and the character of the leachate defined with sufficient precision to establish:

(i) The physical characteristics of the leachate to allow definition of the locus of leachate migration through natural earth materials including;

(A) The uniformity of the the expected leachate (i.e. solubility and miscibility in ground water and constancy with respect to time). Immiscible portions of the leachate or substantially differing leachate must be considered independently.

((B) The range of viscosity of the leachate and immiscible portions of the leachate.

(C) The range of specific gravity of the leachate and immiscible portions of the leachate.

(D) The range of surface tension of the leachate and immiscible portions of the leachate.

(ii) The chemical characteristics of the leachate and immiscible portions of the leachate for the purpose of;

(A) Discussing the expected or probable fate of the contaminants in the leachate base on independent study, or

(B) Discussing the expected or probable fate of the contaminants in the leachate based on reliable reference sources of data.

(4) The informational requirements of § 122.25(d)(3)(ii) may be approximated with respect to the extent of the zone in each homogeneous natural earth material formation as a downward vertical extension of the overlying

formation in contact with leachate provided:

(i) Expansion of the zone of vertical migration due to boundary conditions between formations are accounted for, and

(ii) Expansion of the zone due to capillary migration is accounted for.

(5) The informational requirements of §§ 122.25(d)(3) (iii) and (iv) are to be considered as a best estimate of the locus of gaseous migration in the land and through the land to the land surface.

(6) The informational requirements of § 122.25(d)(4)(i) may be considered equivalent to the best estimates of §§ 122.25(d)(2) (i) , (ii) and (iii) unless the permit applicant elects to define and support the definition of:

(i) Alterations of the chemical and/or physical characteristics of the leachate which will occur within the unsaturated zone,

(ii) The exchange capacity of the earth materials for contaminants in the leachate which will not be exhausted over the period that the facility will dischage leachate.

(7) The informational requirements of § 122.25(d)(4)(iii) shall be defined taking into account the factors defined in paragraph (3)(i) of this subsection, the alteration of those factors which will occur due to mixing (for miscible leachates) with ground water, and factors to account for the dispersivity of the leachate in the specific natural earth material formations which will be contacted by leachate.

(8) The maximum locational definitions required in §§ 122.25(d)(3)(iv) and (4)(iv), termed the zone of containment; and the maximum rate definitions of §§ 122.25(d)(2)(iv) and 4 (v) shall be correlated with the maximum deposition rate definition of § 122.25(d)(1)(iii). A defined factor may be applied to each of the maximum locational and rate definitions, except the maximum rate of deposition, to account for any recognized imprecision or lack of confidence in the analytical determinations of the maximums.

(9) No information is required under §§ 122.25(d)(5) (iii) and (iv) for Class A or Class B facilities unless leachate or ground water effected by leachate will be collected or withdrawn as a function of the facility design for treatment, discharge, or disposal; or passive collection devices such as storm sewers, sanitary sewers, ditches, or agricultual drainage systems do or may in the future exist within the zone of containment.

(10) For any portion which will discharge directly or indirectly with ground water into surface waters; with sufficient precision to establish:

(i) The range of concentrations of contaminants, to be defined in accordance with § 122.25(d)(5)(i), which could occur in the surface waters, and

(ii) That the upper limit of the range of concentration of contaminants is below that which is to be defined in accordance with § 122.25(d)(5)(ii).

(11) For any portion which will discharge to standing surface water or the surface of the ground, both of which should be avoided in a land disposal facility, it will be necessary to establish:

(i) As accurate a prediction as can be achieved unless,

(ii) The location of potential exposure to effects resulting from discharges to standing surface waters or the surface of the ground is part of the facility to which access is controlled in accordance with § 264.14.

(12) For any portion which will be collected in a passive collection device and discharge to surface waters or to the surface of the ground, the precision described in paragraphs (e)(10) (i) and (ii) of this section are sufficient provided the predictions include a definition of the range of concentration of contaminants which could occur within the collection device and be conveyed through or by the collection device and any subsequent conveyance device prior to discharge.

(13) For any portion which will be collected in a well or other ground water collection device and withdrawal for any use, with sufficient precision to establish:

(i) The range of concentration of contaminants, to be defined in accordance with § 122.25(d)(5)(iii), which occur in the ground water withdrawn; provided

(A) That for Class C facilities, the predictions may be limited to those contaminants which could occur over the range of withdrawal that may prevail and interfere with the specific uses to which the ground water may be put; and

(B) That for Class D facilities the predictions include, in addition to predictions for non-drinking uses in accordance with paragraph (A), predictions of the full set of contaminants which could occur over the range of rates of withdrawal that may prevail in ground water withdrawn and supplied for drinking use; and

(C) That for Class E facilities, the predictions include, in addition to predictions in accordance with paragraphs (A) and (B), predictions of the full set of contaminants which could occur in ground water withdrawn for private drinking use assuming no dilution of the affected ground water due to the rate of withdrawal, and

(ii) That the upper limit of the range of concentration of contaminants is below that which is to be defined in accordance with § 122.25(d)(5)(iv).

(f) A report on the hydrogeology, climatology, and geography of the area where the facility is to be located which will be based on the site investigation requirements in paragraph (g) and that shall include:

(1) A description of the geology and hydrology of the area and a listing of all pertinent published and open file text material and mapping available from the United States Geological Survey, the Soil Conservation Service, and State and Geological Agencies. Text material and mapping from such public sources relied upon in preparing the description shall be referenced, and that which was not relied upon shall be discussed with reference to the reasons it was not used. Any other published or unpublished text material or mapping used in preparing the description shall also be referenced. The description shall:

(i) Include such mapping as is necessary to ensure an understanding of the geology and hydrology by a lay reviewer (e.g., a member of the public at large rather than a peer) of the description.

(ii) Be of sufficient detail to define the various earth material formations in the vicinity of the site and to serve as a basis of confirming predictions of the transverse, lateral, and vertical migration of infiltrating rainwater, any liquids to be disposed of or generated within the facility, hazardous wastes or any other wastes disposed of within the facility, or the decomposition byproducts of such hazardous wastes of other wastes that define the zone to be affected within the zone of containment.

(iii) Include the logs of borings taken to establish or improve the understanding of the geology and the hydrology of the area to be impacted by the waste disposal activity.

(iv) Include mapping to define ground surface contours, consolidated rock contours, and ground water elevation contours.

(v) Include a description of any changes in ground surface contours, consolidated rock contours, and ground water elevation contours that will result from the construction or operation of the facility.

(vi) Include a description of the character of each earth material formation expected to be contacted by leachate or gases with regard to: type of material, uniformity, permeability, porosity, weathering (of consolidated rock), fracturing (of consolidated rock and clay), fault zones (of consolidated

rock), karst zones (of consolidated rock), and swelling (of clay).

(vii) Include a description and such mapping of the progression of the migration of the leachate plume in the ground water flow system during the active life of the facility, during the post-closure care period and, unless the plume discharges to surface water or it can be shown that the plume will be collected or withdrawn, subsequent to the post-closure period. The mapping shall be adequate to ensure an understanding of the locus of the migration of the leachate plume by a lay reviewer of the description.

(2) A report on the climatologic factors based on the data required in paragraph (g)(2) of this section.

(3) A report on the geographic factors based on the data required in paragraph (g)(3) of this section.

(g) *Site Investigation Requirements.* Each applicant for a permit for a hazardous waste facility shall investigate the site and environs of the storage, treatment, or disposal activity and establish permanent on site vertical and horizontal controls to allow all elevations and locations to be surveyed, expressed, and plotted with reference to USGS and USC&GS horizontal and vertical controls.

(1) With respect to geologic and hydrologic factors:

(i) Surface topography shall be surveyed with sufficient accuracy to allow the plotting of surface contours at a contour interval not greater than two meters over an area extending at least forty meters beyond any proposed construction activity, including excavation or filling, or any area where leachate will migrate within ten meters of the ground surface.

(ii) Unless reliable boring data is available from previous investigations, sufficient borings shall be made in unconsolidated earth materials in the vicinity of the site and the zone of leachate or gaseous migration to characterize or verify the characterization of unconsolidated earth materials with respect to type of material, uniformity, permeability, porosity, and fracturing. In addition, where such materials will be subject to loads or used as a functioning part of a constructed facility; swelling, settlement, and plasticity shall be characterized or verified.

(iii) Where leachate migration will reach the contact surface between unconsolidated and consolidated earth materials, the contact surface of consolidated rock shall be surveyed with sufficient accuracy to allow the plotting of the contact surface at a contour interval of not greater than four meters.

(iv) Where leachate migration will occur within consolidated rock, the effected consolidate rock shall be characterized by geologic investigation with respect to type of material, permeability, porosity, relationship to any overlying mantle of unconsolidated materials, relationship to adjacent consolidated materials, degree of weathering including the formation of karst zones, degree of fracturing, the location and character of fault zones, and attitude.

(v) Ground water elevations shall be determined with sufficient accuracy to allow the plotting of water table contours at a contour interval of not greater than two meters beneath the site where ground water mounding may or will occur due to discharge from the facility, and in any area where ground water affected by leachate will migrate within ten meters of the ground surface. Beyond the above described areas, sufficient ground water elevation data shall be obtained to construct a ground water flow net for any given set of conditions of discharge to the ground water, withdrawal or discharge from the ground water, and recharge of the ground water which may occur prior to, during, or after the active operation of the facility.

(vi) To the extent that new borings are made or new wells are installed to obtain the data necessary to characterize or verify the character of earth materials or the ground water within and flowing through such earth materials, boring holes and wells shall be filled and, if necessary, plugged and sealed to avoid creating new paths for fluid migration unless the hole or well will be maintained as a ground water sampling well in accordance with Subpart F.

(vii) All existing excavations, borings, or wells or other ground water collection devices within the zone of containment shall be located by field survey, and described in detail.

(2) With respect to climatologic factors;

(i) The seasonal variation in ambient temperatures including the average monthly temperature, and the extremes during any month.

(ii) The seasonal variation in wind conditions including the average number of days in any direction and at any velocity range for which data exists and the direction and velocity of expected extremes.

(iii) The seasonal variation in the type, duration, intensity, and amount of precipitation including both monthly averages and the expected extremes during any month.

(3) With respect to geographic factors;

(i) The type of land use including but not limited to:

(A) The associated densities of human population living, working, or passing through the area.

(B) The associated density of animal population living in or passing through the area.

(C) The associated intensity of use for the production of food chain crops.

(ii) The controls over land use and the manner in which such controls are implemented or are to be implemented.

(iii) Projected future land use based on trends in land use, existing or developing plans to modify the land use.

(4) With respect to the following special requirements based on land disposal facility class:

(i) An applicant for a permit for a Class A land disposal facility must investigate the entire aquifer to which discharge will occur and within which leachate will migrate and establish, based on reliable reference data or independent field investigation, that:

(A) No part of the aquifer is now or will in the future be used as a source of water supply for domestic, agricultural, industrial, or commercial uses.

(B) No migration can occur from the aquifer to any other aquifer.

(ii) An applicant for a permit for a Class B land disposal facility must investigate the entire portion of the aquifer to which discharge will occur and within which leachate will migrate (which may be equivalent to or inclusive of the zone of containment) and establish, based on reliable reference data and/or independent field investigation, that:

(A) No part of the portion of the aquifer is now or will in the future be used as a source of water supply for domestic, agricultural, industrial, or commercial uses.

(B) No migration can occur from the portion of the aquifer to any other portion of the aquifer or to any other aquifer.

(iii) An applicant for a permit for a Class C land disposal facility must investigate in detail each location of ground water withdrawal or collection for use, referencing well logs or construction records when available, with respect to the type of well or other ground water collection device including:

(A) The age of the well or collection device, the materials of construction, and the location of casing, screens, seals, plugs, etc.

(B) The zone of collection or withdrawal.

(C) The rate of ground water collection or withdrawal.

(D) The possible yield of the well or other ground-water collection device.

(E) The actual use of the collected or withdrawn ground water.

(iv) An applicant for a permit for a Class D land disposal facility must, in addition to the requirements of paragraph (iii) for any ground water use other than public drinking water, investigate each location of ground water withdrawal or collection for use as public drinking water, referencing well logs or construction records when available, with respect to the type of well or other ground water collection device including:

(A) The age of the well or collection device, the materials of construction, and the location of casing, screens, seals, plugs, etc.

(B) The zone of collection or withdrawal.

(C) The rate of ground water collection or withdrawal.

(D) The potential yield of the well or other ground water collection device.

(E) The physical potential yield of the aquifer to additional wells or other ground water collection devices in the same zone of withdrawal.

(F) The treatment provided prior to distribution of the ground water for use.

(v) An applicant for a permit for a Class E land disposal facility must, in addition to the requirements of paragraph (iii) for any ground water use other than public drinking water and the requirement of paragraph (g)(4)(iv) of this section for any ground water use as public drinking water, investigate each location of ground water withdrawal or collection for use as private drinking water, referencing well logs or construction records when available, with respect to the type of well or other ground water collection device including:

(A) The age of the well or collection device, the materials of construction, and the location of casings, screens, seals, plugs, etc.

(B) The zone of collection or withdrawal.

(C) The rate of ground water collection or withdrawal.

(D) The possible yield of the well or other ground-water collection device.

(E) The physical potential yield of the aquifer to additional wells or other ground water collection devices in the same zone of withdrawal.

(F) The alternative sources of public or private drinking water available to the well owner.

(h) A description of the monitoring and, if planned or required, the modeling proposed to comply with Subpart F (Ground Water and Gaseous Emission Monitoring) or to verify or refine the projections of the transverse, lateral, and vertical extent of the migration of and the mass of contaminants in the leachate, the lateral and vertical extent of the migration of gases, and the mass of gaseous emissions.

8. In § 122.26, paragraph (b) is revised to read as follows:

§ 122.26 Permits by rule.

* * * * *

(b) *Injection wells.* The owner or operator of an injection well disposing of hazardous waste beneath a surficial aquifer and beneath a confining zone that does not allow movement of fluid into a surficial aquifer if the owner or operator:

(1) Has a permit for underground injection issued under Part 122, Subpart C or Part 123, Subpart C; and

(2) Complies with the conditions of that permit and the requirements of § 122.45 (requirements for wells managing hazardous waste); and

(3) Providing that no ground water is being or will in the future be withdrawn from the zone of containment.

9. In § 122.28, a new paragraph (f) is added to read as follows:

§ 122.28 Additional conditions applicable to all RCRA permits.

* * * * *

(f) The following report shall be submitted by the permittee to the Director on March 1 of the year following three full years of permitted operation, based on an October 1 through September 30 year (i.e., not a calender year) and tri-annually thereafter during the active life and post-closure period of the facility.

(1) A modified prediction prepared in accordance with the permit application requirements of § 122.25(d); and

(2) Proposed modifications to the monitoring and (if necessary) modeling program describer in accordance with the permit application requirements of § 122.25.

10. In § 122.29, paragraph (b) is redesignated as paragraph (d), and new paragraphs (b) and (c) are added to read as follows:

§ 122.29 Establishing RCRA permit conditions.

* * * * *

(b) The maximum allowable rate of disposal of specific hazardous wastes and other wastes at or below the rate for which permit authorization was requested in accordance with § 122.25(d)(1)(iii), and

(c) For land disposal facilities, a condition limiting allowable effects authorized by the permit to include, at a maximum, only those effects to the land, to the ground water, to the atmosphere, or via the ground water; to the land, to the surface waters, or to the atmosphere as have been defined in the permit application and which:

(1) Result within the zone of containment;

(2) Result from discharges from the zone of containment to surface waters or to the surface of the ground;

(3) Result from collection or withdrawal of ground water;

(4) Result from gaseous escape from the facility of from leachate; and

(d) Each of the applicable requirements specified in 40 CFR Parts 264 and 266.

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Part III

Department of State

Foreign Service Grievance Board

Grievances and Separation for Cause Cases

DEPARTMENT OF STATE

Foreign Service Grievance Board

22 CFR Ch. IX

Foreign Service Grievance Board Regulations

AGENCY: Foreign Service Grievance Board, State.

ACTION: Interim rule with request for comments.

SUMMARY: The Foreign Service Grievance Board revises its regulations to conform to the provisions concerning grievances and separation for cause cases in the Foreign Service Act of 1980 (Pub. L. 96-456; 94 Stat. 2071) of October 17, 1980. The revision provides explicit directions in procedures to follow when filing grievances and separation for cause cases. It also sets down rules and procedures the Board follows in handling these cases.

DATES: Interim rule effective February 15, 1981. Comments must be received on or before March 9, 1981.

ADDRESSES:

For mailing public comments: Foreign Service Grievance Board, Department of State (S/FSG), SA-6, Room 430, Washington, D.C. 20520.

For hand delivery of public comments: Foreign Service Grievance Board, Berkley Building, 1700 N. Lynn St. (or 1701 N. Ft. Myer Drive), Room 430, Rosslyn, Virginia.

FOR FURTHER INFORMATION CONTACT: Pratt Byrd (Executive Secretary) 703/235-9860.

In consideration of the foregoing, in Chapter IX of Title 22, Code of Federal Regulations, Parts 901-908 are revised and a new Part 909 is added to read as follows:

CHAPTER IX—FOREIGN SERVICE GRIEVANCE BOARD REGULATIONS

PART 901—GENERAL

Subpart A—Purpose and Scope

Sec.

901.1 Purpose and scope.

Subpart B—Meanings of Terms as Used in This Chapter

901.10 Act.
901.11 Agency.
901.12 Board.
901.13 Executive secretary.
901.14 Service.
901.15 Exclusive representative.
901.16 Grievant.
901.17 Charged employee.
901.18 Grievance.
901.19 Party.
901.20 Record of proceedings.
901.21 Representative.

Authority: Secs. 610, 1101, 1102, 1105, and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4132, 4135, and 4136).

Subpart A—Purpose and Scope

§ 901.1 Purpose and scope.

The regulations contained in this chapter establish the internal organization of the Foreign Service Grievance Board and prescribe its procedures in:

(a) Determining its jurisdiction in cases involving grievances and separation for cause proceedings;

(b) Compiling a record in such cases;

(c) Conducting hearings in such cases, when required or deemed necessary; and

(d) Deciding such cases, or otherwise disposing of them, so as to ensure the fullest measure of due process for the members of the Foreign Service.

Subpart B—Meanings of Terms as Used in This Chapter

§ 901.10 Act.

"Act" means the Foreign Service Act of 1980 (Pub. L. 96-465, October 17, 1980).

§ 901.11 Agency.

"Agency" means the Department of State, the Agency for International Development, the International Communication Agency, the Department of Agriculture, or the Department of Commerce, if the Agency employs the individual appearing in a case before the Board and/or has control over the act, omission, or condition forming the subject matter of such case.

§ 901.12 Board.

"Board" means the Foreign Service Grievance Board, including any designated panel or member thereof.

§ 901.13 Executive Secretary.

"Executive Secretary" means the Executive Secretary of the Board or his or her designee.

§ 901.14 Service.

"Service" means the Foreign Service of the United States.

§ 901.15 Exclusive Representative.

"Exclusive Representative" means any labor organization which is certified as the Exclusive Representative of the bargaining unit of which the grievant or Charged Employee is a member.

§ 901.16 Grievant.

"Grievant" means anyone who has filed a grievance and who is: (a) a Member of the Service, as defined in Section 103 of the Act, who is a citizen of the United States. (The phrase "Member of the Service" includes those appointed under the Foreign Service Act of 1946, as amended, who have not yet been converted to Civil Service under section 2104 of the Act.); (b) a former Member of the Service; or (c) in the case of death of the Member or former Member a surviving spouse or, if none, another Member of the family.

§ 901.17 Charged Employee.

"Charged Employee" means a Member of the Senior Foreign Service or a Member of the Service assigned to a salary class who has been proposed for separation for cause under Section 610(a)(2) of the Act.

§ 901.18 Grievance.

(a) "Grievance" means any act, omission, or condition subject to the control of an Agency which is alleged to deprive a Member of the Service of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the Member, including but not limited to:

(1) Complaints against separation of a Member allegedly contrary to law or regulation or predicated upon alleged inaccuracy, omission, error or falsely prejudicial character of information in any part of the official personnel record of the Member;

(2) Other alleged violation, misinterpretation or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the Member;

(3) Allegedly wrongful disciplinary action against the Member;

(4) Dissatisfaction with respect to the working environment of the Member;

(5) Alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the Member which is or could be prejudicial to the Member;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by a Member in a grievance; and

(7) Alleged denial of an allowance, premium pay or other financial benefit to which the Member claims entitlement under applicable laws and regulations.

(b) The scope of grievances described above may be modified by written agreement between an Agency and its Exclusive Representative.

(c) The term "grievance" does not include:

(1) Complaints against an individual assignment of a Member under Chapter

5 of the Act, other than an assignment which is alleged to be contrary to law or regulation;

(2) The judgment of a selection board (established under Section 602 of the Act) or a tenure board (established under Section 306(b) of the Act) or any other equivalent body established by laws or regulations which similarly evaluates the performance of Members of the Service on a comparative basis;

(3) The expiration of a limited appointment, termination of a limited appointment under Section 611 of the Act, or the denial of a limited career extension or denial of a renewal of a limited career extension under Section 607(b) of the Act; or

(4) Any complaint or appeal where a specific statutory hearing procedure exists other than procedures for considering prohibited personnel practice charges before the Merit Systems Protection Board or Special Counsel (5 U.S.C. 1206).

(d) When the Grievant is a former Member of the Service or a surviving spouse or family Member of a deceased Member or former Member, "grievance" shall mean a complaint that an allowance, premium pay or other financial benefit to which the Grievant or former Member claimed or might have claimed entitlement, under applicable laws or regulations, has been denied.

(e) For the purposes of these regulations, the written complaint concerning any act, omission, or condition specified above may be referred to as the "grievance".

§ 901.19 Party.

"Party" means (a) the Grievant/Charged Employee; (b) the Agency or Agencies employing the Grievant/Charged Employee and/or having control over the act, omission, or condition leading to appearance before the Board; or (c) the Exclusive Representative if it has achieved Party status under Section 903.5(a). A Party may act through its duly designated representative.

§ 901.20 Record of proceedings.

"Record of Proceedings" means the case file maintained by the Board on each grievance case, or separation for cause proceeding.

§ 901.21 Representative.

"Representative" means the person(s) identified in writing to the Board as assisting the Party or Parties in the presentation of the case.

PART 902—ORGANIZATION

Sec.
902.1 Chairperson and Deputy Chairperson.
902.2 Board operations.
902.3 Board staff.

Authority: Secs. 1105 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4135 and 4136).

§ 902.1 Chairperson and Deputy Chairperson.

The Chairperson presides over meetings of the Board. The Chairperson shall select one of the Board Members as deputy. In the absence of the Chairperson, the Deputy Chairperson, or in his or her absence, another member designated by the Chairperson, may act for him or her.

§ 902.2 Board operations.

(a) The Board may operate either as a whole, or through panels or individual members designed by the Chairperson.

(b) When operating as a whole, the Board may not act in the absence of a quorum. A majority of the members shall constitute a quorum. The Board will act by a majority vote of those present. Amendments to these regulations and Board policies adopted pursuant to § 909.3 shall be adopted by the Board operating as a whole.

(c) Board panels and presiding members of panels shall be designated by the Chairperson subject only to the provisions of § 905.3.

§ 902.3 Board staff.

The Chairperson shall select the Board's Executive Secretary and other staff provided for in the Act. The Executive Secretary and staff shall be responsible only to the Board through the Chairperson.

PART 903—INITIATION AND DOCUMENTATION OF CASES

Sec.
903.1 Initiation of cases.
903.2 Waiver of time limits.
903.3 Record of Proceedings.
903.4 Rulings on materials.
903.5 Participation of exclusive representative.
903.6 Service of documents.
903.7 Interrogatories.
903.8 Acknowledgment.
903.9 Withdrawal.
903.10 Access to records.
903.11 Decision whether to hold a hearing.

Authority: Secs. 610, 1104, and 1106-1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010, 4134, and 4136-4139).

§ 903.1 Initiation of cases.

(a) Grievances submitted to the Board shall be in writing, and shall explain the nature of the grievance, and the remedy sought; shall contain all the documentation furnished to the Agency and the Agency's final review; and shall be timely filed in accordance with applicable regulations.

(b) If a grievance is not resolved under Agency procedures within 90 days after it is filed with the Agency, the Grievant or the Exclusive Representative (on behalf of a Grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Board for its consideration and resolution.

(c) Separation for cause proceedings of a Charged Employee shall be initiated before the Board by submission of a statement of the acts or behavior considered by the Agency to warrant separation.

§ 903.2 Waiver of time limits.

Upon showing of good cause, the Board may waive the time limits for the filing of a grievance contained in 3 FAM 663.6. Before deciding whether to grant a waiver the Board shall solicit the views of the Parties.

§ 903.3 Record of proceedings.

Upon receipt of initial documents relating to a case, a Record of Proceedings shall be established, and all material received or obtained by the Board in connection with the case shall be placed in it unless the Board excludes such material under § 903.4. The Parties and the Exclusive Representative, if any, shall have access to the Record of Proceedings. Classified portions of the Record of Proceedings may be reviewed by the Parties and the Exclusive Representative, if any, under conditions prescribed by the Board to ensure appropriate security.

§ 903.4 Rulings on materials.

The Board may at any stage of the proceedings exclude materials from the Record of Proceedings at the request of a Party or on its own initiative, on the grounds that such materials are irrelevant, immaterial or unduly repetitive.

§ 903.5 Participation of exclusive representative.

(a) Upon the initiation of a case, the Executive Secretary shall ascertain from the Agency, the Grievant/Charged Employee and any labor organization which has been certified as the Exclusive Representative of employees of the Agency, whether the relevant position occupied by the Grievant/Charged Employee is part of the bargaining unit for which the labor organization is the Exclusive Representative. If a substantial dispute exists as to whether that position is part of the bargaining unit, and if the Board

determines that resolution of that dispute is necessary for determining the status of the labor organization in a case, the Board shall notify the Parties and the labor organization, who may request the Foreign Service Labor Relations Board to make a final determination of that dispute. If the Foreign Service Labor Relations Board determines that the Grievant or Charged Employee is a member of a bargaining unit represented by an Exclusive Representative, the Executive Secretary shall promptly send a copy of the papers filed with the Board to the Exclusive Representative.

(b) The Exclusive Representative has the right to intervene as a Party to the case if such Exclusive Representative gives timely notice to the Board in writing of its decision to intervene as a Party. Notice shall be considered to be timely if given prior to or at the prehearing conference, or, in a case to be decided under Part 906, if given within 10 days of receipt of a notice from the Board of the Board's intent to close the Record of Proceedings.

(c) An Exclusive Representative which has not intervened under paragraph (b) of this section may be permitted to intervene as a Party upon written application. In ruling upon the application, the Board shall consider whether granting the application will unduly delay or prejudice the adjudication of the rights of the original parties, and may place conditions on the Exclusive Representative's participation to avoid such delay or prejudice.

§ 903.6 Service of documents.

Any Party submitting documents to the Board in connection with a case shall send a copy to the other Parties and to the Exclusive Representative, if any. The Board shall send copies of its correspondence concerning the case to the Parties and the Exclusive Representative, if any.

§ 903.7 Interrogatories.

Each Party shall be entitled to serve interrogatories upon another Party, and have such interrogatories answered by the other Party unless the Board finds such interrogatories irrelevant, immaterial, or unduly repetitive. Parties shall follow procedures established by the Board concerning the use of interrogatories.

§ 903.8 Acknowledgment.

Each case received shall be acknowledged in writing by the Executive Secretary of the Board. If in the judgment of the Executive Secretary additional documentation or information is needed, he or she may request such materials.

§ 903.9 Withdrawal.

A case may be withdrawn at any time by written notification to the Board from the Party initiating the case. A case may be determined by the Board to have lapsed when the Grievant fails to respond to two successive written Board inquiries within any deadline fixed for such response. The Board may permit the reopening of lapsed cases upon a showing of good cause.

§ 903.10 Access to records.

(a) If a Party is denied access to any Agency record prior to or during the consideration of a case by the Agency, the Party may protest such denial before the Board in connection with the case.

(b) In considering a case, the Board shall have access to any Agency record as follows:

(1) The Board shall request access to any Agency record which the Grievant/Charged Employee requests to substantiate his or her grievance or defense to a charge if the Board determines that such record may be relevant and material to the case.

(2) The Board may request access to any other Agency record which the Board determines may be relevant and material to the case.

(3) An Agency shall make available to the Board any Agency record requested under paragraphs (b) (1) and (2) of this section unless the head or deputy head of such Agency personally certifies in writing to the Board that disclosure of the record to the Board and the Parties would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the Agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an Agency record, or a summary or extract of a record, made available to the Board under paragraph (b) of this section is relevant and material to the case, the Agency concerned shall make such record, summary, or extract, as the case may be, available to the Parties.

(d) In considering a case, the Board may take into account the fact that the Parties or the Board were denied access to an Agency record which the Board determines is or may be relevant and material to the case.

(e) The Parties in any case decided by the Board shall have access to the Record of Proceedings and the decision of the Board.

§ 903.11 Decision whether to hold a hearing.

After deciding either to accept jurisdiction over a grievance or to postpone decision of that question under § 904.2(a), the Board will make an initial determination of whether a hearing shall be held, in accordance with Part 905, or whether the grievance shall be resolved without a hearing, in accordance with Part 906. The Board may reconsider its decision as to holding a hearing upon the written request of any Party or on its own initiative.

PART 904—JURISDICTION AND RELATED MATTERS

Sec.
904.1 General.
904.2 Preliminary determinations.
904.3 Relationship to other remedies.

Authority: Secs. 1101, 1104, 1108, and 1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4134, 4138, and 4139).

§ 904.1 General.

The Board's jurisdiction extends to any grievance, and to separation for cause proceeding initiated pursuant to Section 610(a)(2) of the Act.

§ 904.2 Preliminary determinations.

(a) If an Agency, in its final review, has questioned whether a complaint constitutes a grievance, the Board will make a preliminary determination of its jurisdiction unless the Board concludes that resolution of the question of jurisdiction should be deferred until the Board has compiled a Record of Proceedings or held a hearing on the merits of the case.

(b) Prior to compiling a Record of Proceedings or holding a hearing on the merits of the case, the Board also may make a preliminary determination on any question raised by a Party concerning the timeliness of a grievance, the election of other remedies under Section 904.3, or any other issue whose resolution might avoid the necessity of further proceedings.

(c) Before making a preliminary determination under this section, the Board shall obtain the views of the other Parties and transmit those views to all Parties.

(d) Where a preliminary determination is made under this section which would result in the termination of a case, the grievant may seek review of that determination within 30 days of receipt of the written notification of the Board's decision. A request for review shall be made in writing, and shall address itself to the Board's decision. A

panel of three members of the Board who did not participate in the preliminary decision shall decide the question on review.

§ 904.3 Relationship to other remedies.

(a) A Grievant may not file a grievance with the Board if the Grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief provided under another provision of law, regulation, or Executive Order, and the matter has been carried to final decision under such provision on its merits or is still under consideration. This provision shall not apply to Grievants who have filed a prohibited personnel practice charge before the Special Counsel for the Merit Systems Protection Board.

(b) If a Grievant is not prohibited from filing a grievance under paragraph (a) of this section, the Grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief as a prohibited personnel practice complaint under the provisions of law relating to the Merit Systems Protection Board or Special Counsel, or under a regulation or Executive Order. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

PART 905—HEARINGS

Sec.

905.1 Mandatory hearing.
905.2 Notification.
905.3 Hearing panels and members.
905.4 Prehearing conferences.
905.5 Powers of presiding member.
905.6 Conduct of hearing.
905.7 Witnesses.
905.8 Failure of party to appear.

Authority: Secs. 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010 and 4136).

§ 905.1 Mandatory hearing.

The Board shall conduct a hearing, (1) at the request of the Grievant in any case which involves disciplinary action or a Grievant's retirement from the Service for expiration of time-in-class or based on relative performance, or (2) in any case which in the judgment of the Board can best be resolved by a hearing or presentation of oral argument. The Board shall also conduct a hearing in separation for cause proceedings unless the Charged Employee waives in writing his or her right to such hearing.

§ 905.2 Notification.

When the Board orders a hearing, the Executive Secretary shall so notify the Parties in writing. The Parties shall be given reasonable notice of the date and place selected by the Board for the hearing.

§ 905.3 Hearing panels and members.

Unless the Board and the Parties agree otherwise, all hearings shall be held before a panel of at least three members.

§ 905.4 Prehearing conferences.

(a) The Board may in its discretion order a prehearing conference of the Parties (which may be presided over by any member) for the purpose of considering:

(1) Simplification or clarification of the issues;

(2) Serving of interrogatories;

(3) Stipulations, admissions, agreements on documents, matters already on record, or similar agreements which will avoid the necessity of proving facts or issues not in dispute;

(4) Identification of witnesses the Parties may wish to call and the intended scope of their testimony; limitation on the number of witnesses; and arrangement for the appearance of witnesses;

(5) Avoidance of irrelevant, immaterial, or unduly repetitive testimony;

(6) The possibility of disposition of the case through agreement;

(7) The order of presentation at the hearing and the allocation of the burden of proof; and

(8) Such other matters as may aid in the disposition of the case.

(b) The Parties authorized to attend the hearing may attend the prehearing conference.

(c) The results of the conference shall be summarized in writing by the Board and made a part of the Record of Proceedings. Copies of the summary shall be sent to the Parties. The Parties may submit comments or corrections on the summary.

§ 905.5 Powers of presiding member.

In connection with the hearing, the presiding member shall, as appropriate:

(a) Fix the time and place of the hearing;

(b) Order further conferences;

(c) Regulate the course of the hearing;

(d) Administer oaths and affirmations;

(e) Dispose of procedural requests and similar matters;

(f) Rule on admissibility of testimony and exhibits;

(g) Exclude any person from the hearing for behavior that obstructs the hearing;

(h) Authorize and set the time for the filing of briefs or other documents;

(i) Grant continuances and extensions of time;

(j) Reopen the record;

(k) Take any other action in the course of the proceedings consistent with the purpose of this part.

§ 905.6 Conduct of hearing.

(a) *Authorized attendance.* The Parties and, as determined by the Board, a reasonable number of representatives of the Parties are entitled to be present at the hearing. The Board may, after considering the views of the Parties and of any other individuals connected with the grievance, decide that a hearing should be open to others. No person shall be permitted to attend the hearing when classified material is being discussed unless that person possesses the appropriate security clearance.

(b) *Procedure.* Hearings shall be conducted by the presiding member so as to assure a full and fair proceeding. The Board shall not be limited by the legal rules of evidence. However, the presiding member shall exclude irrelevant, immaterial, or unduly repetitive evidence. The Board may require the Parties to designate one of their representatives as principal spokesperson.

(c) *Order of presentation.* In cases involving disciplinary action, including separation for cause cases, the Agency will ordinarily present its case first and will retain that order of precedence throughout the hearing. In other cases the Grievant will ordinarily present his or her case first and will retain that order of precedence throughout the hearing.

(d) *Evidence.* Subject to the presiding member's rulings on the relevancy, materiality, and repetitious nature of evidence, the Parties may offer such evidence, including interrogatories, depositions and Agency records as they desire. They shall produce such additional evidence as the presiding member shall consider relevant and material. Where deemed appropriate by the Board, the Parties may be supplied only with a summary or extract of classified material (also see § 903.10).

(e) *Testimony.* Testimony at a hearing shall be given under oath or affirmation.

(f) *Transcript.* A verbatim transcript shall be made of any hearing and shall be part of the Record of Proceedings.

§ 905.7 Witnesses.

(a) *General.* Each Party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition. A Party wishing to take the deposition of a witness shall give the other Parties reasonable notice of the time and place of the deposition and of the identity of the witness.

(b) *Availability.* Upon request of the Board or upon request of the Grievant/Charged Employee deemed relevant and material by the Board, and Agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility. If the Board determines that the actual presence of such witness at the hearing is required for just resolution of the case, the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Agency which is a Party to the hearing.

(c) *Notice.* The Parties are responsible for notifying their witnesses and for arranging for their appearance at the time and place set for the hearing. The Board may preclude a witness from testifying because of the failure of the Party responsible for the witness' appearance to comply with this section.

§ 905.8 Failure of party to appear.

The hearing may proceed in the absence of any Party who, after due notice and without good cause, fails to be present or obtain an adjournment.

PART 906—PROCEDURE WHEN HEARING IS NOT HELD

Authority: Sec. 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136).

§ 906.1 General.

(a) In a case in which a hearing is not required under § 905.1, the Board may request in writing that specified documents or other evidence be furnished to it and/or may authorize the Executive Secretary to obtain such additional documents or other evidence as may be necessary to understand and decide the case.

(b) Each Party will be offered the opportunity to review and to supplement, by written submissions, the Record of Proceedings, prior to the date fixed by the Board for closing of the Record. The Board shall then consider the case and make a decision based on that Record. This may include the ordering of a hearing in accordance with Part 905.

PART 907—REMEDIES

Sec.
907.1 Board orders.
907.2 Board recommendations.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 907.1 Board orders.

If the Board finds that a grievance is meritorious, the Board shall have the authority to direct the Agency:

(a) To correct any official personnel record relating to the Grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(b) To reverse a decision denying the Grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(c) To retain in the Service a Member whose separation would be in consequence of the matter by which the Member is aggrieved;

(d) To reinstate the Grievant, and to grant the Grievant back pay and attorney fees in accordance with the Back Pay Act;

(e) To pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under 5 U.S.C. Section 7701(g); and

(f) To take such other remedial action as may be appropriate under procedures agreed to by the Agency and the Exclusive Representative, if any.

§ 907.2 Board recommendations.

(a) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

(b) The head of the Agency shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation and shall implement the recommendation of the Board except to the extent that the head of the Agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the head of the Agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Copies of the decision shall be served on the other Parties. Pending the decision of the head of the Agency, there shall be no ex parte communication concerning the grievance between the head of the Agency and any person involved in the proceedings of the Board. The head of the Agency shall, however, have access to the entire Record of the Proceedings of the Board.

PART 908—DECISIONMAKING

Sec.
908.1 Basis.
908.2 Board order.
908.3 Board recommendation.
908.4 Other decision.
908.5 Time limits for compliance.
908.6 Summaries of Board decisions.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 908.1 Basis.

Decisions of the Board shall be based upon the Record of Proceedings, shall be in writing, shall include findings of fact, and shall include a statement of the reasons for the decision.

§ 908.2 Board order.

Where the Board's decision imposes action on an Agency the decision shall be in the form of a remedial order addressed to the designated official of the Agency. A copy of the decision shall be supplied to each Party.

§ 908.3 Board recommendation.

Where the Board's decision is a recommendation, it shall be directed to the head of the Agency. A copy of the decision shall be supplied to each Party.

§ 908.4 Other decision.

Where the Board's decision requires no action by an Agency, the decision shall be forwarded to the Grievant. A copy of the decision shall be supplied to each Party.

§ 908.5 Time limits for compliance.

Orders of the Board and recommendations which are not rejected in accordance with § 907.2 shall be complied with within any time limit for compliance established by the Board's decision, unless the Board extends the time limit on a showing of good cause.

§ 908.6 Summaries of Board decisions.

The Board may, from time to time, issue such summaries and expurgated versions of its decisions as it may consider necessary to permit the Agencies, the Exclusive Representative organization(s), and the Members of the Service to become aware of the general nature of the cases it has received and their manner of disposition, without invading the privacy of the Grievants.

PART 909—MISCELLANEOUS

Sec.
909.1 Suspension of Agency actions.
909.2 Requests to reopen cases.
909.3 Board policy statements.
909.4 Confidentiality.

Sec.
909.5 Judicial review.
909.6 Pending grievances.

Authority: Secs. 1106, 1107, 1110, and 2401 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136, 4137, 4140 and 4172).

§ 909.1 Suspension of Agency actions.

(a) If the Board determines that the Agency is considering the involuntary separation of the Grievant, disciplinary action against the Grievant, or recovery from the Grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the Agency shall suspend such action until the Board has ruled on the grievance.

(b) The Board shall expedite its decisions on requested suspensions of proposed Agency actions. The Board may permit or require argument with respect to such requests by the Parties and Exclusive Representative, if any.

§ 909.2 Requests to reopen cases.

The Board may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence.

§ 909.3 Board policy statements.

The Board may publish statements regarding policies it has established as to its operations and procedures.

§ 909.4 Confidentiality.

(a) To the maximum extent practicable, the Board will make every effort to preserve the confidentiality of the identity of the Grievant or Charged Employee.

(b) The records of the Board shall be maintained by the Board under appropriate safeguards to preserve confidentiality and shall be separate from all records of the Agencies.

§ 909.5 Judicial review.

Any aggrieved Party may obtain judicial review of a final action of an Agency head or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in Chapter 7 of title 5 of the United State Code. 5 U.S.C. Sec. 706 shall apply without limitation or exception.

§ 909.6 Pending grievances.

Any grievance pending before the Board prior to February 15, 1981 shall be resolved under the provisions of the Foreign Service Act of 1946 as amended, and the regulations promulgated thereunder.

Issued at Washington, D.C., on January 27, 1981.

Richard I. Bloch,

Chairman, Foreign Service Grievance Board.

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federal register

Thursday
February 5, 1981

Part IV

Consumer Product Safety Commission

Urea-Formaldehyde Foam Insulation; Proposed Ban; Denial of Petition

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1306

Urea-Formaldehyde Foam Insulation; Proposed Ban; Denial of Petition

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule, denial of petition.

SUMMARY: The Commission proposes to ban urea-formaldehyde (U.F.) foam insulation. The proposal would prohibit manufacturers from manufacturing or offering the product for sale in the United States after the effective date. The Commission's proposed action is based on findings that U.F. foam insulation is being distributed in commerce and presents an unreasonable risk of injury because of the release of formaldehyde gas from the product after it is installed. The Commission has evaluated the effectiveness of existing standards as well as other possible approaches to eliminating consumer exposure to formaldehyde gas released from the product. The Commission finds that no feasible standard, including labeling or information disclosure, would adequately protect the public from the risk of injury associated with the product.

In this notice, the Commission also denies the remaining part of a petition from the Metropolitan Denver District Attorney's Consumer Office. This petition included a request for the Commission to establish a mandatory standard to address the risk of injury associated with U.F. foam insulation.

DATES: (1) *Effective date:* The Commission proposes an effective date that is a date within the range of 30–180 days after any final ban is published. (2) *Written comments:* Written comments on the proposal must be submitted to the Commission on or before April 6, 1981. The Commission will consider comments received after this date to the extent practicable. (3) *Oral presentation:* On March 20, 1981, the Commission will allow interested persons an opportunity to orally present data, views, or arguments concerning the proposal. Those persons who wish to make an oral presentation should notify the Office of the Secretary (202) 634–7700, by March 10, 1981. A summary or copy of testimony should be submitted to the Office of the Secretary by March 13, 1981. The oral presentation will begin at 10:00 a.m. in the Commission's Third floor meeting room, 1111 18th Street, NW., Washington, D.C.

ADDRESS: Written comments, preferably in five copies, should be submitted to the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C., 20207 and should be titled: *Proposed Ban of U.F. Foam Insulation.*

All materials the Commission has that are relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Harry Cohen, Program Manager, or Ruth Siegel, Project Manager, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301) 492–6453.

SUPPLEMENTARY INFORMATION:

A. Summary of the Commission's Concern and the Need for a Ban

Urea-formaldehyde (U.F.) foam insulation is a thermal insulation material for residences or other buildings. The product is manufactured at the job site by mixing resin, foaming agent, and a compressed gas and then pumping this mixture, which resembles shaving-cream, into the walls of the building being insulated. After the material is in the wall for a period of time it should become rigid and self-supporting.

The Commission is concerned about the adverse health effects that can occur when consumers are exposed to formaldehyde gas that is released from the product into the interiors of buildings. Although the amount and duration of formaldehyde release can vary, laboratory tests have shown that every U.F. foam insulation product tested releases a measurable amount of formaldehyde gas. The Commission is not aware of any brand of the product presently being marketed that does not release some formaldehyde gas after it is installed. After installation, the product may continue to release formaldehyde gas for years.

In a study by the Chemical Industry Institute for Toxicology (CIIT) formaldehyde gas has been shown to cause cancer in rats. There is also evidence that formaldehyde causes cancer in mice. The laboratory rats that developed cancer because of their exposure to formaldehyde gas had a cumulative exposure to formaldehyde that is within an order of magnitude (factor of 10) of the foreseeable cumulative exposure for humans. The Commission established a panel of 16 senior government scientists to evaluate the carcinogenicity data. In a report to the Commission, the Federal Panel concluded that formaldehyde should be presumed to pose a carcinogenic risk to humans. The Commission staff prepared a quantitative assessment of the risk to humans presented by the formaldehyde gas released from U.F. foam insulation. based on this assessment, on the average, any person living in a U.F. foam insulation home for seven years after the product is installed would have, as an upper estimate, an 85 in a million additional risk of developing cancer from the formaldehyde released by the insulation. As an upper value, an additional 150 cancers may develop among individuals currently exposed in the approximately 500,000 homes that have been insulated with the product.

In addition to the risk of cancer presented by U.F. foam insulation, the Commission is also concerned about acute illness that can result from exposure to formaldehyde gas released from the product.

The Commission has received nearly 1600 complaints of health related problems from persons who have had the product installed, and has conducted and reviewed over 350 in-depth investigations of these complaints. In nearly a fourth of the investigated complaints, consumers reported that they had to leave their home for varying periods of time, refrain from using a part of their home, or delay their move into a home insulated with U.F. foam insulation. There is no generally reliable remedy for eliminating formaldehyde gas problems after the insulation is installed short of physically removing the product from the walls of the building. The common symptoms in the complaints are typical of the acute illness that can result from formaldehyde exposure, and include eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, headaches and dizziness. The range of severity of reported reactions varies from short term discomfort to long term impairment. In some cases persons have been hospitalized, primarily for respiratory distress, after U.F. foam insulation was installed.

Many of the compliant residences in which formaldehyde measurements were made had levels of formaldehyde at or below 0.1 parts per million (ppm). The Commission requested the National Academy of Sciences (NAS) to determine whether there is a tolerable level of formaldehyde in the air of homes. After researching and considering this issue, a committee of expert toxicologists established by NAS concluded that there is no population threshold for the acute irritant effects of

formaldehyde in humans. The Committee recommended that formaldehyde be kept at the lowest practical concentration in indoor residential air.

The Commission has carefully examined existing standards and manufacturer's specifications for the product, as well as draft standards that have recently been submitted to the Commission. None of these standards or specifications have been shown to adequately address the release of formaldehyde from the product and the chronic and acute risk of injury associated with that release. The provisions that purport to reduce formaldehyde emissions are unsupported by a technical rational with documentation as to their effectiveness. Instead, the ability of manufacturers to avoid complaints of acute illness after the product has been installed is at the present time largely dependent on the skill of the individual installer, and is not something which can be codified in a standard or predictably and reliably duplicated by others. Moreover, even those installations which do not result in complaints of acute illness pose a risk of injury from cancer to consumers exposed to the formaldehyde. The technology and support for a standard that would adequately and predictably control the release of formaldehyde from the product is not presently at hand and has not been shown to be readily available in the future.

The Commission has also considered other regulatory alternatives, such as labeling and information disclosure to consumers. However, because of (1) the nature of the product—the fact that it is manufactured at the site of installation and is essentially a nonreturnable product, or one that is returnable only at great expense—and (2) the inability to provide notification to subsequent purchasers of the building where the insulation is installed, labeling or disclosures would not adequately address the problem.

The Commission recognizes that banning a product is a serious action. If U.F. foam insulation is banned, the economic consequences to that industry, which is composed of many small businesses, are likely to be severe. At the same time, however, given the unreasonable risk of injury presented by the product, the availability of substitute forms of insulation for nearly all applications, and the fact that there is no feasible standard, including labeling or information disclosure, that would eliminate or adequately reduce the risk, a ban is necessary and is in the public interest. The Commission has included in the proposed rule a procedure for interested persons to apply for an exemption from the ban, based on evidence showing that they have developed a product that will not present a risk of injury from the release of formaldehyde gas. Before issuing a final ban, the Commission will carefully consider all information presented by interested persons who comment on this proposed action.

B. Background

The Commission staff learned of possible health problems associated with U.F. foam insulation as early as 1976. In October, 1976, the Metropolitan Denver District Attorneys' Consumer Office filed a petition (CP 77–1) under section 10 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2059, requesting the Commission to develop a safety standard under section 7 of the CPSA, 15 U.S.C. 2065, for certain types of home insulation products, including U.F. foam insulation. The petitioner claimed that there is an unreasonable risk of injury of irritation and poisoning associated with U.F. foam insulation. After considering information compiled by the Commission staff, the Commission decided, on March 5, 1979, to defer a decision on the part of the petition relating to U.F. foam insulation and instructed the Commission staff to evaluate additional information on possible means of addressing this alleged unreasonable risk of injury (44 FR 12080).

After gathering additional information, the Commission held public hearings on U.F. foam insulation in Portland, Oregon; Atlanta, Georgia; Minneapolis, Minnesota; and Hartford, Connecticut from December 1979 through February, 1980 (44 FR 69578, December 3, 1979).

From April 9–11, 1980, the Commission staff held a technical workshop on formaldehyde at the National Bureau of Standards. At this workshop experts from the United States and eight foreign countries presented information on U.F. foam insulation, formaldehyde chemistry, product applications and properties, and measurement and sampling of formaldehyde.

On June 10, 1980, the Commission published a proposed notice to purchasers concerning the potential adverse acute health effects associated with the release of formaldehyde gas from U.F. foam insulation (45 FR 39434). The proposal would have required manufacturers of U.F. foam insulation to give specified technical and performance information to prospective purchasers and purchasers to assist them in making an informed choice in purchasing the product. The proposal included information concerning the release of formaldehyde gas, symptoms of the acute illness associated with its release, and certain conditions under which the release of formaldehyde gas is more likely. The Commission solicited comments on the proposal and received 63 comments from interested persons.

C. Description of the Product

U.F. foam insulation is a cellular plastic product used as a thermal insulation material. The product is manufactured at the job-site by feeding, generally, pressurized air or nitrogen along with two liquid chemicals—a formaldehyde based resin and a foaming agent—through a foaming equipment system. The product that results from this reactive mixture has a shaving cream-like consistency and is usually pumped through relatively small holes into the walls of standing structures. After the U.F. foam insulation is inside the wall, the insulation should become firm or self-supporting.

The resin and foaming agent ingredients are produced by chemical manufacturers, shipped to company distribution outlets, and then purchased by contractors who manufacture the final product at the job-site. The component ingredients are in liquid form at the time of installation, although the contractors can receive these materials in either the liquid or powder form. The foaming agent is generally a concentrated liquid that contains an acid catalyst.

D. Description of the Proposed Ban

The proposed regulation would ban U.F. foam insulation in order to prevent the risk of injury from cancer as well as acute illnesses caused by the release of formaldehyde gas from the product. After the effective date of the final regulation, persons would be prohibited from manufacturing or selling U.F. foam insulation. The ban would not apply to U.F. foam insulation that has been installed before the effective date.

The proposal defines the product that is banned as any cellular plastic thermal insulation material which contains as a component chemical, formaldehyde, formaldehyde polymers, formaldehyde derivatives, or any other chemical from which formaldehyde can be released.

The definition does not include urethane or styrene foam insulation. These insulation materials are rigid in form and are not foamed-in-place or manufactured at the site of installation. Although urethane foam insulation is manufactured from some formaldehyde-based chemicals, such as resoles (phenol alcohols) and isocyanates, the

manufactured product is extremely unlikely to release formaldehyde because of the nature of the manufacturing stages and the inherent chemical stability in the polymeric bonding. The definition also does not include styrene foam insulation, since this product does not use formaldehyde-based chemicals. In addition, once it is manufactured, styrene foam insulation does not form a polymeric structure that can release formaldehyde. The Commission encourages interested persons submitting comments on the proposed ban to comment on the appropriateness of excluding these types of products and the need to exclude any other cellular plastic thermal insulation from the ban.

The proposed ban applies to U.F. foam insulation for use as a consumer product, including U.F. foam insulation that is intended for installation in new homes or residences as well as retrofit applications in existing homes. As proposed, the ban would also apply to U.F. foam insulation that is installed in commercial buildings, recreational facilities, schools, and other public buildings. The Commission recognizes that much of the information presently available and summarized in this notice concerns residential applications of the product. However, the Commission is including non-residential applications within the scope of the proposal since (1) there is no information showing that the product that is installed in non-residences is different than the product installed in residences, (2) there are some reports of acute health problems associated with non-residences, and (3) there could be some degree of risk of cancer to persons exposed to formaldehyde gas released in non-residential applications. The Commission requests interested persons to submit comments on the scope of the proposed action, including whether the ban should be confined to insulation for use in residences. Information received during the comment period should assist the Commission in making a final decision on the need to include non-residential applications within the scope of any final ban.

The Commission is proposing this ban under the authority provided by section 8 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057). Section 30(d) of the CPSA provides that where a risk of injury could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261), the Commission can only take regulatory action under the FHSA unless the Commission, by rulemaking, finds that it is in the public interest to take action under the CPSA. As explained earlier, the scope of this proposed ban extends to non-residential applications of U.F. foam insulation. Since under the FHSA, the Commission lacks the authority to cover products installed in non-residential applications such as schools, churches, stores, or other public buildings, the Commission concludes that the risk of injury could not be eliminated or reduced to a sufficient extent by action taken under the FHSA. In any event, because of the complexity and lengthy nature of the rulemaking proceeding that would be required under the FHSA, the Commission believes it would be in the public interest to regulate this product under the CPSA.

E. Nature of the Risk of Injury

(1) *Risk of Chronic Injury.* The Chemical Industry Institute for Toxicology (CIIT) has sponsored a two year, long-term inhalation study to provide information concerning the long term health effects resulting from formaldehyde exposure. The testing aspect of this study, involving the exposure of rats and mice to 0, 2.1, 5.6 and 14.1 ppm of formaldehyde gas for six hours per day for five days per week, was completed in June, 1980. On October 16, 1979, representatives of the Formaldehyde Institute, an industry trade association, informed the Commission that preliminary results from this study indicated that rats exposed to 15 ppm of formaldehyde gas developed squamous cell carcinomas. On January 17–18, 1980, an IRLG (Interagency Regulatory Liaison Group) task force on formaldehyde visited CIIT to obtain additional information concerning the long term study and to verify the findings of CIIT. The task force included pathologists from the Commission, the Department of Energy, the Environmental Protection Agency, the National Cancer Institute, and the National Institute of Environmental Health Sciences (NIEHS). In a report prepared in February, 1980, the group of pathologists concurred, in general, with the CIIT observations, diagnoses, and interpretations. (C–9)

In order to evaluate the long term human health implications of exposure to formaldehyde, the Commission and other IRLG agencies, with the cooperation of the National Toxicology Program, established a panel of sixteen senior scientists from various government agencies.[1] The Federal Panel on formaldehyde submitted its report to the Commission on November 21, 1980. The panel reviewed available data on formaldehyde in the following five areas: (1) Chemistry and Metabolism; (2) Teratology and Reproduction; (3) Mutagenicity; (4) Carcinogenicity; and (5) Epidemiology. The panel members reviewed and evaluated the available published and unpublished information on the chronic health effects from repeated exposure to formaldehyde, and submitted a comprehensive report to the Commission. In their report to the Commisson (C–1) the Federal Panel concluded:

(1) The CIIT study is a valid study that demonstrates that formaldehyde is carcinogenic to Fisher 344 laboratory rats when inhaled.

(2) The levels of formaldehyde causing cancer in animals are not greatly different from those to which consumers are exposed; nor do there appear to be significant qualitative metabolic differences between rats and humans with regard to formaldehyde.

(3) Formaldehyde may be carcinogenic to species other than the rat, and in tissues other than the nose.

(4) Formaldehyde is mutagenic to a number of different test systems without requiring metabolic activation, and also causes chromosomal aberrations. Formaldehyde also causes malignant transformation of mammalian cultures.

(5) Formaldehyde should be presumed to pose a carcinogenic risk to humans.

(6) The epidemiologic studies presently available are inadequate to permit a direct assessment of the carcinogenicity of formaldehyde to humans.

The Federal Panel found that the CIIT study (Swenberg et al. 1980) demonstrates the carcinogenicity of formaldehyde. The data available to the panel from this study showed that 36 rats, both male and female, had developed nasal squamous cell carcinoma after exposure to 15 ppm of

[1] The Panel members were: Richard A. Griesemer, D.V.M. Ph.D Chairman, National Cancer Institute (now with Oak Ridge National Laboratory); Joseph C. Arcos, Ph.D., Environmental Protection Agency; James R. Beall, Ph.D., Department of Energy; Aaron E. Blair, Ph.D., National Cancer Institute; Thomas F. X. Collins, Ph.D., Food and Drug Administration; Frederick J. de Serres, Ph.D. National Institute of Environmental Health Sciences; Richard B. Everson, M.D., National Institute of Environmental Health Sciences; John F. Gamble, Ph.D., National Institute for Occupational Safety and Health; David W. Gaylor, Ph.D., National Center for Toxicological Research; David H. Groth, M.D., National Institute for Occupational Safety and Health; Han K. Kang, Dr. P.H., Occupational Safety and Health Administration; Richard A. Keenlyside, M.B., B.S., M.R.C.P., National Institute for Occupational Safety and Health, J. William Lloyd, Sc.D., Occupational Safety and Health Administration; Paul Nettesheim, M.D., National Institute of Environmental Health Sciences; Umberto Saffiotti, M.D., National Cancer Institute; Elizabeth K. Weisburger, Ph.D., National Cancer Institute.

formaldehyde gas for 18 months. Cancer first appeared following eleven months of exposure. (After the panel completed its review, the data from the 24 month sacrifice were made available at the CIIT conference on November 20–21, 1980. These data showed that, after 24 months of exposure to 15 ppm of formaldehyde gas, a total of 95 rats had developed nasal cancer. The data also showed that three rats exposed to 6 ppm of formaldehyde gas developed nasal cancer. In addition, two mice exposed to 15 ppm of formaldehyde gas developed nasal cancer. At the CIIT conference, Dr. Craig Barrow and Dr. James Swenberg of CIIT indicated that because of a difference in behavioral pattern, the effective exposure in the mice was about half that for the rats. Thus, the cancer incidence in mice at 15 ppm can be considered comparable to that of rats at 6 ppm. The results of the 24 month sacrifice, especially the observation of nasal cancer in mice, a second species, substantiate the conclusions of the Federal Panel (C–23)).

In their review of the literature and scientific experiments concerning the potential long term health effects of formaldehyde, the Panel found suggestive evidence of formaldehyde's carcinogenicity in additional animal studies, including studies using other routes of exposure and other animal species. (*Laskin* et al. 1980; *Mueller* et al. 1978; *Watanabe* et al. (1954); *Watanabe and Sugimoto*, 1955). Some of these studies revealed evidence of carcinogenicity in tissues other than nasal mucosa. (*Mueller* et al. 1978, *Watanabe* et al. 1954, *Watanabe and Sugimoto* 1955). In addition, the Panel reported that formaldehyde caused the malignant transformation of mouse Balb 3T3 cells *in vitro* (*Brusick*, et al. 1980). The Panel also reported evidence of carcinogenicity in hamsters involving nasal and laryngeal carcinomas resulting from chronic inhalation of acetaldehyde, a short chain aliphatic aldehyde that is closely related to formaldehyde. (*Feron and Woutensen*, 1980).

During the course of the CIIT study, a viral infection developed in the laboratory rats. Some observers have raised the possibility that this infection may have been a significant factor in the nasal tumor development of the formaldehyde exposed animals. However, the Panel concluded that this was unlikely since at the time the viral outbreak occurred, the first nasal cancers that were detected had already formed. In addition, the signs of infection occurred during a very short portion of the experiment (approximately a week). Further, the finding that the mice in the experiment developed nasal cancer (CIIT Docket #11200, December 12, 1980, C–23) but were not affected by the viral infection provides a strong indication that the viral infection was an unlikely contributor to the development of carcinogenesis from formaldehyde exposure.

The Panel also considered the possibility that the irritant effect of formaldehyde may contribute to its carcinogenicity. Research has indicated that agents used in test animals may induce epithelial hyperplasia, a specific irritant effect, without carcinogenic or tumor promoting activity (*Saffioti and Shubik*, 1963; *Raick and Buldzy*, 1973, *Slaga* et al. 1975) Other evidence suggests that agents producing epithelial hyperplasia may play a role within the process of tumor promotion once induction of the carcinogenic process has been initiated by another agent—a carcinogen. (*Boutwell*, 1964; *Hennings and Boutwell*, 1970; *Argyris*, 1979) Based on these observations, the panel concluded that there was no evidence that "irritation", or the induction of epithelial hyperlasia, is sufficient to cause the carcinogenic activity of an agent, such as formaldehyde. However, the Panel did recognize that the induction of epithelial hyperplasia may contribute to some extent to cancer activity by enhancing stages of carcinogenesis such as tumor promotion or tumor growth. However, the available information on this subject is inadequate and not necessarily applicable to the carcinogenic effect of formaldehyde on nasal mucosa.

The Panel found that formaldehyde is not unusual, when compared to other carcinogens, because of its cytotoxic effects. According to the Panel, most carcinogens have significant cytotoxic effects. The cytotoxic effects of formaldehyde may plan a part in its overall carcinogenicity by increasing the number of cells undergoing DNA synthesis and by affecting the process of cell divisions. Both of these conditions may enhance the rate of tumor promotion. (C–1)

The Panel found that formaldehyde produces gene mutations or chromosomal aberrations in bacteria, yeast, insects, molds, and cultured mammalian cells. (C–1) Formaldehyde can produce these effects without the need for external metabolic activation. There are similarities between the basic molecular mechanisms by which chemical mutagens and most chemical carcinogens appear to induce genetic effects. (C–8) The positive results noted by the Panel support the hypothesis of the carcinogenic potential of formaldehyde. (C–1)

The Panel recommended that additional studies be conducted in order to assist in assessing the carcinogenic risk of formaldehyde presented by different routes of exposure, for example, through the skin, as from clothing and direct exposure to the chemical; by injection, as from certain vaccines; or by ingestion, as from certain food products. The Panel did not recommend that another inhalation study be undertaken, or that the CIIT study by repeated.

In its report, the Panel also evaluated available epidemiological information. Reports of studies specifically designed to evaluate the carcinogenicity of formaldehyde to human populations were not available to the Panel, although several such studies are in progress. The Panel considered several studies indicating cancer among workers exposed to formaldehyde. (*Moss and Lee*, 1974; *Bross* et al. 11978); *Decoufle*, 1979; *Matanoski*, 1960) In the judgment of members of the Panel, these studies were not designed to study the health effects of formaldehyde and are difficult to interpret because of the lack of sufficient information caused by the small number of persons studied, the unavailability of data on exposure intensity and duration, as well as other confounding factors.

Scientists on the Commission staff have carefully reviewed the report of the Federal Panel on Formaldehyde, and, based on the information in this report, have stated their agreement with the conclusions of the Federal Panel. There is no evidence of biological differences between the laboratory animals tested and humans that would decrease the potential for humans to develop cancer when exposed to formaldehyde gas. (C–1) (C–2) [3] These staff scientists have also

[3] The Federal Panel's conclusion that formaldehyde should be presumed to pose a cancer risk to humans, based primarily on animal data, is consistent with the positions of other government agencies as well as current scientific research concerning cancer caused by chemicals. (see also: *Environmental Defense Fund* v. *E.P.A.*, 598 F. 2d 62, (D.C. Cir. 1978), *EDFT1 v. TJRuckelshaus*, 439 F. 2d 584, 596 n.41 (D.C. Cir 1971).)

Based on an extensive review of relevant information, including the literature and testimony of expert witnesses, the Occupational Safety and Health Administration (OSHA) concluded that chemicals that cause cancer in animals should be regarded as being potentially carcinogenic in humans. (C–10) In testimony before OSH, Dr. Arthur Upton stated: (1) chemicals that cause cancer in humans (with the possible exception of arsenic) cause cancer in animals; (2) most chemicals shown to induce cancer in one mammalian species also induced cancer in other species; (3) the pathological events that cause tumors to develop in animals and humans are similar, and (4) the mechanisms for

reviewed additional data presented to the CIIT conference on formaldehyde, November 20–21, 1980, and data presented by representatives of the Formaldehyde Institute at a December 5, 1980 meeting with the Commission. Additional support for the conclusion that formaldehyde should be presumed to pose a cancer risk to humans is derived from the fact that formaldehyde has been shown to cause cancer in more than one species of laboratory animal, as demonstrated in results presented at the CIIT conference. The epidemiological studies presented at the CIIT conference and by the Formaldehyde Institute do not have sufficient information to be considered conclusive because of the small population size, lack of exposure data, and other confounding factors (C–40; C–15, Kang, H.)

There is no evidence demonstrating that there is a threshold for formaldehyde, or a dose level below which it is certain that formaldehyde will not induce cancer.[3] These staff scientists also concluded that it would be prudent to reduce or eliminate consumer exposure to the extent possible. (C–2) The Commission agrees with the conclusions of the Panel and the staff scientists.

Consumers who have U.F. foam insulation installed are subject to the chronic risk of injury from cancer since the U.F. foam insulation may release formaldehyde gas into the interior of the building in which it is installed. Research conducted for the Commission has shown that U.F. foam insulation releases measurable amounts of formaldehyde in the laboratory, even after installation under optimum conditions. (C–3, C–4) In addition, levels of formaldehyde have been measured in residences where U.F. foam insulation has been installed. (C–5) In some cases the levels of formaldehyde and the total cumulative exposures in these homes are within an order of magnitude of the levels and exposures in the CIIT study that produced tumors in rats. (C–3, C–4, C–5, C–41)

The release of formaldehyde gas from U.F. foam insulation may occur over long periods of time, up to several years. (A–33) Based on the report of the Federal Panel as well as additional research by Mantel and Schneiderman, the risks to laboratory rats of developing cancer should be considered to apply directly to humans breathing the same concentration of formaldehyde (in ppm) as the test animals. (C–1, C–7, C–8). This information, together with the current understanding of carcinogenesis and the model used by the Panel to predict the degree of risk from formaldehyde, supports the conclusion that consumers who are exposed to formaldehyde gas released from U.F. foam insulation installed in their homes are subject to a risk of injury from cancer associated with the product.

(2) *Risk of Acute Injury.* While the Commission's proposed ban is based principally on the data described above concerning the risk of cancer, additional data concerning the risk of acute illness also support the Commission's action.

In March, 1980, the National Academy of Sciences (NAS) completed work on a contract with the Commission to determine whether there is a tolerable level of formaldehyde in the air of homes. After gathering and critically evaluating all pertinent scientific literature, the Committee on Toxicology, a panel of expert toxicologists established by NAS, concluded that on the basis of available data there is no population threshold for the irritant effects of formaldehyde in humans. The Committee found that information from controlled human studies and complaint related investigations suggests that, even at concentrations of formaldehyde gas below 0.25 ppm, a proportion of the population may respond with some irritation. The Committee recommended that the levels of formaldehyde in indoor residential air be kept at the lowest practical concentration. (A–1)

Studies of human exposure to formaldehyde have generally been either controlled exposure studies, home exposure studies or occupational exposure studies. In the controlled exposure studies, healthy young volunteers were subjected to formaldehyde concentrations of 0.03–4.0 ppm. These volunteers experienced, in general, mild to severe discomfort and irritation of the eye, nose, and throat, as well as an increase in eye blinking rate and a decrease in nasal mucous flow rate. (A–2, A–3) The severity of these responses and the numbers of subjects affected were dependent on the concentration and duration of exposure.

Under less controlled conditions, case studies of formaldehyde exposure in mobile homes and U.F. foam insulated homes at concentrations ranging from 0.03–10 ppm produced an even greater variety of adverse health affects. (A–4, A–5, A–6)[4] In those mobile homes where consumers had complaints, 90 percent of the formaldehyde concentrations measured were below 1 ppm. The reactions included drowsiness, nausea, and headaches; as well as irritation of the eye, nose, and respiratory tract. (A–4) In a group of homes with U.F. foam insulation with levels less than 0.5 ppm formaldehyde, consumers reported eye irritation, upper respiratory symptoms, headaches and skin problems. Disturbances of the gastrointestinal tract were also reported. (A–5) In these homes, the likely cause of the adverse health effect is the formaldehyde gas released from the U.F. foam insulation since: (1) formaldehyde levels were measured in these homes; (2) formaldehyde levels have been shown to increase in homes insulated

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reaction with macromolecules in animals and humans are the same. (C–10) The IRLG document on risk assessment concluded that a close qualitative similarity has been established between the nature of the laboratory response of animals and humans to carcinogenic substances. (C–8) In addition, a study by Dr. David Rall presents data showing that almost all chemicals that cause cancer in humans cause cancer in animals. (C–11) A modified and expanded version of this list is presented by Althouse, et al. (C–12)

[3] Presently available data do not show that there is a threshold for carcinogenicity, or a level of exposure to a carcinogen below which there would be no additional cancer in animals or humans. The issue of whether there is a threshold for cancer has been explored at length by various government bodies and prominent scientists. Drs. Marvin A. Schneiderman, of Clement Assoc; and Pierre Decouflé and Charles C. Brown of NCI have stated that there is little or no evidence for the existence of thresholds in human cancer, and that convincing evidence for a threshold is not at hand either from animal or human data. (C–13) The IRLG and OSHA have also reached the same conclusion. (C–8, C–10) Similar conclusions were reached by Dr. Mathew Meselson, Harvard University; Dr. Samuel Epstein, University of Illinois; Dr. David P. Rall, Director NIEHS, Dr. Harold Stewart, NIH; Dr. William Nicholson, Mt. Sinai School of Medicine; and Mr. Richard Peto, Oxford University, in testimony before OSHA. (C–10)

Experiments designed to produce data to determine a threshold exposure level which will not produce cancer in laboratory animals would be very difficult to perform, according to Dr. David Rall and Dr. Richard Griesemer. (C–14, C–15) Even if such data were available for animal populations under laboratory conditions, it would be difficult to apply these data with any certainty to the human population. Cancer is a multistage process in which a number of agents may act, and is irreversible once the process is initiated (C–14, C–10) Since the human population is genetically more diverse than laboratory animals, and since humans, unlike laboratory animals, are exposed to a variety of substances, including carcinogens or substances which possess the ability to promote or enhance the carcinogenic process; humans can be expected to develop cancer from exposure to levels of a carcinogen that are lower than those observed in the laboratory. (C–13)

[4] It is rarely possible to determine a conclusive cause-effect relationship in uncontrolled human exposure studies involving the home or work, since there may be some uncontrolled variables, including exposure to other possible causative agents. However, in each of these studies cited the authors conclude formaldehyde is the cause of the observed symptoms.

Although each of these studies may not, by itself conclusively show that formaldehyde exposure causes adverse health effects, when considered as a group, together with the results from the controlled human exposure studies and animal experiments, these studies show a definitive cause-effect relationship between formaldehyde and adverse health effects. (A–38)

with U.F. foam insulation (A–39); and (3) the concentration of gasses released by any other chemicals would not have increased following the installation of the insulation, as shown by a DOE study indicating that the installation of insulation has very little effect on air exchange rate. (E–17)

Persons exposed to formaldehyde in occupational situations have experienced eye, nose, and throat irritation (tearing, sneezing, coughing, dry and sore throat) as well as decreased sense of smell and skin irritation caused by the formaldehyde. (A–7, A–8, A–9)

The scientific literature also contains reports of eye, nose, throat, and skin irritation, headaches, dizziness, increased thirst, lethargy, irritability, disturbed sleep, inability to concentrate, moodiness, paranoia, crying without cause, and a crawling sensation of the skin. (A–7, A–10, A–11, A–12, A–14) In addition, asthmatic reactions have been observed from exposure to formaldehyde. (A–13, A–15, A–16, A–17, A–18, A–19) Continued exposure for long periods can also lead to chronic changes of the respiratory tract, such as hypertrophic, subtrophic, or atrophic rhinitis and pharyngitis. (A–8)

The scientific literature indicates that repeated exposure to formaldehyde liquid can cause sensitization [5] in certain individuals. When exposed to formaldehyde these sensitized persons may exhibit allergic dermatitis (A–21, A–22, A–23) or mild to severe asthmatic reactions. (A–18, A–19) There are indications that some of the sensitized individuals may develop increasingly severe reactions from continued exposure to formaldehyde. (A–24, A–23, A–4) It is estimated that 4.5 to 7.8 percent of the population may be potentially capable of becoming sensitized to formaldehyde, based on predictive testing performed on healthy adult volunteers. (A–25) More recent information indicates that the size of the population prone to formaldehyde sensitization may be 1 to 4 percent of the general population. (A–40)

Persons who have a history of allergic or inflammation diseases are generally considered to be more prone to the development of new chemical allergies, including an allergy to formaldehyde. (A–26) Although the causes for this increased sensitivity have not been determined, these factors could be related to (1) genetic factors controlling the allergic process, (2) the allergic process itself, or (3) the likelihood that one of the allergenic products to which the individual was exposed either contained or produced formaldehyde. Persons who have asthma or other respiratory problems are likely to experience more serious reactions when exposed to formaldehyde. (A–28, A–30) Based on this information, persons who have respiratory problems or allergies, especially persons who are allergic to formaldehyde, are likely to experience more serious physical reactions when exposed to formaldehyde gas released from U.F. foam insulation.

The in-depth investigations of consumer complaints concerning U.F. foam insulation and the scientific and medical literature discussed above indicate that exposure to formaldehyde can produce various illnesses in humans. (A–27) The extent and duration of the illnesses depend on the degree of the exposure and the physical condition of the victim. In the case of brief contact, formaldehyde gas commonly causes symptoms such as nasal irritation and congestion, stuffiness, watering and burning of the eyes, sneezing, sinus pain, coughing, irritation, dryness, and burning of the throat. In addition, exposures of short duration have produced headaches, dizziness, nosebleeds, and nausea. Although some of the symptoms of exposure to formaldehyde are similar to those associated with colds, flu, and allergies, the symptoms continue during exposure but are partially or completely alleviated when the person leaves the site of exposure.

Repetitive exposure to formaldehyde appears to affect primarily the respiratory system. Respiratory illnesses, which have been reported to be caused by chronic formaldehyde irritation include: difficulty in breathing (asthma-like symptoms), chronic rhinitis and pharyngitis, chest pains, persistent cough and "chest congestion". Exposures of sufficiently prolonged duration may markedly aggravate existing pulmonary pathology and could initiate severe pulmonary illnesses. (A–27)

Based on consumer complaints concerning U.F. foam insulation and in-depth investigations of these complaints, the most commonly reported symptoms are eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, headaches and dizziness. The in-depth investigations include reports of hospitalizations following installation of the product. (A–34) The range of severity of reported reactions varies from short term discomfort to chronic impairment, such as the loss of visual acuity, reduction in lung function, and sensitization to subsequent exposures to formaldehyde.

Some observers, in commenting on the Commission's proposed notice to consumers, have argued that the health effects attributed to formaldehyde released from U.F. foam insulation may be caused by other indoor air pollutants, such as carbon monoxide, carbon dioxide, radon, nitrogen dioxide, and sulphur dioxide. However, the available information shows that this is unlikely. Some of the suggested pollutant gasses—carbon monoxide, carbon dioxide, and radon—are non-irritating, and thus would not produce formaldehyde-related symptoms at levels normally found in the home. (A–37) In addition, the concentrations of the irritant gasses nitrogen dioxide and sulphur dioxide found in the home appear to be below levels producing eye, nose, and throat irritation in humans. (A–37) Since studies have shown that the air exchange rate in homes is generally decreased by less than 25 per cent by installing insulation and undertaking other efforts to conserve energy (E–17), there is no reason to believe that the levels of these gasses would have increased substantially following the installation of U.F. foam insulation. Thus, it is highly unlikely that other indoor air pollutants are the cause of the symptoms that have been reported. (A–37)

F. Degree of the Risk of Injury

(1) *Risk of Chronic Injury.* As explained in the report of the Federal Panel on Formaldehyde, existing epidemiological studies are inadequate to predict the magnitude of the risk of injury from cancer associated with U.F. foam insulation. As a result, in order to provide some quantitative estimate of the increased incidence of this risk of injury the Commission staff has prepared an estimate of the risk of injury from cancer to consumers resulting from the release of formaldehyde gas from U.F. foam insulation installed in their residences. (C–6) The risk assessment estimates that up to 150 people may develop cancer among the population of 1.75 million persons exposed to formaldehyde in residences that have been insulated with U.F. foam insulation from 1975 to 1980.[6] The risk assessment also estimates that up to 23 people could

[5] Sensitization is an allergic process caused by repeated exposure to certain substances. Persons who are sensitized have a greatly increased capacity to respond to subsequent exposures of an offending agent. Subsequent exposures may therefore produce severe reactions with little correlation to the amounts of excitant involved.

[6] Risk estimation uses statistical methods to establish a correlation between the magnitude of the carcinogen's effect, as observed in experimental animals, and the magnitude of the effects expected in the human population.

develop cancer from installations of the product in the next year. Although the estimates reflect the limitations and uncertainties of the data, they do provide a measure of the magnitude of the problem associated with the levels of formaldehyde to which consumers are exposed from U.F. foam insulation.

In preparing the risk assessment for U.F. foam insulation, the Commission staff relied upon the model used by the Federal Panel to assess the risk of nasal tumors in rats caused by the inhalation of formaldehyde insulation.

The staff risk assessment uses the Federal Panel's model to predict the risk to the consumer from exposure to formaldehyde gas released from U.F. foam insulation.

The Panel chose a model known as the "multistage" model.[7] This model for predicting the risk of cancer to humans was chosen by the Panel since it fits the experimental data on formaldehyde better than other available models.[8] This multistage model is also the model most consistent with prevalent theories on chemical carcinogenicity. Many carcinogens are thought to induce cancer through a series of stages. At high doses of formaldehyde, the dose-response curve for the multistage model curves upward, suggesting that formaldehyde may affect more than one stage in the development of cancer. However, because the effects of a carcinogen may be additive to existing processes in the development of cancer, there is a strong argument that at low doses carcinogenic response is linear with dose. Thus, at low doses, a carcinogen probably affects only one stage in cancer development. (C–18) (Other agents to which the human population is generally exposed could cause the further progression to cancer.) The linearized multistage model takes this into account, and predicts that at low doses, the rate of cancer induction will be proportional to the formaldehyde dose.

The multistage model generates a range of values from the experimental data in predicting human cancer. The Commission staff has used the upper estimate (the estimate from the upper 95 percent confidence limit of the model) in calculating the risk for residents of buildings with U.F. foam insulation.[9] The upper estimate is reasonable in extrapolating from animal data to the human population since the laboratory animals were exposed to a number of carcinogens, as well as other factors that may contribute to the development of cancer in the presence of a carcinogen. (C–40).

The laboratory experimental data on the release of formaldehyde gas from samples of U.F. foam insulation correlates closely to the levels of formaldehyde in homes. (C–22) In quantifying the risk to the human population the Commission has used the best available data, and has relied upon reasonable assumptions where the data are not clear.

The risk assessment model establishes a relationship between the exposure (dose) of the experimental animals in the CIIT long term inhalation study, and the tumors (responses) which resulted. This dose-response relationship is then applied to the human population exposed to formaldehyde. Differences in duration and concentration of exposure between the animal and human populations are taken into consideration by means of the model.

The risk assessment applies the risk factors that are derived to two separate consumer population exposure groups. The first group is made up of residents of homes insulated with U.F. foam insulation where the levels of formaldehyde were sufficiently high to cause complaints of adverse health effects. An exposure concentration level over time is derived from levels measured in these homes at various times after the product was installed. For purposes of the chronic risk assessment the proportion of complaint homes to all homes with U.F. foam insulation is based on a study in New Jersey by *Thun* et. al. comparing the health effects demonstrated for U.F. foam insulation homes versus control households. This comparison indicates that 6.9 percent of all U.F. foam insulation homes may have levels of formaldehyde similar to measured levels in "complaint" homes. When the risk factors from the CIIT data are applied to residents of U.F. foam insulation homes who have health complaints, the assessment predicts that there will be an additional 35 cancers among the estimated 120,000 people living in those homes.[10] This means that, on the average, a person in a home with levels of formaldehyde similar to those measured in "complaint" homes has an increased risk of contacting cancer of approximately three in 10,000 (or 290 in one million).

The risk assessment also calculates the risk for the total population of individuals who are residents of homes with U.F. foam insulation. The Commission has sponsored a study conducted by the Franklin Research Center. (E–5) In this research, panels simulating actual walls were foamed and the concentrations of formaldehyde released were measured and then used to predict concentrations of formaldehyde gas in homes insulated with U.F. foam insulation.[11] The predictions were based on estimates for room size, amount of wall cavity insulated, average air exchange rate, and an equation that estimates the relationship between the age of the U.F. foam insulation and the formaldehyde concentration in a room. Based on the formaldehyde exposure levels from the Franklin Research Center data (C–3), the Commission staff has estimated a range for the risk of cancer due to the offgassing of formaldehyde from U.F. foam insulation. This range applies to U.S. homes (single detached dwellings) insulated with U.F. foam insulation from 1975 to 1980, as well as to any future homes insulated with "best available technology foam". The upper value of the range indicates that 150 cancers may develop among the estimated population of 1.75 million individuals currently exposed in 500,000 homes. The estimation of the upper value of risk is based on assumptions on the side of safety, but not worst case assumptions. This upper estimate of the risk can also be expressed as follows: Any individual living in a home with U.F. foam insulation for 7 years after installation, would have an 85 in a million (or approximately a one in 10,000) additional risk of developing cancer

[7] Dr. David Gaylor of the National Center for Toxicological Research, has selected the multistage model to provide a quantitative assessment of the dose-response relationship of formaldehyde levels to tumor rates observed in the CIIT study. (C–1) The multistage model is widely used for assessing the cancer risk to humans and has been chosen for general use by the Carcinogen Assessment Group at EPA. The current scientific literature contains extensive support for the selection of this model (C–13, C–16, C–17, C–18, C–19, C–20, C–21).

[8] If the Panel and the Commission staff had instead used the linear model, then this model would have predicted significantly higher risk to humans. (C–40).

[9] The linearized multistage model is the upper confidence limit of the general multistage model.

[10] The estimate of the risk of cancer to persons who have already had U.F. foam insulation installed is based on the estimates that: 500,000 homes have been insulated with U.F. foam insulation; there are an average of 3.5 persons per household; and persons in these homes have an average potential exposure of 16 hours per day, seven days per week, for seven years. The estimate is also based on a formaldehyde level versus time curve developed from measured levels in homes.

[11] The Franklin Research Center data were derived from "properly foamed" foam samples which the industry participants stated met the proposed Department of Energy specifications. These samples were produced under optimum laboratory conditions using best available technology. This data can be used to assess the risk from existing installations as well as projected future installations.

from the formaldehyde released by the insulation.

The risk factors, the calculated formaldehyde levels, and the assumed exposure scenario in the risk assessment can similarly be applied to future installations of U.F. foam insulation. Although the exact number of future installations in the absence of a ban is unknown, if the instances of future installations are the same as projected 1980 installations, and if the performance of U.F. foam insulation is similar, then up to 23 additional cancers could eventually result from installations in the next year.

The Commission cautions that this mathematical quantification of cancer risk from U.F. Foam insulation is only intended as an approximation based on reasonable estimates and assumptions of the potential magnitude of the public health problem. The risk estimate is based on data from animals, living in a controlled laboratory environment, that are carefully exposed to specific amounts of a single carcinogen. Human beings, on the other hand, are exposed to a variety of uncontrolled conditions that may increase the potential for inducing cancer when formaldehyde gas is present. As a result, the mathematical quantification of cancer risk described here may well underestimate the additive risk to human beings from exposure to a small amount of a carcinogen. (C–14)

(2) *Risk of Acute Injury.* As noted earlier, the Commission's proposed ban is based principally on the information concerning the risk of cancer. However, the information described below concerning the risk of acute illness also supports the proposal.

As of December, 1980 the Commission has received nearly 1,600 complaints [12] involving an estimated 4,100 people concerning adverse health effects associated with the release of formaldehyde from U.F. foam insulation. (A–30, A–31) Over one-half of these complaints were reported directly to the Commission, and the remainder were referred, mainly by various State agencies. The Commission has complaints from 47 States, and has received 10 or more complaints from 21 States. (A–33) Most of these complaints involve installations of U.F. foam insulation that occurred after 1977, although a small proportion of installations occurred in 1976 and earlier. (A–33) In some cases the reactions to formaldehyde gas do not appear for months after installation. Also, the connection between the symptoms and the insulation may be delayed or never recognized by the consumer. As a result, the Commission does not know the exact number of health problems from U.F. foam insulation.

The Commission staff has conducted in-depth investigations for over 400 of the consumer complaints and has reviewed over 350 of these investigations. (A–33) The in-depth investigations reviewed so far have confirmed the presence of U.F. foam insulation and the involvement of a human health problem for over 90 percent of the consumer complaints investigated. (A–32) Thirty-one persons were hospitalized, primarily for respiratory distress, after U.F. foam insulation was installed. (A–34) Eleven persons in five households reported being sensitized to formaldhyde. (A–35) In over a fourth of the investigated cases, involving nearly 100 families, there were reports that some or all of the occupants either vacated, or planned to vacate, all or a portion of the building for various periods of time, or had to delay their move into a home insulated with U.F. foam insulation. (A–36) Some of these families were advised to leave their homes by their physicians. (A–36) In about half of the households involved in the consumer complaints, someone sought medical treatment. (A–33) The health-related symptoms were linked to formaldehyde by a doctor or someone in the medical profession in about 50 of the investigation reports. (A–33) Non-specific allergic reactions were diagnosed in an additional 30 families. For some of these investigation reports, there are detailed case histories and laboratory test results documenting the symptoms of the complainants. (A–33) About 40 percent of the reports state that the symptoms improve when the victim leaves the insulated environment and reappear after the victim returns to the environment. (A–33)

Nearly one hundred of the in-depth investigations, and many of the State complaints, include measurements of levels of formaldehyde. (A–33) Many residences had levels of formaldehyde that were measured at or below 0.1 ppm. About one-third of the residences had levels over 1 ppm. The levels were measured in homes at intervals ranging from a few weeks to several years after installation. In order to guarantee strict adherence to a prescribed collection and laboratory procedure for making measurements, the Commission staff conducted measurements of free formaldehyde in selected cases.

G. Feasibility of a Standard

Section 7 of the CPSA, 15 U.S.C. 2056, provides that the Commission may issue consumer product safety standards consisting of requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product, as well as requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions. Requirements of a standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with the product.

The Commission has examined existing standards and manufacturers' specifications for U.F. foam insulation, including the standards recently issued by the Department of Energy (DOE) and the National Insulation Certification Institute (NICI). (E–1, E–2, E–3, E–4, E–6, E–7). None of these standards have been shown to result in reduced formaldehyde levels in the home. The Commission has also considered possible additional provisions or improvements in existing standards that would theoretically appear to reduce the release of formaldehyde gas from U.F. foam insulation. However, there are no existing data which demonstrate that any of these provisions do in fact reduce levels of formaldehyde emissions even when tested in a laboratory. In addition, because of variables in the procedures for installing the product, and variables that are likely to occur at the site where the product is mixed and installed in the walls (for example, the type of construction of the building, temperature, humidity, and moisture content of the building materials), any reduction in formaldehyde release observed in laboratory tests would not necessarily ensure a reduction of actual formaldehyde levels when the product is manufactured in the field. (E–1)

Because U.F. foam insulation is manufactured on the job site, as it is mixed and pumped into the walls of a building, it is not possible to apply traditional methods of product control and quality assurance to the manufacturing process. These methods generally rely on having a product with

[12] The Commission considers a complaint to be a report where one or more persons linked health problems to reactions to previously installed U.F. foam insualtion. The count of complaints does not include general inquiries, or odor complaints where health problems are not discussed. The definition of complaint applies to phone and letter complaints. Statements by phone or in writing where a consumer reports a hazard associated with a consumer product are included within the consumer complaint data base. Any gross or systematic misstatements by consumers would be uncovered during the process of evaluating the nature and severity of the hazard. The Commission has no information showing that there is any pattern of intentionally false statements from consumers in the complaint information for U.F. foam insulation.

a fixed composition that can be examined or sampled before it is sold to the consumer. However, U.F. foam insulation does not exist as a product until it is foamed into the walls of the building being insulated. The chemical composition of the product can change as equipment fluctuations affect the chemical ratios during the foaming process or as the foam dries (cures).[13] The actual foaming operation is considered to be an art or specific, learned skill. (E-2) Based on the research conducted for the Commission by the Franklin Research Center (E-5), where commercial brands of U.F. foam insulation were tested under optimum conditions, the Commission concludes that all existing types of U.F. foam insulation tested release measurable amounts of formaldehyde gas and that it is not currently possible to ensure that U.F. foam insulation can be manufactured at the job site without releasing formaldehyde. (E-2)

The factors discussed here that may affect the potential for formaldhyde release are only some of the factors that the Commission has identified. There may be additional factors, as yet unidentified, that also contribute to formaldehyde release from the product. A major problem in attempting to control the release of formaldehyde is caused by the fact the final product may not be homogeneous in structure and chemical linkages.

(1) Analysis of Existing Standards and Manufacturer's Specifications

The Commission staff has prepared a comprehensive analysis of six existing or proposed standards and twelve manufacturer's specifications for U.F. foam insulation.[14] (E-3) The analysis focused on the following parameters and requirements that have previously been considered to be related to the release of formaldehyde from the product. The staff concluded that none of the standards or specifications could be expected to adequately control the release of formaldehyde:

(a) *Free Formaldehyde/Aldehyde Content in the Resin and Foam.* This requirement is based on the assumption that reducing the free, or unreacted, amount of formaldehyde/aldehyde content in the resin or foam will reduce the amount of formaldhyde released from the product after installation. However, based on the Franklin Research Center Study (E-5) as well as statements by Dr. Nigel Pratt of Ciba-Geigy, Cambridge, England and Dr. Beat Meyer of the University of Washington at the Commission's April 1980 Technical Workshop on Formaldehyde (E-8), there is no direct relationship between the free formaldehyde content in the resin and the amount of formaldehyde released from the product. Reducing the level of free formaldehyde in the resin will not ensure a reduction in the total amount of formaldehyde released from the product.[15]

Although the free formaldehyde/adehyde content in the foam may affect the amount of formaldehyde released from U.F. foam insulation shortly after its installation[16], this parameter does not appear to affect the long term formaldehyde release from the product. (E-3) Other functional groups within the U.F. foam insulation polymer, such as methylol and ethers, contribute to long-term release of formaldehyde, especially under conditions of high temperature and high humidity. (E-9, E-10).

(b) *Free Formaldehyde in the Air.* Several existing standards include recommended or accepted levels of ambient formaldehyde, or free formaldehyde in the air. However, as evidenced by the research conducted at the Franklin Research Center, and the Commission staff analysis of this data, because of the characteristics of the product and the large number of potential variables that may affect the rate of release of formaldehyde gas, there is no way of predictably limiting the amount of formaldehyde that is released or ensuring that a certain level is not exceeded in the home. (E-2, E-5) Further, the rate at which formaldehyde is released from the product is affected by changes in temperature, and therefore changes in seasons. (E-10) As a result, specifying a limit of free formaldehyde in the air provides no assurance that the actual level will not exceed the specified level. In addition, as described earlier, there is some risk of injury from cancer to persons exposed to any level of formaldehyde gas.

(c) *Shelf-Life for Resin and Foaming Agent.* The resin used as a component material in making U.F. foam insulation has a limited shelf-life that is affected by the heat to which the material is exposed. (E-2, E-3, E-11) Using a resin that has degraded over time could decrease the quality of the product and result in a greater amount of formaldehyde gas released. The self-life of the foaming agent has not been shown to affect the quality of the product to the same extent. Nearly all of the existing standards and specifications include provisions concerning the shelf-life of the resin and the foaming agent. Most standards and specifications require the resins to be labeled for their shelf-life, which generally ranges from 7 to 90 days, and also require the foaming agents to be labeled for their shelf-life, which generally ranges from two days to one year. The Commission has evaluated these provisions and concludes that it is not possible to rely upon general shelf-life limits since the limits depend on the chemical formulation and the thermal history (involving heat and time) of each individual component material. Shelf-life labeling does not address the temperatures the chemicals were actually subjected to before the product is manufactured at the site of installation.

(d) *Storage Temperatures for Resin and Foaming Agent.* Many of the specifications and standards include provisions, such as limits or labeling requirements, for the storage temperatures of the resin and foaming agent. Since the shelf-life of the resin is affected by heat, the storage temperature of the resin could affect the amount of formaldehyde released from the product. However, the specifications and standards contain no reliable mechanism for verifying that these provisions have been met. As evidenced by the results in the Franklin Research Center Study, control of this variable is

[13] During the curing (or polymerization process) which may last for 30 days or more, depending on temperature, the product changes chemically. Since the product changes chemically, a sample foamed into a bucket at the building site for testing purposes might release a different amount of formaldehyde gas than the foam insulation installed in the walls. Part of the difference is caused by the material composition of the wall cavity, although additional factors may be involved. (E-2)

[14] The following standards were examined: Department of Energy Standard (1980); HUD Use of Materials Bulletin No. 74, (1977); Dutch Quality Requirements for U.F. Foam Insulation (1976); British Standards 5617 and 5618 (1978); German Standard DIN 18-159 (Part 2) (1977); Canadian Standards, 51-CP-24M (1977), 51-CP-22MP (1978).

[15] In the Franklin Research Center study, nine different resins were used in manufacturing samples of commercial U.F. foam insulation. Free formaldehyde content in the resins, as determined by the sulfite method, ranged from 0.01, to 0.32 percent by weight. Air samples were collected periodically and analyzed for formaldehyde content using a modified "NIOSH" chromotropic acid method. Some samples with low free formaldehyde content released more formaldehyde than other samples with higher free formaldehyde/aldehyde content.

[16] After U.F. foam insulation is manufactured at the site of installation, the product characteristically releases the formaldehyde in the fresh foam. This characteristic is known as the short-term release, or a short-term off-gassing, component. However, the product also continues to release formaldehyde over time, as further chemical reactions occur. This characteristic is known as the long-term release, or long-term off-gassing, component. Formaldehyde content in the foam will vary over time. There may be an initial decrease in the amount of formaldehyde released immediately after installation, followed by a later increase in the release of formaldehyde. (E-9, E-15).

not sufficient to eliminate the release of formaldehyde gas from the product. (E–5)

(e) *Ingredient Reaction Temperature.* Many manufacturers' specifications, and several of the standards, include recommended temperature ranges for the mixture of ingredients as the product is being manufactured (installed). However, the Commission is not aware of any scientific justification for the specific temperature ranges. (E–3) In addition, the study conducted by the Franklin Research Center showed that samples of commercial U.F. foam insulation that purportedly met the specified temperature ranges released formaldehyde. (E–5)

(f) *Foam Wet Density.* Although many of the manufacturers' specifications and standards include wet density ranges, the Franklin Research Center Study shows that the rate of formaldehyde emission is relatively insensitive to the ratio of resin to foaming agent during the first 30 days after foam preparation. The rate of formaldehyde emission is even less sensitve to this variable at longer periods of time following foam preparation. (E–5) The Franklin Research Center study shows that when the air pressure is reduced while the ratio of resin to foaming agent is kept at the optimum level there is a marked increase in formaldehyde emission during the first 30 days. The research does not indicate, however, that careful monitoring of air pressure or conducting a wet-density check would be sufficient to eliminate the potential for formaldehyde release.

(g) *Water Hardness.* Several manufacturers include provisions in their specifications that address water hardness when diluting foaming agent concentrates. Several standards also include water hardness provisions. Those provisions are based on the assumption that proper water hardness assures that the foaming agent will perform properly in producing a quality foam with a desirable cell size, and that "good quality" foam is less likely to release formaldehyde gas. In its research for the Commission, the Franklin Research Center produced two test foam insulation samples where the foaming agent was reconstituted using soft (deionized) water instead of moderately hard water. The results of this test shows that water hardness does not affect the release of formaldehyde gas.

(h) *Foam Installation Practice.* Many of the standards and manufacturers' specifications include provisions concerning: (1) temperature limits for surface cavity temperatures where the insulation is to be pumped; (2) installation of the product in ceilings, attics, floors, partitions and interior walls, or in below grade applications; and (3) the use of vapor barriers before installation of the product. While some of these variables, especially those concerning the installation of the product in certain locations, could have an effect on the amount of formaldehyde gas released from the products, strict adherence to these provisions would not eliminate the potential release of formaldehyde gas.

(i) *Equipment.* The Commission staff has also evaluated the equipment used in the process of manufacturing U.F. foam insulation (E–4, E–12, E–15). Based on the Franklin Research Center Study (E–5) and this evaluation, improper use of equipment can adversely affect the quality of the insulation and increase the amount of formaldehyde released. However, the design of the equipment has essentially no effect on the release of formaldehyde gas from the product. (E–2, E–4) The Commission staff and the Franklin Research Center evaluation show that automatic flow control equipment cannot be relied upon to prevent the release of formaldehyde gas, and may in fact cause a greater likelihood of problems because of decreased vigilance by the operator. (E–2, E–4, E–5) The Commission staff has also evaluated what is purportedly the most advanced equipment which controls all three flow parameters: resin, foaming agent, and air. (E–15) Although this equipment may assist the installer in maintaining the correct air flow and air pressure, the equipment will not prevent problems associated with the release of formaldehyde gas from the product. (E–15)

(2) Standards Issued by DOE and the National Insulation Certification Institute

On September 25, 1980 DOE published interim final regulations under the National Energy Conservation Policy Act (NECPA) (Public Law 95–619) establishing interim material and installation standards for U.F. foam insulation. The material and installation standards issued by DOE contain detailed provisions, including many of the provisions described above intended to reduce problems associated with the release of formaldehyde gas. (Shortly before DOE published its interim final standards, the National Insulation Certification Institute (NICI) an industry trade association, adopted a voluntary standard that closely resembles the DOE standard.)

In the preamble to the interim standards, DOE stated that because of the on-going evaluation of the carcinogenicity of formaldehyde to humans, and the research being conducted by the Franklin Research Center, as well as for other reasons, the effective date of the installation and material standards was stayed until February 24, 1981 (45 FR 63787). DOE also stated that if significant new information arises, DOE would conform its regulations with any legal action taken by the Commission with respect to U.F. foam insulation. DOE recognized that the interim nature of the standards reflects, among other things, the need for further research and also reflects DOE's conclusion that there is insufficient information to respond fully to questions in the preamble to the proposed rule (44 FR 75960) concerning safety issues associated with the release of formaldehyde gas from U.F. foam insulation.

The Commission staff has submitted detailed comments on the provisions of the DOE standard (E–6) and has also evaluated the standard submitted by NICI. (E–7) Based on these analyses, the provisions of the DOE standards do not adequately control the potential release of formaldehyde gas from the product. In research conducted for the Commission by the Franklin Research Center, samples complying with the specific provisions of the DOE standard were tested and found to exhibit off-gassing characteristics that could have produced a level of formaldehyde that is equivalent to the levels found in many of the homes measured in the Commission's in-depth investigations. (E–5)

(3) Formaldehyde Institute Draft Standard

On December 17, 1980 the Formaldehyde Institute and twelve U.F. foam insulation manufacturers and private labelers submitted a draft standard presented by Dr. C. W. Frank and Dr. Keith R. Long of the University of Iowa. (E–13) According to Drs. Long and Frank, and draft standard is based on the DOE Interim Final Standard, American Society for Testing and Materials Standards, and the National Insulation Certification Institute standard.

The draft standard includes provisions addressing the transportation and storage of the raw materials and the manufacture and installation of the product. The draft standard also includes provisions concerning certification that the product meets the standards. According to Drs. Long and Frank, the draft standard will reduce formaldehyde emissions from "properly installed" U.F. foam insulation to approximate ambient levels and will be

effective in virtually eliminating complaints due to formaldehyde emission. (E–14)

The Commission staff has evaluated the Formaldehude Institute draft standard and has met with Formaldehyde Institute representatives, including Drs. Long and Frank to discuss the draft. (E–15, E–16) The draft standard contains two provisions relating to formaldehyde and the final product: (1) the free formaldehyde content in the resin and the fresh foam and (2) the total formaldehyde in fresh and cured foam.

Based on the analysis of similar provisions in other standards, including the DOE standard (E–3, E–6), the Commission concludes that the provisions concerning the free formaldehyde content in the resin and the fresh foam will not adequately address the problems associated with the release of formaldehyde gas from the product.

The draft standard requires the content of free formaldehyde in the resin to be less than 0.5 percent by weight, and is based on the assumption that reducing the amount of free formaldehyde will also reduce the amount of formaldehyde released from the final product. However, the Franklin Research Center has shown that reducing the level of free formaldehyde in the resin will not ensure a reduction in the total amount of formaldehyde released from the product. (E–5, E–8, E–15)

In this study, some products with low free formaldehyde content performed worse in terms of formaldehyde off-gassing characteristics than others with higher free formaldehyde content. The maximum amount of free formaldehyde that would be allowed under the suggested standard would actually allow manufactures to increase the amount of free formaldehyde over levels in current product formulations. The current formulations tested by the Franklin Research Center had free formaldehyde contents of 0.32 percent or less. The Commission has also received health complaints involving U.F. foam insulation resins that claim to have less than 0.5 percent free formaldehyde. Since the provision concerning free formaldehyde content in the resin reflects the existing state of the art in producing U.F. foam insulation, there is no expectation that this provision would have any future beneficial effect on the current formulations of the product that have been shown to release formaldehyde gas.

The draft standard also requires the free formaldehyde of the fresh foam to be less than 0.3 percent by weight. This provision may have a beneficial effect on the short-term release of formaldehyde after the product is installed. (E–3) However, the Franklin Research Center study has also shown that the free formaldehyde content of the fresh foam does not affect the long term release of formaldehyde from the product. (E–3) The draft standard would not result in a change in resin composition from the resin compositions currently used by manufacturers.

The draft standard requires the total amount of formaldehyde in the foam to be determined by the manufacturer, and includes a new procedure for measuring total formaldehyde in the foam. The standard requires the testing of individual samples taken from the fresh foam and from the cured foam (after 28 days). This provision is not supported by data or any technical rational showing that it relates to or will have any effect on the long-term release of formaldehyde gas. (E–15)

Because of the absence of this data and rationale, the provisions of the standard are not sufficient to provide a basis for predicting that the standard, if followed, will result in reduced concentrations of formaldehyde after U.F. foam insulation is installed. (E–15)

(4) Possible Provisions for Adequately Addressing the Potential Formaldehyde Release From U.F. Foam Insulation

The Commission staff has also examined possible provisions for adequately reducing or eliminating the potential for formaldehyde release from U.F. foam insulation. (E–2) The approach which appears the most promising, based on the evaluations and studies conducted so far, would involve the following provisions: Establishing a set of pass/fail criteria and product qualification for each of the principal components used in making U.F. foam insulation. The criteria would address such factors as resin at the plant; the time-temperature history of the resin after it leaves the plant and before it is foamed; the foaming agent; the equipment; and the actual process of manufacturing (installing) the product.

Before this approach could be assumed to be effective for use in a mandatory standard it is necessary to make the following assumptions:

(i) A safe exposure level can be set for formaldehyde.

(ii) Tests of foam samples can accurately predict performance at the site where the product is manufactured.

(iii) Products tested could meet the pass/fail criteria under a set of prescribed conditions.

(iv) Component controls could be developed which would then be effective in keeping the product in the walls similar to the product tested by eliminating as many on-site variables as possible.

However, at the present time, (1) an acceptable safe level of formaldehyde exposure in the home has not been established, (2) there is no reliable method to predict product performance based on a laboratory sample of the product, there are a large number of variables at the manufacturing location that could affect the product's performance, such as, the type of construction, the temperature of the wall cavities, the existing level of formaldehyde loading in the home, and meteorological conditions at the site before, during, and after the manufacturing process is complete. Given these circumstances, there is no compelling data showing that pass/fail criteria and the provisions for ensuring these criteria, could be developed that will adequately and predictably control the release of formaldehyde gas from the product. (E–2)

(5) Adequacy of Warnings and Instructions

In the case of many other consumer products, a warning or instruction requirement can often be attached to the product, and can be effective in reducing or preventing injuries after the product is purchased and is being used. However, for U.F. foam insulation, it is not possible to physically attach the warning requirement to the product, since it is pumped into the interior of wall cavities in a building. In addition, after the product is installed, the consumer cannot take any preventive measures to reduce or prevent the off-gassing of formaldehyde.

The Commission is unable to ensure that subsequent purchasers of residences or other buildings where U.F. foam insulation has been installed would receive the warnings or instructions that have already been given to the person buying the insulation. Although the original purchaser who receives warnings or instructions may be able to exercise an informed choice concerning the risks associated with the product, a subsequent buyer of the building may be wholly unaware of these risks. Since the product may present a risk of injury from cancer at levels that are lower than those most persons could detect, the subsequent purchaser may have no reason to suspect that such a risk is present.

At the present time the Commission concludes that requiring the U.F. foam insulation manufacturer to give the consumer written warnings and

instructions would not be effective in addressing the risk of injury associated with the product. Since many sales of the product appear to be based on personal solicitation, the required warning could be mitigated by oral statements by the salesperson. Further, the impact of a written statement could be severely diminished in the confusion of the purchase transaction. A requirement for warnings or instructions is also not likely to be effective because of the nature of the product. Unlike many other consumer products that can readily be disposed of, such as toasters or hair dryers, the product here is an expensive one with a long product life and is essentially non-returnable, or one that is removable only at great expense and effort. (The process of removing the product involves removing exterior or interior wall materials of the building and can cost thousands of dollars.) Consumers who for some reason do not read or understand the warnings or instructions before the product is pumped into the walls of their home may have little effective recourse in later addressing problems of formaldehyde release.

As described earlier in this notice, the Commission has proposed a regulation that would have required manufacturers to provide a notice to consumers concerning the release of formaldehyde gas from the product and the acute illness that can result from the release of this gas (45 FR 39438, June 10, 1980). However, the disclosure requirement proposed by the Commission did not include language about the risk of cancer associated with the product. (At the time of the proposal, the Commission had not yet received the report of the Federal Panel on Formaldehyde or the 24 month results of the CIIT study on the carcinogenicity of formaldehyde.) Also, several of the comments received on the proposal questioned the adequacy of the scope of the notice as well as the efficacy of the proposed notice. These comments raised concerns similar to those discussed above. Since the proposed notice does not include information concerning the risk of injury from cancer, and since there are serious questions about the efficacy of the disclosure, the Commission has decided not to issue a final disclosure requirement at this time. However, the Commission has not formally withdrawn the proposal. The Commission will make a decision whether to formally withdraw the proposed disclosure requirement at the conclusion of this rulemaking proceeding.

Based on the analysis of the engineering information and the reasons described above, at this time the Commission concludes that none of the existing standards, specifications for the product, and most promising approaches would be effective as a mandatory standard in addressing the risk of injury associated with the product. The Commission also concludes, for the reasons described above, that requirements for warnings or instructions would not be effective in addressing the risk of injury associated with the product. Accordingly, the Commission finds, based on the information before it at the present time, that there is no feasible standard that would adequately protect the public from the risk of injury associated with the release of formaldehyde gas.

The Commission encourages interested persons, in commenting on the proposal, to specifically address the issue whether there is a feasible standard for the product. Persons who believe that there is such a standard should describe the provisions of such a standard in detail, and should furnish the Commission with all information or data that demonstrates the effectiveness of the suggested approach.

H. Economic Considerations

The Commission has considered the potential economic effects of the proposed ban on industry and consumers, including the potential foregone energy savings and the availability of substitute forms of insulation. A preliminary economic assessment prepared by the Commission staff in November 1980, provides a detailed discussion of the facts summarized below. The preliminary economic assessment is based primarily on information that was made available to the Commission through July 1980. Since that time, there may have been substantial changes in the U.F. foam insulation industry. The Commission encourages interested persons to provide additional information, as well as revisions to this existing information in comments on this proposal. The Commission is especially interested in receiving comments presenting additional information in the following areas:

(1) The number of current installations, and the number of projected future installations of U.F. foam insulation over the next several years, in the absence of a ban of the product by the Commission;

(2) The current number of persons installing the product, as well as the current number of manufacturers and distributors of component materials for U.F. foam insulation;

(3) The number of installers and component manufacturers or distributors that have left the industry but would again enter the industry in the absence of a ban of the product by the Commission;

(4) The extent to which manufacturers of component materials used in making U.F. foam insulation, and persons installing the product, rely on revenues derived from sales of U.F. foam; and the ability of these companies to diversify their operations to moderate this impact;

(5) Specific information on the current market for U.F. foam insulation, including the percentage of installations involving new construction and non-residential applications;

(6) The amount of value of U.F. foam installed in an average application.

(7) The costs of removing U.F. foam insulation from the walls of buildings and replacing the insulation with alternative insulating materials, as well as the costs of any other remedial measures; and

(8) The impact of a ban on the resale of values of buildings that have already been insulated with U.F. foam insulation.

(1) Number of Residential Installations of U.F. Foam Insulation

The Commission staff's preliminary economic assessment includes a discussion of the number of residential installations of U.F. foam insulation from 1975 through 1980, the years in which nearly all U.S. installations have occurred. Although various estimates of installations range from 404,000 to 666,000, the most reasonable estimate at the present time is that approximately 474,000 residences have been insulated with the product during these years. The yearly number of installations, as reflected in all of the estimates, shows a great increase from 1975 to a peak in 1977, and then a substantial decline in 1978.

(2) Residential Wall Retrofit Market Share Held by U.F. Foam Insulation

Based on a residential energy consumption survey conducted for the U.S. Department of Energy (DOE) (EC–2) the Commission staff has calculated the market share held by U.F. foam insulation for residential wall retrofit insulation. In 1977 the market share estimate ranges from 8.4 to 12.8 percent of the total market. For 1977 the most reasonable estimate is that the U.F. foam market share was 9.8 percent of the total market. In 1978, the market share estimate ranges from 4.6 to 8.5 percent of the total market. For 1978 the

most reasonable market share estimate is 5.4 percent. The product experienced a 53 percent decrease in the number of residential installations from 1977 to 1978.

The DOE information indicates that alternative insulation materials are readily available to consumers insulating their exterior walls and, in fact, are used much more frequently than U.F. foam insulation. Although the DOE report does not specifically identify the other types of insulation materials used, materials such as mineral wool and cellulose insulation can be blown into most exterior wall cavities. In addition, various types of insulation board can be added to the outside of the exterior walls.

(3) Economic Effects of a Ban of U.F. Foam Insulation

The economic effects of a ban of U.F. foam insulation would fall on: (1) U.F. foam chemical manufacturers and suppliers of imported chemicals; (2) U.F. foam insulation contractors who manufacturer the product at the site of installation; and (3) consumers and the public at large, in the direct effect of foregone energy savings, the indirect effect of reduced real estate values, and benefits from the reduction of the hazard from exposure to formaldehyde gas.

(a) Impact of a Ban on Manufacturers and Importers of U.F. Foam Component Materials. The major anticipated economic impacts of a ban for manufacturers and importers of U.F. foam component materials are in lost revenues and unemployment. If the total number of residential installations of U.F. foam per year in the absence of a ban is 60,000 to 80,000 (EC–1), suppliers of the materials used to make U.F. foam insulation would have a loss in sales that corresponds to the value of the materials in these installations. If the lost revenues are calculated by multiplying the estimated value of the chemicals used by the number of installations, the lost sales would be $12 to $20 million per year. If the lost revenues are calculated as a percentage of the retail value of the installed product, then the estimated lost sales would be from $11 million to $40 million per year.

When the Commission staff prepared its preliminary economic assessment, available information indicated that 30, and possibly more, companies in the United States either manufactured U.F. foam chemicals or distributed imported U.F. foam chemicals. Information available in preparing the assessment showed that the ten largest companies may supply 85 to 90 percent of the resin used for insulation. More recent estimates by industry representatives indicate that there are nine U.S. firms manufacturing component materials for U.F. foam insulation, and that there are ten U.S. firms that are either private labelers of component materials or distributors of materials produced by domestic or foreign firms. (EC–9) Information gathered by Dun and Bradstreet shows that nearly all of these companies have fewer than 20 employees, and some have fewer than 10 employees. (EC–4) Only one company has more than one plant. Although some of these companies may be able to produce U.F. foam resins for other uses, such as adhesives for the production of plywood and particle board, or may be involved in marketing other energy conservation related products, many of the major suppliers of U.F. foam chemicals would face a substantial reduction in their total revenues if U.F. foam insulation is banned. Many of the remaining suppliers of U.F. foam insulation materials are likely to go out of business, unless then can diversify their operations. Within the last few months, some major manufacturers and suppliers of U.F. foam chemicals, have gone out of business because of reduced demand for U.F. foam insulation or anticipated problems in marketing the product in the future. The maximum impact of a ban for manufacturers and distributors of the component materials used to make U.F. foam insulation may be the exodus of 19 firms from the industry, with a loss in employment of approximately 250 to 350 persons.

(b) *Impact of a Ban on U.F. Foam Insulation Contractors.* The major anticipated economic impacts of a ban for persons installing U.F. foam insulation will be in the form of a loss of revenues and reduced employment.

Available information indicates that there has been a substantial decline in the number of installers in the last several years. (EC–1) As of April 1980, the best available estimates were that there were approximately 1500 to 2000 active installers, and that approximately an equal number of persons had the necessary equipment to install the product but were not installing U.F. foam insulation. (EC–1) A recent submission to the Commission, however, states that the number of active installers is only 600–800. (EC–10) Based on information provided by Battelle (EC–5) and an informal survey conducted by the staff, most of these installers are likely to have other sources of income, such as from the installation of siding, roofing, and storm windows, as well as from other types of insulation. Seventy-eight percent of insulation contractors surveyed by *Roofing/Siding/Insulation* magazine in 1980 reportedly installed at least one energy conservation product other than insulation. (EC–6)

Based on an estimated total annual retail value of $43 to $120 million for 60,000 to 80,000 installations per year and on the assumption that 1,500 to 2,000 installers would be active in the absence of a ban, the average number of annual installations per firm would range from 30 to 50. The average gross revenues per firm would range from $30,000 to $80,000 per year. The actual gross revenues may be greater or less than this amount for individual installers. The overall impact of a ban on each installer would depend on the extent to which total revenues are derived from U.F. foam insulation jobs, and the extent to which lost revenues may be compensated by increased installation of other types of insulation materials or other home improvement operations. (As noted above, the number of active installers of U.F. foam insulation may now range from 600–800. However, the Commission does not have current information on U.F. foam insulation activity that would allow precise estimates of average installation rates on revenues for these firms.)

Information provided by insulation contractors indicates that there may be from three to fifteen employees per firm who install U.F. foam insulation. The number of employees who would lose their jobs as a result of ban would vary depending on whether these employees could be used in other activities. Some of the contractors contacted by the staff who are no longer installing U.F. foam insulation indicated that they were able to use these employees in other activities and were not forced to lay them off when they discontinued use of U.F. foam insulation. However, where U.F. foam insulation represents a substantial portion of the firm's revenue layoffs are more likely to result.

(c) *Impact of the Proposed Ban on Consumers-Foregone Energy Savings.* Based on a projection of 75,000 installations in 1980, the estimated total energy savings for U.F. foam insulation ranges from 2.7 to 3.4 trillion Btu's annually. These savings have an estimated value between $16 and $20 million at 1980 energy prices.

Present information shows that the walls of most residences now being insulated with U.F. foam could be insulated with alternative insulating materials. In approximately 5 to 10 percent of the residences, the wall cavities may be so narrow that alternative materials are inadequate.

However, because these homes have narrow wall cavities, the energy savings in these homes would probably be less than in homes with deeper wall cavities. The Commission staff estimates that the total annual energy savings in these residences in 1980 could range from 35 to 87 billion Btu's, with a value of $204,000 to $518,000 at 1980 energy prices. These foregone energy savings would be repeated for each year that insulation is not installed.

A ban could also have the indirect result of discouraging installation of alternative types of wall insulation in some homes in which the alternative types of insulation are suitable, because of a decline in the solicitation of insulation jobs or a decision by consumers not to have other types of insulation installed. However, where other types of insulation are suitable, the energy losses are less likely to be continued in later years, since consumers are able to insulate and are more likely to do so as they consider their energy losses. For this reason, and because the failure to insulate these residences would be an indirect result of a ban, the foregone energy savings in those homes where alternative types of insulation are less suitable should be given greater emphasis.

The cumulative foregone energy savings after the ban becomes effective can not be precisely determined because of uncertainty about: (1) the number of U.F. foam insulation installations in future years in the absence of a ban, (2) the total number of uninsulated residences; and (3) the development of new alternative wall cavity insulating materials in the future that may also be suitable for the small percentage of installations for which U.F. foam is now reportedly the only available insulating material.

(4) Availability of Substitute Insulating Materials

It is expected that producers of alternative insulating materials will be able to meet any increased demand resulting from a ban of U.F. foam insulation since:

(1) U.F. foam insulation holds a small portion of the total insulation market, and

(2) As a result of recent expansion, the fibrous glass industry has significant excess capacity. Producers of other types of insulation, such as cellulose and rock wool, may also have excess capacity.

Although the demand for insulation is likely to increase as economic conditions in the construction industry improve, a ban of U.F. foam insulation would not lead to a significant increase in the demand for alternative insulating materials.

(5) Impact on Real Estate Values

A ban of U.F. foam insulation could have an adverse effect on the resale value of residences or other buildings that have been insulated with U.F. foam insulation. Since the ban is not retroactive and does not directly affect products that have already been installed, this impact would be a secondary, rather than a primary impact of the ban. A decline in real estate values of homes insulated with U.F. foam insulation could also occur in the absence of a ban. To the extent that it does, such losses in value would not be attributable to the ban. At the present time, there is insufficient information to accurately estimate the magnitude of these effects, if any.

(6) Costs of Litigation and Remedial Measures

If the Commission bans U.F. foam insulation, consumers who have already had the product installed may increase their efforts to have the insulation removed. This increase in efforts may lead to greater costs incurred by U.F. foam chemical manufacturers and installers in litigation or in taking remedial measures. Although these costs could be a significant factor in the overall economic impact of a ban, at the present time there is insufficient information to estimate their magnitude, if any.

(7) Effective Date

The effective date that is chosen may have an effect on the ability of installers to use their remaining inventories of raw materials. The economic impact of the effective date is likely to be affected by the shelf-life of the raw materials. Materials that are shipped in a dry form generally have a long shelf-life: in some cases the recommended shelf-life may be a year or more. These materials are often imported resins. However, the majority of the U.F. foam insulation jobs in the United States use U.F. foam resins shipped in liquid form from domestic producers. This material has a much shorter recommended shelf-life: from 7 to 90 days. The recommended shelf-lives of foaming agents range from 48 hours to one year.

Based on this information, an effective date longer than 30 days after a final ban is issued could allow some installers to use their stocks of raw materials. As a result of reduced demand, suppliers of raw materials would probably cease production and distribution of U.F. foam chemicals almost immediately after a ban is issued. Because a Commission decision to issue a ban is likely to dramatically decrease orders immediately after a final regulation is issued, a long effective date, beyond 90 days, would probably not significantly moderate the impact of the regulation on manufacturers and importers of component materials.

Installers who offer other types of insulation or who are involved in other home improvement jobs, such as the installation of roofing and siding, would probably not experience an adverse economic impact caused by an effective date of 90 days, as opposed to a later effective date. However, for installers relying on U.F. foam insulation as a substantial percentage of their total revenues, the effective date chosen could affect their ability to remain in business by diversifying their operations. This effect should be especially significant for firms who entered the business strictly as installers of U.F. foam insulation but who broadened their operations in response to the decline in demand since 1977. An effective date of less than 90 days could present these firms with greater difficulties in acquiring the equipment necessary to further broaden their operations to remain in business.

(8) Costs and Benefits of a Ban

Before issuing a final ban, the Commission must find that the ban is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. As construed by the Courts,[17] this means that the benefits of the regulatory action must bear a reasonable relationship to the costs. The statute does not require the Commission to quantify the potential costs and benefits before taking regulatory action (H.R. Rep. No. 1153, 92nd Cong. 2nd Sess. 33 (1972). In the case of the present regulatory action, it is not feasible to provide an accurate quantification of all of the costs and benefits at this time since the number of assumptions required to form estimates on many of the potential costs and benefits summarized below preclude an accurate estimate. However, the Commission is able to qualitatively evaluate the costs and benefits and preliminarily concludes that the benefits do bear a reasonable relationship to the costs. In addition, in those instances where the Commission has provided a quantification of costs, the Commission concludes that the benefits bear a reasonable relationship to the costs.

[17] *Aqua Slide "N" Dive Corp.* v. *CPSC*, 569 F. 2d 831, 842 ((5th Cir. 1978). *Southland Mower Co.* v. *CPSC*, 619 F. 2d 499, 523 (5th Cir. 1980).

In considering the potential benefits of a ban in reducing the future incidence of cancer, the Commission has used the risk assessment described in the section of this proposal concerning the degree of the risk of injury for chronic hazards. (C–6) Based on a projection of 75,000 installations of U.F foam insulation in 1980 (EC–1), as well as the information in the risk assessment, approximately 262,500 persons would be at risk from the projected 1980 residential installations of U.F. foam insulation. Based on the upper estimate of risk (.000086), approximately 23 of these persons may develop cancer as a result of their exposure. (C–6)

The principal measure of the direct societal costs of a ban of U.F. foam insulation would be the foregone energy savings (or higher future energy costs) resulting from the buildings that are not insulated because of the absence of U.F. foam insulation from the market. There may be other secondary costs, such as a reduction in resale value of homes that have been insulated with U.F. foam insulation. However, as discussed earlier, a reduction in resale values may occur in the absence of a ban and would not be directly attributable to the ban, since the ban, as proposed, is not retroactive in effect. In addition there will be other costs, such as the lost revenues to U.F. foam insulation installers and chemical manufacturers; and the fact that some firms are likely to go out of business with resulting unemployment. These other costs could be offset by the likelihood that some of the revenues that would have gone to U.F. foam insulation installers will be used for the installation of other types of insulation, and some of the loss of employment in the U.F. foam insulation business may be offset by gains in employment in other insulation material businesses. (EC–1)

The foregone energy savings from a ban is the foregone energy savings involving wall constructions in which the use of alternative insulating materials is less suitable, such as brick and block walls with narrow wall cavities. The foregone energy savings from these homes is estimated to be 35 to 87 billion Btu's, with a value of $204,000 to $518,000, at 1980 energy prices. The staff has evaluated future foregone energy savings by discounting these savings to their present value. Based on these calculations, the present value of foregone energy savings resulting from a ban of U.F. foam insulation would range from approximately $1.6 million to $5.2 million, based on foregone energy savings for 10 years,[18] and assuming that there is a 5 to 10 percent annual increase in the real price of heating fuel.

If the estimated value of foregone energy savings is compared to the estimated risk of 23 cases of cancer that might eventually result from these installations each year, based on the upper value of the estimated range of risk, the calculated cost per cancer avoided would range from $70,000 to $226,000 per year. (EC–1)

This range addresses only the benefits of avoided incidences of cancer in terms of foregone energy savings. Although additional benefits can not be reliably quantified, a ban would also benefit society in the following ways: (1) avoidance of the costs of lives lost and the medical and social costs for treatment of cancer;[19] (2) reducing the costs of adverse acute health effects caused by formaldehyde; (3) avoidance of the costs of remedial measures to attempt to correct problems in future installations, including the costs of removing foam from residences; and (4) avoidance of costs incurred due to time lost from work, rental of other residences, and costs of litigation involving installations.

When the benefits of avoided incidences of cancer and the additional benefits described above are considered in relationship to the facts that the ban is likely to result in a relatively minor impact to the economy as a whole, and will result in minimal energy losses because of the ready availability of substitute types of insulation for most applications, the Commission preliminarily concludes that the benefits of the ban do bear a reasonable relationship, and do in fact justify, the costs of the regulatory action.

I. Initial Regulatory Flexibility Analysis

In accordance with section 603 of the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 603) (effective January 1, 1981), the Commission has prepared an initial regulatory flexibility analysis to accompany this proposal. (EC–8) The full text of the initial regulatory flexibility analysis is available in the Office of the Secretary of the Commission, 1111 18th Street, third floor, Washington, D.C. 20207. In this notice, the Commission includes a summary of this analysis.

The purpose of the Regulatory Flexibility Act, as stated in section 2(b)(5 U.S.C. 601 note) is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. The act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their action to ensure that such proposals are given serious consideration. The act requires agencies to prepare an initial regulatory flexibility analysis to accompany the proposed rule. The analysis must describe the impact of the proposed rule on small entities (businesses, organizations, and governmental jurisdictions).

The initial regulatory analysis describes the reasons why the agency action is being taken. These reasons are described elsewhere in this notice in greater detail, and involve the need to protect the public against the unreasonable risk of injury associated with the release of formaldehyde gas from the product and the lack of a feasible standard, including labeling, that would adequately protect the public. The reasons also include a consideration of the potential costs and benefits of the proposed action and a preliminary determination that a ban of U.F. foam insulation is in the public interest.

The objective of the proposed rule is to protect the public against the unreasonable risk of injury from the toxicity of formaldehyde gas released from the product. The proposed rule would accomplish this objective by eliminating U.F. foam insulation that releases formaldehyde gas from the marketplace. The legal basis for the proposal is section 8 of the CPSA, 15 U.S.C. 2057, which authorizes the Commission to issue a regulation declaring a product to be a banned hazardous product if the Commission finds that: (1) a consumer product is being, or will be, distributed in commerce and presents an unreasonable risk of injury; and (2) no feasible consumer product safety standard under the act would adequately protect the public from the unreasonable risk of injury associated with the product.

The initial regulatory flexibility analysis includes a description and an estimate of the number of small entities to which the proposal would apply. A ban of the product would apply only to businesses, and would not apply to

[18] A 10 year period is appropriate, assuming that the development and availability of suitable alternative types of insulation for these applications will be a probable outcome of the ban.

[19] The benefit to society from lives saved is extremely difficult to estimate in dollars. The Commission does not endorse any estimate of the monetary value of life. The Commission has not attempted to assign monetary value to the avoided incidences of cancer in terms of the value of lives that would be saved or the human suffering that would be avoided.

small organizations or small governmental jurisdictions as defined in the Regulatory Flexibility Act. The ban would apply to persons who combine the component materials (resin, foaming agent, and gas) and foam the insulation into its permanent location. These persons would be classified under Standard Industrial Classification code 1742, which is a category of special trade contractors including firms involved in plastering, drywall, acoustical, and insulation work. Under size standards specified by the Small Business Administration (S.B.A.), these firms are considered small businesses if their annual sales are $1 million or less. Based on this standard, as well as the assumption that the great majority of installers of U.F. foam insulation are independently owned and operated and are not dominant in their field of operation, then nearly all of the installers of U.F. foam insulation would be considered to be small businesses. In April 1980, there were an estimated 1500 to 2000 active installers. However, in January, 1981, NICI estimated that the number of active foam contractors is approximately 600 to 800.

Although the proposed ban would not apply directly to manufacturers and suppliers of component materials used to make U.F. foam insulation, many of these firms may be affected by the ban and may meet the criteria of the S.B.A definition of small business. These manufacturers may be classified under Standard Industrial Classification Code 2821, which is a category including manufacturers of plastics materials, synthetic resins, and non-vulcanized elastomers. Under S.B.A. size standards, these firms must have less than 750 employees to be considered small businesses. Distributors of U.F. foam insulation resins produced by domestic or foreign manufacturers may be classified under Standard Industrial Classification code 5161, which is a category including wholesalers of chemicals and allied products, including synthetic resins. These firms must have maximum annual sales of $15 million or under to be considered small businesses under S.B.A. size standards.

The preliminary economic assessment prepared by the Commission staff estimates that there may be more than 30 domestic manufacturers and distributors of U.F. insulation resins. The 10 largest companies may supply 85–90 percent of the resin used for insulation. As of December 1980, the Formaldehyde Institute verified that there are 9 domestic manufacturers and 10 distributors or private labelers of U.F. resins produced by domestic and foreign firms. Based on available information nearly all of these manufacturers and distributors would meet the S.B.A. size standards to be classified as small businesses. One manufacturer may be considered to be dominant in its field of operation based on the fact that it produces the material used in 50 percent or more of the installations.

The initial regulatory flexibility analysis describes the potential impact of the proposed regulation on these small businesses. The major impacts of a ban would be in the form of lost revenues and reduced employment. Assuming that there would be between 60,000 and 80,000 installations of U.F. foam per year in the absence of a ban, then the estimated total annual retail value of installed U.F. foam insulation would range from $43 million to $120 million. Assuming 1500 to 2000 installers would be active, there would be an average of 30 to 50 installations per firm each year, and the average gross revenues from the installation of the product would range from $30,000 to $80,000 per year.[20] The impact of a ban on individual installers would depend on the extent to which their total revenues are dependent on U.F. foam insulation jobs, and the extent to which lost revenues may be compensated by increased installation of other types of insulation materials or expansion of other home improvement operations. At the present time the Commission does not have information to estimate the number of firms that would be able to remain in operation in spite of a ban.

The number of employees installing the product may range from 3–15 per firm. Although the Commission at present does not have information that would allow an estimate of the number of employees that would lose their jobs, employee layoffs are more likely to result in the case of contractors for whom installation of U.F. foam insulation accounts for a substantial percentage of total revenue.

The wholesale value of U.F. foam insulation materials required to insulate 60,000 to 80,000 residences annually may range from $11 to $40 million, based on present information. The loss of revenues from U.F. foam insulation related sales would be a substantial reduction in the total revenues of the small manufacturers and importers of these chemicals. Many of these companies may go out of business if a ban is adopted. Present information indicates that nearly all of these companies have fewer than 20 employees, and some may have fewer than 10 employees. The maximum impact of the ban for these companies may be the loss of 19 firms from the industry, and a loss in employment of 250–350 persons.

If a ban is issued, the Commission anticipates that consumers who have already had the product installed will be increasingly likely to seek remedies from manufacturers and installers. Although an estimate of these increased costs is not available, the costs may be substantial and burdensome if borne by U.F. foam installers or chemical manufacturers and distributors.

The initial regulatory flexibility analysis discusses the projected compliance requirements of the proposed rule. The rule would not impose reporting, recordkeeping or other compliance requirements on small entities. No profesional skills or other resources would be required in order for persons to comply with the regulation.

In accordance with section 603 of the Regulatory Flexibility Act, the initial regulatory flexibility analysis also examines other Federal regulations to determine whether they may duplicate, overlap, or conflict with the proposed rule.

The Department of Housing and Urban Development (HUD) has issued a Use of Materials Bulletin (UMB #74, for U.F. foam insulation, October 13, 1977). UMB #74 explains the conditions under which HUD will accept U.F. foam insulation and stipulates certain limitations for its use in new home construction.

The Department of Energy (DOE) has issued an interim final regulation on September 25, 1980 (45 FR 63786) that would establish interim material and installation standards for U.F. foam insulation under the Residential Conservation Service Program. The interim DOE rule is scheduled to become effective on an interim basis on February 24, 1981. However, in the preamble to this regulation, DOE stated that it is the responsibility of CPSC to take action to reduce or eliminate the risk of injury associated with consumer products such as insulation and stated that it would conform its regulations with any legal action taken by CPSC with respect to U.F. foam insulation.

The Federal Trade Commission (FTC) has issued a Trade Regulation Rule on the Labeling and Advertising of Home Insulation (16 CFR Part 460), which became effective on September 29, 1980. The regulation applies to insulation material used in homes, including U.F. foam insulation.

[20] As noted above, the number of active installers of U.F. foam insulation may now range from 600 to 800. However, the Commission does not have current information on U.F. foam insulating activity that would allow precise calculations of average installation rates or revenues for these firms.

If the Commission were to issue a final ban, manufacturers and installers would not be subject to duplicative, overlapping, or conflicting federal regulations concerning the installation of U.F. foam insulation, since the ban would prohibit such installations in the United States.

The initial regulatory flexibility analysis also includes a discussion of significant alternatives to the proposed rule. In proposing a ban, the Commission has made the preliminary determination that there is no feasible standard or other action, including labeling or information disclosure, that would adequately protect the public, and that a ban of the product is in the public interest. Since the ban does not contain reporting requirements, the Commission could not minimize the impact of the regulation on small businesses by altering these requirements. The ban also does not contain any provisions that would allow the use of performance rather than design standards. In addition, the Commission could not grant small businesses a blanket exemption from coverage under the regulation while still accomplishing the objectives of the regulation.

The Commission has also considered the possibility that alternative effective dates could assist small businesses to remain in operation while achieving the objectives of the regulation. An effective date longer than 30 days after publication of a final ban could allow some installers to deplete their inventories and may provide time for some installers to further diversify their oprations to remain in business. Because of market conditions, including a severe reduction in demand and potential unavailability of materials, an effective date longer than 90 days is unlikely to allow for greater depletion of inventories or an enhanced opportunity to remain in business. However, since the further depletion of inventories that would be provided by an effective date of longer than 30 days may be inconsistent with the objective of protecting the public against the unreasonable risk of injury presented by the product, the Commission may adopt a shorter effective date, such as 30 days. The Commission is proposing an effective date that falls within the range of 30–180 days, and solicits comments on the issue of which date within that range would be an appropriate effective date.

J. Environmental Considerations

The Commission staff has made an assessment of the potential environmental impact of a proposed ban. (EC–7) The assessment addresses potential effects of the proposed ban on residential energy consumption, energy consumption for the production of alternative issulation materials, and the effects on indoor air quality. The assessment concludes that the proposed regulatory action will not have a significant effect on the environment.

The assessment bases this conclusion on the following determinations: (1) Alternative insulation materials, such as cellulose and mineral wool insulation, are available for use in most structures that would be insulated with U.F. foam insulation in the absence of a ban. In what is estimated to be a small percentage of installations, such as those with narrower wall cavities, the use of alternative materials may not be possible. In these structures foregone energy savings (energy losses) would occur as a direct result of a ban. However, the expected foregone energy savings in these structures is estimated to be less than 0.001 percent of total annual residential consumption of energy for heating. (EC–7) As a result, a ban of this product will not significantly affect the nation's rate of energy consumption, and the use of non-renewable resources.

(2) Energy consumption for the production of alternative insulating materials used as a result of a ban of U.F. foam insulation would be negligible compared to the energy savings that would result from the use of these materials and compared to the total annual consumption for heating residences.

(3) A ban of U.F. foam insulation would eliminate the insulation as a contributor to increased levels of formaldehyde gas in the interior environment. Since formaldehyde can contribute to adverse health effects, improvement in indoor air quality should result. Although installing alternative insulating materials in walls may also contribute to a reduction in the indoor air quality by reducing the air exchange rate of buildings that are insulated, the alternative materials do not release formaldehyde gas and are not themselves thought to contribute significantly to reduced indoor air quality. As a result, where alternative insulating materials are used, the indoor air quality should be better than if U.F. foam insulation is used. The Commission has no information showing that these other materials presently pose equal or more serious hazards to the health and safety of consumers.

The environmental assessment also discusses alternatives that were considered by the Commission before proposing a ban, and evaluates the potential environmental effects of these alternatives.

The Commission does not foresee significant adverse impacts on the environment resulting from a ban that would counter the beneficial impact of improved indoor air quality, even though the benefits may be small. Upon reviewing these factors and others raised in the environmental assessment report and accompanying finding of no significant impact on file at the Office of the Secretary, it appears to the Commission that the environmental effects of a rule that will result from a ban of U.F. foam insulation are not significant, according to criteria for this determination stated in the Council on Environmental Quality's final regulations (40 CFR Part 1508), and the Commission's procedures for environmental review (16 CFR Part 1021). Since a significant effect on the quality of the human environment is not anticipated from this proposed ban, the Commission concludes that an environmental impact statement is not needed.

Effective Date

The Commission is proposing an effective date that would be a date within the range of 30 to 180 days after issuance of a final ban. Section 9(d)(1) of the CPSA and the Administrative Procedure Act provide that the Commission may set an effective date from 30 to 180 days after a final ban is issued. Although the Commission could, for good cause, decide that a longer or shorter effective date is in the public interest and choose that date, present information does not show that there would be significant benefits to either industry or consumers, if the Commission chose an effective date falling outside a date in the range that is proposed.

Among the factors that the Commission will consider in choosing an appropriate effective date for any final ban are the impact of the effective date on installers of U.F. foam insulation and manufacturers of raw materials, discussed earlier in this notice, as well as the need for the ban in order to adequately protect the public.

An effective date longer than 30 days after a final ban is issued could allow some installers of U.F. foam insulation to delete their inventories of raw materials, depending on the level of demand for the product. Such an effective date could also allow installers who have only recently diversified their operations into other areas an opportunity to acquire the equipment necessary to further broaden their operations so that they can remain in

business and not be forced to lay off employees. An effective date shorter than 90 days may make it more difficult for these companies to remain in business. However, given the likely low level of demand for U.F. foam insulation following the issuance of a final ban, an effective date that is longer than 30 days may not provide firms with an increased opportunity to remain in business through diversification. For installers who have not already taken steps to diversify, an effective date of even 180 days may not substantially improve their ability to remain in business. Any difference in the impacts of effective dates greater than 30 days after issuance of a final rule would depend on the extent to which a significant demand for the product would be present after the 30 day period.

Based on existing information concerning market conditions, an effective date within the range of 30–180 days should not, in itself, have a significant impact on manufacturers and importers of the raw chemicals used to manufacture U.F. foam insulation. Because of a dramatic decrease in orders expected, and in order to minimize the economic impact of a ban, these firms will probably stop producing and distributing U.F. foam chemicals almost immediately after a ban is issued. Since the issuance of a final ban will probably result in an immediate sharp decline in orders for raw materials, an effective date of 180 days would not lessen the impact of a ban on these firms.

An effective date shorter than 90 days is consistent with the need to protect the public. For this reason, the Commission may conclude that an effective date as early as 30 days after issuance of a final ban is appropriate.

The Commission encourages interested persons, in submitting comments, to specifically address the issue of the effective date.

L. Statutory Findings

Section 8 of the CPSA, 15 U.S.C. 2057, provides that before issuing a proposed ban for a consumer product, the Commission must find that:

(1) The consumer product is being, or will be, distributed in commerce and presents an unreasonable risk of injury; and

(2) No feasible standard under the Act, including requirements for warnings and instructions, would adequately protect the public from the unreasonable risk of injury associated with the product.

Based on the available data concerning the marketing of U.F. foam insulation, the Commission finds that this product is being, and will be, distributed in commerce.

The Commission has examined the available information, described earlier in this notice, concerning the nature and degree of the risk of injury from the product. Based on this information, the Commission determines that U.F. foam insulation presents a risk of injury to humans as a result of the toxicity of the formaldehyde gas released from the product.

The Commission has also examined the available information, described earlier in this notice, concerning the potential economic impact of the proposed ban, including its effective date, on industry as well as consumers. The Commission agrees with the information in this section concerning the potential effect of the regulation on the cost, utility, and availability of U.F. foam insulation. Because of the availability of suitable alternative insulating materials for nearly all applications in which U.F. foam insulation is used, and the potential marginal contribution to energy conservation by U.F. foam insulation in those few situations where it may be presently the only available insulating material, the Commission determines that the need of the public for the insulation can be adequately met by the alternative insulating materials.

The Commission agrees with the factual analysis concerning the potential effect of the regulation on persons who install U.F. foam insulation as well as manufacturers and importers of raw materials used in manufacturing U.S. foam insulation. The Commission has fully considered the prospective costs and benefits that would result from the proposed ban. The Commission concurs in the factual analysis in this section of the notice and concludes that the benefits of the proposed regulation bear a reasonable relationship to the costs of the regulation.

As a result of both the acute and chronic risks of injury associated with U.F. foam insulation because of the potential release of formaldehyde gas from the product, and the judgment that the benefits of the proposed regulation bear a reasonable relationship to the costs of the regulation, the Commission finds, based on the information presently available, that the continued manufacture and sale of U.F. foam insulation presents an unreasonable risk of injury. The Commission's finding is based primarily on the available information concerning the risk of cancer, but is also supported by the available information concerning the risk of acute illness. Earlier in this notice, the Commission has examined existing information concerning the feasibility of a standard and has found that there is no feasible standard, including labeling, that would adequately protect the public. The Commission determines, based on the available information it has considered, that a ban of the product is in the public interest. Accordingly, the Commission is proposing this ban. Interested persons should note that although the Commission has made these findings concerning unreasonable risk of injury and feasibility of a standard at this time, in accordance with section 8 of the act, the Commission will carefully consider the comments from all interested persons. Before issuing a final regulation, the Commission will evaluate these findings in light of any data or arguments that are presented.

Section 9(c) of the Consumer Product Safety Act requires that prior to issuing a consumer product safety rule the Commission shall consider and make appropriate findings for inclusion in the rule. Based on available information, the Commission has been able to draw preliminary conclusions which are set forth as proposed findings in the proposed ban. The proposed findings are subject to change by relevant information. Therefore, the Commission is particularly interested in obtaining information on the following matters:

(1) The degree and nature of the risk of injury which the rule is designed to eliminate or reduce;

(2) The current market for U.F. foam insulation, including the number of present installations, and the number of U.F. foam installers and manufacturers and distributors of raw materials;

(3) The need of the public for U.F. foam insulation; the utility of substitute types of insulation; and the probable effect of the ban on the cost or availability of substitute types of insulation;

(4) Any means of achieving the effect of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety;

(5) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk associated with U.F. foam insulation;

(6) That promulgation of the rule is in the public interest; and

(7) that no feasible standard would adequately protect the public from the unreasonable risk of injury associated with U.F. foam insulation (15 U.S.C. 2058(a)(2)).

Section 9(b) of the Act, 15 U.S.C. 2058(b), requires that in promulgating a

consumer product safety rule, the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule. At the present time, the Commission has no information showing that elderly or handicapped persons may be adversely affected by a ban of U.F. foam insulation. The Commission solicits comments as to the potential effect of the proposed ban on this segment of the population.

M. Applications For Exemptions

In proposing this action, the Commission does not intend to forestall further technological research and development of foamed-in-place insulations that do not present health problems associated with the release of formaldehyde. Although at the present time the Commission is not aware of any existing or potential method of manufacturing and installing U.F. foam insulation that has been shown to adequately address these health problems, such a method may be developed in the future.

The Commission has included in the proposed ban a procedure by which interested persons may request the Commission to exempt an individual product from coverage under the ban.[21] At § 1306.5 of the proposed regulation, the Commission has included a section that sets out procedures and requirements for applications for exemptions.

In order for the Commission to exempt a product, the person requesting the exemption must supply the Commission with full and complete test data and analyses demonstrating that:

(1) The procedures used to develop the supporting data should be relied upon by the Commission;

(2) The conditions of the test include all reasonably foreseeable conditions of handling, installation, storage, installation equipment performance, resin uniformity (within and between batches), and response to temperature and humitidy effects during the life of the product;

(3) The procedures for manufacturing the product can readily be followed by installers in the field;

(4) The procedures, when followed in the field, produce uniform and consistent results; and

(5) Under none of the conditions described above will the product present a risk of injury associated with the release of formaldehyde gas.

As a condition for granting an application, the Commission may require the person applying for an exemption to provide assurances that if any installation results in the release of formaldehyde gas to which consumers may be exposed, the person who has been granted the exemption will take whatever steps are necessary to ensure that the product does not present a risk of injury to the consumer from exposure to formaldehyde gas. These measures may include removing the insulation product from the building or purchasing the consumer's home as well as providing the consumer with suitable alternate housing during the period in which the consumer could be exposed to formaldehyde gas released from the product.

Exemptions that are granted would be granted for a specified period of time, and would involve periodic monitoring of installations by the Commission staff. The terms and conditions for any exemption will be described in a written agreement placed in a public file in the Office of the Secretary of the Commission.

Persons submitting proprietary or confidential information in support of an application may request that the information be treated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)). Such requests should comply with the Commission's regulations at 16 CFR 1015.18, and will be treated in accordance with the regulations at 16 CFR 1015.18–19.

The Commission staff, to the extent practicable, will assist interested persons in preparing their applications for an exemption.

Although the Commission will receive applications during the comment period, interested persons should be aware that acton on any individual application will be considered as a separate matter from this rulemaking. The Commission may not complete its evaluation of such applications before a final ban would become effective. In the event that the ban becomes effective before final action is taken on an application, then manufacturers would be prohibited from manufacturing or offering for sale products that are covered by the ban, including those products covered by the ban that are the subject of pending applications. As explained in proposed section 1306.5(k) interested persons should also be aware that the filing of an application will not have the effect of staying the effect of the ban for the product.

N. Denial of Petition

In this notice the Commission denies the remaining part of a petition (CP 77–1) from the Metropolitan Denver District Attorney's Consumer Office to establish a standard to address the alleged risk of injury of irritation and poisoning associated with U.F. foam insulation. the petition included information concerning product specifications and a description of the effects of exposure to formaldehyde. The Commission agrees with the petitioner that U.F. foam insulation presents an unreasonable risk of injury resulting from the toxicity of the formaldehyde gas that can be released. However, as explained elsewhere in this notice, the Commission has made the finding, based on presently available information, that there is no feasible standard that would adequately protect the public from this unreasonable risk of injury. Accordingly, the Commission has decided not to initiate a standard development proceeding for U.F. foam insualtion at this time.

O. Date of Promulgation

Section 9 of the CPSA, 15 U.S.C. 2058, sets forth the administrative procedures applicable to promulgation of consumer product safety rules and provides guidance concerning the time period for a rule to take effect after the date it has been promulgated by the Commission. However, the CPSA does not define the date of promulgation. In the absence of statutory direction or Commission guidance, therefore, there is an element of uncertainty as to when a rule is considered to be promulgated. Promulgaton could take place when the Commission, at a public meeting, votes to issue a rule or when the Federal Register notice announcing the rule is signed by the Commission's Secretary, or at another time.

The uncertainty of date of promulgation may be important to those who believe they are adversely affected by a rule issued by the Commission. Section 11 of the CPSA, 15 U.S.C. 2060, provides that such persons or groups may petition a U.S. Court of Appeals in the circuit of their residence or principal place of business for judicial review of the rule. In such a case, the Commission is required to respond by filing the record of the rule in the court chosen by

[21] Of course, under section 10 of the CPSA (15 U.S.C. 2059) interested persons could petition the Commission to amend or revoke a ban that is issued, or could petition the Commission to initiate a standard development proceeding for U.F. foam insulation. If the Commission granted a petition, then the Commission would initiate a rulemaking proceeding.

Persons who seek to petition the Commission must follow the Commission's regulations for petitions, at 16 CFR 1110. Petitions must include information establishing the need and technical support for the requested action.

the first person or group to file for judicial review.

Thus, persons or groups who are represented at a public meeting where the Commission votes to issue a rule and believe they are adversely affected by the rule, may properly try to be first to file for judicial review in a circuit of their own choosing. Persons or groups unable to be represented at such public meetings, whether for reasons of geographical or financial inconvenience, or otherwise, may also believe they are adversely affected by a Commission decision to issue a rule and yet not have an opportunity to file for judicial review in a forum of their own choosing.

In the event that the Commission issues a final regulation that declares U.F. foam insulation to be a banned hazardous product, it is important to remove the elements of uncertainty and possible unfairness that may occur concerning opportunity for judicial review of a final regulation by promulgating the rule on a date certain after its publication. The Commission observes that courts have traditionally approved a great deal of discretion to agencies in determining the manner in which their actions are promulgated. In this regard, courts have deferred to the agency's choice as long as the choice is reasonable. The Commission's practice of designating the time of promulation has been held to be reasonable. *Southland Mower Company v. U.S. Consumer Product Safety Commission*, 600 F. 2d 12 (5th Cir. 1979).

Accordingly, in order to provide the maximum amount of guidance possible to the courts and interested persons, the Commission proposes that any final ban would be promulgated at noon, Eastern Time, ten days after it is published as a final rule in the **Federal Register**. The Commission believes this choice of promulgation date is reasonable in that it provides sufficient time for interested persons to learn about the rule before a court can be petitioned for judicial review.

Section 9(a)(1) of the CPSA provides that within 60 days after the publication of a proposed ban the Commission must either issue a final ban or withdraw the proposal, unless the Commission, for good cause, extends this period. Because of the complexity of the issues in this rulemaking, and the need to allow interested persons a 60 day opportunity to submit comments, the Commission, for good cause, extends the period of time for issuing a final regulation for 180 days after the close of the comment period.

P. Actions by Other Governments

(1) Based on the risk of acute illness presented by the product, the State of Massachusetts has declared U.F. foam insulation to be a banned hazardous substance and has required the removal of U.F. foam insulation from commerce in that state. The Massachusetts ban became effective November 14, 1979. The Massachusetts regulations are currently in litigation, although the ban itself is in effect during this litigation. The State has issued repurchase provisions for the ban, effective November 20, 1980. These provisions allow homeowners who have had their homes insulated with U.F. foam insulation to have the foam removed at the manufacturer's expense if at least one occupant of the structure has suffered adverse health effects which occurred or were aggravated after exposure to the U.F. foam insulation.

(2) The Attorney General's Office of the State of Connecticut has entered into an agreement with nine members of the U.F. foam insulation industry to resolve complaints concerning acute illness associated with U.F. foam insulation. The Connecticut agreement also requires manufacturers to provide prospective purchasers with a notice concerning possible adverse health effects associated with the product. On January 1, 1980, the Connecticut Department of Consumer Protection proposed a regulation to require a health notice in all U.F. foam insulation contracts from all manufacturers.

(3) The Office of the Attorney General of the State of Colorado issued a warning on December 4, 1978, about potential acute health hazards to consumers who have purchased U.F. foam insulation. Denver County has adopted a prohibition against the use of U.F. foam insulation in new or existing construction.

The Colorado Board of Health held a hearing on U.F. foam insulation on June 18, 1980, on the advisability of either requiring labeling or banning the product. On September 17, 1980, based on the acute health hazards to consumers, the Colorado Department of Health banned the future installation of U.F. foam insulation in facilities where persons may be exposed for a protracted length of time without knowledge of the presence of the product. The health department also requires a disclosure statement in contracts for installation of the product in private dwellings or other buildings not covered by the ban.

(4) New York and Rhode Island have adopted health and safety related disclosure requirements for the product concerning the acute risk of injury.

(5) In Minnesota, the legislature enacted a law requiring the Commissioner of Health to determine if a significant health problem is presented by the use of building materials, including U.F. foam insulation, that emit formaldehyde gas. On May 22, 1980, the Commissioner of Health declared that, because of problems of acute toxicity, the use of building materials which give off formaldehyde vapor can be a "significant health problem" under certain circumstances. On June 23, 1980, a temporary rule was proposed which will establish a maximum limit of 0.5 ppm for the air inside newly constructed dwelling units.

(6) On December 18, 1979, the Virginia Department of Health issued a Health Hazard Alert Sheet on the problems of acute toxicity presented by formaldehyde and U.F. foam insulation.

(7) In several state legislatures, bills have been introduced to ban or impose a moratorium on the sale of U.F. foam insulation (Arizona, West Virginia, New Hampshire and Ohio), to set performance requirements limiting formaldehyde emission (California), or to require safety related disclosures (Maryland).

(8) The Canadian government has adopted a temporary ban of further sales of U.F. foam insulation, effective in December 1980, because of the acute and chronic risks of injury associated with the product.

Q. Actions by Other Federal Agencies

(1) The Department of Housing and Urban Development (HUD) has issued a Use of Materials Bulletins (UMB #74, October 13, 1977) for U.F. foam insulation. UMB #74 explains the conditions under which HUD will accept the product and stipulates certain limitations for its use in new home construction.

(2) On May 29, 1980, the Small Business Administration (SBA) informed the Commission that the SBA declined to make small businesses in the U.F. foam insulation industry eligible for financial assistance under the Economic Dislocation Loan Program. SBA determined that the problems effecting the industry are not due to direct governmental actions but were caused by adverse publicity resulting from improper installation of the product by dealers.

(3) On September 25, 1980 the Department of Energy published interim final material and installation standards for U.F. foam insulation (45 FR 63786). These standards would become effective on an interim basis on

February 24, 1981. However, DOE stated in the preamble to the regulation that if significant new information arises, DOE will be able to take whatever action is appropriate, including, if necessary, banning U.F. foam from the Residential Conservation Service Program (45 FR 63787). DOE also stated that its regulations will conform with any legal action taken by the Commission with respect to U.F. foam insulation (45 FR 63787). The DOE regulations include a required notice to consumers that is similar to the notice proposed by the Commission.

R. Conclusion and Proposal

Based on the foregoing information, the Commission proposes to ban U.F. foam insulation.

Accordingly, the Consumer Product Safety Commission proposes to amend Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations, by adding Part 1306, as follows:

PART 1306—BAN OF UREA-FORMALDEHYDE FOAM INSULATION

Sec.

1306.1 Scope and application.
1306.2 Definitions.
1306.3 Banned hazardous product: Urea-formaldehyde foam insulation.
1306.4 Findings.
1306.5 Applications for exemptions.

Authority: Secs. 8, 9, 30(d), Pub. L. 79–573, as amended, 90 Stat. 506 (15 U.S.C. 2057, 2058, 2079(d)).

§ 1306.1 Scope and application.

(a) In this Part 1306, the Consumer Product Safety Commission declares that urea-formaldehyde (U.F.) foam insulation is a banned hazardous product under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058).

(b) This ban applies to U.F. foam insulation that is manufactured or sold for use after (date ranging from 30 to 180 days after issuance of a final ban), and which is a "consumer product" as that term is defined in Section 3(a)(1) of the Consumer Product Safety Act. Accordingly, U.F. foam insulation that is customarily produced or distributed for sale to or for use, consumption, or enjoyment of consumers in or around a household, in schools, churches, or commercial buildings or other public buildings is covered by the regulation.

(c) The Commission has issued this ban because it has found (1) that there is an unreasonable risk of injury due to the toxicity of the formaldehyde gas released from the product, and (2) that no feasible consumer product safety standard under the CPSA would adequately protect the public from this risk.

§ 1306.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this Part 1306.

(b) "Urea-formaldehyde (U.F.) foam insulation", also referred to as formaldehyde based foam insulation, or foamed-in-place insulation, means any cellular plastic thermal insulation material which contains as a component chemical, formaldehyde, formaldehyde polymers, formaldehyde derivatives, or any other chemical from which formaldehyde can be released. This definition does not include the following materials: (1) urethane foam insulation, and (2) sytrene foam insulation.

(c) The "manufacturer of U.F. foam insulation" is the installer who combines the component materials and foams the insulation into its permanent location.

§ 1306.3 Banned hazardous product: Urea-formaldehyde foam insulation

U.F. foam insulation which is manufactured or offered for sale after (date ranging from 30–180 days after issuance of a final ban) is a banned hazardous product.

§ 1306.4 Findings.

(a) *The degree and nature of the risk of injury.* The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is the risk of cancer and illness from acute toxicity. U.F. farm insulation releases formaldehyde gas, which can cause cancer. Consumers who are exposed to formaldehyde gas in buildings insulated with U.F. foam insulation have an increased risk of cancer of approximately one in 10,000. Formaldehyde gas released from U.F. foam insulation can also cause illness from acute toxicity. The most common symptoms of this illness are eye, nose, and throat irritation, persistent cough, respiratory distress, skin irritation, nausea, headaches and dizziness. The range of severity of reported reactions varies from short term discomfort to chronic impairment. Persons with respiratory problems or allergies may suffer more serious reactions, especially persons who are allergic to formaldehyde.

(b) *Products subject to the ban.* U.F. foam insulation is a cellular plastic thermal insulation material that is manufactured at the job-site by mixing two liquid chemicals—resin and a foaming agent and, generally, pressurized air or nitrogen, through a foaming equipment system. The resultant mix has a shaving cream-like consistency and is usually pumped through relatively small holes into the walls of standing structures. After it is in the wall, the product should cure and become firm or self-supporting.

(c) *Need of the public for the products and effects of the rule on their utility, cost, and availability.* U.F. foam insulation is used as a thermal insulating material by the public. Alternative insulation materials are available to adequately meet the need of the public. The ban will remove U.F. foam insulation from the market. The ban will have little or no effect on the cost and availability of substitute insulation products.

(d) *Any means of achieving the objective of the ban while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The Commission believes that there will be minimal disruption to the market for thermal insulation materials as a consequence of the ban, and that no further reduction in adverse effects is feasible by other regulatory options, such as a standard or disclosure requirement for the product, or by changing the effective date.

§ 1306.5 Applications for exemptions

(a) *Purpose and policy.* Interested persons may submit an application for an exemption from this ban. The purpose of this section is to provide procedures and requirements for submitting applications for an exemption.

(b) *Procedural requirements for applications for exemptions.* To be considered an application for an exemption from this ban, a document filed under this section must:

(1) Be mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third Floor, Washington, D.C. 20206.

(2) Be written in the English language.

(3) Contain the name and address of the person applying for an exemption.

(4) Contain an explicit request for an exemption from this ban.

(5) Describe the product for which an exemption is sought, including its complete chemical formulation, and method and equipment for installing the product. Where a submission fails to meet all of the requirements of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the application may be resubmitted when the deficiency is corrected.

(c) *Substantive requirements for applications for exemptions.* To be considered complete, an exemption shall include full and complete test data and analyses demonstrating that:

(1) The procedures used to develop the supporting data should be relied upon by the Commission.

(2) The conditions of the test include all reasonably foreseeable conditions of handling, installation, storage, installation equipment performance, resin uniformity (within and between batches), and response to temperature and humidity effects during the life of the product;

(3) The procedures for manufacturing the product can readily be followed by installers in the field;

(4) The procedures, when followed in the field, produce uniform and consistent results; and

(5) Under none of the conditions described above will the product present a risk of injury associated with the release of formaldehyde gas.

(d) *Advice from the Commission staff concerning applications.* To the extent practicable, the Commission staff will provide applicants with advice in preparing their applications, including the content of applications.

(e) *Applications with insufficient or incomplete information.* If an application is submitted that is not complete and does not explain the reason for the absence of the information, the Commission shall afford the person applying for an exemption a reasonable opportunity to provide additional information. If the required information is not submitted to the Commission, or if the person applying for an exemption does not satisfactorily explain the absence of the information within a reasonable time, the application shall be closed if insufficient or incomplete information has been submitted to enable the Commission to evaluate the merits of the exemption request.

(f) *Trade secrets and other confidential information.* Where an application contains material that the applicant believes should be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552, the applicant shall comply with the requirements of 16 CFR 1015.18, the Commission's regulation under the Freedom of Information Act concerning requests for treatment as exempt material. The Commission shall act upon any request for treatment as exempt material in accordance with the provisions of 16 CFR 1015.18 and 1015.19.

(g) *Granting applications.* Where the Commission determines that an application is justified, the Commission will direct the staff to prepare a written agreement for the signature of the Secretary of the Commission and the person requesting the exemption. After the agreement is signed by both parties, it will be placed in the public file in the Office of the Secretary of the Commission.

(h) *Conditions for exemptions.* The agreement will specify the conditions of the exemption as well as the duration of the exemption. As conditions for an exemption, the Commission may require the applicant to monitor formaldehyde levels. The Commission may also require the applicant to provide assurances that if any future installation of the product covered by the exemption results in the release of formaldehyde gas to which consumers may be exposed, the person who has been granted the exemption will take whatever steps are necessary to ensure that the product does not present a risk of injury to the consumer from exposure to formaldehyde gas. These measures may include removing the insulation from a building or purchasing a consumer's home, as well as providing the consumer with suitable alternate housing during the period in which the consumer could be exposed to formaldehyde gas released from the product. The Commission will periodically monitor installations and compliance with the terms of the agreement.

(i) *Revocation of exemptions.* In the event that the Commission determines that there is not substantial compliance with the agreement, the Commission shall revoke the exemption, after giving the applicant written notice of noncompliance and an opportunity to respond to the allegations in the notice within 10 working days after receipt of the notice.

(j) *Denying applications.* Where the Commission determines that the information presented in the application does not justify an exemption, the application shall be denied, and the applicant notified in writing of the denial, including a brief statement of the reasons for the denial.

(k) *Effect of filing an application.* The filing of an application under this section shall not have the effect of staying the ban as to the product. Therefore, the continued manufacture of the product covered by the ban or offering the product for sale during the Commission's consideration of the application is in violation of the law.

Dated: January 28, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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[FR Doc. 81–4296 Filed 2–4–81; 8:45 am]

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Thursday
February 5, 1981

Part V

Department of Energy

Office of Hearings and Appeals

Application for Exception Filed by 341 Tract Unit of Citronelle Field; Proposed Interim Decisions and Orders

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Application for Exception filed by 341 Tract Unit of Citronelle Field; Proposed Interim Decisions and Orders

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Issuance of a Proposed Decision and Order and Interim Decisions and Orders.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy hereby gives notice of a Proposed Decision and Order and Interim Decisions and Orders issued with respect to an Application for Exception filed by the 341 Tract Unit of the Citronelle Field.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street NW., HG–40 M St., Washington, D.C. 20461, (202) 653–3100.

SUPPLEMENTARY INFORMATION: On December 31, 1980, the Department of Energy issued an Interim Decision and Order to the 341 Tract Unit of the Citronelle Field that implements exception relief on an interim basis, pending the DOE's final determination with respect to an Application for Exception filed by the Citronelle Unit (Case No. DEE–7746). A Proposed Decision and Order was issued in this matter on October 8, 1980, and a first Interim decision and Order was issued on December 15, 1980.

In its exception application, the Citronelle Unit requested relief which would provide the Unit's ownership interest with sufficient funds to finance a miscible fluid displacement enhanced crude oil recovery project. In the October 8 Proposed Decision and Order the DOE determined that due to an anomalous series of events, the working interest owners were unable to receive regulatory benefits from the tertiary incentive program to implement the enhanced recovery project on the Citronelle Unit. The DOE tentatively concluded that exception relief should be granted which would alleviate this gross inequity and provide the working interest owners with a sufficient economic incentive to proceed with the enhanced recovery project.

In the December 15 Interim Decision and Order, the DOE determined that an appropriate mechanism for alleviating the gross inequity experienced by the Citronelle Unit was to allow the Unit to recertify price-controlled crude oil previously produced from the Unit in order to generate $63.8 million in revenues. The DOE implemented this relief mechanism in the December 31 Interim Decision and Order. The effect of this relief is to reduce entitlements benefits to all firms on the Entitlements Notice issued by the DOE on January 27, 1981. As a condition of this interim relief, the Citronelle Unit was required to establish a special interest-bearing escrow account in which all revenues collected pursuant to the Interim Decision and Order were to be placed.

Any person who wishes to contest the findings reached in the October 8 Proposed Decision and Order, the December 15 Interim Decision and Order, and the December 31 Interim Decision and Order and who has not previously been served with copies of these determinations should contact the Office of Hearings and Appeals no later than February 20, 1981. Such persons will be permitted to file briefs in this matter and to participate in a hearing for oral argument. Any person who fails to contact the Office of Hearings and Appeals by February 20, 1981 will have waived his right to challenge the determinations referred to above.

The text of the Proposed Decision and Order and the Interim Decisions and Orders are set forth below.

Issued in Washington, D.C., February 2, 1981.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy
Washington, D.C. 20461

October 8, 1980.

Proposed Decision and Order of the Department of Energy

Application for Exception

Name of Petitioner: The 341 Tract Unit of the Citronelle Field
Date of Filing: August 8, 1979
Case Number: DEE–7746

On August 8, 1979, the Unit Manager of the 341 Tract Unit of the Citronelle Field (Citronelle) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, the petitioner requests that, effective June 1, 1979, the working interest owners of Citronelle be permitted to sell the crude oil produced from the Citronelle Field at world market prices in order to accumulate sufficient funds to finance a teritiary enhanced recovery project. On October 29, 1979, a hearing was held to afford the applicant an opportunity to make an oral presentation in support of the exception request. Citronelle's final submission of information in this proceeding was received on June 19, 1980.

The 341 Tract Unit is located in Mobile County, Alabama. The Unit Manager operates Citronelle on behalf of more than 850 working interest owners. The applicant is therefore a "producer" as that term is defined in 10 C.F.R. § 212.31 and is subject to the provisions of 10 C.F.R., Part 212, Subpart D, which govern the first sale price of domestic crude oil.

According to the present Application, the proposed tertiary project for the Citronelle Field site is a miscible fluid recovery program. The program, if completed successfully, would result in the injection of significant quantities of carbon dioxide (CO_2) into the reservoirs located beneath the Citronelle Field in order to recover a greater portion of the underlying crude oil reserves than would be possible under the present method of extraction. The Manager estimates that the implementation of this project would require expenditures of approximately $74 million. (*1*) Based upon a study of the geologic characteristics of the Field and comparisions with other projects implemented under similar conditions, the applicant estimates that the proposed project would eventually yield 30 to 60 million barrels of domestic crude oil which would not otherwise be produced.

I. Regulatory Background

Effective February 1, 1976, the provisions of 10 C.F.R., Part 212, Subpart D were amended in order to implement the crude oil pricing policies which Congress set forth in Section 401 of the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94–163 (December 22, 1975). *See* Fed. Energy Guidelines at ¶10,850. The amendments which were promulgated adopted a two tier pricing mechanism under which old or lower tier crude oil must be sold pursuant to the lower tier ceiling price rule set forth at 10 C.F.R § 212.73, while new or upper tier curde oil may be sold pursuant to the upper tier ceiling price rule set forth at 10 C.F.R. § 212.74. With respect to months commencing after May 31, 1979, the DOE regulations define "new crude oil" in part as "the total number of barrels of domestic crude oil produced and sold in a specific month, less (1) the base production control level for that month, and less (2) the current cumulative deficiency since June 1, 1979." Section 212.72 defines the term "property" as follows: (*2*)

"'Property' means the right to produce domestic crude oil, which arises from a lease or from a fee interest. A producer may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation."

The base production control level (BPCL) and current cumulative deficiency for a given property are generally determined in relation to the production from the property concerned during the 1972 calendar year. *See* 10 C.F.R. § 212.72

The pricing regulations set forth in Part 212, Subpart D contain a number of provisions for the release of lower tier crude oil to upper tier status and the release of upper tier crude oil to stripper, or decontrolled status. For

example, under general provisions for the phased decontrol of crude oil pricing, producers may release a specified portion of upper tier production to market price levels in each successive month. *See* 44 Fed. Reg. 66186 (November 19, 1979). In addition, in order to provide incentives for production from properties with relatively low production levels and high operating costs, production from a property classified as a "stripper well property" is exempt from DOE pricing restrictions, and production from a "marginal property" may be sold in relatively greater proportion at upper tier or market prices as a result of an adjustment to such a property's BPCL. *See* 10 C.F.R. §§ 212.54 and 212.72. Generally, the DOE pricing regulations provide that properties qualifying as "marginal" under the definition set forth at 10 C.F.R. 212.72 may utilize a BPCL equal to zero for months subsequent to December 31, 1979. The actual reduction to zero of the BPCLs for marginal properties was however delayed to April 1, 1980 as a result of Executive Order No. 12187, 45 Fed. Reg. 3 (January 2, 1980), and Executive Order No. 12209, 45 Fed. Reg. 26311 (April 18, 1980). As indicated by the definition of "new crude oil" set forth above, a reduction in a property's BPCL will generally increase the volume of crude oil subject to upper tier and market prices under the provisions of 10 C.F.R. Part 212.

The bulk of Citronelle's crude oil production has been derived from a completion depth below the 10,000 foot level. Under the marginal property schedule set forth in § 212.72, as amended on July 7, 1980, Citronelle's crude oil production therefore qualifies as production from a marginal property. *See* 45 Fed. Reg. 47406 (July 14, 1980).

An additional regulatory program applicable to the present proceeding is set forth at 10 C.F.R. § 212.78., 44 Fed. Reg. 51148 (August 30, 1979). These regulations were promulgated in order to encourage the development of tertiary enhanced recovery programs for crude oil properties. In order to reduce the reliance of the United States on imported crude oil, on September 1, 1978, the DOE promulgated the regulations at Section 212.78, 43 Fed. Reg. 33679 (August 1, 1978), as amended effective October 1, 1979, 44 Fed. Reg. 51148 (August 30, 1979), generally to permit producers of crude oil to sell all of the incremental crude oil which is produced from a qualified tertiary recovery project at uncontrolled price levels (the tertiary incremental program). In addition, in recognition of the substantial risk and considerable initial expenditures associated with a tertiary recovery project, Section 212.78 provides additional revenues to crude oil producers as an incentive for tertiary recovery projects (the tertiary incentive program). Under the tertiary incentive program a crude oil producer is permitted to sell at uncontrolled price levels certain volumes of non-incremental production, i.e., crude oil which is currently being produced and would be produced without tertiary recovery. This permits the producer to receive "front-end" money with respect to a tertiary project which has been undertaken. *See* Regulatory Preamble to Section 212.78, CCH *Federal Energy Guidelines*, Vol. 4, ¶ 40,460. The incentive program generally provides that beginning on January 1, 1980, a producer with an interest in a property on which a tertiary recovery project has been undertaken who contributes to that tertiary project may begin selling price-controlled crude oil at market prices to the extend necessary to recoup additional revenues equal to 75 percent of certain expenditures involved in the project. Producers are permitted to recover through "tertiary incentive revenue" those expenditures which are defined in 10 C.F.R. § 212.78(c) as "recoupable allowed expenses." Section 212.78(c) limits the total amount of tertiary incentive revenue which a producer may accumulate through the sale of price controlled crude oil at exempt price levels to $20 million for any one property. As stated above, all of the "incemental crude oil" produced from a property through tertiary recovery may be sold at market price levels. *See* 10 C.F.R. § 212.78 (a), (c).

II. The Applicant's Contentions

In its exception application, Citronelle states that exception relief is necessary to permit it to conduct a tertiary recovery project on the Citronelle Field. In the absence of exception relief, Citronelle states that it will be unable to pursue a full tertiary program and that as a result as much as 30 to 60 million barrels of crude oil which could be extracted through tertiary recovery will not be produced. According to the application, unless exception relief is granted permitting it to sell all of the 341 Tract crude oil production at market price levels beginning June 1, 1979, the current and projected revenues of the property will not be sufficient to enable the working interest owners to undertake a full tertiary recovery program. With respect to financing the tertiary recovery project either internally or through borrowings, Citronelle points out that the ownership of the Unit is held by more than 850 small and independent working interest owners and that it is simply not possible to obtain capital or the consent to borrow from the necessary 75 percent of these working interests. The firm notes in this regard that its Unitization and Unit Operating Agreements provide that the portion of the working interest owners who agree to borrow funds must accept the full liability associated with the loan. In addition, Citronelle points out that merely obtaining the consent necessary to form the Citronelle Unit in the first place required a period of four years. Even if it were possible to obtain the agreement of 75 percent of the working interests of the Unit, Citronelle maintains that it would require such an extended period of time that the production of the Unit would not then be sufficient to finance the full tertiary project. *See* Official Transcript of October 29, 1979 Hearing (hereinafter cited as Tr.) at 9–12.

III. Analysis

In its initial exception application Citronelle requested relief which would permit it to establish world market prices for all of its crude oil production effective June 1, 1979. According to Citronelle, this relief was necessary to permit it to accumulate the $60 million which it claimed was necessary to permit the firm to undertake a tertiary recovery project on the Citronelle Field. However, since the filing of this initial application, several events have occurred which affect Citronelle's financial position.

In its initial application, Citronelle assumed that it would received no financial benefit from the marginal property provisions of 10 C.F.R. § 212.72. However, as previously noted, on July 7, 1980 DOE amended the schedule which determines whether a particular property may qualify as a "marginal" property. As a result of this amendment, Citronelle does have production from a marginal property and has indicated that it will received additional revenues of approximately $26.6 million for this production, net of severence taxes and base royalty payments.

In addition, Citronelle has certified three tertiary recovery projects for the 341 Tract Unit. *See* 10 C.F.R. § 212.78(d). According to the Citronelle submissions, these projects correspond to three properties which the firm plans to distinguish under the terms of 10 C.F.R. § 212.72. (*3*) Under these circumstances, it would appear that Citronelle may recoup up to $60 million in tertiary incentive revenues.

As result of the events described above, the crude oil sales revenues available to Citronelle for its tertiary recovery program, absent any exception relief, have increased substantially. The present submission now amounts to a request that beginning with June 1, 1979, Citronelle be permitted to receive market price levels for the remaining volumes of crude oil which were produced and sold at controlled price levels. This exception in turn has two aspects. First, that with respect to crude oil sold during the period June 1, 1979 through December 31, 1979, Citronelle be permitted to charge market prices for crude oil which was sold at controlled prices, and second, that with respect to crude oil sold since December 31, 1979 the firm be permitted to price all of its crude oil production as if it had been engaged in tertiary production since January 1, 1980. This latter aspect of the Citronelle petition would permit the firm to begin to accrue tertiary incentive revenues as of January 1, 1980, even though the firm had not incurred and paid any expenses with respect to a tertiary project on that date. It is important to note that Citronelle could not have begun its tertiary program on or before January 1, 1980 because the additional revenues now available to the firm under the amended marginal property provisions of § 212.72 were not available until July 7, 1980. Even though the amended provisions were made effective June 1, 1979 Citronelle could not have utilized the funds prior to July 1980 and thus was not financially in a position to avail itself of the benefits and incentives of the tertiary incentive provisions of § 212.78 as of January 1, 1980. (*4*)

In a number of prior Decisions, exception relief to permit a crude oil producer to increase its prices has been approved based upon a showing by a producer that it required an additional economic incentive in order to implement a crude oil production investment. *See, e.g. Phillips Petroleum Co.*, 4 DOE ¶ 81,071 (1979); *Maurice L. Brown Co.*, 3 DOE ¶ 81,075 (1979); *Montana Petroleum Co.*, 3

DOE ¶ 81,076 (1979). In these cases we concluded that the crude oil price control program administered by the DOE was frustrating the attainment of increased domestic energy production. Accordingly, exception relief was granted to permit the sale of certain volumes of crude oil at prices in excess of those permitted by 10 CFR, Part 212, Subpart, D. The level of exception relief in recent proceedings of this type has generally been structured to provide a 23 percent pre-tax rate of return on a producer's investment—although a higher rate of return may be warranted where the risk factors involved in a particular project justify the use of a different rate. *See Phillips Petroleum Co.*, 2 DOE ¶ 82,583 (1978); *Maurice L. Brown Co.*, 3 DOE ¶ 81,075 (1979).

In this proceeding Citronelle has not submitted any calculation of a projected rate of return on its tertiary project investment. Furthermore, Citronelle's testimony in hearings held in connection with the marginal property rule suggests that the firm's ultimate rate of return in the absence of exception relief might be substantial. *See* Transcript of May 13, 1980 Hearing in the matter of "Production Incentives for Marginal Properties," Docket No. ERA-R-78-16B, at 54. In any event, in the absence of any rate of return data, we could not conclude that relief under the precedent cited above is warranted.

However, the magnitude of the proposed Citronelle tertiary investment and the very substantial benefits to the nation of a successful tertiary project yielding as much as 30 to 60 million incremental barrels of domestic crude oil lead us to conclude that some further consideration is warranted in the present case.

As previously discussed, one aspect of exception relief in this case would permit Citronelle, effective January 1, 1980, to sell sufficient volumes of the 341 Tract price-controlled crude oil at market price levels in order to accumulate the amount of tertiary incentive revenues permitted under the provisions of 10 CFR § 212.78. Under § 212.78 these monies would be devoted to meeting qualified expenses related to the tertiary recovery project. After considering the record in this proceeding and the combination of events which precluded Citronelle's beginning the tertiary project at a time when it could take full advantage of the January 1, 1980 effective date of the provisions of 10 CFR § 212.78(a)(2), we have concluded that this relief should be granted.

Under § 212.78(a)(2), a producer engaged in a tertiary recovery program could, beginning with January 1, 1980, sell sufficient volumes of price controlled crude oil production to recover a maximum of 75 percent of the qualified expenses associated with a tertiary recovery project. Citronelle could not avail itself of the incentives offered by these provisions on January 1, 1980, however, since it did not have the capital available to begin the tertiary project.

Shortly after the marginal well rule provisions were amended on July 7, 1980, to include wells of the depth operating on the Citronelle Unit, the firm began tertiary operations. However, since the provisions of 10 CFR § 212.78(a)(2) do not permit tertiary incentive revenues to be earned until qualified expenditures have actually been made, Citronelle was precluded from earning such revenues with respect to its crude oil production beginning January 1, 1980 and continuing until approximately September 1980. Had the Citronelle production wells been included within the scope of the initial marginal well rule which was promulgated on June 1, 1979, it is reasonable to assume that Citronelle would have at that time utilized the additional revenues for the project as it began to do in August 1980. We emphasize in this regard that as soon as the additional revenues which Citronelle received as a result of the July 7, 1980 amendment of the provisions of § 212.72 became available to Citronelle, the applicant commenced the tertiary recovery project. However, because of the passage of time, and the fact that these marginal well revenues were not available for the tertiary project until after July 7, 1980, Citronelle was effectively denied access to the incentive provisions of § 212.78 between January 1, 1980 and approximately September 1, 1980. In view of the important goals of the tertiary incentive regulations and the obvious benefits of the Citronelle tertiary recovery project, we have concluded that this combination of events has produced a gross inequity which warrants exception relief. Consequently, we will grant an exception for the single purpose of encouraging and expediting this project and to permit Citronelle to certify production as tertiary incentive crude oil effective January 1, 1980, the date upon which producers were generally permitted to begin making such certifications under the tertiary incentive program.

The Citronelle exception request, if granted, would also permit the applicant to recertify and sell at market price levels all of the price controlled crude oil produced and sold from the Unit during the period June 1, 1979 through December 31, 1979. This exception relief would permit Citronelle to receive an additional $15.9 million in revenues which the applicant maintains is necessary to the success of the tertiary recovery project. After fully considering the record in the matter, we are unable to conclude that this exception relief is warranted.

The amended provisions of the marginal well rule will make available to Citronelle approximately $26.6 million in revenues which Citronelle may utilize in connection with its tertiary recovery project. In addition, the exception relief found to be appropriate in this proceeding should enable Citronelle to accumulate a total of $22.5 million in tertiary incentive revenues. As a result it appears that Citronelle will have available for its tertiary recovery program as much as $49.1 million in incremental revenues from the sale of lower and upper tier crude oil at market price levels. Thus, through September 30, 1981, Citronelle should received a total of $49.1 million in revenues which could not have been anticipated when the firm's initial exception request was filed.

During the course of this proceeding, Citronelle has asserted that its tertiary program may require an initial investment of as little as $33.5 million to begin recovery from a first phase of the project and as much as $74.1 million for what appears to be the full program. The $74.1 million cost projection includes a factor of 10 percent, or $6.7 million, for "miscellaneous and unanticipated expenses." Citronelle has provided no basis whatsoever for this very substantial miscellaneous and unanticipated expenses allowance. After eliminating this 10 percent allowance factor, it appears that Citronelle's maximum cost estimate for the tertiary project is $67.4 million. According to the firm's expenditure projections, however, only $46 million of this amount will be expended prior to 1982. Since it appears that as of September 30, 1981, the date on which crude oil price controls are scheduled to expire, Citronelle will have received as much as $49.1 million in incremental revenues available for use in the tertiary project, we cannot conclude that exception relief to provide Citronelle with an additional $15.9 million is either necessary or warranted.

Citronelle has pointed out in this proceeding that the royalty interest payments which must be met by its individual working interest owners vary from 12.5 percent to 47 percent.(5) Citronelle asserts that it must set aside a portion of the marginal property revenues of $26.6 million sufficient for the overall working interest to meet an average royalty burden of 37.5 percent which is actually borne by only 28 percent of the working interest owners. According to the applicant, this action is necessary under the unitization agreement and to protect the working interests which are obliged to meet the higher royalty interest payments. The Citronelle filings indicate that approximately 14 percent or $3.7 million of the incremental marginal property revenues would be required to defray the average 37.5 percent royalty interest payments. This would leave approximately $22.9 million, or 86 percent for use in the tertiary recovery project. However, Citronelle maintains that it should not have to devote more than 41 percent of the incremental revenues to the tertiary project and that the balance of 59 percent should be utilized to cover royalty payments and to compensate the working interests. Thus, Citronelle claims that it will only be able to devote $10.9 million of the incremental marginal property revenues to the tertiary project rather than the $22.9 million which would be available after meeting the 37.5 percent average royalty interest. It appears that the difference of $12 million would be remitted to the working interests. As a result, Citronelle maintains that it will have only $33.4 million, including tertiary incentive revenues, to devote to its project, rather than the sum of $49.1 million specified above.

Even if we were to agree that Citronelle must use $3.7 million of the revenues which it receives under the marginal well rule to satisfy royalty interest payments, the payment of an additional $12 million of these revenues to the working interests certainly does not form the basis for exception relief. Under the logic of the Citronelle petition, the necessity for the additional exception relief arises as a result of additional payments which Citronelle will make to the working interests. No justification has been provided as to why Citronelle should pay the $12

million to the working interests instead of using the funds in the tertiary project. Thus there is no apparent justification for this aspect of the Citronelle exception request.

Nor are we convinced by the claim that Citronelle must compensate all of the working interests of the Unit at a rate of 37.5 percent simply because 28 percent of the working interest ownership is obliged to undertake royalty payments that average 37.5 percent. Certainly, we understand that provisions of the Citronelle unitization agreement as well as the number and composition of the working interests of the project may pose some difficulties to Citronelle's retaining and utilizing for the tertiary recovery project the maximum amount of the marginal well incremental revenues available to it. However, these alleged difficulties are internal ones which may be resolved by Citronelle through agreements with the royalty and working interests. We emphasize in this regard that Citronelle itself apparently feels that the tertiary recovery program offers substantial investment returns since it has in fact undertaken the project. *See also* Transcript of May 13, 1980 Hearing in the Matter of "Production Incentives for Marginal Properties," Docket No. ERA-R-78-18B, at 54. Therefore, a substantial incentive exists for Citronelle, the working interest owners and the royalty interest owners to reach an accommodation. Unless the difficulties in reaching accommodation were demonstrated to be both insurmountable as well as posing an effective barrier to a successful tertiary project, resolution of these types of internal difficulties through the exceptions process would not be appropriate. The record does not make this type of showing. In any event, it appears that Citronelle is able to devote 14 percent of the marginal property revenues to permit $37.5 percent royalty interest payments and still retain $45.4 million ($49.1–$3.7), or substantially all of the $46 million which it indicates the project will require prior to the end of 1981. Therefore, the difficulties which Citronelle alleges will result if it does not compensate its working interests at a higher rate do not appear to be relevant to the present request for exception relief.

As discussed above, we have determined that Citronelle should be permitted to certify production as tertiary incentive crude oil effective January 1, 1980, the date upon which qualified producers were generally permitted to begin making such certifications under the tertiary incentive program. Citronelle is otherwise subject to all requirements of 10 C.F.R. § 212.78.

It is therefore ordered that:

(1) The Application for Exception filed by the 341 Tract Unit of the Citronelle Field (Citronelle) is hereby granted as set forth below.

(2) Notwithstanding the provisions of 10 C.F.R., §§ 212.72 or 212.131, with respect to Citronelle's first sales of crude oil made during the period from January 1, 1980 until September 30, 1981, Citronelle may certify as "tertiary incentive crude oil" any of this crude oil as necessary to recover "recoupable allowed expenses" pursuant to the provisions of 10 C.F.R. § 212.78 with respect to the tertiary recovery project undertaken at the 341 Tract Unit of the Citronelle Field in Mobile County, Alabama.

(3) For purposes of this Order, the purchase of the crude oil referred to in Paragraph (2) above shall be deemed to be the "first purchase" of "tertiary incentive" crude oil for the sole purpose of the Domestic Crude Oil Purchases Monthly Report, Form ERA-182.

(4) This exception is based upon the presumed validity of statements, allegations, and documentary material submitted by the applicant. This exception may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

(5) To the extent that the full amount of exception relief has not been granted as requested, an Appeal from those portions of this Decision which deny in part the relief requested may be filed by any person who is aggrieved or adversely affected by the denial of exception relief. Such Appeal shall be filed with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 1.40. 43 Fed. Reg. 35907 (1978).

(6) All other portions of this Decision constitute final Orders of the Department of Energy of which any aggrieved party may seek judicial review.

References

1. In its initial Application for Exception, Citronelle estimates the costs for its tertiary recovery project to be approximately $60 million. This estimate included $28 million in capital expenditures and an additional $32 million to be committed to a contract for the procurement of CO_2. However, on June 19, 1980, Citronelle submitted a more detailed schedule of the implementation costs for its tertiary recovery project which indicates total capital expenditures for the project to be approximately $74 million. While part of the discrepancy between the $60 million and $74 million figures is generally explained by a change in the method by which Citronelle plans to obtain CO_2 for its project, the firm has also revised upward a number of its initial estimates for individual project expenditures. According to the more recent Citronelle estimates, its proposed tertiary project will involve the following expenditures:

Drill and complete 6 CO_2 injection wells	$3,600,000
Drill and complete 2 CO_2 production wells	11,000,000
Construct CO_2 pipeline	27,000,000
Workover production wells	21,300,000
Revamp production facilities	1,240,000
Lay CO_2 injection lines	350,000
Install compressors, motors, pumps and related injection equipment	1,925,000
Engineering	1,036,000
Allowance for miscellaneous and unanticipated expenses	6,700,000
Total (exclusive of project operation and maintenance)	74,151,000

2. For a more complete exposition of the DOE's regulatory definition of "property," the applicable rulings and regulatory preambles issued by the DOE should be consulted. *See, e.g.*, ruling 1977-2, Fed. Energy Guidelines at ¶ 16,066. *See also* Ruling 1980-3, Fed. Energy Guidelines at ¶ 16,077.

3. We are not in the present proceeding making any determination regarding the validity of Citronelle's proposed property designation.

4. The marginal property amendment made clear that, despite its retroactive effective date to June 1979, producers could not back certify more than the normal two months. *See* 10 CFR § 212.72. Citronelle, however, under the provisions of a court order issued by the U.S. District Court for the Eastern District of Texas on August 24, 1979, was able to certify its crude oil at a price level applicable to a marginal property for all of its crude oil production subsequent to June 1, 1979. The terms of the District Court Order provided that Citronelle place the incremental proceeds from these increased price levels into an escrow account. Since no back-certification was therefore involved, the escrowed funds became available to Citronelle after the July 7, 1980 amendment of the marginal property schedule set forth at 10 CFR § 212.72.

5. It should be noted that under the provisions of an Alabama State Law, Citronelle's overriding royalty interest owners are in general required to contribute their proportionate share of the capital and operating costs of a tertiary recovery project approved by the State. *See* 1978 Amendment to § 9-17-83(7), Code of Alabama 1975.

December 15, 1980.

Interim Decision and Order of the Department of Energy

Name of Petitioner: The 341 Tract Unit of the Citronelle Field
Date of Filing: October 31, 1980
Case Number: BEN-0071

On October 31, 1980, the 341 Tract Unit of the Citronelle Field (the Citronelle Unit) filed an Application for Interim Relief with the Office of Hearings and Appeals of the Department of Energy. On October 8, 1980, the DOE had issued a proposed Decision and Order in which it tentatively determined that exception relief should be approved that would permit the Citronelle Unit to sell all the crude oil produced from the unit since January 1, 1980 at market price levels. The present request, if granted, would permit the Citronelle Unit to implement the relief set forth in the Proposed Decision and Order on an interim basis pending the issuance of a final Decision and Order on its Application for Exception. The Citronelle Unit further requests that the relief be extended to all crude oil produced from the Citronelle Unit since May 31, 1979.

I. Background

In the Proposed Decision and Order, the DOE determined that due to an anomalous series of events, the working interest owners were unable to implement an enhanced crude oil recovery project on the Citronelle Unit and, as a result, could not receive any of the regulatory benefits of the tertiary incentive program until September 1980. *See* 10 CFR § 212.78. Accordingly, the DOE determined that exception relief was warranted to permit the working interest owners access to the teriary incentive program on the date they would have been eligible to utilize the provisions of that program had the anomalous events not occurred, *viz.*, January 1, 1980. Exception relief was tentatively

approved which would permit the working interest owners to recertify as "tertiary incentive crude oil" all the crude oil produced from the unit since January 1, 1980. The Citronelle Unit would be required, however, to comply with all other provisions of that program. In the Proposed Decision, the DOE found that such a level of exception relief should provide the working interest owners with a sufficient economic incentive to agree to undertake a miscible fluid displacement project on the Citronelle Unit. The Proposed Decision and Order includes a detailed discussion of the basis for the determination that exception relief should be approved for the Citronelle Unit.

In its initial request, the Citronelle Unit indicated that exception relief permitting the Unit Manager to sell all the crude oil produced from the unit since May 31, 1970 at market price levels was necessary to provide the working interest owners with the appropriate incentive to agree to undertake the project. The Unit Manager maintained that because the working interest ownership is held by over 850 small and independent owners, it would be inordinately difficult to obtain the requisite 75 percent ownership interest participation that is needed to undertake the project unless substantial financial incentives are provided. The Unit Manager stated further that without the participation of the requisite ownership interest it would be impossible to internally generate the requisite funds or borrow capital from an outside lending institution. In a supplemental submission, the Unit Manager indicated that it would need approximately $60 million in order to fund the first several years of the enhanced recovery project. The Unit Manager asserted that unless it was permitted to finance the project by accumulating a fund of $60 million which would be generated by moving price-controlled crude oil to market price levels, the project would not be undertaken and the nation would be deprived of between 30 and 60 millon barrels of recoverable crude oil.

In the present submission, the Citronelle Unit states that the relief tentatively approved in the proposed Decision is insufficient to induce the working interest owners to participate in the project. The Citronelle Unit claims that the DOE did not take into consideration the effects of the windfall profits tax or individual income tax considerations in calculating the amount of revenues available through the tertiary incentive program. As a result of the omission of these tax obligations, it claims the working interest owners will not have $60 million in capital available to finance the project. In addition, the Citronelle Unit maintains that it should not be limited to the generally applicable provisions of the tertiary incentive program which require that expenses be incurred prior to being recouped. The Unit Manager argues that all revenues generated by recertifying the non-tertiary crude oil production from the unit should instead be placed in an escrow account and disbursed by the DOE when valid cost estimates are submitted by the Citronelle Unit. The Citronelle Unit strongly contends that due to the phased decontrol of crude oil and individual income tax considerations for the working interest owners for calendar year 1980, interim exception relief must be approved immediately or there can never again be a sufficient incentive to induce the working interest owners to agree to participate in the project.

II. Analysis

It is important to emphasize at the outset that tertiary enhanced recovery projects are vital to meeting the energy requirements of the nation and are strongly encouraged by the DOE. *Benson-Montin-Greer Drilling Co.*, 6 DOE ¶ 81,220 (1980). After a review of the record in this matter, we have concluded that interim exception relief is warranted. Interim exception relief has frequently been approved in cases involving requests for relief from the crude oil ceiling price regulations. *See, e.g., Chevron U.S.A., Inc.*, 4 DOE ¶ 82,508 (1979); *Pennzoil Producing Co.* 3 DOE ¶ 82,506 (1979); *Commonwealth Oil Refining Co.*, 2 DOE ¶ 82,523 (1978).

We are unable to conclude at this stage in the proceeding that the full amount of exception relief requested by the Citronelle Unit is necessary or appropriate at this time. We have determined, however, that interest considerations would be served by approving on an interim basis the relief approved in the October 8, 1980 Proposed Decision.

The working interest owners have presented substantial evidence to demonstrate that the project they propose to initiate will contribute significantly to the energy resources available to the nation. Due to the phased decontrol of crude oil, it appears that unless the project is implemented in the near future, the working interest owners' incentives may be reduced to those available under normal market situations. That situation is attributable to the fact that once crude oil is fully decontrolled, there will no longer be any price-controlled crude oil produced from the unit which could be released to market price levels thereby generating an incremental benefit for undertaking the project.[1] We have concluded that public interest considerations strongly favor the approval of an interim exception. The applicant has therefore on balance met the criteria for the approval of interim exception relief.[1] We have also determined that the provisions of the proposed Decision should be slightly modified so that the Citronelle Unit will have more immediate access to the exception relief approved in the Proposed Order. The regulations permit "tertiary incentive crude oil" to be sold at market price levels only when qualified expenses for the teritary project have been incurred. The exception relief tentatively approved in the Proposed Decisions which designated additional quantities of crude oil eligible to be classified as "tertiary incentive crude oil" would in all likelihood be implemented over an extended period of time. The delays inherent in this process would, therefore, reduce the incentive necessary to induce the working interest owners to embark upon the project. To provide the ownership interest with a more immediate financial incentive, the Unit Manager of the Citronelle Unit will therefore be permitted to immediately recertify all the unit's production from January 1, 1980 through September 30, 1980 as "tertiary incentive crude oil." All funds generated by this process will then be placed in a suitable interest-bearing escrow account and shall be available for the recovery of qualified tertiary expenditures. The Citronelle Unit will be subject, however, to all other provisions of the tertiary incentive program including the definition of "recoupable allowable expenses" and the program's certification requirements. While the revenues generated under this form of interim exception relief will not provide the Citronelle Unit with the full amount of up-front financing that it claims is necessary as an inducement to undertake the project, we anticipate that it should generate approximately $22.5 million of additional revenues by moving otherwise price-controlled crude oil to market price levels. That amount of incremental funds should help ensure that the project requires no additional financing during the first several years of its operation.

We have also determined that the interim relief extended to the Citronelle Unit should be implemented somewhat differently with respect to the purchasers of the crude oil than the usual recertification method permitted under the regulatory program. The purchasers and ultimately the refiners of the recertified crude oil generally would be permitted to certify as tertiary incentive crude oil in their current month's crude oil receipts, a quantity of otherwise price-controlled crude oil equivalent to the amount of crude oil recertified from the Citronelle Unit. In the present case, however, this could lead to excessive benefits to the refiners of the recertified crude oil since the value of an entitlement and the Deemed Old Oil Supply Ratio have changed since January 1980 in a manner that will produce entitlements revenues to those refiners that do not correspond to the amount of revenues to be received by the Citronelle Unit for the recertified crude oil. For example, the Gulf Oil Company (Gulf) as the purchaser and refiner of approximately 98 percent of the production from the Citronelle Unit would receive substantial benefits if it were now permitted to recertify as "tertiary incentive crude oil" what otherwise would be considered as price-controlled crude oil in its crude oil receipts for the current month. Therefore, we have determined that the purchasers of the crude oil shall not be permitted to recertify the crude oil involved in this proceeding as "tertiary incentive crude oil." Instead each ultimate purchaser shall report to the Economic Regulatory Administration the payments it has made to the Citronelle Unit as a result of the approval of the interim exception relief previously discussed, and the crude oil purchasers will then be compensated for those payments to the Citronelle Unit by an exact dollar adjustment to the next Entitlements Notice. In the event there are intermediate purchasers of the crude oil to be recertified, the Citronelle Unit will be permitted to recertify the crude oil directly to the ultimate refiner or purchaser.

We recognize that the exception relief discussed above does not provide the full measure of financing that the Citronelle Unit claims is necessary to undertake the project.[2]

In view of the stated difficulties of undertaking the project, we are, however, willing to consider the approval of an alternative method for financing the entire cost of the enhanced recovery program which would enable the Citronelle Unit to immediately implement the project and have access to funds necessary to finance the tertiary program. The alternative form of relief is described below.

III. Alternate Form of Relief

In its exception application and its petition for interim relief, the citronelle Unit asserts that the most apropriate form of exeption relief would permit it to finance the project with the incremental revenues realized by selling at market price levels all the otherwise price-controlled crude oil produced from the Citronelle Unit. In its submissions, the Citronelle Unit maintains that the unit is unable to generate either the internal or external financing necessary to fund the project. In the absence of the necessary capital acquired through the approval of exception relief, the Citronelle Unit claims it will be impossible to obtain the requisite consent of 75 percent of the working interest ownership to undertake the project. The Citronelle Unit maintains that unless a sufficient portion of the ownership interest agree to participate in the project, the Citronelle Unit will not be able to take advantage of the regulatory benefits accorded through the tertiary recovery regulations.

Since the Citronelle Unit's stated difficulty in attracting financing appears to be the major obstacle preventing the project from being undertaken, we have determined that the Citronelle Unit should have access to an alternate form of interim relief. We believe that the alternate form of relief discussed below should provide the ownership interests with the incentive to participate in the project, and at the same time achieve the regulatory objectives of the tertiary recovery program. A review of the record indicates that a maximum of $60 million (after payment of any windfall profits tax liabilities) would be necessary to fund the project during the next several years. Therefore, we are proposing to allow the Citronelle Unit to fund the project by raising through recertification of the price-controlled crude oil produced from the unit $60 million in net revenues, provided that the necessary ownership interest agree to undertake the proposed project. In addition, since this form of interim relief alleviates in full the inequity found to exist (*viz*, the lack of a sufficient incentive to induce the working ownership to agree to obtain financing), the ownership interest of the Citronelle Unit will be required as a condition of the relief to waive access to any of the funding provisions of the tertiary incentive program as set forth in 10 C.F.R. § 212.78. This election will be irrevocable at the time the Citronelle Unit chooses whether to accept this alternate form of interim relief. In addition, repayment of any borrowed funds will be required if the enhanced recovery project is successful.

The effect of this exception relief will be to provide the ownership interest with the full amount of additional funds necessary to undertake and complete the enhanced recovery project on the Citronelle Field. These expenditures will in effect be funded by increasing the entitlements burden of all domestic refiners by a *pro rata* amount. In turn, all ultimate purchasers of price-controlled petroleum products in the United States could be charged marginally higher prices. We believe such an amount of interim relief is justified in the present case in order to induce the ownership interests to undertake the project since the incremental amounts of crude oil to be produced are very substantial and would significantly enhance domestic energy resources and our ability to reduce imports of crude oil. However, according to the data submitted in this proceeding, the financial benefits that the unit will obtain in the long-run from undertaking the project are expected to be far in excess of the initial investment required. While the Citronelle Unit should be provided with appropriate economic incentives necessary to proceed, it would not be in the public interest to approve excessive exception relief. Therefore, to prevent the working interest owners from realizing windfall benefits from exception relief, the capital provided by this Decision should be repaid in the event the project is a commercial success. Otherwise, the ultimate consumers of petroleum products in the United States would be extending to the Citronelle Unit a sum of money without any repayment obligation, thereby alleviating all risks associated with undertaking the project. Accordingly, we have determined that in the event that the project is a commercial success, the funds provided to the Citronelle Unit as a result of this Decision will be repaid with interest at the prime rate compounded yearly. If the enhanced recovery project on the Citronelle Unit is successful, the repayment of any borrowed funds should not be a significant burden to the owners of the unit. In no event, however shall the repayment required of any interest owner exceed 50 percent of the revenues received by that interest owner as a result of the investments made by the use of the funds received pursuant to this Order.

In order to implement the alternate form of relief set forth above, the Unit Manager will be permitted to recertify at market price levels a sufficient quantity of prior production from the unit that was sold at price-controlled levels in order to recoup $60 million in net revenues. The relief will be implemented by recertifying the crude oil directly to the Gulf Oil Company, the principal ultimate purchaser of the crude oil. Gulf shall certify to the DOE the amount of revenues to be paid to the Citronelle Unit and that firm will then receive entitlements that correspond to revenues to be remitted to the unit. The incremental payments remitted by the crude oil purchaser to the Citronelle Unit shall then be placed in a special interest-bearing escrow account that will be administered by an appointed trustee. No subsequent recertification of the crude oil by the purchaser will be permitted. The provisions of the Proposed Ordering Paragraphs are set forth in the Appendix to this Decision. If the Citronelle Unit elects this alternate form of exception relief, it shall notify the Office of Hearings and Appeals within ten working days of the date of this Order. The DOE will then promptly issue a Supplemental Decision and Order.

It is therefore ordered that:

(1) The provisions of this Order are effective immediately unless the applicant notifies the Office of Hearings and Appeals within ten (10) days of the date of issuance of this Order of its intention to accept the relief set forth in the Appendix to this Decision.

(2) Notwithstanding the provisions of 10 CFR Part 212, Subpart D, with respect to the first sale of crude oil produced from the Citronelle Unit during the period January 1, 1980 through September 30, 1980, the Unit Manager of the Citronelle Unit may, within thirty (30) days of the date of this Decision and Order sell all production at market price levels and recertify the crude oil as "tertiary incentive crude oil." The Citronelle Unit shall be subject to all the conditions set forth in Paragraphs (3) through (11) below.

(3) The revenues obtained from the recertification of the crude oil set forth above shall upon receipt be placed in a special interest-bearing escrow account established pursuant to the provisions of Paragraph (7) below. The funds in such escrow account may be used only to recover "recoupable allowable expenses" at the Citronelle Unit as that term is defined in 10 CFR § 212.78. The expenses involved must be incurred before March 31, 1983.

(4) After payment pursuant to Paragraph (2) above, each crude oil purchaser shall file a report with the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration. That report shall contain a detailed summary of the quantities of crude oil recertified and the additional payment made to the Citronelle Unit as a result of the recertification.

(5) Notwithstanding any contrary provisions of 10 CFR § 211.67, after receiving notification from the crude oil purchasers and the Unit Manager that payments for the revised certifications have been made, the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration shall issue to each purchaser an additional number of entitlements equal in value to the amount that each of the purchasers or refiners are required to pay the Unit Manager for the recertified crude oil as set forth in Paragraph (2) of this Order. The additional entitlements issued to each crude oil purchaser shall be carried as an additional one-line entry on a subsequent Entitlements Notice.

(6) Within sixty (60) days of the date of this Decision and Order, the Citronelle Unit shall file a report with the Office of Hearings and Appeals. That report shall contain a detailed summary of the quantities of crude oil so recertified and the revenues received as a result of recertification. The Citronelle Unit shall also file with the Office of Hearings and Appeals periodic reports due forty-five (45) days subsequent to the end of each fiscal quarter detailing the capital and operating costs associated with the enhanced crude oil recovery project.

(7) Within twenty (20) days of the date of this Decision and Order, the Citronelle Unit shall establish a special interest-bearing

escrow account maintained at its expense in a bank which has been chartered by a state agency or instrumentality or by the Comptroller of the Currency of the United States Treasury Department, and which in either case is a member of the Federal Reserve System. The terms of the escrow account shall expressly provide that:

(a) The Citronelle Unit shall deposit into the escrow account all moneys collected in accordance with the provisions of Paragraph (2) above;

(b) No disbursements or withdrawals of the funds in the account shall be permitted by the escrow agent without the express written approval of the Director of the Office of Hearings and Appeals of the DOE or his designee;

(c) Immediately upon receipt of a directive from the Director of the Office of Hearings and Appeals of the DOE or his designee, the escrow agent shall disburse the funds in the escrow account in the manner and for the purposes specified by the Director of the Office of Hearings and Appeals. The escrow agent shall regard the directives issued by the Director of the Office of Hearings and Appeals as definitive and shall not in any way subject his adherence to the directive to the consent of the Citronelle Unit or any other party;

(d) The escrow account shall be subject to audit by the DOE or its designee at any time; and

(e) The escrow agent shall be required to furnish on a monthly basis, beginning on the date on which the account is established, a certified written statement of the status of the account to the Director of the Office of Hearings and Appeals of the DOE.

(8) Within twenty-five (25) days of the date of this Decision and Order, the Citronelle Unit shall deposit with the Director of the Office of Hearings and Appeals a copy of the signed escrow agreement which it has entered into pursuant to Paragraph (7) above. The Unit Manager shall also at that time submit to the Office of Hearings and Appeals the names of two proposed trustees which must be either banks or some other authorized institutions that are licensed to engage in such fiduciary relationships. The Director of the Office of Hearings and Appeals will designate a trustee who will coordinate with the DOE the administration of the escrow account. The trustee will be subject to all the conditions that are stipulated by the Director or his authorized designee and shall be paid by the Citronelle Unit.

(9) If the DOE finds that the provisions of Paragraphs (6) and (8) have not been complied with, it may without further notice enter a supplemental order vacating the relief approved in Paragraphs (1) through (3) above.

(10) Upon a final determination of the Application for Exception or a request by the Citronelle Unit that is approved by the Director of the Office of Hearings and Appeals or his designee, the escrow agent shall disburse any remaining funds in the account pursuant to the directives of the Director of the Office of Hearings and Appeals or his designee.

(11) All funds placed in the escrow account pursuant to the provisions of this Order, as well as any unexpended funds within the account, may be remitted by order of the Director of the Office of Hearings and Appeals to the United States Treasury or distributed in another manner consistent with the attached Decision.

(12) This Order is based on the presumed validity of statements, allegations, and documentary material submitted by the petitioner in connection with its Application for Exception. It may be revoked or modifed at any time upon a determination that the factual basis underlying the exception application is incorrect. The DOE may also, by further Order, direct appropriate adjustments or remedial action by the applicant if the determination reached in the final Decision and Order issued with respect to the Application for Exception should differ from the determination reached in the Proposed Decision and Order.

(13) This Order shall remain in effect pending further Order of the Office of Hearings and Appeals or until the Department of Energy issues a final Decision and Order with respect to the Application for Exception filed by the petitioner.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

[1] This situation arises due to the provisions of 10 C.F.R. § 212.78 which permit the owners of a property for which a tertiary enhanced recovery project is undertaken to sell at market prices quantities of otherwise price-controlled crude oil. To illustrate this situation, consider the following example: Producer A currently operates a property the production from which is sold at price-controlled levels. Current revenues are $500,000. In the absence of price controls, revenues would be $1,000,000 without the tertiary investment and $1,500,000 with the investment. Producer A undertakes a tertiary recovery project which costs $300,000. Under the incentives provided by the tertiary regulations, Producer A may also move a portion of current production from price-controlled levels to market levels to recover 75 percent of certain expenditures connected with the project and may also sell the incremental tertiary production realized from project at world market levels. Total revenues increase to $1,225,000 and the marginal revenue is $725,000 ($1,225,000 minus $500,000). Without price controls, Producer A only receives marginal revenues of $500,000 ($1,500,000 minus $1,000,000). Thus, under price controls, Producer A realizes marginal revenues of $725,000 on an investment of $300,000. In the absence of price controls, Producer A realizes marginal revenues of only $500,000 on the same $300,000 investment. Therefore, Producer A has a greater incentive to undertake the project under the present price control situation.

[2] Section 205.69A(a) of the DOE Administrative Procedures and Sanctions Regulations provides that the Office of Hearings and Appeals may issue an Interim Decision and Order if it determines that public interest considerations strongly favor the approval of an interim exception pending the completion of the generally applicable exception procedures.

The regulations also set forth three factors that should be considered in making that determination:

(1) the probability that exception relief will ultimately be granted;

(2) the harm an applicant is likely to incur unless exception relief is approved immediately; and

(3) the harm other persons are likely to incur if the Interim Order is issued.

10 CFR § 205.69A(a). As previously discussed, the first two criteria for the approval of interim relief have been satisfied. With respect to the last criterion, it should be noted that recertification of the crude oil involved will not adversely affect the crude oil purchasers since they are permitted to pass through these increased costs under the DOE regulatory program.

[3] The Citronelle Unit has presented additional arguments regarding the impact of the Windfall Profits Tax Act and individual income tax considerations on the additional revenues which will be generated as a result of exception relief. These arguments have been presented for the first time in the Application for Interim Relief and will be carefully considered before a final Decision and Order is issued with respect to the Citronelle Unit Application for Exception.

Appendix

If the Citronelle Unit notifies the Office of Hearings and Appeals within ten working days of the issuance of this Decision that it wishes to receive the alternate relief, the interim relief granted above will be rescinded and a Supplemental Order in substantially the following form granting alternate interim relief will be issued.

It is therefore ordered that:

(1) The provisions of this Order will be effective immediately.

(2) Notwithstanding the provisions of 10 CFR Part 212, Subpart D, the Unit Manager of the 341 Tract Unit of the Citronelle Field (the Citronelle Unit) be and hereby is permitted to recertify to Gulf Oil Company on either January 2, or January 30, 1981, appropriate volumes of crude oil produced and sold from the Citronelle Unit for the benefit of the working interest owners and the participating overriding royalty interest owners sufficient to generate an additional $60 million (plus any windfall profits tax laibilities incurred on the recertified crude oil). The total revenues realized through the recertification shall be placed in the escrow account described below. The Citronelle Unit will also be subject to the conditions set forth in Paragraphs (3) through (11) below.

(3) Within ten (10) days of the date of the issuance of this Order, the Citronelle Unit shall establish a special interest-bearing escrow account maintained at its expense in a bank which has been chartered by a state agency or instrumentality or by the Comptroller of the Currency of the United States Treasury Department, and which in either case is a member of the Federal Reserve System. The terms of the escrow account shall expressly provide that:

(a) The Citronelle Unit shall deposit into the escrow account all monies collected in accordance with the provisions of Paragraph (2) above;

(b) No disbursements or withdrawals of the funds in the account shall be permitted by the escrow agent without the express written approval of the Director of the Office of Hearings and Appeals of the DOE or his designee;

(c) Immediately upon receipt of a directive from the Director of the Office of Hearings and Appeals of the DOE or his designee, the escrow agent shall disburse the funds in the escrow account in the manner and for the purposes specified by the Director of the Office of Hearings and Appeals. The escrow agent shall regard the directives issued by the

Director of the Office of Hearings and Appeals as definitive and shall not in any way subject his adherence to the directive to the consent of the Citronelle Unit or any other party;

(d) The escrow account shall be subject to audit by the DOE or its designee at any time; and

(e) The escrow agent shall be required to furnish on a monthly basis, beginning on the date on which the account is established, a certified written statement of the status of the account to the Director of the Office of Hearings and Appeals of the DOE.

(4) Within thirteen (13) days of the date upon which it receives notice of the issuance of this Order, the Citronelle Unit shall deposit with the Director of the Office of Hearings and Appeals a copy of the signed escrow agreement into which it has entered pursuant to Paragraph (3) above. The Citronelle Unit shall also at that time submit to the Office of Hearings and Appeals the names of two proposed trustees which must be either banks or some other authorized institutions that are licensed to engage in such fiduciary relationships. The Director will designate a trustee who will coordinate with the DOE the administration of the escrow account. The trustee's duties will include drafting suggested ordering paragraphs to be included in the final Order assuring that payments made from the escrow account are in accordance with the terms of this Order, and taking appropriate steps during the life of the loan to assure that repayment is properly received under the terms of Paragraph (12) below. The trustee will be subject to all the conditions that are stipulated by the Director or his authorized designee and shall be paid by the Citronelle Unit

(5) If the DOE finds that the provisions of Paragraphs (3) and (4) have not been complied with, it may without further notice enter a supplemental order vacating the relief granted herein.

(6) Within thirty (30) days subsequent to the implementation of the exception relief set forth in Paragraph (2) above, the Citronelle Unit shall file a report with the Office of Hearings and Appeals. That report shall contain a detailed summary of the quantities of crude oil so recertified and the revenues received from each crude oil purchaser as a result of recertification. The Citronelle Unit shall also file periodic reports due forty-five (45) days subsequent to the end of each fiscal quarter detailing the capital and operating costs associated with the enhanced crude oil recovery project.

(7) Within five (5) days after the Unit Manager has recertified the crude oil pursuant to Paragraph (2) above, Gulf Oil Company shall file a report with the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration. That report shall contain a summary of the quantities of crude oil recertified and the additional payments which will be made to the Citronelle Unit.

(8) Notwithstanding any contrary provisions of 10 CFR § 211.67, after receiving notification from the Gulf Oil Company and the Unit Manager that payments for the revised certifications will be made, the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration shall issue to the Gulf Oil Company additional entitlements equal in value to the amount that the Gulf Oil Company will subsequently remit to the Unit Manager for the recertified crude oil under the provisions of this Decision and Order. The additional entitlements issued to Gulf shall be carried as an additional one-line entry on a subsequent Entitlements Notice. Gulf shall agree as a condition prior to the sale of these entitlements that the funds received shall be transferred to the Unit Manager of the Citronelle Unit within 10 days of the sale of the entitlements approved through the exception relief. The Unit Manager shall then place all such funds in the escrow account established pursuant to this Order.

(9) In the event that the applicant utilizes the exception relief approved in this Decision and Order, the Citronelle Unit waives access to the provisions of 10 CFR § 212.78 with respect to the use of the tertiary recovery incentive program.

(10) The escrow agent shall disburse the funds in the account pursuant to the directives of the Director of the Office of Hearings and Appeals or his designee. The revenues in the escrow account are to be used for the capital investments incurred in connection with an enhanced crude oil recovery project of the Citronelle Unit and to pay all windfall profits taxes associated with the recertification.

(11) In the event the tertiary recovery project is determined to be commercially successful, the Director of the Office of Hearings and Appeals or his authorized designee shall issue a supplemental order detailing the manner in which the monies borrowed by the Citronelle Unit are to be repaid. In addition, interest will be assessed on the borrowed funds at the prime rate compounded annually. In no event shall the repayment required of any interest owner exceed 50 percent of the additional revenues received by that interest owner as a result of the investments made by use of the funds received pursuant to this Order.

(12) Any funds placed within the escrow account pursuant to the provisions of this Order, as well as any unexpended funds within the account, may be remitted by order of the Director of the Office of Hearings and Appeals to the United States Treasury or distributed in another manner consistent with this Decision.

(13) This Order is based on the presumed validity of statements, allegations, and documentary material submitted by the petitioner in connection with its Application for Exception. It may be revoked or modified at any time upon a determination that the factual basis underlying the exception application is incorrect. The DOE may also, by further Order, direct appropriate adjustments or remedial action by the applicant if the determination reached in the final Decision and Order issued with respect to the Application for Exception should differ from the determination reached in the Proposed Decision and Order.

(14) This Order shall remain in effect pending further Order of the Office of Hearings and Appeals or until the Department of Energy issues a final Decision and Order with respect to the Application for Exception filed by the petitioner.

December 31, 1980.

Interim Decision and Order of the Department of Energy

Name of Petitioner: The 341 Tract Unit of the Citronelle Field
Date of Filing: December 29, 1980
Case Number: BEN-0078

On December 13, 1980, the Department of Energy issued a Decision and Order that implemented on an interim basis the exception relief tentatively approved to the 341 Tract Unit of the Citronelle Field (the Citronelle Unit) in a Proposed Decision and Order previously issued to the unit on October 8, 1980. In the December 13 Decision and Order, we indicated that the DOE would, upon request, provide the Citronelle Unit access to an alternate form of interim relief. That form of relief would provide the working interest owners with a loan of the funds necessary to undertake an enhanced recovery project on the Citronelle Field.[1] On December 29, 1980, the Citronelle Unit filed a petition with the Office of Hearings and Appeals in which it requested that the DOE implement the alternate form of interim relief. This Decision and Order is issued in response to that request.

For the reasons specified in the December 13, 1980 Decision and Order, we are implementing on an interim basis exception relief that will permit the Citronelle Unit to proceed with the miscible fluid displacement enhanced recovery project at the Citronelle Field. The mechanism to be utilized, as previously specified, will involve the recertification of price-controlled crude oil previously produced from the unit in order to generate an additional $60 million in net revenues.

The effect of this interim exception relief will be to provide the ownership interest with the full amount of funds necessary to undertake and complete the enhanced recovery project on the Citronelle Field (hereinafter referred to as "capital costs"). These expenditures will in effect be funded by increasing the entitlements burden of all domestic refiners by a *pro rata* amount. In turn, all ultimate purchasers of price-controlled petroleum products in the United States could be charged marginally higher prices. We believe such an amount of interim relief is justified in the present case in order to induce the ownership interests to undertake the project since the incremental amounts of crude oil to be produced are very substantial and would significantly enhance domestic energy resources and reduce the need to import crude oil. However, according to the data submitted in this proceeding, the financial benefits that the unit will obtain in the long run from undertaking the project are expected to be far in excess of the initial investment required. While the Citronelle

[1] For a full description of the background and the history of the present proceeding, see *The 341 Tract Unit of the Citronelle Field*, 7 DOE ——, No. BEN-0071 (December 13, 1980); *The 341 Tract Unit of the Citronelle Field*, No. DEE-7746 (October 8, 1980) (proposed decision).

Unit should be provided with appropriate economic incentives necessary to proceed, it would not be in the public interest to approve excessive exception relief. Therefore, to prevent the working interest owners from realizing windfall benefits from exception relief, the funds provided by this Decision should be repaid in the event the project is a commercial success. Otherwise, the ultimate consumers of petroleum products in the United States would be extending to the Citronelle Unit a sum of money without any repayment obligation. Accordingly, we have determined that in the event that the project is a commercial success, the funds provided to the Citronelle Unit as a result of this Decision must be repaid with interest computed at the prime rate compounded yearly. If the enhanced recovery project on the Citronelle Unit is successful, the repayment of any borrowed funds should not be a significant burden to the owners of the unit. In no event, however, shall the repayment required of any interest owner exceed 50 percent of the revenues received by that interest owner as a result of the investments made utilizing funds received pursuant to this Order.

In order to implement the interim exception relief set forth above, the Unit Manager will be permitted to recertify at market price levels a sufficient quantity of prior crude oil production from the unit that was sold at price-controlled levels in order to recoup $60 million in net revenues. The relief will be implemented by recertifying the crude oil directly to the Gulf Oil Corporation (Gulf), the principal ultimate purchaser of the crude oil. Gulf shall in turn certify to the DOE the amount of revenues to be paid to the Citronelle Unit and that firm will then receive a number of entitlements equal in value to the revenues to be remitted to the unit. The incremental payments remitted by Gulf to the Citronelle Unit shall then be placed in a special interest-bearing escrow account that will be administered by an appointed trustee. No subsequent recertification of the crude oil by Gulf will be permitted.

In order to ensure that the ownership interest do not receive excessive benefits through the approval of interim relief, and as previously specified, the Citronelle Unit is deemed to waive access to any of the funding provisions of the tertiary incentive program. *See* 10 CFR § 212.78. In addition, any revenues that the Citronelle Unit has received through the tertiary incentive program shall be returned within 60 days of this Order to the appropriate crude oil purchasers. The crude oil purchasers shall in turn recertify the prior tertiary incentive crude oil as price-controlled crude oil and shall pass through the revenues received from the Citronelle Unit as a reduction of their product costs.

The interim exception relief approved in this Decision is designed to provide the owners of the unit with an incentive to participate in and subsequently undertake the project. The present interim relief is not intended to place the Citronelle Unit in a more advantageous position for a subsequent sale of the unit to another firm. As a condition of exception relief, we will require the Citronelle Unit to notify the Office of Hearings and Appeals of any changes in the ownership interest of the 20 largest working interest owners of the Citronelle Unit. If the DOE determines that adjustments to the level of exception relief are necessary as a result of any subsequent ownership changes, a Supplemental Order will be issued that specifies any remedial action to be required by the Citronelle Unit.

The DOE is further aware that many of the terms used in this Decision may require clarification. For example, terms such as "tertiary investment," "operating expense," "capital costs," and "commercial success" are not precisely defined in this Order. Nevertheless, we believe it is in the public interest to issue this Decision and Order at the present time in order to provide the ownership interest of the Citronelle Field with an immediate economic incentive to undertake the project. In the final Decision and Order issued in connection with the October 8, 1980 Proposed Decision and Order or in Supplemental Orders that may be issued, we will clarify the provisions of this Decision and Order, as necessary, and address the issues raised by the Citronelle Unit or any of the aggrieved parties.

Finally, since the present Order implements the alternate form of relief set forth in the December 13, 1980 Decision, the provisions of that Order relating to the implementation of the exception relief set forth in the October 8, 1980 Proposed Order on an interim basis will be rescinded *ab initio*.

It is therefore ordered that:

(1) The provisions of this Order will be effective immediately.

(2) Notwithstanding the provisions of 10 CFR Part 212, Subpart D, the Unit Manager of the 341 Tract Unit of the Citronelle Field (the Citronelle Unit) be and hereby is permitted to recertify to the Gulf Oil Corporation (Gulf) on either January 2, or January 30, 1981, appropriate volumes of crude oil produced and sold from the Citronelle Unit for the benefit of the working interest owners and the participating overriding royalty interest owners sufficient to generate an additional $60 million (plus any windfall profits tax and state severance tax liabilities incurred on the recertified crude oil). All of the revenues realized through the recertification shall be placed in the escrow account described below. The Citronelle Unit will also be subject to the conditions set forth in Paragraphs (3) through (13) below.

(3) Within ten (10) days of the date of the issuance of this Order, the Citronelle Unit shall establish a special interest-bearing escrow account maintained at its expense in a bank which has been chartered by a state agency or instrumentality or by the Comptroller of the Currency of the United States Treasury Department, and which in either case is a member of the Federal Reserve System. The terms of the escrow account shall expressly provide that:

(a) The Citronelle Unit shall deposit into the escrow account all monies collected in accordance with the provisions of Paragraph (2) above;

(b) No disbursements or withdrawals of the funds in the account shall be permitted by the escrow agent without the express written approval of the Director of the Office of Hearings and Appeals of the DOE or his designee;

(c) Immediately upon receipt of a directive from the Director of the Office of Hearings and Appeals of the DOE or his designee, the escrow agent shall disburse the funds in the escrow account in the manner and for the purposes specified by the Director of the Office of Hearings and Appeals. The escrow agent shall regard the directives issued by the Director of the Office of Hearings and Appeals as definitive and shall not in any way subject his adherence to the directive to the consent of the Citronelle Unit or any other party;

(d) The escrow account shall be subject to audit at any time by the DOE, the trustee identified in paragraph (4) below, or any other designee of the DOE; and

(e) The escrow agent shall be required to furnish on a monthly basis, beginning on the date on which the account is established, a certified written statement of the status of the account to the Director of the Office of Hearings and Appeals of the DOE.

(4) Within thirteen (13) days of the date upon which it receives notice of the issuance of this Order, the Citronelle Unit shall deposit with the Director of the Office of Hearings and Appeals a copy of the signed escrow agreement into which it has entered pursuant to Paragraph (3) above. The Citronelle Unit shall also at that time submit to the Office of Hearings and Appeals the names of two proposed trustees which must be either banks or other institutions that are licensed to engage in such fiduciary relationships. No proposed trustee shall be the escrow agent or a bank or other lending institution located within the state of Alabama. The Director will designate a trustee which need not be a proposed trustee who will act as an agent of the DOE until repayment is made by the Citronelle Unit. The trustee's duties will include coordinating the administration of the escrow account, assuring that payments made from the escrow account are in accordance with the terms of this Order, and taking appropriate steps during the life of the loan (including hiring independent auditors and geologists), to assure that repayment is properly received under the terms of Paragraphs (11) and (12) below. The trustee will be subject to the directives of the Director of the Office of Hearings and Appeals or his authorized designee and his expenses shall be paid by the Citronelle Unit.

(5) If the DOE finds that the provisions of Paragraphs (3) and (4) have not been complied with, it may without further notice enter a supplemental order vacating the relief granted herein.

(6) Within thirty (30) days subsequent to the implementation of the exception relief set forth in Paragraph (2) above, the Citronelle Unit shall file a report with the Office of Hearings and Appeals. That report shall contain a detailed summary of the quantities of crude oil so recertified and the revenues received from Gulf as a result of recertification. The Citronelle Unit shall also file periodic reports due forty-five (45) days subsequent to the end of each fiscal quarter detailing separately all costs associated with the implementation of the tertiary project (which have previously been referred to as

"capital costs" in this Decision although they may not be capital costs as that term is generally understood) and any operating costs associated with the enhanced crude oil recovery project. In addition, the report shall contain projections by year of estimated future production of crude oil that is attributable to the tertiary investments referred to in the Citronelle Unit's prior submissions to the DOE. The Unit Manager shall also file any other explanatory or backup data requested by the Officer or trustee appointed pursuant to Paragraph (4) above.

(7) Within seven (7) days after receipt of Notice that the Unit Manager has recertified the crude oil pursuant to Paragraph (2) above, Gulf shall file a report with the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration. That report shall contain a summary of the quantities of crude oil recertified by the Citronelle Unit and the additional payments which Gulf will subsequently make to the Citronelle Unit.

(8) Notwithstanding any contrary provisions of 10 CFR § 211.67, after receiving notification from Gulf and the Unit Manager that payments for the revised certifications will be made, the Assistant Administrator for Petroleum Operations of the Economic Regulatory Administration shall issue to Gulf additional entitlements equal in value to the amount that Gulf will subsequently remit to the Unit Manager for the recertified crude oil under the provisions of this Decision and Order. The additional entitlements issued to Gulf shall be carried as an additional one-line entry on the first Entitlements Notice published subsequent to receipt of Gulf's report. Gulf shall file with the Office of Hearings and Appeals a written statement prior to the sale of these entitlements that the funds received shall be transferred to the Unit Manager of the Citronelle Unit within 10 days of the sale of the entitlements approved through the exception relief. The Unit Manager shall then place all such funds in the escrow account established pursuant to this Order.

(9) The Citronelle Unit waives access to the provisions of 10 CFR § 212.78 with respect to the use of the tertiary incentive program. Any revenues that the Citronelle Unit has previously received through the tertiary incentive program shall be returned with any accrued interest within 60 days of this Order to the appropriate crude oil purchasers. The crude oil purchasers and resellers shall in turn recertify the prior tertiary incentive crude oil as price-controlled crude oil and shall reflect the revenues received from the Citronelle Unit as a reduction in product costs. The ultimate refiners shall report these changes as adjustments to their crude oil receipts by filing amended reports with the DOE.

(10) The escrow agent shall disburse the funds in the account pursuant to the directives of the Director of the Office of Hearings and Appeals or his designee. The revenues in the escrow account are to be used for the capital investments and associated expenses incurred in connection with the enhanced crude oil recovery project on the Citronelle Unit and to pay all windfall profits taxes and state severance tax liabilities associated with the recertification.

(11) In the event the tertiary recovery project is determined to be commercially successful, the Director of the Office of Hearings and Appeals or his authorized designee shall issue a supplemental order detailing the manner in which the monies provided to the Citronelle Unit are to be repaid. In addition, interest will be assessed on the borrowed funds at the prime rate compounded annually. In no event shall the repayment required of any interest owner exceed 50 percent of the additional revenues received by that interest owner as a result of the investments made by use of the funds received pursuant to this Order. The Citronelle Unit may also be directed to deliver quantities of crude oil subsequently produced from the unit for use in the strategic petroleum reserve in order to repay the funds borrowed to implement the enhanced recovery project on the Citronelle Field.

(12) Any unexpended funds within the account may be remitted by order of the Director of the Office of Hearings and Appeals to the United States Treasury or distributed in another manner consistent with this Decision.

(13) Within twenty (20) days subsequent to the issuance of this Decision, the Citronelle Unit shall provide the Office of Hearings and Appeals with a current list of the working interest owners and their respective ownership percentages. The Citronelle Unit shall also promptly notify the Office of Hearings and Appeals of any changes in the ownership interest of the 20 largest working interest owners of the Citronelle Unit and the reasons for any such change. If changes in the working interest do occur, the DOE may subsequently make adjustments to the level of exception relief in the event and to the extent that such ownership changes are determined to be inconsistent with the intent of this Decision and Order.

(14) All questions of interpretation of the terms and conditions of the Decision and Order shall be resolved by the Director of the Office of Hearings and Appeals or his designee through the issuance of written determinations.

(15) This Order is based on the presumed validity of statements, allegations, and documentary material submitted by the petitioner in connection with its Application for Exception. It may be revoked or modified at any time upon a determination that the factual basis underlying the exception application is incorrect. The DOE may also, by further Order, direct appropriate adjustments or remedial action if the determination reached in the final Decision and Order issued with respect to the Application for Exception should differ from the determination reached in the Proposed Decision and Order and this Decision and Order.

(16) This Order shall remain in effect pending further Order of the Office of Hearings and Appeals or until the Department of Energy issues a final Decision and Order with respect to the Application for Exception filed by the petitioner.

(17) The Ordering Paragraphs of the Decision and Order issued to the Citronelle Unit on December 13, 1980 be and hereby are rescinded.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 81-4278 Filed 2-4-81; 8:45 am]

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Reader Aids

Federal Register

Vol. 46, No. 24

Thursday, February 5, 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, FEBRUARY

10135-10450.....2
10451-10704.....3
10705-10894.....4
10895-12224.....5

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12092 (Revoked by EO 12288).....10135
12278 (correction).....10895
12279 (correction).....10897
12288.....10135

4 CFR

20.....10451

7 CFR

29.....10451
905.....10899
907.....10900
1421.....10137, 10900

Proposed Rules:
1701.....10498
1747.....10746
2851.....10498

8 CFR

211.....10901
214.....10901

9 CFR

Proposed Rules:
318.....10500
381.....10500

10 CFR

Proposed Rules:
Ch. I.....10747
50.....10501

12 CFR

217.....10452
544.....10705
545.....10705
546.....10705
571.....10705

Proposed Rules:
Ch. II.....10747

13 CFR

118.....10455
119.....10455

Proposed Rules:
124.....10501

14 CFR

39.....10140
43.....10705, 10902, 10903
71.....10903, 10904
91.....10705, 10902, 10903
121.....10705, 10902, 10903
123.....10705, 10902, 10903
125.....10705, 10902, 10903
135.....10705, 10902, 10903
145.....10705, 10902, 10903
207.....10455
208.....10457
212.....10457
214.....10457

Proposed Rules:
39.....10163
71.....10164
207.....10164
208.....10164
212.....10164
214.....10164

15 CFR

938.....10141

16 CFR

1212.....10458

Proposed Rules:
Ch. I.....10502
13.....10921
423.....10165
457.....10747
1306.....11188

17 CFR

200.....10904

18 CFR

4.....10458
271.....10141, 10460
282.....10148

Proposed Rules:
2.....10165
4.....10165
5.....10165
16.....10165
131.....10165

19 CFR

355.....10905

21 CFR

178.....10461
510.....10462, 10464
520.....10463
522.....10463
558.....10464
1030.....10465

22 CFR

41.....10906
901.....11180
902.....11181
903.....11181
904.....11182
905.....11183
906.....11184
907.....11184
908.....11184
909.....11184

23 CFR

140.....10706, 10906

450 ..... 10706, 10906
630 ..... 10706, 10906
655 ..... 10706, 10906
656 ..... 10706, 10906
765 ..... 10706, 10906

Proposed Rules:
635 10177
1221 10922

24 CFR

Proposed Rules:
868 10922

25 CFR

52 10707
53 10707

26 CFR

15A 10708
26a 10907
31 10148

Proposed Rules:
1 ..... 10510, 10749
48 10923

27 CFR

Proposed Rules:
181 10512

29 CFR

1 10465
2 10465
5 10466
2520 10465
2550 10465
2608 10720
2615 10720

Proposed Rules:
Ch. XIV 10177
2520 10512

30 CFR

71 10465
90 10465
211 10707
221 10707
231 10707
250 10707
270 10707
700 10707
716 10707
785 10707
948 10707
950 10707

31 CFR

51 10908

32 CFR

59 10908
826 10708

33 CFR

117 ..... 10706, 10906
157 ..... 10706, 10906
161 ..... 10706, 10906
162 ..... 10706, 10906

Proposed Rules:
207 10923

34 CFR

75 ..... 10153, 10721
76 10721
776 10721
778 10721
208 10153
220 10153

Proposed Rules:
100 10516

36 CFR

223 10497

37 CFR

307 10466

39 CFR

111 ..... 10154, 10721

Proposed Rules:
776 10513

40 CFR

51 10910
52 10910
56 10911
123 10487
264 10911
265 10911
401 10723
707 10912

Proposed Rules:
Ch. I 10177
52 10750
60 10752
122 11126
260 11126
264 11126

41 CFR

Ch. 18 (Parts 3, 4, 5) 10489
Ch. 18 (Parts 3, 20, Appendix E) 10495
7-4 10912
7-7 10912

Proposed Rules:
1-4 10924

43 CFR

9 10707
2090 10707
2091 10707
2200 10707
2210 10707
2220 10707
2250 10707
2260 10707
2270 10707
2300 10707
2310 10707
2320 10707
2340 10707
2350 10707
2920 10707
4100 10497

Public Land Orders:
5797 10707
5798 10707
5799 10707
5802 10707
5803 10155
5804 10707
5805 10707
5806 10707
5809 10707
5812 10707
5814 10707
5817 10707
5818 10707
5819 10707
5821 10707
5824 10707
5825 10707
5826 10707
5827 10707
5828 10707
5830 10707
5831 10707
5832 10707
5833 10707
5834 10707
5836 10707
5837 10707
5838 10707
5839 10707
5840 10707
5841 10707
5842 10707
5844 10707
5845 10707
5846 10707
5848 10707
5849 10707
5850 10707
5851 10707
5852 10707
5853 10707
5854 10707
5855 10707

44 CFR

Proposed Rules:
67 10753-10763

46 CFR

Proposed Rules:
381 10515
524 10177
549 10767

47 CFR

17 10915
73 ..... 10724-10737, 10916
81 10155
97 10915

Proposed Rules:
Ch. I 10924
2 10768
22 10768
73 ..... 10772-10784, 10963-10968
94 10768
73 10177

49 CFR

1 10919
173 ..... 10706, 10906
179 ..... 10706, 10906
192 ..... 10157, 10706, 10906
195 ..... 10157, 10706, 10906
460 ..... 10706, 10906
613 ..... 10706, 10906
635 ..... 10706, 10906
639 ..... 10706, 10906
640 ..... 10706, 10906
642 ..... 10706, 10906
1033 ..... 10497, 10740-10743
1109 10162
1201 10919
1206 10919
1207 10919
1248 10745
1331 10920

Proposed Rules:
512 10969
571 ..... 10179, 10428, 10969
575 10429
1044 10180
1109 ..... 10181, 10182

50 CFR

17 10707

Proposed Rules:
216 10785
611 10182
639 10515
643 10182
661 10182

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
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DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
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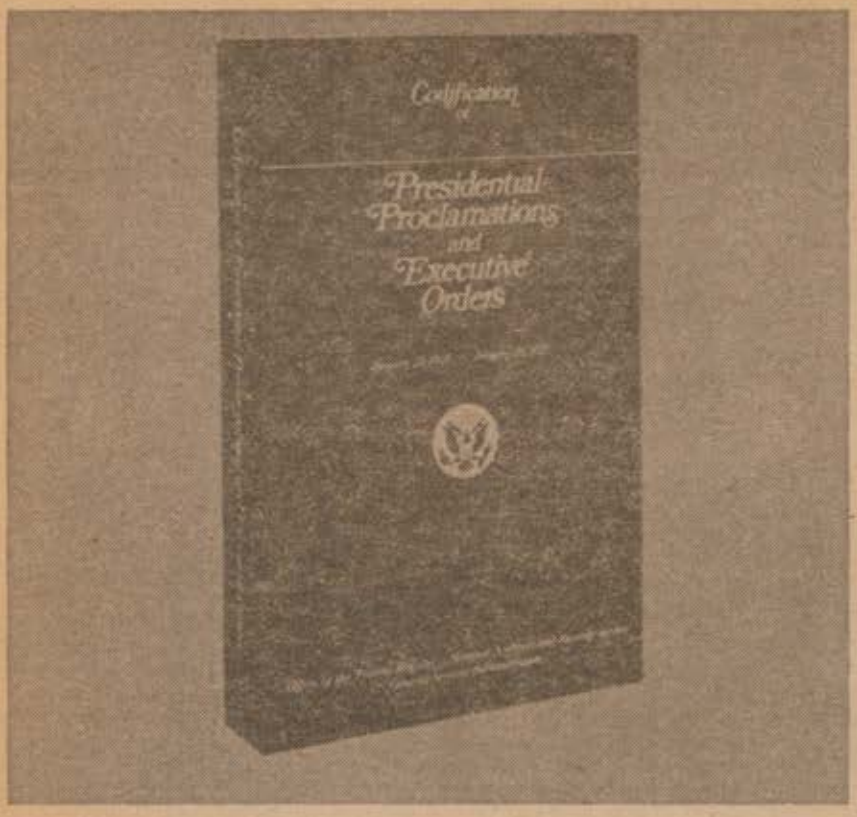
NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing January 28, 1981

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Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1977 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

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